

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

J.H., by and through his mother and next friend, N.H.; I.B., by and through his parents and next friends, A.B. and I.B., on behalf of themselves and all others similarly situated,

Plaintiffs-Petitioners,

-against-

JOHN BEL EDWARDS, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF LOUISIANA; THE LOUISIANA OFFICE OF JUVENILE JUSTICE; EDWARD DUSTIN BICKHAM, IN HIS OFFICIAL CAPACITY AS INTERIM DEPUTY SECRETARY OF THE LOUISIANA OFFICE OF JUVENILE JUSTICE; JAMES WOODS, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE ACADIANA CENTER FOR YOUTH; SHANNON MATTHEWS, IN HER OFFICIAL CAPACITY AS THE DIRECTOR OF THE BRIDGE CITY CENTER FOR YOUTH; SHAWN HERBERT, IN HER OFFICIAL CAPACITY AS THE DIRECTOR OF THE SWANSON CENTER FOR YOUTH AT MONROE; and RODNEY WARD, IN HIS OFFICIAL CAPACITY AS THE DEPUTY DIRECTOR OF THE SWANSON CENTER FOR YOUTH AT COLUMBIA,

Defendants-Respondents.

CIVIL ACTION NO. 3:20-cv-00293-JWD-EWD

CLASS ACTION

**THE LOUISIANA OFFICE OF JUVENILE JUSTICE DEFENDANTS'¹
MOTION FOR SUMMARY JUDGMENT**

¹ Filed on behalf of Defendants-Respondents The Louisiana Office of Juvenile Justice (“OJJ”), Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward (collectively “the OJJ Defendants”).

NOW INTO COURT, through undersigned counsel, come Defendants, the Louisiana Office of Juvenile Justice, Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward, who respectfully move for summary judgment pursuant to Fed. R. Civ. P. 56 dismissing all claims against the OJJ Defendants. In further support of their Motion, the OJJ Defendants plead and aver:

1. The record has been fully developed as to all claims asserted against the OJJ Defendants.

2. The OJJ Defendants' response to the COVID-19 pandemic has been found, based upon a consideration of the fully-developed record, "commendable" and fully compliant with the requirements of the Eighth and Fourteenth Amendments of the United States Constitution.

3. There exists no genuine issue of material fact as to the Constitutionality of the OJJ Defendants' response to COVID-19.

4. The OJJ Defendants are entitled to summary judgment as a matter of law pursuant to Fed. R. Civ. P. 56.

5. In support of this Motion, the OJJ Defendants rely on the following documents:

- a. The Declaration of Revettea Woods, *attached hereto as Exhibit A*;
- b. The Parties' Joint Statement of Stipulated Facts (Doc. 51);
- c. The Court's Findings of Fact and Conclusions of Law (Doc. 95);
- d. The Louisiana Office of Juvenile Justice Defendants' Statement of Undisputed Material Facts Supporting Their Motion for Summary Judgment, *filed concurrently*; and
- e. The Louisiana Office of Juvenile Justice Defendants' Brief in Support of Their Motion for Summary Judgment, *filed concurrently*.

WHEREFORE, for reasons more fully set forth in the attached Memorandum in Support and the full record of this case, the OJJ Defendants request that the Plaintiffs' claims be dismissed with prejudice pursuant to Fed. R. Civ. P. 56.

Respectfully submitted,

Defendants The Louisiana Office of Juvenile Justice, Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward

By: *S/Kyle V. Miller*

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OJJ Defendants' Attorneys

CERTIFICATE OF SERVICE

I, Kyle V. Miller, hereby certify that I have today served the foregoing document via the Court's electronic filing system, which provided notice to all counsel of record.

Dated: July 29, 2020

S/Kyle V. Miller

KYLE V. MILLER

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

J.H., by and through his mother and next friend, N.H.; I.B., by and through his parents and next friends, A.B. and I.B., on behalf of themselves and all others similarly situated,

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CIVIL ACTION NO. 3:20-cv-00293-JWD-EWD

CLASS ACTION

**THE LOUISIANA OFFICE OF JUVENILE JUSTICE DEFENDANTS'¹
STATEMENT OF UNDISPUTED MATERIAL FACTS SUPPORTING
THEIR MOTION FOR SUMMARY JUDGMENT**

¹ Filed on behalf of Defendants-Respondents The Louisiana Office of Juvenile Justice (“OJJ”), Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward (collectively “the OJJ Defendants”).

NOW INTO COURT, through undersigned counsel, come Defendants, the Louisiana Office of Juvenile Justice, Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward, who submit this statement of undisputed material facts establishing the OJJ Defendants' entitlement to summary judgment pursuant to Fed. R. Civ. P. 56.

1. Plaintiffs allege that the OJJ Defendants' actions or failures to act in relation to the COVID-19 pandemic constitute violations of Plaintiffs' federal constitutional rights under the Eighth and Fourteenth Amendments and seeks relief under 28 U.S.C. § 2241 and 42 U.S.C. § 1983. Compl. (Doc. 1).

2. The Court conducted an evidentiary hearing on Plaintiffs' Motion on June 3, 2020 through June 5, 2020, including testimony of eight lay witnesses and three expert witnesses. Findings of Fact and Conclusions of Law ("FFCL") (Doc. 95) at ¶ 20.

3. The Court found, based upon all evidence, testimony, and argument, that "OJJ's job in responding to eh COVID-19 pandemic has been commendable. ... All of their actions were rationally related to legitimate objectives, and OJJ was certainly not deliberately indifferent in responding to the crisis." *Id.* at ¶ 376.

4. Plaintiffs' Complaint alleges the OJJ Defendants have violated the Plaintiffs' Constitutional rights by engaging in the following conduct:

- a. Continuing to detain Youth who are within 180 days of their scheduled release date, Compl. (Doc. 1) at ¶ 73 & p. 41;
- b. Continuing to detain Youth who Plaintiffs contend are "presumptively eligible for release," *id.* at ¶ 73;
- c. Testing only those Youth who exhibit symptoms of COVID-19, instead of testing all Youth, *id.* at ¶¶ 62-63;

- d. Using behavioral intervention rooms for purposes of medical isolation, *id.* at ¶ 68;
- e. Confining Youth to their dormitories for extended periods of time, *id.* at ¶ 75;
- f. Using pepper spray on Youth, *id.* at ¶ 77;
- g. Temporarily suspending education and rehabilitation services, *id.* at ¶¶ 76, 78;
- h. Temporarily suspending in-person visitation, *id.* at ¶ 79; and
- i. Using the OJJ Defendants' current COVID-19 pandemic response plan, which Plaintiffs allege to be insufficient, *id.* at ¶¶ 57-72.

