

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

Favian Busby, Terric Edwards, Russell Leaks,
Saul Molina Martinez, Joseph Nelson, and Mark
Phillips, *on their own behalf and on behalf of
those similarly situated*;

Petitioners-
Plaintiffs,

v.

Floyd Bonner, Jr., *in his official capacity*,
Shelby County Sheriff, and the Shelby County
Sheriff's Office;

Respondents-
Defendants.

Case No. 2:20-cv-2359-SHL

**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND
PERMISSION TO POST CLASS NOTICE**

Pursuant to Fed. R. Civ. P. 23(e), Plaintiffs Favian Busby, Terric Edwards, Russell Leaks, Saul Molina Martinez, Joseph Nelson, and Mark Phillips (collectively "Named Plaintiffs"), through counsel and on behalf of similarly situated individuals ("Plaintiffs"), and Defendants Floyd Bonner, Jr. and the Shelby County Sheriff's Office (collectively "Defendants"), through counsel, move for preliminary approval of a class action settlement.

The Parties respectfully move for entry of the Preliminary Approval Order (attached to the Memorandum of Law as Exhibit A): (a) granting preliminary approval of the settlement embodied in the proposed Consent Decree attached as Exhibit B and the proposed Settlement Agreement attached as Exhibit C; (b) approving the forms of notice attached as Exhibits D and E; (c) establishing a procedure for providing notice of the settlement and Consent Decree to members of the Class and Subclass and affording them an opportunity to object; and (d) setting a date and time for a fairness hearing approximately 5 weeks from the date the Court grants this Motion.

The grounds for this motion are set forth in the accompanying Memorandum of Law and the Exhibits thereto.

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF THE PARTIES' JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PERMISSION
TO POST CLASS NOTICE**

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INTRODUCTION

Plaintiffs brought this case as a class action, alleging that in continuing to detain medically vulnerable and disabled persons during the COVID-19 pandemic, Defendants violated Plaintiffs' constitutional and statutory rights. Plaintiffs brought claims for declarative and injunctive relief and/or a writ of habeas corpus under 48 U.S.C. § 2241 as well as discrimination on the basis of disability in violation of Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Rehab Act"). Plaintiffs sought, among other things, release from the Jail via a temporary restraining order and/or preliminary injunction. In response, Defendants denied they violated Plaintiffs' constitutional or statutory rights. Defendants disputed Plaintiffs' allegations concerning Plaintiffs' safety in the Shelby County Jail (the "Jail") and asserted that they implemented numerous practices and procedures that appropriately combated and prevented the spread of COVID-19 in the Jail.

By Order dated June 10, 2020, the Court denied Defendants' motion to dismiss and certified a Class and Subclass of medically vulnerable and disabled individuals detained pretrial at the Jail who are at high risk of serious injury or death from COVID-19. *See* ECF No. 38. Subsequently, the Court heard proof from the parties as well as an Independent Inspector concerning the Jail's response to COVID-19. After hearing proof, the Court, in its August 7, 2020 Order, denied the Plaintiffs' motion for preliminary injunction. *See* ECF No. 124. While the Court found that the proof showed "failures with how the Jail detains medically vulnerable detainees amid this pandemic," the Court concluded that "these failures can likely be remedied quickly." ECF No. 124, Pg.ID 2814–16. As a result, on September 15, 2020, Plaintiffs sought leave to file an amended complaint seeking relief

under 42 U.S.C. § 1983 in addition to habeas relief under 28 U.S.C. § 2241. *See* ECF No. 137. That motion is *sub judice*.

At different times during these proceedings the parties have endeavored to settle their dispute. The Court’s August 7 Order added additional impetus to these efforts. On December 16, 18, and 22, 2020, the parties engaged in mediation, which proved successful. The parties now bring this motion seeking preliminary approval of their class action settlement, which if approved would result in the entry of a Consent Decree, in the form attached hereto as Exhibit B (the “Decree”), as well as a Release and Settlement Agreement, in the form attached hereto as Exhibit C (the “Agreement” and together with the Decree, the “Settlement”).

The Decree and Agreement meet the requirements the Court must evaluate in considering whether to grant the motion seeking preliminary approval because there is no risk of fraud or collusion; the complexity, expense, and likely duration of the litigation favor settlement; the parties have engaged in sufficient discovery for Plaintiffs to gauge the adequacy of settlement; the parties are using settlement to resolve a legitimate legal and factual disagreement; the Class counsel and Class representatives agree that the settlement is favorable; Plaintiffs’ counsel is not aware of any objections from absent Class and Subclass members; and the settlement serves the public interest.

