

**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

DECLARATION OF DR. FRED ROTTNEK

I. Background and Qualifications

1. My name is Fred Rottnek, MD, MAHCM. I am a Professor of Medicine in the Saint Louis University School of Medicine, Professor in the Physician Assistant Program at the Doisy College of Health Sciences, and Professor in the Center for Health Law Studies in the School of Law. I am the Director of Community Medicine in the Department of Family and Community Medicine and the Program Director of the Addiction Medicine Fellowship. I am board-certified in Family Medicine and Addiction Medicine, and I am a certified Correctional Health Care Physician through the National Commission on Correctional Health Care.
2. I am a board-certified family physician and certified correctional health care physician with over 15 years of experience practicing correctional health care in Saint Louis County, Missouri.

3. I was the lead physician and medical director of the Saint Louis County (Missouri) Jail for over fifteen years, from June 2001 through September 2016. In this role, contracted through the Saint Louis County Department of Health, I saw patients three days/week, took call on average 16 days/month, and participated in the leadership teams that were responsible for the health and well-being of inmates, correctional medicine staff, correctional staff, and visitors to the jail, which is located in the Buzz Westfall Justice Center as well as Juvenile Detention in the Family Courts of Saint Louis County. In addition to policies regarding patient care and custody of medically-fragile inmates, I participated in the development of policies regarding institutional safety. Examples of the latter include standard operating procedures on complex patients in the medical and psychiatry infirmary, hygiene and cleaning protocols during the initial outbreak of MRSA in the early 2000's, and safety and emergency protocols related to the institutional lockdown following Michael Brown's shooting death in Ferguson, MO, in August 2015.
4. At a large urban jail, during my years in this role, I was responsible for directing the medical care and supporting the correctional medicine staff in the care of a daily census of patients that varied from 900 to 1400, as well as annual intake screenings of 30,000 to 34,000 arrestees. The Saint Louis County Jail was (and is) the only jail in the State of Missouri that meets standards for accreditation by the American Correctional Association. Juvenile Detention is accredited by the National Commission on Correctional Health Care.
5. My bio, attached as Exhibit A, includes a brief description of my education and relevant experience.
6. My C.V., attached as Exhibit B, has a full list of my honors, experience, and publications.
7. I am donating my time reviewing materials and preparing this report. Any live testimony I provide will also be provided pro bono.
8. I have testified as an expert at trial or by deposition once in the past 3 years.
9. I have contributed my experience in this field, and emerging science related to COVID-19 in a letter I wrote to the Supreme Court of Missouri, and to declarations that I submitted in *Swain v. Junior*, No. 2020-cv-21457 (So. Dist. Fla., Apr. 5, 2020) and *Feltz v. Regalado*, No. 18-cv-00298 (D. Okla. June 6, 2018), stating the threat COVID-19 posed to inmates in prisons and jails, detailing the impossibility of jails and prisons meeting the Center for Disease Control's guidelines, and supporting the release of medically vulnerable people.

II. Heightened Risk of Epidemics in Jails and Prisons

10. Based on my review of information from the CDC, National Commission on Correctional Health Care (NCCHC), and the National Institute of Corrections (NIC) on COVID-19, my experience working in primary care and public health in both jail and juvenile detention settings, my review of the relevant medical literature, my review of the Plaintiffs' declarations, and my review of photos of the facility from other pre-COVID-19 jail inspections, it is my professional judgment that the COVID-19 pandemic will have a

devastating and lethal impact on the lives of both incarcerated individuals and prison personnel in East Baton Rouge Parish, and result in a medical emergency that could overwhelm local medical infrastructure.

11. For a jail or prison located in a community where COVID-19 is spreading, there are no steps that administrators can take to ensure that the disease will not enter and spread through the facility and back out to the community. Ideally, a detention facility should strictly follow CDC guidelines for mitigating the risk to inmate and staff populations and the general public.¹ However, these measures are designed to manage and mitigate—not eliminate—the increased risk to jail or prison populations.² Due to the nature of prison facilities, even if the CDC measures were precisely adhered to, inmates would remain at substantially higher risk than the average person in a community where an outbreak occurs.³ Moreover the presence of a prison in a community would continue to increase the risk to all community members, even if CDC guidelines were strictly followed.
12. The presence of a correctional facility poses a grave threat to the health and safety of Parish residents, as an ongoing outbreak in a jail or prison could limit the ability of health professionals to contain, mitigate, and treat the spread of COVID-19. In my professional opinion, jails and prisons are particularly under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, and the East Baton Rouge Parish Prison is no exception. It is my professional judgment, based on the materials and experience identified above, *see supra* ¶10, 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. The reasons for this conclusion are detailed in the following points.