5. The Court has ruled that each of these actions comply with Constitutional requirements:

- a. **Confining Youth Who Are Within 180 Days of Release:** “Since the juvenile court is not a party to this action (and since, even if it were, this Court has considerable doubts about its authority to order the juvenile court to take certain action), this Court cannot afford Plaintiffs the relief they seek.” FFCL (Doc. 95) at ¶ 286.
- b. **Confining Youth Who Are Presumptively Eligible for Release:** “[T]he Court adds that neither of the named Plaintiffs, I.B. or J.H., currently qualify for a furlough recommendation under the criteria in OJJ’s Furlough Policy. Stipulations ¶ 67, Doc. 51. Further, neither D.M. nor H.C. are eligible for a recommendation for extended furlough.” *Id.* at ¶¶ 289-290.
- c. **Failing to Test Youth for COVID-19:** “OJJ’s decision to test only symptomatic youth is rationally related to the legitimate objective of public health. [. . .] In sum, the Court declines to find that OJJ committed a

constitutional violation when they are following the same testing policy of most of the jurisdictions in this country and the same policy endorsed by the CDC.” *Id.* at ¶ 293.

- d. **Use of Behavioral Intervention Rooms for COVID-19 Isolation:** “OJJ’s decision to temporarily use behavioral intervention rooms for Youth who are awaiting test results is rationally related to the legitimate objective of public health. [. . .] Given the extremely important need to quarantine Youth who were awaiting test results, the relatively short amount of time it now takes to obtain test results for COVID-19, the fact that the behavioral intervention rooms were only used when infirmary rooms were full, the Court cannot say that OJJ’s decision to use these rooms was not rationally related to legitimate objectives.” *Id.* at ¶ 299.
- e. **Confining Youth to their Dormitories:** “OJJ’s decision to ‘reverse isolate’ the Youth in their dorms is rationally related to the legitimate objective of keeping the Youth and community safe from COVID-19. [. . .] Considering the important need to prevent the spread of the COVID-19 pandemic, the Court finds that OJJ’s actions related to this issue are clearly rationally related to a legitimate objective.” *Id.* at ¶¶ 305-06.
- f. **Using Pepper Spray on Youth:** “While Plaintiffs certainly presented evidence that the use of pepper spray is disfavored, this issue has essentially been rendered moot by Pl. Ex. 56, *April 27, 2020, Chemical Agent Memorandum*. As the parties have stipulated, since April 27, 2020, ‘chemical spray will not be permitted inside the secure facilities,’ ‘unless given specific

directives from the Regional Director for a specific incident.’ *Stipulations* ¶ 81, Doc. 51. Plaintiffs fail on this issue.” *Id.* at ¶ 308.

- g. **Temporary Suspension of Structured Education and Rehabilitative Programs:** “While not ideal, the Court cannot say that OJJ’s efforts to provide educational services to the Youth during the enormous strain of the pandemic was not rationally [r]elated to legitimate objectives. [. . .] Even [Plaintiffs’ Expert] Mr. Schiraldi agreed that OJJ continued some level of rehabilitation to the Youth throughout the pandemic. Schiraldi Tr. (6/4/20) at 45. The Court finds that OJJ’s robust provision of services in these areas is certainly rationally related to legitimate objectives.” *Id.* at ¶¶ 310-11.
- h. **Suspension of In-Person Visitation:** “Given the heightened need for OJJ to prevent the spread of COVID-19 to the Youth and the community, the Court finds that OJJ’s policy of increasing the number of phone calls and use of video conferencing calls to be very reasonable under the circumstances.” *Id.* at ¶ 86.
- i. **Plaintiff’s Request to Order a Different Pandemic Response Plan:** “As amply demonstrated, and as Plaintiffs’ experts concede, OJJ’s plan conforms to CDC guidelines. *See* Schiraldi (6/4/20) at 62; Franco-Paredes Tr. (6/3/20 p.m.) at 62-63. Further, it is beyond reasonable.” *Id.* at ¶ 313.

6. The Court has found that the OJJ Defendants have not violated the Fourteenth Amendment, ruling that “the record is exceedingly clear that OJJ’s COVID-19 response strategy of testing, screening, isolation, reverse isolation, quarantine, social distancing, and its

corresponding scaled reduction in programing was and is rationally related to the legitimate interests of rehabilitation and public health and safety.” *Id.* at ¶ 280.

7. The Court has found that the OJJ Defendants have not violated the Eighth Amendment, ruling that “OJJ’s response has not been deliberately indifferent.” *Id.* at ¶ 321.

8. Pursuant to Fed. R. Civ. P. 10(c), the OJJ Defendants adopt and incorporate by reference as if fully set forth herein the Parties’ Joint Statement of Stipulated Facts (Doc. 51).

9. Pursuant to Fed. R. Civ. P. 10(c), the OJJ Defendants adopt and incorporate by reference as if fully set forth herein Paragraphs 1-257 of the Court’s Findings of Fact and Conclusions of Law (Doc. 95).

Respectfully submitted,

Defendants The Louisiana Office of Juvenile Justice, Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward

By: *S/Kyle V. Miller*

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CERTIFICATE OF SERVICE

I, Kyle V. Miller, hereby certify that I have today served the foregoing document via the Court's electronic filing system, which provided notice to all counsel of record.

Dated: July 29, 2020

S/Kyle V. Miller

KYLE V. MILLER

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Defendants-Respondents.

CIVIL ACTION NO. 3:20-cv-00293-JWD-EWD

CLASS ACTION

**THE LOUISIANA OFFICE OF JUVENILE JUSTICE DEFENDANTS'¹
BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

¹ Filed on behalf of Defendants-Respondents The Louisiana Office of Juvenile Justice (“OJJ”), Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward (collectively “the OJJ Defendants”).