ARGUMENT

I. Preliminary Approval of the Parties’ Settlement

Fed. R. Civ. P. 23(e) requires the “court’s approval” for any settlement of claims of a certified class. The Court may only approve a class settlement after holding a hearing to determine whether the settlement is “fair, reasonable, and adequate.” *Does 1-2 v. Déjà Vu Services, Inc.*, 925 F.3d 886, 894 (6th Cir. 2019). The Court makes this determination

after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2). The key factors for the Court to consider when undertaking this inquiry include: (1) the risk of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest. *See Does I-2*, 925 F.3d 886 at 894–95 (citing *Int'l Union, UAW, et al. v. General Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007) (hereinafter “*UAW*”). The settlement proposed by the parties satisfies these criteria.

A. There is No Risk of Fraud or Collusion

There has been no suggestion of any conflicts of interest with respect to the negotiation of the Settlement, and there were none. The proposed Decree and the Agreement before this Court were negotiated at arms-length by attorneys with no conflicts of interest who vigorously advocated for their respective clients. At different times in these proceedings, the parties unsuccessfully attempted to settle their dispute. Those negotiations gained added impetus following the Court's August 7 Order and were facilitated by mediation held between the parties on December 16, 18, and 22, 2020. Counsel for the parties also continued to meet and confer while mediation was ongoing. The parties exchanged multiple drafts of the proposed Decree and the Agreement and both sides made compromises to reach consensus. The arms-length negotiation was ultimately successful because the parties were able to arrive at a resolution that promotes safety in the

Jail and protects Class and Subclass members from COVID-19, while also allowing Defendants flexibility to operate the Jail as required by law.

B. The Complexity, Expense, and Likely Duration of the Litigation Favor Settlement

Combating the novel coronavirus and the worst pandemic in over a century in a congregate setting, such as the Jail, has raised complex factual and legal issues that require an urgent resolution that favors settlement. The Settlement resolves these pressing issues quickly and avoids extensive additional discovery which is already underway.

The Settlement resolves concerns regarding the safety of the Plaintiffs and the members of the Class and Subclass and ensures that they will continue to be safe for the duration of the pandemic by providing mechanisms for continued reporting and inspections by the Court-appointed Independent Inspector. Absent a determination by the Court, the Decree will remain in place for the duration of the pandemic and does not terminate until the pandemic is declared over or a vaccine is offered to all detainees housed at the Jail. *See* Ex. B at ¶¶ 28–29.

The Settlement also avoids extensive discovery, including a forthcoming production from Defendants of electronically stored information (ESI) that will include a large quantity of emails and related documents, and eight depositions, which Plaintiffs have already noticed. In addition, absent approval of the Settlement, the parties will need to continue to conduct ongoing expert discovery regarding scientific questions related to the spread of COVID-19, including via airborne particles through the ventilation and air filtration systems in the Jail.

In addition, the Settlement obviates the need to resolve the appropriate legal standard applicable to Plaintiffs' claims, which the Court previously declined to reach. *See*

ECF No. 124, Pg.ID 2821. If, instead of settling, the parties were obligated to litigate this issue, it would impose further on the Court's time at considerable expense to the parties. For these reasons, both sides agree that the complexity, expense, and likely duration of this litigation favor settlement.

C. The Parties Have Engaged in Sufficient Discovery for Plaintiffs to Gauge the Adequacy of Settlement

Whether the parties have engaged in sufficient discovery for Plaintiffs to gauge the adequacy of the Settlement turns on whether Plaintiffs have “obtained a sufficient understanding of the case to gauge the strengths and weaknesses of the claims and the adequacy of the settlement.” *N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 236 (E.D. Mich. 2016). Plaintiffs have taken three depositions and served three sets of Requests for Production, totaling twenty-four Requests, as well as nine interrogatories. *See* ECF No. 57-1– ECF No. 57-5. Defendants have produced nearly 3,000 pages of documents. In addition, the factual record was developed in numerous hearings before the Court, including a hearing involving testimony from the Independent Inspector and another two-day evidentiary hearing which entailed live testimony from six witnesses. *See* ECF No. 108; ECF No. 111.

Discovery is ongoing, but Plaintiffs have had a meaningful opportunity to gauge the strengths and weaknesses of their claims, and they have concluded that a settlement is adequate. The Decree addresses Plaintiffs' concerns because it imposes numerous fail-safes intended to protect the members of the Class and Subclass from COVID-19. First, it requires the Jail to provide regular reporting regarding the population of the Jail and the impact of COVID-19 on the Jail's population. *See* Ex. B at ¶¶ 4–5. Second, the Decree calls for unannounced inspections at regular intervals by the Court-appointed Independent

Inspector. The Independent Inspector is empowered to conduct inspections commensurate and in accordance with the Court's June 18, 2020 Order, ECF No. 56. In addition, the Independent Inspector will monitor the continuing work of the Jail's Expeditor to evaluate Class and Subclass members for consideration of release on less restrictive conditions other than detention. *See id.* at ¶ 8. Pursuant to the terms of the Decree, Defendants are obligated to use their best efforts to implement the recommendations of the Independent Inspector or to provide a written explanation for why, despite using their best efforts, Defendants are unable to do so. The Independent Inspector will opine in subsequent visits whether Defendants have undertaken their best efforts.

