

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-00977-PAB-MEH

THOMAS CARRANZA, et al.

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

**NOTICE OF SUBMISSION OF SUPPLEMENTAL SUPPORT TO PLAINTIFFS'
MOTION FOR FORTHWITH HEARING [ECF # 62]**

Plaintiffs, through undersigned counsel, respectively submit their Supplemental Support to Plaintiffs' Motion for Forthwith Hearing Regarding Defendant's Non-Compliance with the Court's Preliminary Injunction (ECF Doc. 62) as follows:

Plaintiffs filed their Motion for Forthwith Hearing Regarding Defendant's Non-Compliance with the Court's Preliminary Injunction on May 21, 2020, stating that Defendant's newly enacted policies and procedures to identify and protect medically vulnerable inmates at the Weld County Jail (WCJ) do not comply with this Court's order and are insufficient to reasonably mitigate the risk of COVID-19 to medically vulnerable inmates. Indeed, as currently conceived, Defendant's plans will increase the likelihood of infection for some medically vulnerable inmates.

Dr. Carlos Franco-Paredes provided his supplemental declaration, attached as Exhibit 1, in support of Plaintiffs' motion and Plaintiffs' respectfully submit it in support of their motion for forthwith hearing.

Dated: May 27, 2020

Respectfully submitted,

s/ Darold W. Killmer

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*In cooperation with the ACLU Foundation of
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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, I electronically filed the foregoing **NOTICE OF SUBMISSION OF SUPPLEMENTAL SUPPORT TO PLAINTIFFS' MOTION FOR FORTHWITH HEARING [ECF # 62]** with the Clerk of the Court using the CM/ECF system which will send notification to the following counsel.

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EXHIBIT 1

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Defendant.

**FIRST SUPPLEMENTAL EXPERT DECLARATION OF
DR. CARLOS FRANCO-PAREDES**

This declaration supplements my declaration of April 24, 2020. I reviewed the following additional case documents related to this declaration: Defendant’s Notice of Complete Compliance with the Court’s Preliminary Injunction Order and Exhibits F, F-1, F-2, F-3, F-4, F-5 and H. Based on my review of these documents, together with the jail inspections and documents relied upon for my April 24 declaration, it is my opinion that certain aspects of the compliance plan for Weld County Jail (WCJ) will place medically vulnerable inmates at a substantial risk of serious illness or death from COVID-19. Of great concern, some of WCJ’s plan has the potential to *increase* the risk of infection by medically vulnerable inmates compared to the policies and procedures in place during my last inspection of the WCJ on April 24.

Background Information

1. **Widespread testing is now available in Colorado.** It is my opinion that if WCJ wished to perform universal testing given its current jail population of less than 500 inmates, it could acquire those tests – likely free – by requesting them from the Colorado Department of Public Health and Environment (CDPHE). I have contacted colleagues at CDPHE. Weld County Public Health can request swabs and testing would be performed at the State PH Lab. The contact person is Matt Bauer who is the regional epidemiologist at Weld County Public Health Department and who can coordinate ordering supplies.

2. **The reported numbers of individuals with the virus in the Weld County Jail is likely a substantial undercount.** As I noted in my April 24 declaration, the Weld County Jail appeared to be focusing its testing only on symptomatic inmates and the jail was not testing mildly symptomatic inmates, inmates who had been in contact with positive inmates or staff, or medically vulnerable inmates. Based on the recent data provided by WCJ, it appears that – despite the availability of widespread testing in Colorado – WCJ’s testing procedures remain

unchanged. As of April 30, WCJ reported that it had tested 23 inmates for COVID-19, and that 10 of those inmates (43% percent) had tested positive. There were still seven inmates in custody at the time who had tested positive for the virus. During my April 24 inspection, I spoke with several inmates who had symptoms consistent with COVID-19, but who had not been tested and who were housed in small cells with other inmates where social distancing was not possible. According to the WCJ's recent filing, as of May 17, WCJ had only performed three additional tests, so that total inmates tested as of that date is 26. With so little testing in the wake of the outbreak at WCJ, it is a very high probability that there are inmates who have COVID-19 in the jail—both symptomatic and asymptomatic—housed in small cells with others and who remain unable to practice social distancing.