This case is ready for resolution. The factual record necessary to decide this case on the merits has been more than sufficiently developed. Plaintiffs allege that the OJJ Defendants' response to the COVID-19 pandemic has and is violating Plaintiffs' Eighth and Fourteenth Amendment rights. With the benefit of the three-day evidentiary hearing, the emergency written discovery and accompanying document production, the Parties' Joint Statement of Stipulated Facts, and the factual submissions of the Parties, there is nothing left to learn about the OJJ's pandemic response strategy. There is no genuine issue of material fact. As this Court has already noted, not only have the OJJ Defendants' actions been constitutional, they have been "commendable." Thanks in large part to the early and thorough work of both the Court and the litigants, this record is now ripe for application of the Rule 56 summary judgment standard, and the OJJ Defendants are entitled to an order of dismissal with prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Complaint and Attached Documents

Plaintiffs filed the underlying Complaint on May 14, 2020, seeking various forms of injunctive relief from the Defendants. *See generally* Compl. (Doc. 1). The named Defendants are Governor John Bel Edwards, the OJJ, Edward Dustin Bickham (Deputy Secretary of the Louisiana Office Of Juvenile Justice), James Woods (Director of the Acadiana Center for Youth); Shannon Matthews (Director of the Bridge City Center for Youth), Shawn Herbert (Interim Director of the Swanson Center for Youth at Monroe), and Rodney Ward (Deputy Director of the Swanson Center for Youth at Columbia) (collectively "Defendants"). *See id.* at ¶¶ 17-23.

Plaintiffs' Complaint generally alleges that Defendants' purported actions or failures to act in relation to the COVID-19 pandemic constitute violations of Plaintiffs' federal

constitutional rights under the Eighth and Fourteenth Amendments and seeks relief under 28 U.S.C. § 2241 and 42 U.S.C. § 1983. *See generally id.* Plaintiffs seek a preliminary injunction and permanent injunction, including but not limited to the release of juvenile offenders (the “Youth”) for the duration of the COVID-19 pandemic. *See id.* at 40-46.

Plaintiffs attached as exhibits to their Complaint 12 affidavits/declarations from 19 fact witnesses and expert witnesses. *See generally* Compl. (Doc. 1) at Exs. 1-9, 11-13.

B. Briefing on Plaintiffs’ Motion for TRO and Related Record

On May 15, 2020, Plaintiffs filed an Emergency Motion for Temporary Restraining Order Seeking Immediate Furlough (“Motion for TRO”) (Doc. 7) and submitted thorough briefing in support of their motion, *see generally* Mem. in Support of Pls.’ Emergency Mot. for Temporary Restraining Order Seeking Immediate Furlough (“Pls.’ TRO Br.”) (Doc. 7-1). Specifically, Plaintiffs moved the Court to “issue a Temporary Restraining Order (TRO) ... immediately enjoining Defendants from (1) continuing to confine all children who are currently within 180 days of their release dates; (2) continuing to confine children who are presumptively eligible for release, including all children who are eligible for furlough under OJJ’s criteria; (3) failing to test children for COVID-19; (4) using ‘Behavioral Intervention Rooms’ for any child who tests positive for COVID-19 or displays symptoms of the disease; (5) confining children to their dormitories for lengthy periods of time; (6) using pepper spray on children; and (7) continuing the suspension of structured educational and rehabilitative programming in OJJ facilities.” Pls.’ TRO Mot. (Doc. 7) at 1-2. Plaintiffs further moved this Court to “order Defendants-Respondents to develop, within 48 hours, an effective COVID-19 response plan governing the state’s four children’s detention centers that fully conforms to CDC guidelines.” *Id.* at 2. As part of their Motion for TRO, Plaintiffs submitted an additional expert witness declaration. *See* TRO Mot. (Doc. 7) at Ex. 1.

Defendants timely submitted their response (Doc. 34) to Plaintiffs' Motion for Temporary Restraining Order. *See generally* OJJ Defs.' Resp. to Pls.' Mot. for Temporary Restraining Order ("Defs.' TRO Resp.") (Doc. 34). As part of the OJJ Defendants' submission, the OJJ Defendants provided the Court with five affidavits/declarations, each of which included supporting documents. The affidavits/declarations were from Denise Dandridge (OJJ's Director of Health Services), Edward Dustin Bickham (Deputy Secretary of the OJJ), Shawn Herbert (OJJ's Interim Director of the Swanson Center for Youth and Program Manager), Kim Mims (OJJ's Director of Education), and Revettea Woods (OJJ's Deputy General Counsel). *See id.* at Exs. A -E.

Plaintiffs timely submitted their reply (Doc. 31). Reply Mem. in Support of Pls.' Emergency Mot. for Temporary Restraining Order ("Pls.' TRO Reply") (Doc. 31). Plaintiffs' included five additional declarations from fact witnesses and expert witnesses as part of their reply submission. *See generally id.* at Exs. 2-3, 6-8.

C. Plaintiffs' Requested and Received Emergency Discovery

Additionally, on May 18, 2020, Plaintiffs filed a Motion for Expedited Discovery (Doc. 14) and Motion for Expedited Consideration of such motion for discovery (Doc. 15). The OJJ Defendants agreed to produce:

- Redacted² records identifying all Youths confined in the four OJJ secure facilities along with the reasons for their confinement, the duration of their confinement, and currently projected release dates;
- Redacted records identifying which Youths confined at the four OJJ secure facilities have been tested for COVID-19, when each Youth was tested, the type of test

² Any records regarding Youths in OJJ's secure care facilities were redacted to protect the confidentiality of the identity of the Youths.

- administered to each Youth, the result of each such test, the date that each such test produced results, and the results of each such test;
- Redacted records sufficient to identify the Youths currently confined at the four OJJ secure facilities that have been diagnosed as having any of the following conditions that place them at higher risk of harm from COVID-19: asthma, hypertension, obesity, diabetes, the HIV infection, or other medical conditions that suppress or compromise the immune system; and
 - The OJJ Defendants' policies, procedures, and practices adopted in response to COVID-19.