In addition, the Decree provides machinery to ensure that the ventilation and air flow in the Jail is safe, *see id.* at ¶ 13, provisions to ensure that there is adequate testing for COVID-19 in the Jail, reporting of the results of that testing, and appropriate quarantining procedures, *see id.* at ¶¶ 14–18, and it ensures that Class and Subclass members will continue to receive adequate hygiene and personal protective equipment. *See id.* at ¶ 19. Further, the Decree ensures that the Independent Inspector will pay particular attention to the Jail's efforts to maximize social distancing. *See id.* at ¶ 20.

The parties have also agreed that they will endeavor to resolve any dispute regarding the Decree promptly and will only have recourse to the Court in the event of an emergency or if they cannot reach a resolution themselves. Independently, the underlying case will be stayed upon entry of the Decree unless and until Plaintiffs seek enforcement of the Decree. This mechanism provides further comfort to Plaintiffs that Defendants will endeavor in good faith to uphold their obligations as set forth in the Decree and that, in the

event of a dispute, Plaintiffs can quickly have recourse to the Court, which is particularly important in light of the urgency required to confront the pandemic.

D. Likelihood of Success on the Merits

When inquiring into the likelihood of success on the merits for purposes of approving the Settlement, the Court “[weighs] the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in the settlement.” *UAW*, 497 F.3d 615, 631 (quoting *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 (1981)). The question is ultimately “whether the parties are using settlement to resolve a legitimate legal and factual disagreement.” *Id* at 632.

The parties are settling to resolve legitimate factual and legal disagreements. There have been significant factual disagreements between the parties about the conditions in the Jail. Indeed, “[b]ecause of the dramatically different descriptions of the way in which detainees were being confined at the Jail when this matter was filed, the Court allowed the factual record related to [Plaintiffs’ Motion for a Temporary Restraining Order] to be further developed,” ECF No. 124, Pg.ID 2804, and the Court ordered an independent inspection of the Jail. ECF No. 45, Pg.ID 734. Based on the Independent Inspector’s findings, the testimony offered at the Court’s evidentiary hearing, and the documents offered into evidence, the Court made findings regarding the way in which people are being detained at the Jail. *See* ECF No. 124, Pg.ID 2804. Still, the parties have continued to dispute the extent to which Class and Subclass members are safe in the Jail.

The Settlement also resolves difficult and novel legal questions about which the parties disagree. The parties provided the Court with extensive briefing and oral argument regarding the legal standard applicable in this case. Plaintiffs allege that their constitutional rights under the Fourteenth Amendment and their statutory rights under Title II of the ADA

and Section 504 of the Rehab Act are being violated because of their detention in the Jail during the COVID-19 pandemic. Specifically, Plaintiffs brought four independent claims for release: (i) unconstitutional punishment in violation of the Fourteenth Amendment; (ii) unconstitutional confinement in violation of the Fourteenth Amendment; (iii) discrimination on the basis of disability in violation of the ADA; and (iv) discrimination on the basis of disability in violation of the Rehab Act. Among other things, the parties disagreed about the standard applicable to pre-trial detainees under the Fourteenth Amendment as well as the availability of the ADA and Rehab Act for habeas relief.

The parties are also relying on the Settlement to ensure a quick and effective resolution to their dispute in light of the uncertainty and threat from the ongoing pandemic. Tennessee was recently “ground zero” in the nation’s virus surge.¹ In light of the thorny factual and legal difficulties that this case presents, absent the Settlement months could pass before a judgment on the merits might be reached. The Settlement is the most efficient and effective way in which to ensure that Plaintiffs and the Class and Subclass members are safe now and for the duration of the pandemic.

E. Class Counsel and Class Representatives Agree that the Settlement Is Favorable

In their reasoned, professional judgment, counsel for both parties agree that the benefits of the Settlement outweigh the risks of continued litigation. Plaintiffs’ counsel

¹ Dan Levin and Juliana Kim, “Tennessee Is ‘Ground Zero’ in the Nation’s Virus Surge, and Christmas Could Make it Worse, The Governor Warns,” *The New York Times* (Dec. 22, 2020), *available at* <https://www.nytimes.com/live/2020/12/22/world/covid-19-coronavirus/tennessee-is-ground-zero-in-the-nations-virus-surge-and-christmas-could-make-it-worse-the-governor-warns>.

have also consulted with the Class representatives, who all agree that the Settlement is more beneficial than the risks of further litigation.

