UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

BRITTANY WADDELL, ROGER EWING, TONY SMITH, DANIEL HATTEN, DOUGLASS TRIPLETT, ERIK LEWIS, BOB HENDERSON, THOMAS HOLDER, and JAMARCUS DAVIS, individually and on behalf of a class of all others similarly situated,

Plaintiffs,

v.

TOMMY TAYLOR, in his official capacity as Interim Commissioner of the Mississippi Department of Corrections; RON KING, in his official capacity as Superintendent of Central Mississippi Correctional Facility; and JOE ERRINGTON, in his official capacity as Superintendent of South Mississippi Correctional Institution,

Defendants.

Civil Action No. 3:20-cv340-TSL-RHW

CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This case is a challenge to the inadequate response to the COVID-19 pandemic at Mississippi's two largest prisons—Central Mississippi Correctional Facility (CMCF) and South Mississippi Correctional Institute (SMCI)—which together house approximately 6,000 women and men.

2. Prior to the COVID-19 pandemic, Mississippi's prisons were in a state of crisis. People die in our prisons at a rate that far exceeds the national average. Mississippi has the second-highest rate of incarceration in the nation, holding many in custody who do not need to be incarcerated. Prisons like CMCF and SMCI are functionally overcrowded: their housing units operate at physical capacity but with half the required staff. Often only one officer at CMCF or SMCI is on duty to supervise hundreds of residents, sometimes in different locations. Residents spend most of their time in and between cramped rows of bunk beds placed about four feet apart. Certain housing units at CMCF and SMCI hold concentrated chronic care populations—of elderly, ill, and disabled individuals at higher risk of hospitalization and death due to COVID-19 infection. Even in these crowded 100-person double-bunked zones, prison officials have not adequately implemented rudimentary pandemic response protocols, such as frequent cleaning and disinfection of living units and provision of sufficient cleaning supplies. Residents regularly run out of soap and cannot wash their hands. Some use unlaundered personal towels to try and clean common areas. Individuals have reported having symptoms of coronavirus but were not immediately isolated or tested. Systemwide, MDOC has tested less than one half of one percent of its population for COVID-19—only a few dozen of the over 18,000 individuals it holds in custody.

3. MDOC's failure to adequately implement baseline protective measures at CMCF and SMCI months into the pandemic violates the Americans with Disabilities Act and the Rehabilitation Act—federal laws that protect women and men in prison whose disabilities put

them at an increased risk of contracting, becoming severely ill from, and dying as a result of COVID-19 infection. MDOC's failure also violates the right of all residents at CMCF and SMCI to be free from conditions of confinement that create a substantial risk of serious harm to their health and safety, as guaranteed under the Eighth Amendment of the United States Constitution.

4. Social distancing is extremely difficult in these overcrowded prisons, and steps to reduce that overcrowding would help to ameliorate the dangers posed by COVID-19. At the same time, remedial steps to mitigate and manage transmission of COVID-19 must be implemented immediately, including measures provided by the Centers for Disease Control and Prevention (CDC) in its guidance to correctional facilities. In this case, Plaintiffs seek a court order requiring adequate implementation of measures necessary to minimize and manage an outbreak of COVID-19 at CMCF and SMCI.

JURISDICTION & VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution of the United States, and pursuant to 28 U.S.C. § 1343(a) because this action seeks to redress the deprivation, under color of state law, of rights secured to Plaintiffs by the Constitution and laws of the United States.

6. Plaintiffs' claims are also brought pursuant to the Americans with Disabilities Act (ADA), 28 U.S.C. § 12132 et seq., and the Rehabilitation Act (RA), 29 U.S.C. § 794 et seq. Plaintiffs' claims for relief are also predicated, in part, upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution of the laws of the United States.

7. This Court has authority to grant declaratory and injunctive relief under to 28 U.S.C. §§ 2201 and 2202, as well as Federal Rule of Civil Procedure 65.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), as Defendants do business in this judicial district and many of the events or omissions giving rise to the claims occurred in this judicial district.

PARTIES

Plaintiffs

9. Brittany Waddell is incarcerated at CMCF. She is 33 years old, has three children, and is incarcerated for a drug-related offense. She lives in a unit that houses approximately 120 women in rows of bunk beds spaced approximately four feet apart.

10. Roger Ewing is incarcerated in CMCF. He is 68 years old. He uses a wheelchair as a result of multiple strokes. He has difficult standing up from his wheelchair. He suffers from severe chronic asthma and the beginning stages of emphysema that make it difficult for him to breathe. He has had multiple bouts of cancer. He suffers from bad kidneys and stones. He had boiling water thrown on him when he was incarcerated at another prison that burned nearly half of his body. He suffers from nerve pain that prevents him from sleeping more than a few hours at night. Mr. Ewing is a qualified individual with a disability under the Americans with Disabilities Act in that he has an impairment that substantially limits major life activities, including, but not limited to, sleeping, walking, standing, breathing, and respiratory function. He is similarly a qualified individual with a disability for purposes of Section 504 of the Rehabilitation Act. He is a member of the Disability Subclass for reasons including, but not limited to, the fact that his disabilities put him at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19. Mr. Ewing lives in one of the units at CMCF that is home to a large population of elderly and chronic care medical patients; the approximately 100 residents spend most of their time in and among rows of bunk beds spaced approximately four feet apart.

11. Tony Smith is incarcerated in CMCF. He is 58 years old. He suffers from high blood pressure, cholesterol, and an enlarged prostate, all of which he must take medication for. He suffers from a degenerative joint disease. He has a disease affecting his spine. If he misses his blood pressure medication, he suffers from bad headaches and lethargy. He broke his hand badly in December of 2019. His broken hand healed incorrectly, and he is still in pain. He is waiting for outside medical care to fix his hand, but the appointment has been delayed by the pandemic. Mr. Smith is a qualified individual with a disability under the Americans with Disabilities Act in that he has an impairment that substantially limits major life activities, including, but not limited to, walking and standing. He is similarly a qualified individual with a disability for purposes of Section 504 of the Rehabilitation Act. Mr. Smith is at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19. Mr. Smith lives in one of the units at CMCF that is home to a large population of elderly and chronic care medical patients; the approximately 100 residents spend most of their time in and among rows of bunk beds spaced approximately four feet apart.

12. Daniel Hatten is incarcerated in CMFC. He suffers from high blood pressure. His high blood pressure leads to frequent tension headaches that immobilize him on his bed. He was stabbed in the eye in February of 2020, which healed improperly. His eye is painful, has limited movement, and causes him to see double. He suffers from ulcerated hemorrhoids. Mr. Hatten is a qualified individual with a disability under the Americans with Disabilities Act in that he has an impairment that substantially limits major life activities, including, but not limited to, seeing, walking, and standing. He is similarly a qualified individual with a disability for purposes of Section 504 of the Rehabilitation Act. Mr. Hatten is at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19.

13. Douglass Triplett is incarcerated in SMCI. He is 56 years old. He suffers from HIV and paranoid schizophrenia. Although he is currently under the care of a physician for his HIV, he has not received treatment for his paranoid schizophrenia for approximately twenty years. His HIV makes him extremely weak, lethargic and immobilized. He also has little to no appetite with terrible pain in his stomach. Because of these symptoms, he cannot exercise like he normally would. He also is not supposed to be in sunlight, so he cannot often go outside. Mr. Triplett is a qualified individual with a disability under the Americans with Disabilities Act in that he has an impairment that substantially limits major life activities, including, but not limited to, eating, walking, standing, concentrating, thinking, communicating, immune system function, neurological function, and brain function. He is similarly a qualified individual with a disability for purposes of Section 504 of the Rehabilitation Act. He is a member of the Disability Subclass for reasons including, but not limited to, the fact that his disabilities put him at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19.