See generally Joint Status Report (Doc. 24) at 1. The OJJ Defendants produced these responsive documents within nine days. *See generally id.*

D. The Parties Entered Into a Lengthy Joint Stipulation

On June 1, 2020, the Parties narrowed the issues in dispute by entering into a Joint Statement of Stipulated Facts (Doc. 51). The 92-paragraph Statement of Stipulated Facts sets forth a detailed listing of agreed to facts, covering numerous topics, including, but not limited to:

- COVID-19 generally, its potential symptoms and outcomes, and its complicating factors;
- The State of Louisiana's experience with COVID-19 as of the date of the stipulation;
- OJJ's secure care facilities, including the number of Youths detained in the facilities;
- OJJ's experience with COVID-19 as of the date of the stipulation;
- OJJ's preparations for responding the COVID-19 pandemic;
- Various aspects of OJJ's COVID-19 response plan, including its suspension of in-person visits, furloughs, and off-campus outings, the acquisition of personal

- protective equipment and cleaning supplies, and the acquisition of COVID-19 test kits;
- OJJ’s COVID-19 test plan and strategy for measuring recovery and discharging Youth from medical isolation;
 - OJJ’s COVID-19 screening procedure for staff entering the facilities;
 - The criteria for eligibility of furlough recommendations;
 - The modifications to the educational programming during the COVID-19 response; and
 - Plaintiffs’ efforts related to submitting COVID-19-related grievances under the OJJ’s Administrative Review Process.

See generally id.

E. The Court Conducted a Three-Day Evidentiary Hearing

The Court conducted an evidentiary hearing on Plaintiffs’ TRO Motion on June 3, 2020 through June 5, 2020. During the hearing, Plaintiffs called six witnesses (including three expert witnesses) for live testimony. Specifically, Plaintiffs called three lay witnesses:

- D.M. (an incarcerated Youth), *see* Findings of Fact and Conclusions of Law (“FFCL”) (Doc. 95) at ¶ 46;
- J.P. (D.M.’s mother), *see id.* at ¶ 208; and
- L.P. (the mother another incarcerated Youth, H.C.), *see id.* at ¶ 49.

Plaintiffs also called three expert witnesses:

- Megan Maraynes, M.D. (a pediatric emergency room physician), *see id.* at ¶ 25;
- Carlos Franco-Paredes, M.D. (an infectious disease physician), *see id.*; and
- Vincent Schiraldi (a juvenile justice / juvenile facility administrator), *see id.* at ¶ 64.

The OJJ Defendants called five fact witnesses:

- Edward Dustin Bickham (OJJ Deputy Secretary), *see id.* at ¶ 171;
- Denise Dandridge (OJJ’s Director of Health Services), *see id.* at ¶ 43;
- Kim Mims (OJJ’s Director of Education), *see id.* at ¶ 135;
- Shawn Herbert (OJJ’s Interim Director of the Swanson Center of Youth and Program Manager), *see id.* at ¶ 150; and
- Cassandra Washington (OJJ’s Interim Director of the Bridge City Center for Youth), *see id.*

The OJJ Defendants’ witnesses, through their live testimony, painted a detailed picture of the OJJ’s comprehensive COVID-19 pandemic response, addressing both the medical strategies and the alternative strategies for education and rehabilitative programming within the secure care facilities. *See generally id.* at ¶¶ 36-48, 58-61, 66-96, 109-11, 113-121, 125-26, 128-65, 167, 178-91, 193-205.

F. The Court Found the OJJ Defendants’ COVID-19 Response to be “Commendable”

On June 24, 2020, the Court issued a 93-page opinion denying all preliminary relief sought by the Complaint. *See generally* FFCL (Doc. 95). The trial testimony, which occurred over the course of three days, together with the Parties’ Stipulations, pre-trial submissions, and documentary evidence, allowed the Court to develop over 240 paragraphs of Factual Findings related to the OJJ’s COVID-19 pandemic response and the conditions of confinement for the Youth. *See generally id.* at 1-53.

In the Opinion, the Court thoroughly analyzed the clinical impact of COVID-19 within the OJJ secure care facilities and OJJ’s response to COVID-19, including (1) the general response; (2) pre-pandemic planning; (3) access to the facilities; (4) virtual visitation; (5) reverse

isolation strategies; (6) testing protocols; (7) quarantine and medical isolation protocols; (8) changes to educational services and rehabilitative programming; (9) depopulation planning and protocols; (10) furlough policies; and (11) several other ancillary concerns raised by Plaintiffs.

Id. Ultimately, the Court concluded as follows:

The Court has found throughout this opinion that Plaintiffs did not come close to satisfying their burden, under either constitutional standard, or for any of element of injunctive relief standard (regardless of what it is called). Thus, Plaintiffs should not file another motion for a preliminary injunction unless circumstances have substantially changed and unless they have a good faith basis in law or fact to do so. The Court will consider an award of attorneys' fees if it finds that a second preliminary injunction motion was brought frivolously.

On the whole, the Court finds that OJJ's job in responding to the COVID-19 pandemic has been commendable. As stated throughout this opinion, the Court was highly impressed with the OJJ witnesses who testified, all of whom seemed like highly dedicated workers who were doing the best they could under harrowing and unprecedented circumstances. All of their actions were rationally related to legitimate objectives, and OJJ was certainly not deliberately indifferent in responding to the crisis. As Defendants said in their opening statement, "this is not even a close call." Tr. (6/3/20) at 37. The Court agrees.

Id. at ¶¶ 374, 376. In denying all preliminary relief, the Court clarified that it had thoroughly analyzed each of the arguments raised by Plaintiffs and Defendants and examined all record evidence. *Id.* at ¶ 23 ("The Court has carefully considered all of the evidence and parties' submissions in rendering these findings of fact and conclusions of law. All arguments and evidence have been considered, even if not directly mentioned herein.").

II. ARGUMENT AND AUTHORITIES

Following the Court's June 24 opinion, Plaintiffs' case is left on a rudderless course. The Court concluded that the OJJ's COVID-19 pandemic response was not unconstitutional but

instead was “commendable.” Nonetheless, Plaintiffs continue to actively and aggressively litigate. They continue to seek a declaration from the Court that the OJJ’s COVID-19 pandemic response violates the Eighth and Fourteenth Amendment rights of all Youth within the OJJ.³ They have forged ahead in pursuit of class relief, seeking Rule 23 class certification of all Youth within the OJJ. The result has been an expensive and labor-intensive briefing exercise devoted to various Rule 23 issues,⁴ despite the Court’s clear finding that the OJJ’s COVID-19 pandemic response has been “rationally related to the legitimate interests of rehabilitation and public health and safety” and “has simply not been deliberately indifferent.” FFCL (Doc. 95) at ¶¶ 280, 322.

There is no genuine issue of material fact on the remaining questions. Based on the robust evidentiary record before the Court, it is readily apparent that the OJJ Defendants’ response to the COVID-19 pandemic complied with the Eighth and Fourteenth Amendments to the Constitution. Accordingly, the OJJ Defendants are entitled to summary judgment.