F. Reaction of Absent Class and Subclass Members

After consulting with the Class representatives, Plaintiffs' counsel have no knowledge of any objections by absent Class and Subclass members. Any objecting absent Class and Subclass members will have the opportunity to do so throughout the notice-and-objection process explained below.

G. The Settlement Serves the Public Interest

The Settlement resolves the parties' disputes and provides immediate relief to medically vulnerable people in the Jail who are in danger of severe consequences should they become infected with the novel coronavirus. The Decree contains detailed, concrete steps that Defendants will undertake to protect against the virus' spread in the Jail. There is always a risk that jail outbreaks may spill into the community outside the jail as staff, visitors, and incarcerated people cycle in and out of the facility. The Decree will therefore also help to minimize the spread of COVID-19 in Shelby County and Tennessee more broadly. This factor weighs strongly in favor of approving the Settlement, particularly in light of the especially difficult public health crisis that the State of Tennessee is currently confronting.

II. Reasonable Notice to the Class Requires Posting Notices In the Jail

"The court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Two forms of notice are attached hereto as Exhibits D and E. The first version, Exhibit D, is written in plain text and is intended to be understood by individuals with a fifth grade or lower literacy level (the "Plain Text Notice"). The second version, Exhibit E, is slightly more complex, and is

intended to be understood by individuals who read at a higher literacy level (the “Detailed Notice” and together with the Plain Text Notice, the “Notices”).

The manner of providing notice is reasonable when it “apprise[s] the . . . members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests.” *UAW*, 497 F.3d at 630 (internal quotation marks omitted); *see also In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984) (upholding notice that “described the terms of the settlement, the reasons for [class representatives’ decision to settle], the legal effect of the settlement and the rights of the [class members] to voice their objections”). “Due process does not, however, require *actual* notice to each party intended to be bound by the adjudication of a representative action.” *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) (emphasis in original); *see also In re S. Ohio Corr. Facility*, 173 F.R.D. 205, 211–12 (S.D. Ohio April 22, 1997) (finding manner of notice reasonable where “[d]efendants posted a copy of the notice in a conspicuous place in the cellblocks of all the Ohio adult male prisons”).

In *UAW*, the Sixth Circuit concluded notice was “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections” because “[t]he notice . . . clearly explained its purpose, discussed the nature of the pending suit and proposed class and accurately summarized the 76-page settlement agreement and incorporated exhibits in a little over four pages.” *UAW*, 497 F.3d at 629–30. Additionally, “enclosed with the notice was a copy of the settlement agreement, ensuring that [class members] would have full access to the very document the district court would examine at the fairness hearing.” *Id.* at 630.

Here, the substance of the two forms of the notice is adequate. Like in *UAW*, the Detailed Notice discusses the suit and summarizes the Decree in less than four pages. The Plain Text Notice discusses the suit and summarizes the Decree in ten pages that are accessible and easy to understand. Also like in *UAW*, the Class members will have the opportunity to review the full Decree should they choose to do so.

The manner of notice is also reasonably calculated to apprise interested parties of the Decree and give Class and Subclass members an opportunity to object. The Parties have prepared two versions of the notice to ensure all Class and Subclass members can understand the terms of the settlement, irrespective of literacy level, education level, and language. The Plain Text Notice is intended to be understood by individuals with a fifth grade or lower literacy level, while the Detailed Notice is slightly more complex, and is intended to be understood by individuals who read at a higher literacy level. The Plain Text Notice will be posted in both English and Spanish to ensure all Class and Subclass members can understand the contents. The Plain Text Notice will be posted in each of the housing units of the Jail.

Next to each posting, there will be a message indicating that the pod counselor has copies of the Detailed Notice, the Consent Decree, and the Court Order defining the Class and Subclass for detainees to review. Each pod counselor will retain copies of the English and Spanish versions of the Notices, the Consent Decree, and the Court Order defining the Class and Subclass. Each pod counselor will maintain these copies and will provide detainees with access to review these copies upon request. In this way, Class and Subclass members will be able to access the Notices and the Consent Decree, much like the proposed

UAW class members could access the notice and the 76-page settlement agreement that the notice summarized.

The Notices explain in simple terms that Class and Subclass members can object to the terms of the Consent Decree by writing out their objections and mailing them to the Court. The Notices also provide a toll-free phone number that Class and Subclass members can call from the Jail to discuss the Settlement with Plaintiffs' counsel.

In the event the Court enters the Consent Decree, the Jail will modify these procedures. The Jail will post a message in the communal areas that indicates the Consent Decree is available for review upon request from a pod counselor. The Jail will maintain a copy of the Consent Decree with each pod counselor until the Consent Decree is no longer in place. Providing notice in this manner is reasonably calculated to apprise all current and future members of the Class and Subclass of the terms of the settlement.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court grant their joint Motion.