¹ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, CDC (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (hereinafter CDC Interim Guidance).

² See Matthew J. Akiyma, et al., *Flattening the Curve for Incarcerated Population—Covid-19 in Jails and Prisons*, *The New Engl. J. of Med.* (Apr. 2, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2005687> (“Irrespective of . . . interventions [to limit the number of people entering and leaving jails], infected persons—including staff members—will continue to enter correctional settings A recent SARS-CoV-2 outbreak among cruise-ship passengers and crew in Yokohama, Japan, provides a warning about what could soon happen in correctional settings.”); CDC Interim Guidance (“The integration of [multiple] components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help *reduce the risk* of transmission and severe disease from COVID-19.”) (emphasis added)

³ Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 8, 1047-1055 (Oct. 15, 2007), <https://academic.oup.com/cid/article/45/8/1047/344842> (identifying factors that make jails inherently dangerous with respect to infectious disease); Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, *The New York Times* (Mar. 16, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html> (“It is not a matter of if, but when, this virus breaks out in jails and prisons”).

III. Jails and Prisons Cannot Implement Adequate Prevention, Containment, and Mitigation Strategies

13. COVID-19 is a highly infectious and easily communicable disease.⁴ The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing), but survives on inanimate surfaces for up to three days. The latest medical information indicates people are most contagious when they are actively symptomatic, but it is still possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. The CDC recommends people maintain a distance of 6 feet between them and anyone else in order to avoid contact with the disease.
14. COVID-19 prevention strategies necessitate both containment and mitigation. In addition to social/physical distancing, containment requires intensive hand washing practices, disinfection, and aggressive cleaning of surfaces, and identifying and isolating people who are ill. Moreover, the use of appropriate personal protective equipment (PPE) is necessary for those tasked with decontaminating surfaces and interacting with potentially infected individuals.⁵ The CDC recommends mitigation strategies such as social distancing and closing communal spaces (schools, workplaces, etc.) to protect those most vulnerable to the disease.⁶
15. Jails and prisons are unable to adequately implement containment strategies. During an infectious disease outbreak, most people in the community can protect themselves by washing their hands. Unfortunately, inmates have limited opportunities to maintain optimal hygiene through handwashing and showering as recommended by the CDC. In general, the more restricted the level of housing, the more barriers and inmate has to proper hygiene. Many jails and prisons charge inmates money for hand soap or other personal hygiene products. Most facilities also ban the use of alcohol-based antibacterial hand sanitizer. Further, under CDC guidance, high-touch surfaces (doorknobs, light switches, etc.) should be cleaned and disinfected several times a day with bleach or other approved cleansers, and the cleaner should use disposable gloves to prevent virus spread.⁷ That said, many jails and prisons place limitations on the amount of cleaning supplies available to inmates and also have insufficient staff available to clean, particularly during a public health pandemic like this. Spaces within jails and prisons are often poorly ventilated and share HVAC systems, which facilitates and accelerates the spread of diseases through aerosolized droplets.
16. Jails and prisons are also unable to practice effective mitigation strategies. Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person-to-person.⁸ When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are far greater than normal. As

⁴ Coronavirus (COVID-19), CDC, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

⁵ *Id.*

⁶ *Id.*

⁷ *Disinfecting Your Facility if Someone is Sick*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/disinfecting-building-facility.html>

⁸ *Active Case Finding for Communicable Diseases in Prisons*, 391 *The Lancet* 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext)

such, when jailed or imprisoned, people have much less of an opportunity to protect themselves by social distancing than they would in the community. The CDC suggests that jails and prisons implement social distancing strategies such as staggering meals, moving all bunks six feet apart, and limiting the distance inmates need to be transported to access medical care.⁹ From my professional experience, these distancing strategies will be difficult if not impossible for most jails and prisons to implement.

17. The latest guidance from the CDC suggests that jails and prisons have a long list of hygiene supplies, cleaning supplies, PPE, and medical supplies on hand and available.¹⁰ For example, the CDC recommends facilities provide liquid soap, as harsh bar soap can irritate the skin and reduce handwashing. The CDC also recommends jails and prisons have enough face masks to require every individual displaying COVID-19 symptoms to wear one. In my professional experience, it is unlikely most jails and prisons have or reasonably could obtain the required supplies to comply with this guidance.