³ While Plaintiffs continue to pray for various forms of relief, ultimately their claims rise or fall on the issue of whether the OJJ Defendants have violated Plaintiffs’ Eighth and Fourteenth Amendment rights. The remaining relief requested is as follows:

- (a) Class certification, Compl. (Doc. 1) at 40;
- (b) Injunctive and declaratory relief ordering that OJJ’s COVID policies and practices “in their totality” violate the 14th Amendment, *id.*;
- (c) An order and judgment declaring that OJJ’s COVID policies and practices “in their totality” violate the 8th Amendment, *id.*;
- (d) An order and judgment declaring that the “conditions, acts, omissions, policies and practices described above” violate the 14th Amendment rights of the Plaintiffs-Plaintiffs and the class they seek to represent, *id.*;
- (e) An order and judgment declaring that the “conditions, acts, omissions, policies and practices described above” violate the 8th Amendment rights of the Plaintiffs-Plaintiffs and the class they seek to represent, *id.* at 40-41;
- (j) Retain jurisdiction until the Defendants have complied with this Court’s orders and there are assurances that Defendants will continue to comply, *id.* at 44;
- (k) An order awarding attorneys’ fees and costs under 42 U.S.C. § 1988, *id.* at 44; and
- (l) Any other relief this Court deems proper, *id.* at 44.

⁴ See Pls.’ Mot. for Class Certification (Doc. 60); Pls.’ Mot. Pursuant to Fed. R. Civ. P. 23(d) (Doc. 85); Pls.’ Mot. to Expedite Hearing on Rule 23(d) Motion (Doc. 88); Defs.’ Resp. in Opp. to Rule 23(d) Mot. (Doc. 97); Pls.’ Reply in Support of Rule 23(d) Mot. (Doc. 102); Defs.’ Mem. in Opp. to Mot. for Class Certification (Doc. 101).

A. Standard of Review: Summary Judgment

This Court has recited the applicable summary judgment standard of review as follows:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). If the mover bears his burden of showing that there is no genuine issue of fact, “its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... [T]he nonmoving party must come forward with specific facts showing that there is a genuine issue for trial.” See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986) (internal citations omitted). The non-mover’s burden is not satisfied by “conclusory allegations, by unsubstantiated assertions, or by only a ‘scintilla’ of evidence.” *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir.1994) (citations and internal quotations omitted). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co.*, 475 U.S. at 587, 106 S. Ct. 1348. Further: In resolving the motion, the court may not undertake to evaluate the credibility of the witnesses, weigh the evidence, or resolve factual disputes; so long as the evidence in the record is such that a reasonable [fact-finder] drawing all inferences in favor of the nonmoving party could arrive at a verdict in that party’s favor, the court must deny the motion. *International Shortstop, Inc. v. Rally’s, Inc.*, 939 F.2d 1257, 1263 (5th Cir.1991).

Gage v. Canal Barge Co., 431 F. Supp. 3d 754, 759 (M.D. La. 2020); *Rouse v. Ard*, No. CV 18-583-JWD-EWD, 2020 WL 96898, at *2 (M.D. La. Jan. 8, 2020) (same); *June Med. Servs., LLC v. Kliebert*, 105 F. Supp. 3d 611, 617 (M.D. La. 2015) (same); *Golden v. Columbia Cas. Co.*, No. CIV. A. 13-547-JWD, 2015 WL 3650761, at *10 (M.D. La. June 11, 2015) (same).

As to the timing, “[u]nless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.” Fed. R. Civ. P. 56(b).

B. Plaintiffs' Claims and the Court's Denial of Plaintiffs' Motion for TRO

Plaintiffs' Complaint (Doc. 1) generally alleges violations of the Eighth and Fourteenth Amendment. *See* Comp. (Doc. 1) at ¶ 108 (generically alleging Plaintiffs' "rights under the Fourteenth Amendment to reasonably safe living conditions and to rehabilitative treatment"), ¶¶ 117-18 (generically claiming the "COVID-19 pandemic creates a substantial risk of serious harm (including death) to Plaintiffs-Petitioners from the policies, actions and inactions of Defendants-Respondents in response the COVID-19 pandemic" and that the OJJ Defendants "have failed to take reasonable measures to abate that risk"). Unpacking these broad-brush allegations, Plaintiffs are specifically complaining of the following conduct:

1. Continuing to detain Youth who are within 180 days of their scheduled release date, *id.* at ¶ 73 & p. 41;
2. Continuing to detain Youth who Plaintiffs contend are "presumptively eligible for release," *id.* at ¶ 73;
3. Testing only those Youth who exhibit symptoms of COVID-19, instead of testing all Youth, *id.* at ¶¶ 62-63;
4. Using behavioral intervention rooms for purposes of medical isolation, *id.* at ¶ 68;
5. Confining Youth to their dormitories for extended periods of time, *id.* at ¶ 75;
6. Using pepper spray on Youth, *id.* at ¶ 77;
7. Temporarily suspending education and rehabilitation services, *id.* at ¶¶ 76, 78;
8. Temporarily suspending in-person visitation, *id.* at ¶ 79; and
9. Using the OJJ Defendants' current COVID-19 pandemic response plan, which Plaintiffs allege to be insufficient, *id.* at ¶¶ 57-72.

The following Findings and Conclusions from the Court’s June 24 opinion address each substantive claim in the Complaint and demonstrate that there is truly nothing left to be litigated:

1. **Confining Youth Who Are Within 180 Days of Release:** “Since the juvenile court is not a party to this action (and since, even if it were, this Court has considerable doubts about its authority to order the juvenile court to take certain action), this Court cannot afford Plaintiffs the relief they seek.” *Id.* at ¶ 286.
2. **Confining Youth Who Are Presumptively Eligible for Release:** “[T]he Court adds that neither of the named Plaintiffs, I.B. or J.H., currently qualify for a furlough recommendation under the criteria in OJJ’s Furlough Policy. Stipulations ¶ 67, Doc. 51. Further, neither D.M. nor H.C. are eligible for a recommendation for extended furlough.” *Id.* at ¶¶ 289-290.
3. **Failing to Test Youth for COVID-19:** “OJJ’s decision to test only symptomatic youth is rationally related to the legitimate objective of public health. [...] In sum, the Court declines to find that OJJ committed a constitutional violation when they are following the same testing policy of most of the jurisdictions in this country and the same policy endorsed by the CDC.” *Id.* at ¶ 293.
4. **Use of Behavioral Intervention Rooms for COVID-19 Isolation:** “OJJ’s decision to temporarily use behavioral intervention rooms for Youth who are awaiting test results is rationally related to the legitimate objective of public health. [...] Given the extremely important need to quarantine Youth who were awaiting test results, the relatively short amount of time it now takes to obtain test results for COVID-19, the fact that the behavioral intervention rooms were only used when infirmary rooms