14. Bob Henderson is incarcerated in SMCI. He suffers from neurofibromatosis. His disease causes tumors to grow on his spine and nervous system, as well as both inside and outside his body. It also causes high blood pressure, altered vision, difficulty walking, and problems with white blood cells. He is not receiving the necessary MRIs and treatment for his neurofibromatosis and is weak, cannot walk or stand for a prolonged time, and requires more significantly more sleep than an average person. He has also suffered from depression. Mr. Henderson is a qualified individual with a disability under the Americans with Disabilities Act in that he has an impairment that substantially limits major life activities, including, but not limited to, sleeping, seeing, walking, standing, neurological function, and circulatory function. He is similarly a qualified individual with a disability for purposes of Section 504 of the Rehabilitation Act. He is a member

of the Disability Subclass for reasons including, but not limited to, the fact that his disabilities put him at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19.

15. Erik Lewis is incarcerated in SMCI. He is 38 years old. He suffers from chronic asthma. He often struggles to breathe due to his asthma. His asthma makes any activity, including walking or talking, difficult. He suffers from severe migraines. Mr. Lewis is a qualified individual with a disability under the Americans with Disabilities Act in that he has an impairment that substantially limits major life activities, including, but not limited to, walking, speaking, communicating, breathing, and respiratory function. He is similarly a qualified individual with a disability for purposes of Section 504 of the Rehabilitation Act. He is a member of the Disability Subclass for reasons including, but not limited to, the fact that his disabilities put him at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19.

16. Thomas Holder is incarcerated in SMCI. He is 64 years old. He suffers from facial cancer, which has disfigured his face. He has been diagnosed with diabetes. He also suffers from type one bipolar disorder, which is the most severe form of the disease. He becomes manic if his bipolar disorder is not treated or he becomes stressed. His bipolar disorder causes him to become very agitated and have trouble sleeping. Mr. Holder is a qualified individual with a disability under the Americans with Disabilities Act in that he has an impairment that substantially limits major life activities, including, but not limited to, sleeping, concentrating, thinking, and brain function. He is similarly a qualified individual with a disability for purposes of Section 504 of the Rehabilitation Act. He is a member of the Disability Subclass for reasons including, but not limited to, the fact that his disabilities put him at increased risk of contracting, becoming severely ill from, and/or dying from COVID-19. Mr. Ewing lives in one of the units at SMCI that is home to a large

population of elderly and chronic care medical patients; the approximately 100 residents spend most of their time in and among rows of bunk beds spaced approximately four feet apart.

17. Jamarcus Davis is incarcerated in SMCI. He suffers from anxiety and depression. His symptoms have become more serious over the course of the pandemic.

18. All of these Plaintiffs live in prisons where the Defendants and their agents have not adequately implemented safeguards regarding COVID-19 in violation of the Constitution and federal laws as described in this complaint. As a result, the risk of contracting and suffering or dying from COVID-19 has dramatically increased for each of these individuals.

Defendants

19. Defendant Tommy Taylor is the Interim Commissioner (Commissioner) for the Mississippi Department of Corrections (MDOC) and is sued in his official capacity. References to MDOC herein also refer to Commissioner Taylor. As Commissioner, Taylor is responsible for the operation of the MDOC, Mississippi's prison system, and its prisons, and is responsible for insuring compliance with the United States Constitution and federal laws.

20. Defendant Ron King is the Superintendent of CMCF and is sued in his official capacity. In that capacity, he is responsible for the operation of CMCF and is responsible for insuring compliance with the United States Constitution and federal laws at CMCF. References to CMCF herein also refer to Defendant King.

21. Defendant Joe Errington is the Superintendent of SMCI and is sued in his official capacity. In that capacity, he is responsible for the operation of SMCI and is responsible for insuring compliance with the United States Constitution and federal laws at SMCI. References to SMCI herein also refer to Defendant Errington.

22. MDOC, CMCF, and SMCI are public entities under Title II of the ADA and receive federal financial assistance within the meaning of the RA, and have at all relevant times.

23. At all relevant times, the actions of Defendants and their agents were state action and were taken under color of state law.

GENERAL ALLEGATIONS

I. The COVID-19 Pandemic in Mississippi and Beyond

24. We are living in the midst of an extreme, unprecedented worldwide health emergency caused by the rapid spread of the 2019 coronavirus, COVID-19.

25. On March 14, 2020, Mississippi Governor Tate Reeves issued a proclamation declaring a disaster in the State of Mississippi.[1] President Trump has declared COVID-19 a national emergency.[2] The World Health Organization has declared it to be a global pandemic.[3]

26. Worldwide, nearly 4.2 million individuals have confirmed diagnoses of COVID-19 and more than 285,000 have died.[4]

27. Across the United States, there are more than 1.3 million confirmed cases of COVID-19 and over 82,000 people have died.[5]

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[1] Mississippi Office of the Governor, Proclamation (Mar. 14, 2020), *available at* https://www.sos.ms.gov/Content/documents/about_us/WhatsNew/GovernorProclomationPublicHealth.pdf.

[2] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID19) Outbreak (Mar. 13, 2020), available at https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.

[3] Rolling Updates on Coronavirus Disease (COVID-19), World Health Org., *available at* https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen (last visited Apr. 28, 2020).

[4] WHO Coronavirus Disease (COVID-19 Dashboard), World Health Org., *available at* https://covid19.who.int/ (last visited May 13, 2020).

[5] Coronavirus Disease 2019 (COVID-19): Covid-19 in the U.S., Centers for Disease Control and Protection, *available at* https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last visited May 13, 2020)

28. As of May 13, 2020, there were 10,090 of COVID-19 cases in Mississippi.[6] 465 people in Mississippi have died from the disease.[7] Case totals in Mississippi are rising across the state with every passing day.[8]

29. COVID-19 is an extremely dangerous virus. It can severely damage the lungs and other vital organs, including the heart and liver, and ultimately cause death.

30. There is no known vaccine, cure, or treatment. No one is immune.

31. Many patients who do not die still require hospitalization. Those with serious cases may face prolonged recovery periods and suffer from neurological damage and permanent loss of respiratory capacity.[9]

32. The fatality rate of COVID-19 increases with age. Specifically, people over 65 who contract COVID-19 face heightened risks of serious illness or death.[10]

33. COVID-19 also puts at particular risk individuals with underlying health conditions or other disabilities including lung disease, heart disease, chronic liver or kidney disease, diabetes, epilepsy, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders, inherited metabolic disorders, stroke, developmental delay, and asthma. People who are pregnant may also be at higher risk of developing severe illness from COVID-19.[11]

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[6] Coronavirus Disease 2019 (COVID-19): Covid-19 in Mississippi and the U.S., Mississippi State Dept. of Health, *available at* https://msdh.ms.gov/msdhsite/_static/14,0,420.html (last visited May 13, 2020).

[7] *Id.*

[8] *Id.*

[9] *Id.* ¶ 7.

[10] Coronavirus Disease 2019 (COVID-19): Older Adults, Centers for Disease Control and Prevention ("CDC") (Apr. 7, 2020), *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html.