IV. Jails and Prisons Cannot Adequately Treat Those Infected

18. To prevent transmission of droplet-borne infectious diseases, people who are infected and symptomatic should be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms and, in my experience, many jails and prisons have none. This makes both containing the illness and caring for those who have become infected much more difficult.
19. In my opinion, administrative or disciplinary segregation, or solitary confinement, of those who may be infected is not an effective disease containment strategy. The detrimental mental health effects of solitary confinement are well-known.¹¹ Studies show the isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death.¹² Solitary confinement is also an ineffective way to prevent transmission of the virus to others, because of the aforementioned lack of negative pressure rooms, and because correctional staff will still have to come within close proximity to check on these individuals. Moreover, placing inmates in solitary confinement will place a greater burden on already limited staff and resources. Per NCCHC guidelines, correctional facilities are responsible for meeting the medical and mental health needs of people in solitary or restrictive housing--particularly those with acute medical and mental health needs--which includes regular access to medicine and mental health treatment.¹³ Put simply, solitary confinement will not solve the problem.

⁹ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, CDC (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (hereinafter CDC Interim Guidance).

¹⁰ *Id.*

¹¹ David H. Cloud, et al., *Public Health and Solitary Confinement in the United States*, 105 Am. J. Pub. Health 18, 18 (2015).

¹² Metzner & Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Academy Psychiatry and Law 104–108 (2010).

¹³ *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/250321.pdf> (Nov. 2016).

20. During an infectious disease outbreak, a containment strategy requires that caregivers for people who are ill must have access to adequate PPE supplies. According to NCCHC guidance, jails and prisons must have adequate PPE, including gloves, masks, and respirators, eye protectors, gowns, uniforms, and shoe covers.¹⁴ In my experience, jails and prisons are already under-equipped with medical supplies. A pandemic only exacerbates the shortage. These institutions just simply do not have sufficient PPE for increasing cases of COVID-19 among people who are incarcerated and staff who are required to care for those people, increasing the risk for everyone in the facility of a widespread outbreak.
21. Jails and prisons typically house inmates with chronic conditions, particularly in men, that were not well controlled prior to incarceration. Many of these chronic conditions are contained in the list of diagnoses provided by the CDC that would describe an inmate as being medically vulnerable
- Asthma
 - Chronic kidney disease being treated with dialysis
 - Chronic lung disease, such as emphysema and COPD
 - Diabetes
 - Hemoglobin Disorders, including sickle cell anemia
 - Immunocompromised persons, including those with HIV/AIDS
 - Liver disease, including hepatitis
 - People aged 65 years and older
 - Serious heart conditions, including past myocardial infarctions, and congestive heart failure
 - Severe obesity

In my judgment, I would add inmates that have diagnosis that require regular medication administration and lab monitoring, such as inmates with

- Neurological conditions, such as epilepsy
 - Serious mental illness (those that severely impact daily functioning), such as schizophrenia, bipolar affective disorder, major depression
22. Jails and prisons are often poorly equipped to diagnose infectious disease outbreaks. Most jails and prisons lack urgent or emergent access to testing equipment, laboratories, and ventilators, which means that they will be slow to adequately diagnose and address the outbreak.
23. Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. It is unlikely jails or prisons will have adequate staff or PPE to safely transport individuals to these facilities and sit with the individuals while there.

¹⁴ *Covid-19 Coronavirus: What You Need to Know in Corrections*, NCCHC, <https://www.ncchc.org/covid-resources>.

V. A COVID-19 Outbreak in a Jail or Prison Creates Dangerous Staffing Shortages

24. Absenteeism can pose a substantial safety and security risk. As an outbreak spreads through jails, prisons, and communities, medical personnel, and correctional staff will become sick and stop reporting to work. There is a physical limit to how much overtime other correctional staff can work to make up for lost employees.
25. In my experience, jails and prisons are already dangerously understaffed both in terms of correctional healthcare providers and correctional staff.¹⁵ Many jails and prisons do not have 24-hour on-site health professionals. A shortage of doctors or nurses onsite will impact the already limited ability to conduct testing, treat symptoms, and recommend care for sick individuals. Further, as health systems inside facilities are taxed with COVID-19, people with other serious physical or mental health conditions may not be able to receive the medical care they need for these conditions.
26. A staffing shortage for correctional staff will greatly impact the ability of a facility to respond to a COVID-19 outbreak, as guards or supervisors need to facilitate prevention measures, transport inmates to medical, rearrange housing, and conduct many other non-routine tasks. Moreover, a staffing shortage for correctional staff also creates an unacceptable general risk of danger to inmates and other staff members in a facility.