- were full, the Court cannot say that OJJ's decision to use these rooms was not rationally related to legitimate objectives." *Id.* at ¶ 299.
5. **Confining Youth to their Dormitories:** "OJJ's decision to 'reverse isolate' the Youth in their dorms is rationally related to the legitimate objective of keeping the Youth and community safe from COVID-19. [...] Considering the important need to prevent the spread of the COVID-19 pandemic, the Court finds that OJJ's actions related to this issue are clearly rationally related to a legitimate objective." *Id.* at ¶¶ 305-06.
 6. **Using Pepper Spray on Youth:** "While Plaintiffs certainly presented evidence that the use of pepper spray is disfavored, this issue has essentially been rendered moot by Pl. Ex. 56, *April 27, 2020, Chemical Agent Memorandum*. As the parties have stipulated, since April 27, 2020, 'chemical spray will not be permitted inside the secure facilities,' 'unless given specific directives from the Regional Director for a specific incident.' *Stipulations* ¶ 81, Doc. 51. Plaintiffs fail on this issue." *Id.* at ¶ 308.
 7. **Temporary Suspension of Structured Education and Rehabilitative Programs:** "While not ideal, the Court cannot say that OJJ's efforts to provide educational services to the Youth during the enormous strain of the pandemic was not rationally [r]elated to legitimate objectives. [...] Even [Plaintiffs' Expert] Mr. Schiraldi agreed that OJJ continued some level of rehabilitation to the Youth throughout the pandemic. Schiraldi Tr. (6/4/20) at 45. The Court finds that OJJ's robust provision of services in these areas is certainly rationally related to legitimate objectives." *Id.* at ¶¶ 310-11.
 8. **Suspension of In-Person Visitation:** "Given the heightened need for OJJ to prevent the spread of COVID-19 to the Youth and the community, the Court finds that OJJ's

policy of increasing the number of phone calls and use of video conferencing calls to be very reasonable under the circumstances.” *Id.* at ¶ 86.

9. **Plaintiff’s Request to Order a Different Pandemic Response Plan:** “As amply demonstrated, and as Plaintiffs’ experts concede, OJJ’s plan conforms to CDC guidelines. *See* Schiraldi (6/4/20) at 62; Franco-Paredes Tr. (6/3/20 p.m.) at 62-63. Further, it is beyond reasonable.” *Id.* at ¶ 313.

Ultimately, the Court found that the OJJ Defendants’ conduct did not violate the Fourteenth Amendment or the Eighth Amendment:

- **Fourteenth Amendment Analysis:** “The record is exceedingly clear that OJJ’s COVID-19 response strategy of testing, screening, isolation, reverse isolation, quarantine, social distancing, and its corresponding scaled reduction in programing was and is rationally related to the legitimate interests of rehabilitation and public health and safety.” FFCL (Doc. 95) at ¶ 280 (emphasis added).
- **Eighth Amendment Analysis:** “For all the reasons given in the Fourteenth Amendment section [as bulleted above], the Court finds that OJJ consulted early and often with the Governor’s task force, LDH, LDOE, and Wellpath to formulate and implement its COVID-19 strategy. Further, that strategy was consistent with the CDC Interim Guidance for managing and reducing the spread of COVID-19 in congregate settings like OJJ’s secure care facilities, including by monitoring the CDC for updates to that guidance. *See Valentine*, 956 F.3d at 802 (‘Plaintiffs have cited no precedent holding that the CDC’s recommendations are insufficient to satisfy the Eighth Amendment.’). [...] Plaintiffs’ contention that ‘[t]he only logical explanation [for OJJ’s refusal to adopt universal testing of asymptomatic children] is that it does not matter to Defendants if there are undetected

cases of COVID-19 among the children in OJJ’s secure care facilities’ is totally unfounded and baseless, for all the reasons provided in this opinion. In sum, OJJ’s response has simply not been deliberately indifferent. Plaintiffs have not established that OJJ has been grossly negligent or even negligent, much less that it acted with criminal recklessness. All of Plaintiffs’ criticism strikes the Court as the very kind of ‘disagreements’ which *Valentine* rejected as a basis for a constitutional claim.” *Id.* at ¶ 321 (emphasis added).

See also id. at ¶ 341 (“Given the Court’s findings above that Plaintiffs have clearly failed to demonstrate any viable constitutional claim against OJJ or the other Defendants, the Court declines to rule on [whether Plaintiffs exhausted their remedies in state court to warrant release under federal habeas authority].” (emphasis added)); *id.* at ¶ 374 (“The Court has found throughout this opinion that Plaintiffs did not come close to satisfying their burden, under either constitutional standard, or for any of element of injunctive relief standard (regardless of what it is called). Thus, Plaintiffs should not file another motion for a preliminary injunction unless circumstances have substantially changed and unless they have a good faith basis in law or fact to do so.” (emphasis added)).

The Court concluded its order denying Plaintiffs’ Motion for TRO, noting that the OJJ Defendants’ response to the COVID-19 pandemic has been “commendable”:

On the whole, the Court finds that OJJ’s job in responding to the COVID-19 pandemic has been commendable. As stated throughout this opinion, the Court was highly impressed with the OJJ witnesses who testified, all of whom seemed like highly dedicated workers who were doing the best they could under harrowing and unprecedented circumstances. All of their actions were rationally related to legitimate objectives, and OJJ was certainly not deliberately indifferent in responding to the crisis. As Defendants said in their opening statement, “this is not even a close call.” Tr. (6/3/20) at 37. The Court agrees.

Id. at ¶ 376.