Dated and jointly and respectfully submitted this 22nd day of January, 2021.

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Attorneys for Petitioners-Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Defendants via the Court's ECF system on this the 22nd day of January, 2021.

/s/ Andrea Woods

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

Favian Busby, Russell Leaks, and Joseph
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those similarly situated*;

Petitioners-Plaintiffs,

v.

Floyd Bonner, Jr., *in his official capacity*,
Shelby County Sheriff, and the Shelby
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Respondents-Defendants.

Civil Action No. 2:20-cv-2359-SHL-atc

**[PROPOSED] ORDER GRANTING JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT AND PERMISSION TO POST CLASS
NOTICE**

The parties having jointly submitted a Motion for Preliminary Approval of Class Settlement and Permission to Post Class Notice, and this Court having reviewed the parties' Consent Decree, setting forth the terms and agreements, and the Settlement Agreement having been signed by all parties;

This Court also having reviewed the Notices, which are approved by all parties and provide a mechanism for objections to be submitted;

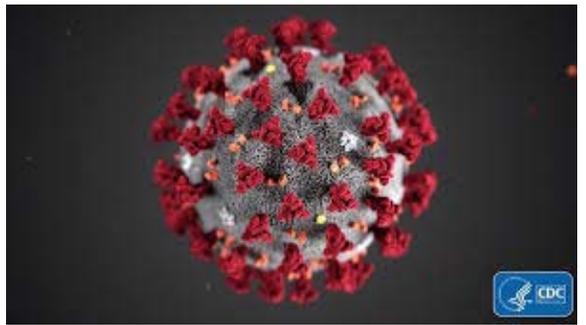
IT IS HEREBY ORDERED that the Motion is **GRANTED**, and the Consent Decree, together with the Notices are preliminarily approved subject to review by the Class and Subclass and objections if any at a Fairness Hearing in this matter scheduled for _____, 2021.

IT IS SO ORDERED, this ___th day of January, 2021.

/s/ _____
SHERYL H. LIPMAN
UNITED STATES DISTRICT JUDGE

Exhibit D

Information about COVID-19 Court Case in the Shelby County Jail



What is this paper?

This paper talks about a court case about COVID-19 in the Shelby County Jail. This paper talks about an agreement to make changes in the Jail to end the court case.

This paper gives general information about the court case and what is happening. There is a longer paper that has all of the details about this case. You can ask for the longer paper from your pod counselor.

Introduction

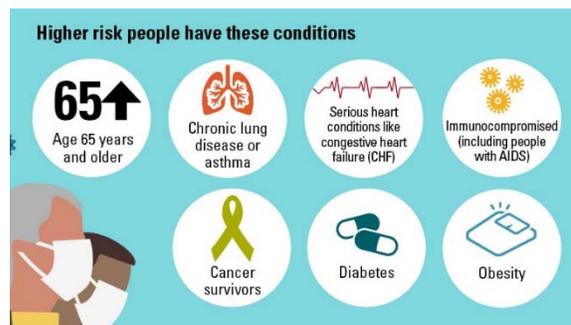
This paper talks about a court case about COVID-19 in the Shelby County Jail.



In April 2020, lawyers from the ACLU, Just City, and other organizations started a court case about COVID-19 in the Shelby County Jail. Another word for this court case is a “**lawsuit.**”

The lawsuit said that the jail was not safe for people who have medical problems or disabilities because of COVID-19.

People with things like diabetes, asthma, cancer, and HIV are more likely to get very sick if they get COVID-19. People with other medical problems are also at high risk.



These are just a few examples. People who are older are also more likely to get very sick if they get COVID-19.

The court case was a special kind of case called a “**class action**.” This means that it was a case trying to make changes for many people. The court case was trying to make things safer for people who have medical problems or disabilities in the jail.



Even if you never talked to any lawyers about the case, you might be part of it if you have a medical problem or disability. That is because a “class action” makes changes for big groups of people.

You are part of this case if you are in jail and you are at high risk for COVID-19. People who are part of this case

are called “**Class Members**”. The “**class**” means the group of people in the jail who are part of this case. You are part of the “class” even if you have never talked to any of the lawyers at the ACLU or Just City.

How Do I Know If I Am Part of the Case? Am I a Class Member?