[11] *See* Coronavirus Disease 2019 (COVID-19): People Who May Be at Higher Risk, CDC, *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last accessed Apr. 28, 2020).

34. But everyone is at risk of COVID-19. The virus is killing even healthy adults.[12]

35. COVID-19 is a particularly contagious disease. A recent study showed that the virus can survive for up to three hours in the air, four hours on copper, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.[13]

36. Controlling the spread of COVID-19 is made even more difficult because of the prominence of asymptomatic transmission from individuals who are contagious but who exhibit no symptoms. Asymptomatic transmission renders ineffective screening tools that depend on identifying symptoms.[14]

37. The CDC and other public health agencies have universally prescribed social distancing and rigorous hygiene as the only ways to meaningfully mitigate the spread of this virus. To properly practice social distancing, every person should remain at a distance of at least six feet from every other person.[15] Rigorous hygiene should include regular and thorough hand washing with soap and water, the use of alcohol-based hand sanitizer, proper sneeze and cough etiquette, and frequent cleaning of all surfaces.[16]

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[12] S*ee also* Bill Gates, Responding to Covid-19 – A Once-in-a-Century Pandemic?, NEW ENG. J. OF MED. (Feb. 28, 2020).

[13] Tests Show New Virus Lives on Some Surfaces for Up to 3 Days, U.S. NEWS (Mar. 11, 2020) https://www.usnews.com/news/health-news/articles/2020-03-11/tests-show-new-virus-lives-on-some-surfaces-for-up-to-3-days (last visited Apr. 28, 2020).

[14] Johnny Milano, Infected but Feeling Fine: The Unwitting Coronavirus Spreaders, N.Y. Times, https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html (last visited Apr. 1, 2020).

[15] Coronavirus Disease 2019 (COVID-19): Social Distancing, Quarantine, and Isolation, CDC, *available at* https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html.

[16] Coronavirus Disease 2019 (COVID-19): How to Protect Yourself, CDC, *available at* https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html (last visited Apr. 28, 2020).

38. The CDC has issued guidance that people should strictly limit their contact with others and avoid gathering in groups of more than ten.[17]

39. Recognizing the urgent need to mandate social distancing statewide to reduce the spread of COVID-19 in Mississippi's communities, on April 1, 2020, Governor Reeves issued a "Shelter in Place" executive order requiring all residents to stay at home, with only limited exceptions for "essential" workers and activities.[18]

40. Governor Reeves subsequently issued a "Safer at Home" executive order on April 24, 2020, which relaxed some of the emergency mandates in place but urged residents to remain at home.[19] The order allowed certain non-essential businesses to reopen while adopting strict precautionary measures, including social distancing, regular sanitation, use of protective gear, and reduced capacity.[20] Governor Reeves amended his "Safer at Home" order on May 4, 2020 to authorize limited in-house dining at restaurants and bars.[21] However, he also announced he would delay further re-openings, citing a spike in coronavirus cases and deaths.[22] The announcement came after Mississippi health officials reported 397 new infections and 20 new deaths on May 1,

[17] Coronavirus Disease 2019 (COVID-19): Resources for Large Events and Mass Gatherings, CDC, *available at* https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html (last visited Apr.28, 2020).

[18] *See* Mississippi Office of the Governor, Executive Order No. 1466 (Apr. 1, 2020), *available at* https://www.mssupervisors.org/sites/default/files/EO%20Stay%20at%20Home.pdf.

[19] *See* Mississippi Office of the Governor, Executive Order No. 1477 (Apr. 24, 2020), *available at* https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1477.pdf.

[20] *Id.*

[21] *See* Mississippi Office of the Governor, Executive Order No. 1478 (May 4, 2020), *available at* https://sos.ms.gov/content/executiveorders/ExecutiveOrders/1478.pdf.

[22] Will Martin, Mississippi's governor backtracked on ending the state's lockdown after the state saw its biggest increase in coronavirus deaths and cases, Business Insider (May 3, 2020), *available at* https://www.businessinsider.com/mississippi-governor-backs-down-on-reopening-after-biggest-covid-spike-2020-5.

2020—the largest single-day increase to occur in the state.[23] On May 8, 2020, Governor Reeves extended his "Safer at Home" order to remain in effect through May 25, 2020.[24]

II. The COVID-19 Pandemic in Prisons

41. The coronavirus has spread rapidly in various prison environments.

42. In Mississippi's Yazoo City Federal Correctional Complex, 120 inmates and 25 staff members are reported to have tested positive for COVID-19 as of May 13, 2020; and one inmate has died.[25]

43. By May 6, 2020, at least 20,119 inmates in state and federal prisons had tested positive for the illness, a 39 percent increase from the week before.[26] In the federal system alone, 4,224 inmates and 548 staff members have confirmed positive test results for COVID-19 nationwide; of those, 51 inmates have died of COVID-19 symptoms.[27]

44. The experience of other states shows that once COVID-19 begins spreading within a prison, it is only a matter of time until the outbreak spreads rapidly and hundreds are infected.

45. For example, in the Federal Correctional Complex in Oakdale, Louisiana, the first inmate, Patrick Jones, tested positive March 21 and died on March 28;[28] since then, at least seven

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[23] *Id.*

[24] *See* Mississippi Office of the Governor, Executive Order No. 1480 (May 8, 2020), *available at* https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1480.pdf

[25] *Id.*

[26] A State-by-State Look at Coronavirus in Prisons, The Marshall Project, *available at* *https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons#* (last visited May 13, 2020).

[27] COVID-19 Coronavirus: COVID-19 Cases, Federal Bureau of Prisons, *available at* https://www.bop.gov/coronavirus/# (last visited May 13, 2020).

[28] Janet Reitman, *'Something Is Going to Explode': When Coronavirus Strikes a Prison*, N.Y. TIMES (Apr. 18, 2020), *available at* https://www.nytimes.com/2020/04/18/magazine/oakdale-federal-prison-coronavirus.html?auth=login-email&login=email.

more inmates have died of COVID-19, more than 20 additional inmates have been hospitalized, and at least 119 inmates and 26 staff members have tested positive.[29]

46. At the Terminal Island Federal Correctional Institution in San Pedro, California, the number of confirmed cases climbed to 620 on May 5, 2020, up from the 33 cases reported in mid-April.[30] The number of infected inmates now constitutes nearly 60 percent of San Pedro's penitentiary population.[31]

47. At the Federal Medical Prison in Fort Worth, Texas, the number of confirmed cases jumped from 35 to 132 between April 21, and April 23, 2020;32 the number has since increased to 647 in just over three weeks.[33]

48. In North Carolina, at the Neuse Correctional Institution, the number of confirmed cases of COVID-19 went from two to 378 in just two weeks, meaning more than half of its inmate population is now confirmed to have the virus.[34]

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[29] *Id.*; COVID-19 Coronavirus: COVID-19 Cases, Federal Bureau of Prisons, *available at* https://www.bop.gov/coronavirus/# (last visited May 13, 2020).

[30] COVID-19 Coronavirus: COVID-19 Cases, Federal Bureau of Prisons, *available at* https://www.bop.gov/coronavirus/# (last accessed May 5, 2020); More than 400 Terminal Island prison inmates test positive for COVID-19, Long Beach Post (Apr. 29, 2020), *available at* https://lbpost.com/news/terminal-island-prison-coronavirus-half-400.