C. No Genuine Issue of Material Fact on Plaintiffs' Claims

The question now before the Court is whether a genuine issue of material fact exists for trial on the issue of whether the OJJ's COVID-19 pandemic response violates Plaintiffs' Eighth or Fourteenth Amendment rights.⁵ Stated differently, the Court must decide if there is record evidence on which a reasonable fact finder could conclude (1) that the OJJ has acted with deliberate indifference to the rights of the Youth, or (2) that the OJJ's pandemic response is divorced from any legitimate governmental interest. Importantly, on the ultimate trial of Plaintiffs' claims, the Court will serve as the factfinder.⁶ Because the Court has already ruled

⁵ Pursuant to Fed. R. Civ. P. 10(c), the OJJ Defendants incorporate by reference as if fully set forth herein the conclusions of law regarding the applicable legal standard to Plaintiffs' constitutional claims as set forth in Paragraphs 263-279 and 315-322 of the Court's Findings of Fact and Conclusions of Law (Doc. 95).

As the Court acknowledged in its June 24 opinion, there is a dispute regarding the applicable standard of constitutional review for "conditions of confinement" cases involving Youth detention facilities. FFCL (Doc. 95) at ¶ 262, *et seq.* Defendants have argued for the "deliberate indifference" standard articulated in *Morales v. Turman*, 562 F.2d 993 (5th Cir. 1977). Plaintiffs have urged the Court to apply the "objectively unreasonable" or "rational relationship" test announced in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). After a detailed analysis of the law and arguments, the Court acknowledged that "*Morales* (albeit the minority rule) appears to be the correct standard in this circuit." FFCL (Doc. 95) at ¶ 269. Ultimately, however, the Court did not reach or decide the issue because "regardless of which standard to apply ... Plaintiffs have failed to meet their burden of clearly demonstrating a substantial likelihood of success on the merits." *Id.* at ¶ 271.

⁶ The remaining requests for relief are all injunctive or declaratory in nature. Because the claims are limited to injunctive and declaratory relief, Plaintiffs are not entitled to a jury trial. *See Thunderhorse v. Pierce*, 364 F. App'x 141, 148 (5th Cir. 2010) ("Thunderhorse was not entitled to a jury trial because he sought only injunctive and declaratory relief. *See Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 193 (5th Cir.2008) ("[U]nless Congress has expressly provided to the contrary, an injunction is an equitable remedy that does not invoke a constitutional right to a jury trial." (citations omitted)); *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 423 n. 19 (5th Cir. 1998) (citations omitted). At trial, when Thunderhorse raised this issue, the magistrate judge explained that "the reason it was a bench trial was because you were seeking injunctive relief and declaratory relief. That's equitable relief."). Accordingly, here, a bench "trial on the merits" for the remaining injunctive and declaratory relief sought by Plaintiffs will result in a virtually identical repeat of the prior evidentiary hearing.

after a full evidentiary hearing that there is no credible evidence to support such claims, *see* FFCL (Doc. 95) at ¶¶ 280, 321, this case is now ripe for dismissal in its entirety.

A review of the Parties' Joint Statement of Stipulated Facts (Doc. 51), together with the admissions of Plaintiffs' experts during trial (all noted in the Court's June 24 opinion), reveals that the parties do not even dispute the facts surrounding OJJ's pandemic response strategy, i.e. the steps OJJ has taken to address COVID-19 within the secure care facilities. Thus, there is no dispute about the nature of OJJ's COVID-19 response, either concerning OJJ's protocols for COVID-19 prevention and treatment or its provision of educational and rehabilitative programming. Instead, this case boils down to a dispute about the adequacy of OJJ's COVID-19 response.

The Court articulated the very problem with this type of dispute in its June 24 order – effectively stating why Plaintiffs' claim cannot survive summary judgment: “[T]he existence of an alternative plan – even a better plan – is not evidence that the challenged plan is unconstitutional or illustrative of deliberate indifference.” FFCL (Doc. 95) at ¶ 367 (quoting *Gumns v. Edwards*, Civ. A. No. 20-231-SDD-RLB, 2020 WL 2510248, at *15 (M.D. La. May 15, 2020)). Instead, the Court explained, “[i]f the choice is between two reasonable responses to a public crisis, the judgment must be left to the governing state authorities.” *Id.* (quoting *Marlowe v. LeBlanc*, No. 20-30276, 2020 WL 2043425, at *3 n.4 (5th Cir. Apr. 27, 2020)). The Court then seized directly on the fatal flaw in Plaintiffs' case: “The question is not whether Plaintiffs can offer a better plan for the OJJ. **The sole question is whether Plaintiffs have demonstrated that OJJ's COVID-19 response is unconstitutional. They have not done so.**” *Id.* at ¶ 368 (emphasis added).

To survive summary judgment, Plaintiffs must create a genuine issue on the constitutionality of the OJJ's pandemic response. To date, the sum total of all record evidence presented by Plaintiffs has been devoted to proving two issues: (1) COVID-19 presents medical problems both generally and in congregate settings like prisons (which is undisputed); and (2) Plaintiffs believe their own strategy to battle COVID-19 is more effective than the strategy employed by OJJ (which is irrelevant). Plaintiffs have not presented a single document or witness that suggests the OJJ's pandemic response rises to the level of a constitutional violation (i.e., was done with deliberate indifference or without any legitimate governmental interest).

On the other hand, the Court thoroughly reviewed Plaintiffs' evidence and the OJJ's response and found the evidence "exceedingly clear": the OJJ's "actions were rationally related to legitimate objectives, and OJJ was certainly not deliberately indifferent in responding to the crisis." FFCL (Doc. 95) at ¶¶ 280, 376. The Court satisfied itself that the OJJ response has been not only constitutional, but "commendable," *id.* at ¶ 376, and concluded that Plaintiffs "clearly failed to demonstrate any viable constitutional claim," *id.* at ¶ 341.

There are no genuine issues of material fact and no further issues for the Court to try here. This case is a classic candidate for summary judgment and should be dismissed with prejudice accordingly.