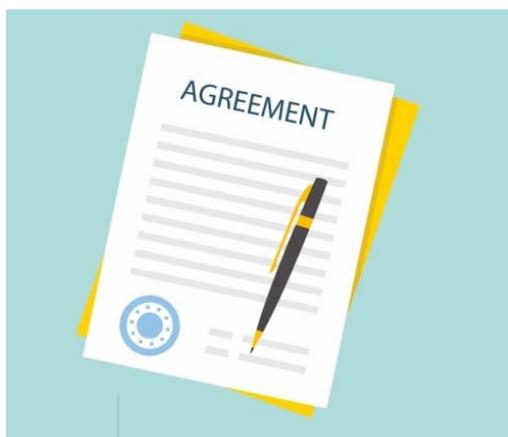
These people are part of the case:

- Everyone who is 65 years old or older
- Everyone who is “medically vulnerable” This means people who have medical problems that make it more dangerous if they get COVID-19. People with these things are “high risk” if they get COVID-19. If you have one of these conditions, you are part of the case:
 - Heart disease
 - Diabetes
 - High blood pressure
 - Poorly Controlled HIV
 - Cancer (if you have cancer now or if you had it in the past)
 - Moderate to Severe Asthma
 - Lung disease, like COPD
 - Kidney disease undergoing dialysis

- Autoimmune disorders, like lupus
- History of organ transplant
- Everyone who is “obese” –have a body mass index of more than 40.

Agreement About This Case

Court cases take a very long time. Since this case started, the lawyers for the ACLU and the lawyers for the jail have been talking to each other. They have been trying to come to an agreement that would be ok with everyone.



Now, the lawyers have an agreement. The jail has agreed to follow certain procedures to protect people from COVID-19.

The full list of these procedures is available from your pod counselor.



The jail will make changes to clean the air better to protect people from COVID-19.



A person from the outside, called an “inspector,” will come to the jail and look at what is happening and see if it is safe.



People who experience symptoms will get tested for COVID-19.

But, if you are a member of the Class, you can say if you think the agreement on this paper is ok or not. If you are part of the case, you can say what you think about this agreement.

You can ask questions. You can also say if you disagree, or if you think the case should not end or if you think the agreement is not good.

This paper talks about how to do these things.

If you think this agreement is ok, you do not have to do anything! But if you have questions, or if you disagree, you can tell the lawyers about them. Or you can tell the court and the judge about what you think too.



You can also call this toll-free number if you have questions or concerns. You can call 800-351-4313 from 9 a.m. to 12 p.m. if you do not understand what this paper says.

What is Happening Now

The lawyers in this case have an agreement about how to end the case. This agreement is called a “**consent decree.**” This is a legal word. It means an agreement that everyone must follow. It is a long process to do a consent decree. Here is how it works.

- First, the lawyers agree on how they think the case could end. The jail agreed to follow certain procedures to protect people from COVID. The ACLU and Just City lawyers think these procedures are good. The lawyers write down what they agree on. The paper with this agreement is the “consent decree.”

This already happened.

- Then, the people in the jail can say what they think about the “consent decree.” They can read the plan. They can ask the lawyers questions. They can tell the judge if they do not like the agreement.

This is what this paper is about. This is happening now.

- Then, the judge thinks about the consent decree and makes a decision. The judge reads the consent decree. The judge reads and thinks about what people in the jail think. The judge reads and thinks about what the lawyers say. Then the judge can “approve” the consent decree. That means that it is official. Or, the judge can tell the lawyers they have to make changes to it.

The judge will make her decision on _____.

- After the judge “approves” the consent decree, the jail must do what the consent decree says. They must follow the rules in it.

What the Agreement Says

This part talks about what the jail is going to do to protect people from COVID-19. This part says what is in the “consent decree.” These are the most important things that the jail has agreed to do. There is a long legal paper called the “Consent Decree” that says exactly what the jail has to do. You can look at the whole consent decree.

These are the big things in the consent decree:

Inspecting (Coming to the Jail)



Someone from the outside who is not part of this lawsuit will visit the jail. This person is called an “**Independent Inspector**.” That person does not work for the jail or the sheriff’s office. That person does not work for the ACLU. The person is “independent”. The Inspector will be someone who knows about how jails work, and about how to keep people safe in jails.

The inspector will come at least once every 90 days. That is once every 3 months. The inspector will not tell the jail before they visit – the visits will be “unannounced.” The inspector can look all around at the jail. The inspector can look at papers that say how many people are in the jail. The inspector can learn how many people have been tested for COVID.

The inspector will write reports after each visit. The reports will say what is happening in the jail about COVID. The reports will say what the jail should do differently to protect people from COVID. The jail must think about those reports. The jail must do what the inspector says, or else say why they cannot do that.

Ventilation (Air Movement)



The jail is changing its “**ventilation system.**” “Ventilation system” means how air moves through a building. The jail is making changes to make sure the air is safe. The jail is making changes to make sure that COVID does not go from one cell to another through the ventilation system, like through heating or air conditioning pipes or ducts.