[31] Richard Winton, Coronavirus outbreak at Terminal Island prison worsens: 5 deaths and 600 infected, L.A. Times (Apr. 30, 2020), *available at* https://www.latimes.com/california/story/2020-04-30/la-coronavirus-outbreak-terminal-island-prison-worsens.

[32] Scott Gordon, *COVID-19 Cases Nearly Quadruple Inside Fort Worth Medical Prison*, NBC 5, *available at* https://www.nbcdfw.com/news/coronavirus/covid-19-cases-quadruple-to-132-at-fort-worth-federal-prison/2356912/.

[33] COVID-19 Coronavirus: COVID-19 Cases, Fed. Bureau of Prisons ("BOP"), *available at* https://www.bop.gov/coronavirus/# (last visited May 13, 2020).

[34] 280+ Test Positive for COVID-19 At NC Prison Near Goldsboro, WWAY News (Apr. 18, 2020), https://www.wwaytv3.com/2020/04/18/280-test-positive-for-covid-19-at-nc-prison-near-goldsboro/.

49. And at the Butner federal prison in North Carolina, it took only five days for the number of confirmed COVID-19 cases to surge from single digits to nearly 60.[35]

50. At Trousdale Turner Correctional Center in Hartsville, Tennessee, the number of confirmed cases jumped from single digits to 1,299 inmates and 50 staff members in less than one week.36 Over half of the prison's population is infected and one inmate has died of COVID-19 symptoms.[37]

51. The jail on Rikers Island in New York City went from a single confirmed case to 287 cases in just over two weeks.[38]

52. In Cook County, Illinois, the number of positive cases in the county jail rose from 2 to 291 in just two weeks.[39]

53. At one point, an outbreak at Marion Correctional Institution in Ohio was the largest-known source of coronavirus infections in the United States.[40] Over 80% of the individuals

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[35] COVID-19 cases at federal prison in Butner jump from 9 to 59 in five days, CBS 17 (Apr. 6, 2020), *available at* https://www.cbs17.com/news/local-news/covid-19-cases-at-federal-prison-in-butner-jump-from-9-to-59-in-five-days/.

[36] TDOC Inmates VODI-19 Testing, Tennessee Department of Corrections, *available at* https://www.tn.gov/content/dam/tn/correction/documents/TDOCInmatesCOVID19.pdf (last visted May 7, 2020); CoreCivic Releases COVID-19 Testing Results for Trousdale Turner Correctional Center, CoreCivic, *available at* https://www.corecivic.com/corecivic-releases-covid-19-testing-results-for-trousdale-turner-correctional-center (last visited May 7, 2020).

[37] *Id.* (last visited May 7, 2020).

[38] COVID-19 Infection Tracking in NYC Jails, The Legal Aid Society, *available at* https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/ (last visited Apr. 27, 2020).

[39] Tyler Kendall, *"We're at war with no weapons": Coronavirus cases surge inside Chicago's Cook County jail*, CBS NEWS (Apr. 5, 2020), available at https://www.cbsnews.com/news/chicago-cook-county-jail-coronavirus-life-inside-covid-19-cases/.

[40] Rick Rojas and Michael Cooper, Georgia, Tennessee and South Carolina Say Businesses Can Reopen Soon, N.Y. TIMES (Apr. 20, 2020), *available at* https://www.nytimes.com/2020/04/20/us/coronavirus-us-hot-spots-reopening.html.

incarcerated at Marion CI tested positive—in other words, over 2,000 of the 2,500 inmates.[41] That county is now experiencing above average rates of community spread outside the prison.[42]

54. In Arkansas, an outbreak at the Department of Corrections' Cummins Unit spread rapidly. The outbreak is believed to have started after a single staff member tested positive in late March.[43] By April 12, the facility's first inmate tested positive.44 Within a few days, it was confirmed that 44 out of the 46 other inmates housed in that inmate's barracks were also infected.[45] By April 19, the facility had over 600 confirmed infections, which accounted for nearly one-third of all confirmed cases in the entire state.[46]

III. The Serious Harm That a COVID-19 Outbreak in a Mississippi Prison Would Cause

55. An outbreak in Mississippi's state prisons, where people are unable to practice social distancing and vigilant hygiene, would be similarly devastating and uncontrollable.

56. COVID-19 is spreading rapidly across prison facilities because it is extremely difficult to maintain the social distancing that is required to mitigate it. Prison facilities are environments where people by definition live in close quarters.

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[41] Sarah Volpenhein, *Marion prison coronavirus outbreak seeping into larger community*, MARION STAR (Apr. 25, 2020), https://www.marionstar.com/story/news/local/2020/04/25/marion-prison-ohio-coronavirus-outbreak-seeping-into-larger-community/3026133001/.

[42] *Id.*

[43] John Moritz, *Arkansas prison farm worker has covid-19m official says*, Ark. Democrat Gazette, Apr. 1, 2020, https://www.arkansasonline.com/news/2020/apr/01/prison-farm-worker-has-covid-19-officia-1/.

[44] Max Brantley, *Coronavirus update: Big jump in Cummins prison cases; a goal of beginning a return to work May 4*, Ark. Times, April 17, 2020, https://arktimes.com/arkansas-blog/2020/04/17/coronavirus-update-big-jump-in-cummins-prison-cases-a-goal-of-beginning-a-return-to-work-may-4

[45] *Id.*

[46] Meghan Roos, *One Arkansas Prison Make Up Almost a Third of State's Coronavirus Cases*, NEWSWEEK (Apr. 20, 2020), *available at* https://www.newsweek.com/one-arkansas-prison-makes-almost-third-states-coronavirus-cases-1499045.

57. Even isolation in single cells for those who have been confirmed to have COVID-19 does not eliminate the risk of contagion due to shared ventilation systems and the necessity of personal contact in preparing and serving meals.[47]

58. The risk of contracting an infectious disease is also higher in correctional facilities because the facilities are not sanitary environments. People share toilets, sinks, and showers, and often have limited access to soap, hand sanitizer, hot water, and other necessary hygiene items. Surfaces are infrequently washed, if at all, and cleaning supplies are in short supply.[48]

59. Moreover, many correctional facilities lack the adequate medical care infrastructure to address the spread of infectious disease like COVID-19 and treat high-risk people in custody. Prison health units are often not equipped with sufficient personal protective equipment for people who are incarcerated and caregiving staff, increasing risks of a widespread outbreak.[49] Most prison health facilities have extremely limited access to emergency medical equipment for patients in respiratory distress, such as oxygen tanks.[50]

60. For these reasons, among others, experts have warned that widespread community transmission of COVID-19 within a prison is likely to cause a disproportionately high mortality rate.[51]

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[47] *Id.*

[48] *Id.* ¶ 17.

[49] *Id.*

[50] "Correctional Facilities In The Shadow Of COVID-19: Unique Challenges And Proposed Solutions," Health Affairs Blog (March 26, 2020), *available at* https://www.healthaffairs.org/do/10.1377/hblog20200324.784502/full/.

[51] "COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses" (March 23, 2020), *available at* https://amend.us/wp-content/uploads/2020/03/COVID-in-Corrections-Challenges-and-Solutions-1.pdf.

61. Prisons and jails often rely on outside community hospitals to provide more advanced and intensive medical care. During an epidemic, this will likely not be possible, as those outside facilities become at or over capacity themselves.