VI. Contagious Disease Outbreaks in Jails and Prisons is a Public Health Nightmare

27. Globally, outbreaks of contagious diseases are all too common in closed detention settings and are more acute than in the community at large. In my experience, past epidemics have taken a greater toll on jails and prisons even when the outbreak is of a disease with available vaccines and medication. For example, during the H1N1-strain flu outbreak in 2009 (known as the “swine flu”), jails and prisons experienced a disproportionately high number of cases. In 2002, an outbreak of MRSA in a Missouri prison caused significant health problems.¹⁶ And currently, jails and prisons across the United States are experiencing COVID-19 outbreaks. In New York, as of May 15, 2020, 362 inmates and 1,300 Department of Corrections workers in Rikers Island have tested positive for COVID-19, and officials report that they expect the numbers to rise. Deaths due to COVID-19 in the Wayne County Jail in Detroit include one of the jail commanders, a deputy in the medical unit, the jail system’s medical director, and another staff physician. And while these numbers are startling, they are almost certainly an underreporting, since jails and prisons have an extraordinarily difficult time finding and purchasing tests. These numbers reinforce the infectivity among correctional workers, medical staff, and vendors who return to their homes and neighborhoods at the end of their shift and may unknowingly spread the virus to others who are medically vulnerable.

¹⁵ See, e.g., Kurt Erickson, *Parson Calls for More Downsizing in Missouri Prison System*, St. Louis Post-Dispatch (Jan. 20, 2020).

¹⁶ Tyrabelidze, et al. *Personal Hygiene and Methicillin-resistant Staphylococcus aureus Infection*, 12 Emerg. Infect. Dis. 422.

28. To deal with a pandemic, society at large can increase resources and take emergency measures, like adding hundreds of hospital beds in a new facility. Jails and prisons have real and hard limitations of space, staffing, and supplies. It is unlikely most jails or prisons will be able to reasonably put into place sufficient resources to address an outbreak. While Baton Rouge Mid-City hospital recently reopened to accommodate the increase in the number of patients with COVID-19 diagnoses, the addition of patients overflowing from EBRPP will further stress resources and staffing realities.

VII. Risk of COVID-19 in the East Baton Rouge Parish Prison

29. In preparing this report I have reviewed the declarations of the Plaintiffs, Belton, Bradley, Franklin, Rogers, Williams, Shepherd, Stewart, Spears, Harris, and Hardy in this case.

30. Based on my professional experience, my review of the relevant literature, and my review of the Plaintiffs' declarations, it is my professional judgment that the East Baton Rouge Parish Prison is under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which would result in severe harm to detained individuals, jail staff, and the broader community. The reasons for this conclusion are detailed as follows.

31. COVID-19 is a highly infectious and easily communicable disease.¹⁷ The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing) but survives on inanimate surfaces for up to three days. The latest medical information indicates people are most contagious when they are actively symptomatic, but now the CDC is recommending people wear masks in public settings because people can transmit the virus days before they start to show symptoms. The CDC recommends people maintain a distance of 6 feet between them and anyone else in order to avoid contact with the disease. If this distance cannot be maintained, CDC recommended people wear masks to provide a barrier from people expelling droplets in breathing, coughing, and conversation.¹⁸ Plaintiff Franklin's declaration details housing practices in several units of the jail, including central booking. In all these settings, social distancing is impossible.

32. Jails and prisons by their nature are unable to adequately implement prevention and containment strategies, and despite local administrators' planning, the East Baton Rouge Parish Prison is no different. To reduce the risk posed by jails and prison, COVID-19 prevention strategies necessitate both containment and mitigation.

33. Containment requires intensive hand washing practices, decontamination and aggressive, frequently scheduled and as-needed cleaning of surfaces, and identifying and isolating people who are ill. Moreover, the use of appropriate personal protective equipment (PPE) is necessary for those tasked with decontaminating surfaces and interacting with potentially infected individuals.¹⁹ The CDC recommends mitigation strategies such as social

¹⁷ Coronavirus (COVID-19), CDC, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

¹⁸ Coronavirus Disease 2019: Recommendations for Cloth Face Covers, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

¹⁹ Coronavirus (COVID-19), CDC, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

distancing and closing communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease.²⁰

34. As mentioned above, jails and prisons typically house inmates with chronic conditions, particularly in men, that were not well controlled prior to incarceration. CorrectHealth and the East Baton Rouge Sheriff's Office have consistently emphasized the prevalence of preexisting conditions within the incarcerated population that often have gone untreated or even undiagnosed. These CDC-designated conditions are listed above.