The jail will show what these changes are. If the ACLU lawyers think these changes are not good enough, and the air is still not safe, then an expert will visit the jail. The expert will look at the ventilation system and say what the jail should do differently.

COVID Testing



Any person who has “**COVID symptoms**” can get a COVID test. “COVID symptoms” means the kinds of things that people who have COVID sometimes feel.

“COVID Symptoms” includes:

- Fever
- Cough
- Chills (feeling very cold and shivery)
- Sore throat
- Losing sense of taste or smell

- Hard to breathe
- Headache
- Body or muscle aches
- Runny nose
- Nausea (feeling sick to your stomach) or vomiting (throwing up)
- Diarrhea

Anyone in the jail who has any of these things can get a COVID test.

The jail will tell people if they have COVID as soon as practicable after they get a test.

Any person who has been near someone who has COVID can get a test too if recommended by applicable guidelines. If you have been near someone who has COVID, you may be offered a test even if you don't feel sick.

People who have COVID



If a person has COVID, the jail will do things to protect the person with COVID and to protect the other people in the jail.

Any person who tests positive for COVID will be “**isolated**.” This means the person will be separated from other people. This helps to stop COVID from spreading.

People who are “isolated” can still have their personal things. They can still have rec time. They can still get medical care.

The jail will do “**contact tracing**.” “Contact tracing” means finding out who a person with COVID has been near. Anyone who has been close to a person with COVID can get tested if recommended by applicable guidelines. Anyone who has been close to a person with COVID will be “**quarantined**” if recommended by applicable guidelines. This means they are separated from other people to stop COVID from spreading.

People who are “quarantined” can still have their personal things. They can still have rec time. They can still get medical care.

Cleaning



The jail will provide everyone access to cleaning supplies. Every person will have things to clean their cells and bunks.



Masks

Every person will have masks. There are 2 kinds of masks. Some masks are made of cloth, and they can be washed. Some masks are called “**surgical masks**,” like doctors wear. Those are made of a special kind of paper, and they cannot be washed.

The jail will give members of the Class either:



- 3 “surgical” (paper) masks or

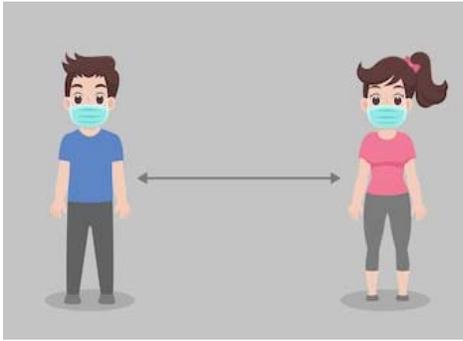


- 2 cloth masks

For people who have “surgical” (paper) masks, the jail will give each person 3 new masks once a week. So every 7 days, each person gets 3 new masks.

For people who have cloth masks, the jail will wash the masks 2 times a week. The jail will give out new cloth masks when needed.

Social Distancing



“**Social distancing**” means staying away from other people. “Social distancing” stops COVID from spreading.

The “independent inspector” who looks at the jail will think about “social distancing” The inspector will look at what the jail is doing so that people can stay away from each other. The inspector

will look at how many people are in the jail and if there is enough room for people to be “social distanced.”

The inspector will write in reports about this. The inspector will say if there are things the jail should do differently. These are “**recommendations**” that the inspector thinks the jail should do.

The jail must answer the inspector’s “recommendations.” The jail must either do what the inspector says, or explain why it can’t do that.

Why Is This Happening?

Lawsuits and court cases take a long time. The lawyers think that this agreement is better than going to trial. It will make changes happen faster than waiting for a trial. COVID is happening right now, and is very dangerous. The lawyers for the ACLU and Just City think that this agreement is the best way to keep people in the jail safe. All of the lawyers think this agreement is fair.

What You Can Do





If you have questions about this agreement or this paper, you can call the ACLU and Just City. The toll-free number is 800-351-4313. You can call any time from 9 a.m. to 12 p.m. You can call collect. The call will not be recorded.



If you are a member of the Class and if you want to tell the judge that you do not agree with what is in this paper, you can write to her. The address to write to the judge is:

Clerk of the Court

RE: Busby et al v. Bonner et al., 2:20-cv-02359-SHL-atc
U.S. District Court for the Western District of Tennessee
167 North Main Street #242
Memphis, TN 38103

If you want to call or write, you must do that before _____, 2021

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT
CONCERNING PROTECTION OF MEDICALLY VULNERABLE AND
DISABLED PERSONS IN THE SHELBY COUNTY JAIL FROM COVID-19**

INTRODUCTION AND BACKGROUND

This Notice is to inform members of the respective “Class” and “Subclass” (as defined below) of a proposed settlement of a class action lawsuit to protect medically vulnerable and disabled persons held in the Shelby County Jail from COVID-19. Lawyers for the Class and lawyers for the Sheriff have spent several months attempting to reach an agreement to end this lawsuit. They have reached a proposed settlement agreement in the form of a proposed Consent Decree, which is summarized below. The Consent Decree is also available for your review by requesting it from a pod counselor. The Court must decide whether to approve the Consent Decree. Before doing so, if you are a member of the Class or Subclass, you have the opportunity to submit any objection to the Court if you disagree with the terms of the settlement. Please be advised that if you fail to follow the exact procedures and deadline for filing objections to the proposed settlement, you will lose any opportunity to object to any part of the proposed Consent Decree.