62. Given this reality, significantly reducing the number of people incarcerated is the only way to prevent devastating losses of life in the prison system.

63. Many judges have recognized the urgent need to release prisoners because continued incarceration risks a death sentence. Several recent federal court rulings ordering release have explained the health risks—to those who are detained, staff, and the outside community at large—created by large detainee populations.[52]

64. Recognizing the urgency of this risk, many judges, prosecutors and correctional authorities across the country have arranged releases to protect individuals and the public health.[53] On March 26, Attorney General Barr issued a directive to the Board of Prisons urging reduction of the prison population through the use of home confinement.[54]

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[52] See, e.g., *Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020) (ordering release of detained immigrant in the midst of the COVID-19 pandemic and noting that "being in a jail enhances risk" and that in jail "social distancing is difficult or impossible"); *Basank v. Decker*, No. 1:20-cv-02518-AT (S.D.N.Y. Mar. 26, 2020) (ordering the release of ten people from three immigration detention facilities in New Jersey because "confining vulnerable individuals . . . without enforcement of appropriate social distancing and without specific measures to protect their delicate health 'pose[s] an unreasonable risk of serious damage to [their] future health'") (internal citation omitted); *Thakker v. Doll*, No. 1:20-cv-00480-JEJ, 2020 WL 1671563, at *8 (M.D. Pa. Mar. 31, 2020) (ordering release of 13 people from three immigration detention facilities in Pennsylvania because "preventative measures" against the "grave consequences" of COVID-19 cannot be practiced in "tightly confined, unhygienic spaces"); *Fraihat v. Wolf*, No. ED CV 20-00590 TJH (KSx) (C.D. Cal. Mar. 30, 2020) (ordering release of individual from immigration detention facility because COVID-19 "can spread uncontrollably with devastating results in a crowded, closed facility"); *United States v. Ramos*, No. 18-CR300009-FDS, 2020 WL 14778307, at *1 (D. Mass. Mar. 25, 2020) (stating that "it is not possible for a medically vulnerable inmate . . . to isolate himself in this institutional setting as recommended by the CDC, and guards and newly arrested individuals must enter the facility on a daily basis")

[53] The Coronavirus Response: Spotlight on State and Local Governments, The Appeal, available at https://theappeal.org/political-report/coronavirus-response-state-local/ (last visited Apr. 27, 2020).

[54] Office of the Attorney General, Memorandum for Director of Bureau Prisons re: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic (Mar. 26, 2020), *available at* https://www.politico.com/f/?id=00000171-1826-d4a1-ad77-fda671420000.

65. Prosecutors from around the country, including three from Mississippi, have issued a statement warning that an "outbreak of the coronavirus in . . . custodial facilities would not only move fast, it would potentially be catastrophic."[55] The statement recognizes that "jails and prisons house disproportionately large numbers of people with chronic illnesses and complex medical needs that many facilities are already ill-equipped to treat."[56] The statement also recognizes that "dramatically reduc[ing] the number of incarcerated individuals" is necessary to avoid such consequences.[57] And the Harrison County, Mississippi Sheriff Troy Peterson has recognized the risk that coronavirus poses to incarcerated people, noting that once coronavirus is introduced in a jail, "inmates, guards and corrections officers, everybody" will be exposed and that "tragedy" will result.[58]

66. Even prior to the COVID-19 crisis, the Mississippi prison system had been under federal investigation by the Department of Justice.[59] The system is notoriously overcrowded, understaffed, and in a state of disrepair.[60]

67. On January 7, 2020, following outbreaks of violence within the prison system and five reported deaths, leaders within the state called upon the Department of Justice Civil Rights

[55] Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody, at 1 (Mar. 25, 2020), *available at* https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf.

[56] *Id.* at 1-2.

[57] *Id.* at 2.

[58] Margaret Baker, *3 Coast jails release some inmates during the coronavirus outbreak. Here's why.*, SUN HERALD (Apr. 17, 2020), *available at* https://www.sunherald.com/news/local/article241922791.html.

[59] Rick Rojas, *After a Dozen Deaths, Justice Dept. Investigates Mississippi Prisons*, N.Y. TIMES (Feb. 5, 2020), *available at* https://www.nytimes.com/2020/02/05/us/parchman-mississippi-prisons.html.

[60] *Id.*

Division to investigate conditions of confinement within MDOC. The letter identified "severe understaffing and horrific conditions" as the basis for the investigation.[61]

68. The Department of Justice investigation, announced February 5, 2020, focuses on "whether the Department of Corrections adequately protects prisoners from physical harm" at four of Mississippi's prisons, including CMCF and SMCI.62

69. From 2014 to 2019, state spending on Mississippi's correctional facilities has declined by over $180 million.[63]

70. The number of deaths in the Mississippi prison system has steadily increased from the mid-2010s, with 85 deaths in FY 2018 and 80 deaths in FY 2019.[64]

71. As of April 18, 2020, at least 30 incarcerated persons in the state prison system have died this year.[65]

72. The former Commissioner of MDOC recognized in January of 2019 that a "staffing crisis" created a "pressure cooker type situation" at Parchman, CMCF, and SMCI.[66] MDOC pays the lowest salaries for correctional staff of any state in the country.[67] In April 2019, the Civil Rights Division of the United States Department of Justice issued a report in which it cited the Alabama Department of Corrections ("ADOC") for "egregious" and "dangerous" systemwide understaffing

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[61] Letter from Mississippi community leaders to Eric S. Dreiband, Assistant Attorney General, Civil Rights Division, U.S. Dep't of Justice, *re: Request for Immediate CRIPA Investigation into Conditions of Confinement in the Mississippi Department of Corrections*, at 1 (Jan. 7, 2020), *available at* https://int.nyt.com/data/documenthelper/6649-request-for-civil-rights-inves/30a322c66c43de9b7833/optimized/full.pdf ("CRIPA Letter").

[62] Justice Department Announces Investigation into Conditions in Four Mississippi Prisons, U.S. Dep't of Justice (Feb. 5, 2020), *available at* https://www.justice.gov/opa/pr/justice-department-announces-investigation-conditions-four-mississippi-prisons.

[63] CRIPA Letter, at 2.

[64] CRIPA Letter, at 3.

[65] *Mississippi Prison System Faces Investigation*, NPR.

[66] CRIPA Letter, at 3.

[67] CRIPA Letter, at 4.

that contributed to likely violations of the Eighth Amendment rights of Alabama prisoners.[68] ADOC maintains a staffing ratio of 9.9 prisoners per correctional officer.[69] At the end of October 2019, each MDOC state-run facility had ratios worse than Alabama's: 12.5 prisoners per correctional officer at Parchman; 17.1 prisoners per correctional officer at CMCF; and an incredible 22.3 prisoners per correctional officer at SMCI,[70] which former MDOC Commissioner Robert L. Johnson called "unconscionable" and unsafe.33A former MDOC Commissioner has led the ratio of correctional officers to incarcerated persons in the state "unconscionable."[71]

73. Audits at multiple MDOC facilities have stated that due to understaffing, MDOC fails to perform the most basic operations required to run prisons. Prisoner counts, for example, are performed incorrectly and inconsistently, and gang control is prevalent across facilities.[72]

74. In sum, MDOC facilities are *already* in a state of crisis. Overcrowded and lacking the means to swiftly respond to many medical emergencies under normal circumstances, MDOC is in a particularly difficult position to address the grave and imminent challenges posed by the COVID-19 outbreak.