Inadequate Testing and Screening

35. Substantial mitigation of the COVID-19 risk would require appropriate screening and available testing for all inmates, staff, and others entering the facility, but thorough testing is not possible given resource constraints, and the screening conducted is not meaningful.
36. Comprehensive testing is a critical component of containing the spread of the virus and to ascertaining the severity of the outbreak.
37. Detainees in the jail have consistently reported an inability to obtain testing even when they show COVID-19 symptoms. For example, Plaintiff Rogers, reports that he remained on a non-COVID-19 unit even though he was symptomatic for days and had reported his symptoms (headaches and body aches) to jail staff. He later tested positive for COVID-19. Rogers Decl. ¶ 8-9. In another example, Plaintiff Spears attests that detainees exhibiting severe symptoms remained in their unit for 10-12 hours before being moved or being tested for COVID-19. Spears Decl. ¶ 27. Plaintiff Williams reports being sent to the COVID-19 isolation unit without having been tested. Williams Decl. ¶ 12. Plaintiff Hardy reports that people with fevers were often left on a regular housing unit until shift change; only then were they transferred to an isolation unit. Hardy Decl. ¶ 12. Stewart, similarly, was symptomatic for weeks, and nurses took no steps to assist him; he later tested positive for COVID-19. Stewart Decl. ¶ 5. Plaintiff Harris reports after a nurse took his temperature, he registered a fever, but then a normal temperature on immediate repeat. Despite this inconsistency, and without a test, he was sent to the COVID-19 housing unit immediately. Harris Decl. ¶6. He wasn't tested for the virus until about 8 days later. *Id.* at ¶12. He reports he ended up testing negative. *Id.* With this set of test results, all the other men on the unit tested positive and were sent to Angola. *Id.* at ¶13. After about 5 days of being the only person on the unit—with no media—seven new inmates with symptoms of the virus, and who eventually tested positive, were brought to the unit. *Id.* at ¶¶14-15 Plaintiff Harris was not given a mask despite the symptoms and test results of others. *Id.* at ¶16. His second test, approximately four days after the arrival of this second group, was positive. He ultimately spent 35 days in lockdown. *Id.* at ¶19. Similarly, plaintiff Franklin reports being placed in a COVID-19 isolation unit the day he was tested for the virus. Franklin Decl. ¶ 30.

²⁰ *Id.*

38. I see no evidence that jail administrators have performed epidemiological surveillance of staff or inmates, and it appears that only isolated tests have been performed for diagnosing based on symptoms. In an April study of four large prisons (in Arkansas, North Carolina, Ohio, and Virginia), 3,277 inmates out of 4,693 tested for coronavirus (70%) tested positive, and only 4% of these inmates reported symptoms. Since viral shedding (the means by which a person shares the virus) occurs for weeks prior to any symptoms—and more people never show symptoms—administrators need to know the COVID-19 status of the population for housing decisions and other mitigation and staff concerns.
39. One Plaintiff, Hardy, attests that guards have stopped testing people unless they exhibit severe symptoms of COVID-19. Hardy ¶ 11. It is imperative that COVID-19 tests are done to determine active cases of infection through viral testing, e.g., currently limited to PCR (polymerase chain reaction tests) and antigen testing. Antibody tests currently available are less reliable and only indicate if a person developed antibodies after exposure to the virus.
40. Jail staff are doing temperature checks of detainees and in some cases sending detainees to COVID-19 units before even administering a test. Williams Decl. ¶ 6-7. Taking detainees' temperature and screening for symptoms is ineffective against the spread of COVID-19. Infected people typically show no symptoms for 2-14 days and some never become symptomatic, even though they may be spreading the disease during that time through the methods outlined above.²¹

Other Containment Measures

41. Common areas and high-touch surfaces, such as phones and doors, are not cleaned by the jail staff. At most, Plaintiffs attest that guards pour diluted solution on the floors on the facility. For example, Plaintiffs Williams, Bradley, Shepherd, and Stewart report that guards do not clean the phones, door knobs, showers, or toilets, forcing many Plaintiffs to clean those things themselves and to use socks as gloves or as phone coverings. Williams Decl. ¶ 20-25; Bradley Decl. ¶ 14; Shepherd Decl. ¶ 16-18; Stewart Decl. ¶ 20-21. Plaintiff Franklin details substandard living conditions—both structural and custodial—throughout the various housing units he occupied. He also comments on the large rats and unhygienic conditions for which he was irregularly given inadequate cleaning supplies. Franklin Decl. ¶¶ 22, 37. Failure to properly sanitize common areas and high-touch surfaces, such as the phones that detained individuals heavily use, seriously increases the risk of the spread of COVID-19 and demonstrates the failure to take the most fundamental precautions for preventing the spread of the disease. CDC provides guidance for these processes, which include the following:
- Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
 - Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).