D. Plaintiff I.B.'s Claims Are Moot Because He Has Been Released from OJJ's Custody

The OJJ Defendants are entitled to summary judgment on the claims by Plaintiff I.B. for the additional reason that his claims are now moot. The Fifth Circuit explained in *Oliver v. Scott* that "the transfer of a prisoner out of an institution often will render his claims for injunctive relief moot." *Oliver v. Scott*, 276 F.3d 736, 741 (5th Cir. 2002); *see also Cooper v. Sheriff, Lubbock County Tex.*, 929 F.2d 1078, 1081 (5th Cir. 1991) (holding prisoner transferred out of

offending institution could not state a claim for injunctive relief); *see also Durbin v. Cain*, Civ. A. No. 10-655-JJB-RLB, 2013 WL 5176395, at * 3 (M.D. La. Sept. 12, 2013) (applying *Oliver* and holding that a plaintiff's claims for injunctive relief against a particular facility were mooted by his transfer to a different prison). Because the doctrine of mootness implicates a court's subject matter jurisdiction, issues of mootness can arise at any stage of a proceeding, even during the course of an appeal. *Carr v. Saucier*, 582 F.2d 14, 15-16 (5th Cir. 1978). In other words, even if a claim is rendered moot after the plaintiff's complaint is filed, the court must dismiss the action for want of jurisdiction. *Id.*

On July 24, 2020 I.B. completed his sentence and was released from OJJ's custody as scheduled. *See* Declaration of Revettea Woods at ¶¶ 5-6, *attached hereto as* Exhibit A. Because I.B. is no longer in the custody of the OJJ (and there is no reason to expect he will re-enter it), his claim for injunctive relief must be dismissed as moot. This Court therefore lacks subject matter jurisdiction over I.B.'s claim, and it should dismiss him from this case.

E. Plaintiff J.H.'s Claims Are Barred Due to His Failure to Exhaust Administrative Remedies

As discussed above, I.B.'s release from OJJ's custody renders his claims moot and requires that he be dismissed from this action. Assuming the Court agrees, then J.H. is effectively the only remaining named Plaintiff. Because J.H. failed to exhaust all administrative remedies prior to filing this action, his claims should be dismissed for this additional reason.

The Parties have stipulated that neither of the named Plaintiffs completed the non-emergency ARP process through the two levels of review. *See* (Doc. 51) at ¶ 84. Plaintiffs' claims of proper exhaustion under the PLRA, and the Court's analysis of same, has been largely devoted to Plaintiffs' use of the emergency ARP procedure as an avenue to satisfy the exhaustion requirement. *See* FFCL (Doc. 95) at ¶¶ 323-38 (discussing PLRA exhaustion).

Pursuant to Federal Rule of Civil Procedure 10(c), the OJJ Defendants adopt and incorporate by reference their briefing submitted on this issue in *Defendants' Proposed Findings of Fact and Conclusions of Law Regarding Plaintiffs' Motion for TRO* (Doc. 78) at ¶¶ 228-42; and *Defendants' Response in Opposition to Plaintiffs' Motion for TRO* (Doc. 34) at 16-21. The OJJ Defendants position has been fully set forth therein.

One additional issue, however, that the parties and this Court have not previously addressed is the timing of J.H.'s emergency ARP request. Plaintiffs' counsel purportedly "filed" an emergency ARP request on J.H.'s behalf by emailing it to several OJJ officials on May 9, 2020, which was a Saturday. *See* FFCL (Doc. 95) at ¶ 252; Stipulation (Doc. 51) at ¶ 88; J.H.'s Grievance (May 9, 2020) (Doc. 31-5) at 1-7. OJJ's ARP policy provides that an ARP request is deemed filed when it is "received" by the ARP coordinator, and that ARP forms that are submitted "on a Saturday, Sunday or other legal holiday shall be deemed to have been received on the first regular business day following the weekend or legal holiday." *See* OJJ Administrative Remedy Procedure ("ARP") at 4, § VII(D)(4)(b) (emphasis added), *attached as* Ex. E-1 *to* Aff. of Revettea Woods (May 26, 2020) (Doc. 34-5). Under the express provisions of the ARP, therefore, the earliest J.H.'s ARP form would have been "filed" was Monday, May 11, only three days before Plaintiffs filed suit on May 14, 2020. *See* Compl. (Doc. 1). Accordingly, the five-day period for OJJ to respond J.H.'s emergency grievance had not yet expired when J.H. filed his Civil Complaint. *See* ARP at 9, § VII(I), *attached as* Ex. E-1 *to* Aff. of Revettea Woods (May 26, 2020) (Doc. 34-5). As such, J.H. unquestionably failed to exhaust all administrative remedies before he filed this action. *See* 42 U.S.C. § 1997e(a). Accordingly, J.H.'s claims are barred, and the OJJ Defendants are entitled to summary judgment on J.H.'s claims for this additional reason.

III. CONCLUSION

After the evidentiary hearing, based on a fully developed record and extensive briefing by the Parties, this Court issued its ruling that the Plaintiffs have not come close to meeting the constitutional threshold for habeas relief or relief under Section 1983. Accordingly, for the reasons discussed both above and in the OJJ Defendants' previous briefing(s), this Court should grant the OJJ Defendants' Motion for Summary Judgment and dismiss this case in its entirety, with prejudice.

Dated: July 29, 2020

Respectfully submitted,

Defendants The Louisiana Office of Juvenile Justice, Edward Dustin Bickham, James Woods, Shannon Matthews, Shawn Herbert, and Rodney Ward

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CERTIFICATE OF SERVICE

I, Kyle V. Miller, hereby certify that I have today served the foregoing document via the Court's electronic filing system, which provided notice to all counsel of record.

Dated: July 29, 2020

S/Kyle V. Miller

KYLE V. MILLER

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28 U.S.C. § 1746 DECLARATION OF REVETTEA WOODS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Revettea Woods, I am over twenty-one (21) years of age and of sound and disposing mind. I have knowledge of, and am competent to testify about, the matters stated in this Affidavit. I am under no legal or other disability. The facts stated herein are true and correct to the best of my knowledge and belief.

2. I am currently employed as Deputy General Counsel with the Louisiana Office of Juvenile Justice (“OJJ”). In that capacity, I am familiar with, and have access to records and information concerning, the Youths housed within OJJ’s secure care facilities.

3. I understand that two Youths have filed a federal class-action lawsuit against OJJ and other defendants, alleging claims related to OJJ’s handling of the COVID-19 pandemic. I also understand that Youths J.H. and I.B. are named plaintiffs in that action.

4. In my capacity as Deputy General Counsel with OJJ, I contacted the appropriate OJJ staff to gather certain information about Youth I.B. Based on that investigation, I received the following information.

5. I.B. was scheduled for release from OJJ custody on July 24, 2020.

6. On July 24, 2020, I.B. was released from OJJ’s custody, and OJJ no longer has custody over I.B.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 28, 2020.



Revettea Woods