IV. The Dangerous and Unlawfully Deficient Implementation of COVID-19 Management Protocols at CMCF and SMCI

75. Defendants have failed to take reasonable steps at CMCF and SMCI to protect Plaintiffs and those whose similarly from transmission of COVID-19. Defendants know about and

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[68] Investigation of Alabama's State Prisons for Men 9–10, U.S. Dep't of Justice (Apr. 2, 2019), *available at* https://www.justice.gov/crt/case-document/file/1149971/download.

[69] Jerry Mitchell, Violent, Ongoing Hell: Mississippi Prisons May Be Worse than Alabama's. Will DOJ Step in?, CLARION LEDGER (Aug. 21, 2019), *available at* https://www.clarionledger.com/story/news/2019/08/21/mississippi-prisons-conditions-worse-than-alabama-doj-violence-cruel-unusual-punishment/2055478001/.

[70] *See* Daily Inmate Population – October 2019, Miss. Dep't of Corrs (Nov. 8, 2019), *available at* https://www.mdoc.ms.gov/Admin-Finance/Documents/2018%20Annual%20Report.pdf.

[71] CRIPA Letter, at 5.

[72] CRIPA Letter, at 10-16.

have disregarded the obvious risks to Plaintiffs' safety. Defendants have likewise failed to make reasonable modifications to their programs and services to protect individuals who suffer from disabilities and are, as a result, particularly vulnerable to serious illness and death resulting from COVID-19 infection. Defendants actions and inactions, outlined below, have put Plaintiffs similarly situated residents in peril.

76. CMCF is the state of Mississippi's largest prison, holding approximately 3,400 women and men. SMCI is the second-largest prison, holding approximately 2,500 men. MDOC currently has approximately 18,100 men and women in custody.

77. Most of the Named Plaintiffs are housed in "open bay" units at CMCF and SMCI, which generally hold 100 or more individuals in rows of bunk beds spaced approximately four feet apart. The other Named Plaintiffs are housed in cells designed to hold two people.

78. It is not possible to stay six feet apart from others at CMCF and SMCI. In the open bay units, there is simply not enough space. Also, there is foot traffic on an ongoing basis between bunks, and residents are within inches or a couple of feet of each other day and night. In celled units, cellmates cannot maintain six feet of distance between one another because of the cells' dimensions and design, and the common areas are compressed.

79. Most of the space in open bay housing units at CMCF and SMCI is taken up by racks of bunk beds and the narrow spaces between them. It is residents' living space. Most residents eat, sleep, and socialize from these living areas. Residents exchange property, papers, and food on and between the racks.

80. The common area of open bay units are comparatively small. Common areas in units holding 100 or more people generally consist of four or six small tables with four attached stools per table. Where the tables end, the racks of bunk beds begin.

81. Some Named Plaintiffs live in units that are home to a large populations of elderly and chronic care medical patients. The approximately 100 residents in these units spend most of their time in and among rows of bunk beds spaced approximately four feet apart.

82. Housing units at CMCF and SMCI are designed to be supervised by multiple guards.

83. CMCF and SMCI do not always have guards supervising housing units. When they do, one guard is often split between two separate housing units. Sometimes one guard is split between four housing units and two separate buildings. This means 200 to 400 people are unsupervised at one time when that one guard is in transit or temporarily unavailable.

84. When no guard is present, there is no alternate means by which a resident can access medical assessment or intervention.

85. At both CMCF and SMCI, people have been in need of medical attention and unable to obtain it because staff was unavailable or unresponsive. For example, one Named Plaintiff at CMCF has life-threatening asthma attacks. Medical staff have advised that he directly report to the infirmary when he feels an attack coming on. He has experienced these debilitating attacks when no staff member was present to help him to visit medical staff. Another Named Plaintiff at CMCF was present when a pregnant woman's water broke in her unit and no guard was present to allow her access to medical staff.

86. "As soon as an individual develops symptoms of COVID-19," Defendants should ensure that he or she "wear[s] a face mask" and is "*immediately* placed under medical isolation[.]"[73] Immediate intervention of this type decreases the possibility that a person with the virus will transmit it to others on the prisons' crowded units.

[73] *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,* Ctrs. for Disease Control & Prev., *Mar. 23, 2020,* (CDC Guidance), *available at*

87. At SMCI, not all people with symptoms of COVID-19 have been isolated, and at CMCF and SMCI, prolonged staff absences from housing units makes immediate intervention impossible. For example, at SMCI, one Named Plaintiff reported symptoms consistent with COVID-19 to facility staff: a fever, very bad cough, body aches, and persistent respiratory distress. He submitted a sick call slip to be seen, and it took days to be answered, during which time he stayed on his unit of 100 men living in rows of bunk beds approximately four feet apart. He was never tested for the flu or for coronavirus. Reportedly, the illness he had quickly spread to others in his unit. Systemwide, MDOC has tested less than one half of one percent of its population for COVID-19—only a few dozen of the over 18,000 individuals it holds in custody.

88. To minimally comply with the critical CDC provision requiring immediate isolation of symptomatic individuals, Defendants must implement a reliable means by which residents can report symptoms of coronavirus and be seen promptly be medical staff, even when no officers are on duty in their housing unit.

89. The CDC Guidance provides that cleaning regularly and frequently is key to preventing and managing COVID-19 in prisons:

> Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing *intensified* cleaning and disinfecting procedures according to the recommendations below. . . . *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). . . . Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day. Ensure adequate supplies to support intensified cleaning and disinfection practices.[74]

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https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#correctional-facilities, p. 5 (emphasis added).

[74] *Id. at* 9 (emphasis added).

90. At CMCF, however, cleaning of common areas is haphazard and occurs approximately once a day instead of several times per day. Cleaning supplies for common areas are limited, and they sometimes run out. No cleaning supplies are available to clean the living areas where people sleep and spend the most time. The number of staff and incarcerated persons trained and responsible for cleaning has not been increased.

91. At SMCI, cleaning of the common areas is haphazard and does not happen several times per day. In some situations, there are not enough supplies to clean the common areas. There are no supplies available to clean the living areas where people sleep and spend most of their time. The number of staff and incarcerated persons trained and responsible for cleaning has not been increased.

92. The CDC Guidance calls for "intensified cleaning" "[e]ven if COVID-19 cases have not yet been identified inside the facility." CDC Guidance, p. 22. Where a case is suspected or has been identified, the need is even greater. Yet at CMCF, a large zone was recently placed on quarantine, and not even baseline cleaning protocols were executed.

93. The CDC Guidance provides that prisons should, "Implement daily temperature checks in housing units where COVID-19 cases have been identified . . . ." CDC Guidance, p. 22 (emphasis added). Yet at CMCF, when a zone was recently placed on quarantine, temperature checks were only done on approximately three of the fourteen quarantine days.

94. The CDC Guidance provides that prison authorities should "[p]rovide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing" and adds such soap should be "liquid soap where possible," and that, "[i]f bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing." *Id.* at 8, 10.

95. However, at CMCF and SMCI, residents do not have enough soap for regular hand washing, much less frequent hand washing. Only bar soap is provided, there is not enough of it, and it generally irritates the skin of those who use it. On two occasions recently, about a month apart, some prisoners were provided with a single bar of Dial soap, but that generally ran out within two weeks.