3. The risk of new sources of infection coming into the Weld County Jail from arrestees remains high given that Weld County is a hotspot for the virus in Colorado, with some of the largest and deadliest outbreaks in the state occurring in Weld County. Weld County has the fifth highest rate of COVID-19 infection in the state, surpassing Denver, Arapahoe, Adams and Jefferson County. Weld County also has the fourth highest death rate. These trends appear to be driven by community-based outbreaks, including at the JBS meat packing plant, where at least 366 employees have tested positive for COVID-19 and at least 8 have died. The plant is currently open despite that many workers have not been tested. Clearly the outbreak is not under control in that plant, and it is highly probable that many of the untested employees have COVID-19. Additionally, several Weld County nursing homes have seen outbreaks. Centennial Health Care Center in Greeley has had at least 22 residents deaths out of the 46 confirmed cases to date. In the midst of these outbreaks, Weld County has substantially reopened its economy, which occurred despite opposition from the Weld County Health Director who recently left his position. Based on data and reports from other jurisdictions, it is my opinion that the relatively high infection rate in Weld County combined with the reopening of the economy substantially increases the risk that some new arrestees booked into the Weld County Jail will have COVID-19, whether or not they are symptomatic for it.

Weld County Jail's May 18, 2020 plan for increased protection of medically vulnerable inmates:

Weld County Jail's plan for increased protection of medically vulnerable inmates, as documented in the filing of May 18, reflects several substantial improvements, most notably WCJ's plan to mandate employees to completely disinfect common spaces prior to use of those spaces by medically vulnerable inmates. Additionally, it is commendable that the jail has guaranteed the provision to inmates of either disposable masks, which will be replaced every three days, or the use of face cloth masks which will be laundered regularly.

However, the following aspects of plan leave medically vulnerable inmates at grave risk of serious illness or death:

1. The plan allows two untested medically vulnerable inmates to be housed together at intake. This arrangement would pose a substantial risk of infection of a medically vulnerable inmates at any jail, but most particularly in Weld County given the breadth of the community outbreak.

2. Rather than prioritizing single cell housing in general population for the 89 identified medically vulnerable inmates, the plan allows untested medically vulnerable inmates to be housed in cells together. Of greatest concern, the plan calls for untested medically vulnerable inmates to be transferred into the cell of another untested medically vulnerable inmate. The plan places no limit on the number of medically vulnerable inmates who can be housed in a cell together.
3. Despite the availability of testing, the plan does not call for universal testing, prevalence testing, testing of all new arrestees or even testing of medically vulnerable inmates.
4. The screening questions for medically vulnerable inmates are inadequate to ensure identification of all medically vulnerable inmates. Some questions, such as whether or not a person is “immunocompromised,” are both medically technical and overly general to ensure that people with varying degrees of education and medical knowledge will be able to answer accurately.

My most significant concerns with this plan relate to lack of social distancing for medically vulnerable inmates. Without social distancing, medically vulnerable inmates face a substantial risk of becoming unnecessarily infected with COVID-19 and becoming seriously ill and/or dying. As I discussed in my April 24 declaration, medically vulnerable inmates are safest from COVID-19 when not in custody, and should be released whenever possible. If they must remain in custody, social distancing at all times – particularly when testing is not occurring – is essential. During my April 24 inspection of the WCJ, I noted several empty cells in all units that I visited, while medically vulnerable inmates were in small cells with 1-3 other cellmates. With only 89 identified medically vulnerable inmates, it is my opinion that the jail will protect the most lives by focusing on single celling all medically vulnerable inmates.

Sheriff Reams asserts that single celling medically vulnerable inmates will negatively impact non-medically vulnerable inmates who would presumably have more densely populated cells. While densely populated cells certainly create a risk of spread in that cell – particularly without universal testing – it is my opinion that protecting medically vulnerable inmates by single celling them is the most important way (short of reduced population) to avoid serious illness and death from COVID-19, even if that means housing more non-medically vulnerable inmates in a cell together. Increasing the risk to younger, healthier inmates while decreasing the risk for medically vulnerable inmates is an appropriate harm-reduction measure.