²¹ See CDC Guidance <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

- Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 external icon as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
 - Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use
42. Plaintiffs are not given the supplies necessary to clean their own cells or personal spaces, even after testing positive for COVID-19. Williams Decl. ¶ 20; Rogers Decl. ¶ 27; Bradley Decl. ¶ 10. The jail provides only deodorized soap, which is not a disinfectant. Soap is required for personal hygiene and effective, frequent handwashing. But commercial deodorized soap is not a disinfectant and does not kill COVID-19. Plaintiff Harris states he was given no PPE, no cleaning supplies, and he was unable to access supplemental hygiene supplies while on his 35-day COVID-19 lockdown. Harris Decl. ¶¶ 16, 23. The CDC provides a list of agents than can effectively kill COVID-19.
43. Guards and other jail staff do not regularly wear protective gear, as outlined by the CDC. Multiple Plaintiffs, like Williams, Rogers, Hardy, and Shepherd, report seeing guards who were not wearing masks, gloves, or other protective equipment. Williams Decl. ¶ 26; Rogers Decl. ¶ 35; Hardy Decl. ¶ 21; Shepherd Decl. ¶ 22. The jail also failed to give Plaintiffs, even COVID-19-positive Plaintiffs, adequate protective equipment; they are instead given thin bandanas. Rogers Decl. ¶ 36. While bandanas are certainly better than nothing as a barrier, they are considered “homemade masks” by the CDC and are not considered PPE. They should only be used as a crisis capacity strategy.
44. Plaintiffs who test positive for COVID-19 are held in portions of the jail that were previously closed due to their conditions. Williams Decl. ¶ 7. Plaintiffs reported seeing rats and spiders throughout the units. Plaintiff Harris provides clear descriptions of disrepair, dirt, and rust in units C01 (the COVID-19+ containment/lockdown unit) and A1. Harris Decl. ¶¶ 8, 28.
45. Plaintiffs report mold and rust throughout the jail and have seen leeches and roaches coming from the bathroom drains. Spears Decl. ¶ 5-7, 10. And the showers are not cleaned consistently. Rogers reports that the showers were cleaned at the end of each day but not between uses. Rogers Decl. ¶27. Hardy and Shepherd report that guards, in lieu of properly cleaning the showers, pour solution on the ground every two or three weeks. Hardy Decl. ¶18; Shepherd Decl. ¶17. They should be cleaned after each use. No cleaning supplies are provided to inmates for frequent cleaning of showers.
46. Multiple Plaintiffs report being held in open-dormitory-style units, some with upwards of 100 people, and sleep on bunk beds with just a couple feet of distance between them. Williams Decl. ¶ 4; Hardy Decl. ¶5-6; Spears Decl. ¶17; Spears Decl. ¶19-20; Bradley Decl. ¶ 4; Shepherd Decl. ¶ 5. Given this layout and crowded environment in which individuals are held, it is impossible to provide an environment where social distancing can take place, depriving individuals of being able to use the most important CDC-recommended measures to protect themselves.

47. Plaintiffs in COVID-19 units are held either in single person cells or in cells with up to three other people. Shepherd Decl. ¶ 8; Stewart Decl. ¶ 13. Plaintiffs attest that these cells have thin walls on the sides, bars on the front, and are so close to one another that detainees can reach into the cell next to them. This open bar architecture allows aerosolized droplets to suspend in the air and move back and forth among cells. The CDC clearly defines the need for cohorting people based on infection and time of diagnoses. Inmates with confirmed positives should not be housed with people with suspected positives. Inmates who are cohorted should continue to wear masks.
48. Staff and detainees require education about the virus, its spread, and rationale for new behaviors and routines. Detainees testify that they have not been informed of, and are not aware of, the need for disease prevention measures, or the substance of recommended measures. Officers do not provide consistent information to the inmates. Almost all information inmates get is from the television. Rogers Decl. ¶ 33; Hardy Decl. ¶ 23. Plaintiff Spears reports that the officers turn off the television if news about coronavirus or COVID-19 is broadcasted. Spears Decl. ¶ 30. Some cite that an officer will occasionally bring in a newspaper to share. Williams Decl. ¶ 19. One plaintiff noted that he may have seen one sign about COVID-19, but that such signs were not ubiquitous. Spears Decl. ¶ 29.
49. Even before the COVID-19 crisis, the jail staff struggled to provide adequate medical care. Now, with the threat of the virus's spread through the jail population, it is questionable whether the jail medical unit is equipped to address both underlying chronic conditions of individuals and the outbreak of COVID-19 in the jail. During a pandemic, isolation, quarantine, and cohorting are housing strategies, they are not a substitute for medical care. The declarations of the Plaintiffs do not approximate the guidance provided by the National Commission on Correctional Care—the national accrediting agency of medical services in correctional institutions. EBRPP states that it maintains this accreditation. Plaintiff Franklin details the delay in medication management, including insulin injections, following the COVID-19 outbreak in EBRPP. These delays not only result in erratic blood sugars readings, they could promote potentially lethal hypoglycemic (low blood sugar) or hyperglycemic (high blood sugar) states. Moreover, when housed in Central Booking, Franklin reports he had to remind the nurses of his medication, frequency, and dosing. They apparently didn't have a medication log. Franklin Decl. ¶¶ 11-12.
50. For individuals in these facilities, the experience of an epidemic and the lack of care while effectively trapped can itself be traumatizing, compounding the trauma of incarceration.
51. The neglect of individuals with acute conditions and serious chronic health conditions under ordinary circumstances is also strongly indicative that the facilities are ill-equipped to identify, monitor, and treat a COVID-19 epidemic. Plaintiffs' declarations attest to neglect of their medical conditions due to the additional demands on staff as a result of the severity of COVID-19. When the medical unit is strained both due to potential understaffing and/or additional burden from potential COVID-19 patients, it is unlikely that it will be able to provide the care necessary for those with medical needs associated with conditions other than COVID- 19.