96. The CDC Guidance provides that prison authorities should "[Provide] [r]unning water, and hand drying machines or disposable paper towels for hand washing. [Provide] [t]issues and no-touch trash receptacles for disposal." *Id.* at 10. However, at CMCF and SMCI, there are no paper towels or hand drying machines. There are no facial tissues. Each person has a roll of toilet paper, but if any of it that is used for facial purposes diminishes the person's toilet paper supply and residents sometimes run out.

97. The CDC Guidance calls for social distancing: "Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms)." *Id.* at 11. Measures for doing this include the following: "Enforce increased space between individuals in holding cells, as well as in lines and waiting areas . . . ." *Id.* "Arrange bunks so that individuals sleep head to foot to increase the distance between them." *Id.*

98. However, at CMCF and SMCI, there are inadequate efforts to enforce or encourage social distancing. In the open bay areas, beds are about three feet apart. There is no sleeping head to foot and no one has ordered it. Similarly, residents do not stay six feet apart in the common areas, bathrooms, eating areas, or in line for pill call. It is difficult and often impossible to do so in the overcrowded spaces in the prison, and no one has instructed or encouraged them to try.

99. The CDC Guidance emphasizes the importance of communication. "Communicate *clearly and frequently* with incarcerated/detained persons about changes to their daily schedule and how they can contribute to risk reduction. . . . Provide up-to-date information about COVID-19 to incarcerated/detained persons on a regular basis . . . . Consider having *healthcare staff perform rounds on a regular basis* to answer questions about COVID-19." CDC Guidance, p. 12 (emphasis added).

100. Residents are not receiving this critical information from prisons. For example, on at least one zone at CMCF, it appears that residents were notified they were on quarantine for potential exposure when a guard entered the zone, announced the quarantine, and left without further explanation.

101. The CDC Guidance also calls for authorities to "[p]ost signage through the facility communicating . . . symptoms of COVID-19 and hand hygiene instructions" and communicating that incarcerated people should "report symptoms to staff." *Id.* at 6. "Ensure that signage is understandable for non-English speaking persons and those with low literacy . . . ." *Id.* See also *id.* at 10 (stating that authorities should "[p]ost signage throughout the facility and communicate this information verbally on a regular basis)."

102. At CMCF and SMCI, however, English-only flyers were posted on some unit bulletin boards but they disappeared quickly and were never replaced. There has been little verbal communication regarding symptoms and hygiene, and people have no way of informing themselves about how to best protect themselves. There are non-English-speaking people at CMCF and SMCI who have not had the opportunity to read even the flyer or flyers that were briefly posted.

103. The CDC Guidance calls for authorities to "consider suspending co-pays for incarcerated/detained persons asking medical evaluation for respiratory symptoms." Id. at 9.

104. At both CMCF and SMCI, it appears that many residents have not been informed of any waiver of the six-dollar sick call fee for those seeking medical care for COVID-19 symptoms. In practice, this discourages people from seeking care and can prolong the time that people with COVID-19 remain symptomatic in crowded housing units.

105. The CDC Guidance states that "[a]s soon as an individual develops symptoms of COVID-19, they should wear a face mask . . . and should be immediately placed under medical isolation . . . ." Id. at 15 (emphasis added). Immediate action decreases the possibility that a person with the virus will transmit it to others in the unit. For immediate action to occur, a means must exist for residents to inform staff who will take prompt action.

106. At both CMCF and SMCI, the sick call process usually takes multiple days and many residents have not been informed of any expedited procedure for COVID-19 symptoms. A shortage of staff makes it difficult to obtain quick action if symptoms do arise.

CLASS ALLEGATIONS

107. Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, the individual Named Plaintiffs bring this action on behalf of themselves and a class consisting of people who are currently incarcerated, or will be in the future, in a CMCF or SMCI detention facility during the duration of the COVID-19 pandemic. Plaintiffs also propose the following Subclass:

a. *Disability Subclass*: People in custody who suffer from a disability that substantially limits one or more of their major life activities and who are at increased risk

of contracting, becoming severely ill from, and/or dying from COVID-19 due to their disability or any medical treatment necessary to treat their disability.

108. A class action is the only practicable means by which the individual Named Plaintiffs and the putative class members may challenge Defendants' unconstitutional actions. Many members of the Class are without the means to retain an attorney to represent them in a civil rights lawsuit.

109. The Class and Subclass are so numerous that joinder of all members is impractical. The number of people in custody is approximately 6,000 in CMCF and SMCI combined. Disposition of this matter as a class action will provide substantial benefits and efficiencies to the parties and the Court.

110. There are questions of law and fact common to all class members and to the subclass members, including: (a) does COVID-19 present a substantial risk of harm to people in CMCF or SMCI custody; (b) have Defendants failed to adequately protect the Class from the immediate threat of COVID-19; (c) what practices are Defendants actually implementing with respect to COVID-19; (d) whether Defendants' actions and/or inactions constitute deliberate indifference to the rights of putative class members; (e) whether the rights of the Subclass under the Americans with Disabilities Act ("ADA") and the Rehabilitation Act are being violated by Defendants' actions and the conditions at CMCF and SMCI; and (f) whether Defendants illegally discriminated against the Subclass by denying reasonable accommodations.

111. The claims of the Named Plaintiffs are typical of those of the Class and Subclass. This typicality stems from Plaintiffs' claims that Defendants have placed them at significant risk of harm by failing to take appropriate steps to address the risk of COVID-19 in CMCF and SMCI. The claims of Plaintiffs, the Class, and the Subclass arise from the same conduct by Defendants

and are based on identical legal theories and seek identical relief. All members of the Class and Subclass are similarly injured by Defendants' wrongful conduct, and the harms Plaintiffs suffer are typical of the harms suffered by the Class and Subclass.

112. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy, especially since joinder of all Class and Subclass members is impractical.

113. Each class member is irreparably harmed as a result of Defendants' wrongful conduct. Litigating this case as a class action will reduce the risk of repetitious litigation relating to the Defendants' conduct.

114. The individual Named Plaintiffs will fairly and adequately represent the interest of the Class and Subclass. The Named Plaintiffs have no conflicts with the unnamed members of the proposed Class and Subclass. In addition, their lawyers are experienced in complex civil rights cases against governmental entities.

115. Defendants have engaged in unlawful actions and inactions in a manner that applies generally to the Class and Subclass, rendering class-wide injunctive and declaratory relief appropriate.

CAUSES OF ACTION

COUNT ONE
Violation of the Eighth Amendment
(42 U.S.C. § 1983)
All Plaintiffs

116. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs as if set forth fully herein.

117. The Eighth Amendment to the Constitution of the United States, as incorporated through the Fourteenth Amendment, provides that individuals who are incarcerated following a

conviction have the right to be free from cruel and unusual punishment. That right entails, among other things, the State's obligation to protect incarcerated individuals from a substantial risk of serious harm to their health and safety. See generally Farmer v. Brennan, 511 U.S. 825 (1994).

118. The State's failure to provide adequate protection and, if necessary, medical care in response to the rapid spread of a deadly virus constitutes deliberate indifference to the serious medical needs of incarcerated individuals in violation of the Eighth Amendment.

119. Plaintiffs, and the class they represent, suffer a substantial risk of serious harm to their health and safety due to the spread of COVID-19 in CMCF and SMCI facilities.