One important note is that I agree with Sheriff Reams’ assessment that the creation of a pod of medically vulnerable inmates would pose an increased risk of harm to those inmates. Medically vulnerable inmates become infected more easily, spread the virus more easily, and get seriously sick and die more easily. Thus, if COVID-19 were to find its way into a pod of all medically vulnerable inmates, the effects could be devastating. For example, the experience in nursing homes and skilled nursing facilities has demonstrated that transferring asymptomatic or presymptomatic persons to a new unit or pod without viral testing facilitated the spread to these new units and ultimately spread the outbreak to new areas inside these facilities¹. Particularly

¹ Gandhi M, Yokoe DS, Havlir DV. Asymptomatic transmission, the Achilles’ heel of current strategies to control Covid-19. N Engl J Med 2020. April 24. DOI: 10.1056/NEJMe2009758.

given that WCJ is not even testing medically vulnerable inmates, there is a substantial risk that any pod of medically vulnerable inmates will suffer from a COVID-19 infection.

Recommendations

1. **Substantially increase testing for COVID-19 in the Weld County Jail.** It is my opinion that WCJ could likely acquire sufficient tests to do universal testing, to continually test people upon intake, and to continually test anyone who shows any symptoms of COVID-19. WCJ should acquire tests to the greatest extent possible and prioritize use of the tests as follows:
 - a. Test all new admission to the jail before they encounter other people.
 - b. Test all medically vulnerable inmates.
 - c. Test any inmate with one or more symptoms consistent with COVID-19.
 - d. Perform prevalence testing.
 - e. Perform universal testing.
 - f. For each person who tests negative, only presume the person is negative if the person is tested again a week after the first test and is still negative.

2. **Improve screening tool to reasonably ensure identification of all medically vulnerable inmates.** Rather than only generally asking inmates whether they have “chronic lung disease,” a “serious heart condition,” “liver disease,” or are “immunocompromised,” the screening questions should also list the most common conditions within these general categories. For instance, as CDC’s website discusses, cancer, bone marrow transplant, and the use of certain medications are conditions that would render someone “immunocompromised” and therefore medically vulnerable.² CDC provides more detailed information about what kinds of common conditions place people at high risk on their website.³ Conditions listed on the CDC website can provide guideposts to creating a more effective screening tool. Additionally, based on my experience interviewing patients, including inmates, it is important to ask patients about their current medications and recent hospitalizations, which can reveal information about serious medical conditions (such as cancer) that render the person high risk.

3. **All medically vulnerable inmates should be single celled and tested through intake and transition.** There is a substantial risk that housing medically vulnerable inmates together at intake and transition will lead to infecting some medically vulnerable inmates with COVID-19. Testing of all individuals, or at least medically vulnerable individuals, at intake will decrease this risk. However, we are seeing a 30% false negative rate in COVID-19 testing. If there is to be any housing of medically vulnerable inmates together at any time during intake or transition, it should only be after both inmates have tested negative twice over a week’s time during which time each inmate has been single celled and able to practice social distancing.

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/immunocompromised.html>

³ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html#liver-disease>

- 4. Medically vulnerable inmates should be prioritized for single cell in general population.** For the reasons discussed above, single celling medically vulnerable inmates throughout their incarceration should be prioritized even if that leads to some population density increase for non-medically vulnerable inmates. To the extent that WCJ truly has no choice but to house medically vulnerable inmates together in a cell, it is imperative that each medically vulnerable inmate be cleared of COVID-19 through testing at least twice over a week's period^{4,5}.

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge.

Date: May 27, 2020

A handwritten signature in black ink, appearing to read 'Gorgas', is written over a horizontal line.

Carlos Franco-Paredes, MD, MPH, DTMH (Gorgas)

Associate Professor of Medicine

⁴ Solis J, Franco-Paredes C, Henao-Martínez AF, Krsak M, Zimmer SM. Structural Vulnerability in the United States Revealed in Three Waves of Novel Coronavirus Disease (COVID-19). *Am J Trop Med Hyg*. 2020 May 7. doi: 10.4269/ajtmh.20-0391. PMID: 32383432.

⁵ Krsak M, Henao-Martínez AF, Franco-Paredes C. Broader COVID-19 Testing in Correctional Facilities. *N Engl J Med* 2020;