52. The jail is ill-equipped to handle the current COVID-19 outbreak. Plaintiffs' declarations attest that the infirmary that sick people have to share showers, toilets, sinks, and other common areas. Plaintiffs report inconsistent and inadequate supplies of personal hygiene supplies. Many rely on commissary to bridge the gaps between distribution of soap from the institution.
53. Failure to provide individuals adequate medical care for their underlying chronic health conditions results in increased risk of COVID-19 infection and increased risk of infection-related morbidity and mortality if they do become infected. Plaintiffs and others held in the jail have serious medical vulnerabilities, including diabetes, asthma, COPD, HIV/AIDS, and other chronic respiratory conditions. An outbreak in East Baton Rouge Parish Prison would be disastrous for plaintiffs, correctional officers, medical staff, and members of Baton Rouge Parish. Many of the plaintiffs have chronic health conditions. When the conditions worsen due to lack of routine access to care, e.g., Plaintiff Franklin with insulin-dependent type 2 diabetes, their susceptibility for COVID-19 infection increases. Franklin Decl. ¶¶ 4, 11.
54. The plaintiffs consistently report lack of social distancing—actually the impossibility of social distancing in most housing settings-- lack of hygiene supplies and cleaning supplies, lack of routine scheduled and as-needed cleaning, and inconsistent medical care due to new and increased demands on correctional and medical staff. This combination of condition puts medically vulnerable inmates at an extremely high risk of infection, as well as the potential for permanent lung damage and death. The only way to effectively reduce this risk is the release of medically vulnerable inmates.
55. Proper response to a COVID-19 outbreak in a jail setting necessarily includes identifying all of the people held in the jail's custody who are medically vulnerable. This task is critical for several reasons, and the daily updating of the list and locations of high-risk patients is critical to basic outbreak management. Creating a real-time list of high-risk patients allows for:
- Identification of high-risk patients who are eligible for release from detention
 - Implementing of active surveillance, special housing arrangements, and other protective measures for high-risk patients who are not ill
 - Implementing enhanced surveillance and protective measures for high-risk patients who are in a quarantine setting, or who develop symptoms of COVID-19
 - Development and implementation of re-entry plans of care and support with community partners for high-risk patients.

VIII. Visiting Facility

56. While we are currently experiencing personal health crises and public health emergencies related to COVID-19, experts share the opinion that the pandemic will extend well into 2022. In jails and prisons, this requires a different mindset in housing and processes,

because, currently, social distancing, the greatest tool in mitigating the spread of coronavirus, is impossible.

57. Since social distancing is impossible at present, the only effective means of reducing risk of infection for medically vulnerable populations is their release from jail or prison. For others who are less susceptible to death from COVID-19, jails and prisons must take measures to decrease the spread of the virus; this is key not only for the health and well-being of the inmates, but also for the correctional and medical staff, their families, and their communities.
58. The CDC has very clear guidance for the management of COVID-19 in correctional and detention facilities. The declarations I have reviewed and the photos I have seen of the EBRPP indicate that the jail is not adhering to many of these guidelines. This must change in order to promote the health of all stakeholders in East Baton Rouge Parish—in both the current emergency and in the long-term health of the community. I have had a unique career in homeless healthcare, correctional health care, and addiction medicine. I have experience and maintain interest in respectfully and productively working with the court to develop measures to ensure safety and promote health of stakeholders in correctional facilities. In addition to my experience outlined above, I am currently working with the stakeholders in the City of St. Louis, Missouri, to safely reopen the courts.
59. In order to get a well-informed understanding of how the EBRPP can make long-term measures to decrease risk of harm, I would need to do an inspection of these facilities. I am available to do so in the coming weeks. Areas and items of inspection would include the following:
 - Places
 - All buildings
 - All lobbies, including public and inmate
 - Intake
 - Infirmary
 - Medical
 - Psychiatric
 - Medical clinic
 - Pods/Housing
 - General population
 - Housing units of all the plaintiffs
 - Special COVID-19 Housing
 - Quarantine units, including J1
 - Showers/Toilets
 - Common areas
 - Dining areas and kitchen
 - Laundry facilities
 - Visitation areas
 - Conveyance vehicles