120. Defendants have acted with deliberate indifference to the risks posed by COVID-19 to Plaintiffs.

121. Defendants knew, and know, of the obvious and well-established risks to Plaintiffs caused by COVID-19.

122. Defendants have failed to act with reasonable care to mitigate the risk posed by COVID-19.

123. As a result of Defendants' actions, Plaintiffs and members of the proposed Class are suffering irreparable injury.

124. At all times, Defendants acted under color of state law.

COUNT TWO
Violation of the Americans with Disabilities Act
(42 U.S.C. § 12101 et seq.)
Disability Subclass

125. Plaintiffs repeat and re-allege the preceding paragraphs as if set forth herein.

126. Defendants have failed to reasonably modify its programs and services to address the substantial and increased risk that Plaintiff members of the Disability Subclass have of

contracting, becoming severely ill from, and/or dying from COVID-19 due to their disability or any medical treatment necessary to treat their disability.

127. Defendants have intentionally discriminated against the Disability Plaintiffs and the members of the Disability Subclass by denying them reasonable accommodations, including accommodations that have been recommended by the CDC, that are necessary to protect them from COVID-19 and that have been described in this complaint.

128. The failure to provide these program modifications and accommodations constitutes illegal discrimination under the ADA and entitles Plaintiffs to injunctive and declaratory relief.

129. Under Title II of the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132.

130. MDOC. CMCF, and SMCI are public entities covered by Title II of the ADA. 42 U.S.C. § 12131.

131. For purposes of the ADA, medical treatment and safe conditions of confinement are programs or services that MDOC facilities provide to Plaintiffs.

132. Named Plaintiffs and other members of the Disability Subclass have a physical impairment that substantially limits one or more of their major life activities.

133. Named Plaintiffs and other members of the Disability Subclass are qualified individuals with a disability under the meaning of the ADA.

134. Defendants know that Named Plaintiffs and other members of the Disability Subclass are qualified individuals with a disability. Defendants know that individuals with

disabilities are in especially acute need of access to reasonable modifications prison programs and policies during the COVID-19 pandemic, yet it has denied these accommodations to the Disability Plaintiffs and other members of the Disability Subclass.

COUNT THREE
Violation of the Rehabilitation Act
(29 U.S.C. § 794 et seq.)
Disability Subclass

135. Plaintiffs repeat and re-allege the preceding paragraphs as if set forth herein.

136. Defendants have failed to reasonably modify its programs and services to address the substantial and increased risk that Plaintiff members of the Disability Subclass have of contracting, becoming severely ill from, and/or dying from COVID-19 due to their disability or any medical treatment necessary to treat their disability.

137. Defendants have intentionally discriminated against the Disability Subclass Plaintiffs and the members of the Disability Subclass by denying them reasonable accommodations, including accommodations that have been recommended by the CDC, that are necessary to protect them from COVID-19 and that have been described in this complaint.

138. The failure to provide these accommodations constitutes illegal discrimination under the Rehabilitation Act, prevents Plaintiffs from obtaining equal access to activities, programs, and services to which they are otherwise entitled, and entitles Plaintiffs to injunctive and declaratory relief.

139. At all times relevant to this action, MDOC, CMCF, and SMCI have received federal funding that requires them to comply with the Rehabilitation Act.

140. The Disability Subclass Plaintiffs and other members of the Disability Subclass are qualified individuals with a disability under the meaning of the Rehabilitation Act.

141. For purposes of the Rehabilitation Act, medical treatment and safe conditions of confinement are activities, programs or services that MDOC facilities provide to Plaintiffs.

142. The Disability Subclass Plaintiffs and other members of the Disability Subclass have a physical impairment that substantially limits one or more of their major life activities.

143. Defendants know that the Disability Plaintiffs and other members of the Disability Subclass are qualified individuals with a disability. Defendants know that individuals with disabilities are in especially acute need of access to accommodations during the COVID-19 pandemic yet it has denied these reasonable accommodations to the Disability Plaintiffs and other members of the Disability Subclass.

144. Accordingly, Defendants have violated rights secured under the Rehabilitation Act to the Disability Plaintiffs and members of the Disability Subclass.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs/Petitioners and proposed class members respectfully request that this Court:

a. Certify the proposed Class and Subclass;

b. Enter an order declaring that Defendants' actions and inactions regarding COVID-19 violate the Eighth Amendment to the United States Constitution;

c. Enter an order declaring that the Defendants have violated the ADA and the Rehabilitation Act by failing to make reasonable modifications to its COVID-19 response;

d. Enter a temporary restraining order, preliminary injunction, and permanent injunction requiring that Defendants take all reasonable and necessary steps to comply with the Eighth Amendment, the ADA, and the Rehabilitation Act and to prevent the transmission of COVID-19 and to properly treat those who contract it, including but not

limited to the following:

i. Implement a facility-wide protocol, and effectively train residents and staff to use it, whereby a resident with coronavirus symptoms can report their symptoms and be evaluated by medical staff promptly; this method must work even if there is no security staff present on a zone or in the tower;

ii. Conduct immediate testing for anyone displaying known symptoms of COVID-19;

iii. Inform all incarcerated people of the waiver of all medical co-pays for individuals experiencing possible COVID-19 symptoms;

iv. Implement daily temperature checks in housing units where COVID-19 cases have been identified;

v. Implement intensified cleaning and disinfecting procedures and ensure that, several times per day, cleaning and disinfecting occurs of surfaces and objects that are frequently touched, especially in common areas;

vi. Ensure that each incarcerated individual receives a free and adequate personal supply of: hand soap that does not cause skin irritation and which is sufficient to permit frequent hand washing, paper towels, facial tissues, cleaning implements such as sponges or brushes, and disinfectant products that are effective against COVID-19; also provide a no-touch trash receptacles for disposal of paper products;

vii. Implement a facility-wide protocol, and effectively train residents and staff to use it, whereby a resident who runs out of soap can obtain more promptly;

viii. Provide incarcerated individuals with sufficient and effective

cleaning supplies free of charge so that they may clean frequently touched items, such as phones, before use;

ix. Ensure that all individuals have access to hand sanitizer containing at least 60% alcohol;

x. Require that all CMCF and SMCI staff wear PPE consistent with the CDC Guidance, including masks and gloves, when interacting with visitors and incarcerated individuals or when touching surfaces in common areas;

xi. Ensure incarcerated people are provided guidance on how to protect themselves from COVID-19 and reduce COVID-19 transmission;

xii. Provide frequent communication to all incarcerated individuals regarding COVID-19, measures taken to reduce the risk of infection, best practices for incarcerated people to avoid infection, and any changes in policies or practices;

xiii. Provide an anonymous mechanism for incarcerated individuals to report staff who violate these guidelines so that appropriate corrective action may be taken;

xiv. Inform incarcerated people are told that they will not be retaliated against for reporting COVID-19 symptoms or for reporting lack of compliance with COVID-19 mitigation measures;

xv. Ensure that incarcerated individuals can remain six feet apart to practice social distancing in compliance with CDC Guidance;

xvi. Appoint an independent monitor with medical expertise to ensure compliance with these conditions, and provide the monitor with unfettered access to medical units, confidential communication with detained individuals in and out of quarantine, and surveillance video of public areas of the facilities; and

e. Retain jurisdiction over this case until Defendants have fully complied with the orders of this Court, and there is a reasonable assurance that they will continue to comply in the future, absent continuing jurisdiction;

f. Issue an order granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. §§ 1988 and 12205; and

g. Grant any further relief that this Court deems necessary.

Dated: May 14, 2020

/s/ Paloma Wu

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