- PPE (and education materials), inventory, availability, education regarding use, and processes
 - Inmates
 - Correctional staff
 - Medical staff
 - Others (vendors, etc.)
- Cleaning supplies (as well as signage and education materials)
 - Availability
 - Supplies
 - Cleaning schedules
- HVAC
 - Observation of ventilation in all the areas above
 - Negative pressure isolation rooms
 - Movement of air in high traffic areas
- Observation of behaviors (and education materials about signs and symptoms of COVID-19, social distancing, use of PPE, use of cleaning and hygiene supplies,)
 - Adequate physical distancing
 - Use of PPE
 - Cleaning in high use areas (phones, common areas)
 - Cleaning in individual cells or bed areas
 - Processes and compliance for entering and leaving building
 - Processes and compliance for moving around in building

60. Records that would be useful for me to analyze to move forward include the following items. The records, policies, and registries are maintained in facilities accredited by the NCCHC and should not be burdensome to produce.

a. EBRPP Records

- i. Processes that have been developed to respond to the current COVID-19 pandemic, including
 1. Treatment, housing, and management of inmates
 2. Housing policies
 3. Testing policies of inmates, staff, vendors, and any other people entering EBRPP
 4. Social distancing guidance, PPE, cleaning, and hygiene guidance for inmates, staff, vendors, and any other people entering EBRPP
 5. Updates in communication with CorrectHealth regarding provision of healthcare, management of sick call, and housing of inmates in quarantine and those who test positive for COVID-19
- ii. Signage and education materials that are currently posted in the facility
- iii. ER runs from 2/1/2020 to 5/26/2020 compared to ER run from 2/1/2019 to May 26, 2019
- iv. COVID-19 tests administered
 1. To inmates and staff

2. Broken down by viral vs. antibody tests
- b. CorrectHealth Records
 - i. Mortality reviews of inmates who have died since 2/1/2020
 - ii. Registry of inmates vulnerable for COVID-19 infection
 1. Asthma
 2. Chronic kidney disease being treated with dialysis
 3. Chronic lung disease, such as emphysema and COPD
 4. Diabetes
 5. Hemoglobin Disorders, including sickle cell anemia
 6. Immunocompromised persons, including those with HIV/AIDS
 7. Liver disease, including hepatitis
 8. People aged 65 years and older
 9. Serious heart conditions, including past myocardial infarctions, and congestive heart failure
 10. Severe obesity
 11. Neurological conditions, such as epilepsy
 - iii. Serious mental illness (those that severely impact daily functioning), such as schizophrenia, bipolar affective disorder, major depression
 - iv. Registry of inmates enrolled in chronic care clinics (part of NCCHC accreditation)
 - v. Sick call and sick call responses since 2/1/2020
 - vi. Pharmacy inventory and fill records
 - vii. Daily infirmary census since 2/1/2020
 - viii. Daily infirmary new admissions since 2/1/2020
 - ix. Contracts with East Baton Rouge Parish for CorrectHealth'

XI. Conclusions

61. For the reasons above, it 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.
62. Reducing the size of the population in jails and prisons is crucially important to reducing the level of risk both for those who are housed and those who work within those facilities. Masks and other facial coverings do not supersede the need for social distancing.
63. From a public health perspective, it is my strong opinion that there is no way short of release to protect the medically vulnerable from grave risk of imminent infection and death. Jails and prisons will remain incubators of coronavirus until there is adequate

testing, routine testing, and appropriate mitigating strategies—the most important being social distancing—throughout the facility for all stakeholders. If these inmates are released, they have an opportunity to practice social distancing—something they cannot do while incarcerated—and more effectively engage in other behaviors recommended by the CDC. Until these measures are in place, all people entering and exiting the facility become vectors to bring the virus back to their homes, their neighborhoods, and the community at large.

64. Although mitigation and containment strategies are vital, they are merely one piece of the puzzle. The lower the jail or prison population, the more effective these strategies will be. Fewer people in a facility means best practices will be more effective, fewer community resources will be needed, and other inmates and correctional staff will be safer. And the community of Baton Rouge will achieve a safer, swifter recovery and fewer, less severe repeated outbreaks.

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

Dated: May 26, 2020

St. Louis, MO

Fred Rottnek, MD

Fred Rottnek, MD, MAHCM