The class action lawsuit dealt with whether people at the highest risk of serious illness if they catch COVID-19 were safe. You are a member of the “Class” if you are 65 years old or older, or if you have a medical condition that puts you at higher risk of serious illness if you get COVID-19, such as heart disease, diabetes, hypertension, COPD, are obese with a body mass index (BMI) of over 40, as well as other conditions. Most people in the “Class” are also in the “Subclass,” (unless you are in the Class because of your age or BMI). The Subclass are people with disabilities protected by the Americans with Disabilities Act. If you are not sure whether you are in the Class or Subclass, you can refer to the Court’s order certifying the classes which is attached here and available from each pod counselor or you can call this toll-free number, 800-351-4313, from 9 a.m. to 12 p.m.

PROPOSED CONSENT DECREE

To resolve this case, the lawyers for the parties have agreed to request that the Court enter the attached proposed Consent Decree as an Order of the Federal District Court. This means that the Jail would need to comply with the terms of the Consent Decree. If the Court enters the Consent Decree, but the Jail does not follow the terms of the Consent Decree, the lawyers for the Class can tell the Court that the Jail is violating the agreement. The Court will ensure all parties follow the terms of the agreement. If the Court enters the Consent Decree, but you feel the Jail is not following the terms outlined below, you can call the lawyers for the Class at this toll-free number, 800-351-4313, from 9 a.m. to 12 p.m. You can call collect and you will not be recorded. A summary of the key terms of the proposed Consent Decree is as follows:

Independent Inspections and Reporting

- The Jail will report COVID-19-related data to an Independent Inspector and to the lawyers for the Class on a periodic basis. This data will include the total population of the Jail as a whole and by housing unit, the number of COVID-19 tests conducted, and the results of those tests.
- The Inspector will come at least once every ninety days to inspect the Jail. The Inspector will make unannounced visits. The Inspector must be granted unrestricted access to the Jail.

Ventilation

- The Jail is currently improving the ventilation and air quality. The Jail will have to prove to the lawyers for the Class that the ventilation and air quality are safe. If the lawyers for the Class still think that either the ventilation or the air quality is unsafe, then an Expert will come to inspect the Jail. The Expert will make recommendations to the Jail. The Jail will either implement those recommendations, or will explain why it will not or cannot implement them.

Testing, Isolation, and Quarantine for COVID-19

- All individuals who are showing symptoms of COVID-19 shall be offered a test for COVID-19 as soon as practicable.
- All individuals tested for COVID-19 shall be informed of their test results as soon as practicable.
- When a person tests positive for COVID-19, the Jail will perform contact tracing. People who come into contact with someone that tests positive for COVID-19 will be offered tests and quarantined as recommended by the applicable guidelines from the CDC and/or the Shelby County Health Department.
- Individuals who test positive will be isolated. Individuals who are isolated will only return to the general population in accordance with CDC guidance.
- Individuals who are quarantined or isolated because they have contracted or been exposed to COVID-19 will have access to personal items and property, recreation time, and medical care.

Hygiene and Personal Protective Equipment

- In addition to the scheduled cleaning times, Class and Subclass members will be provided access to cleaning products to clean their cells and sleeping areas.

- Individuals of the Class and Subclass will receive three surgical masks that must be replaced every week, or two two-ply cloth masks that the Jail must launder twice a week. The Jail must replace these cloth masks as needed. If the Jail does not have enough of these two-ply cloth masks, it may give individuals two cloth masks approved by the Tennessee Department of Health. These must also be laundered twice a week and replaced as needed. The Jail must replace these cloth masks with two-ply cloth masks as soon as possible. Two-ply cloth masks have two layers of cloth instead of one.

Social Distancing

- The Independent Inspector will review the Jail's efforts to maximize social distancing and make recommendations for improving social distancing. The Jail must implement these recommendations, or explain why it will not or cannot implement them.
- The Independent Inspector will review whether the population levels of the Jail are safe. The Independent Inspector will also review the work of the Jail's Expeditor to evaluate Class and Subclass members to determine whether their cases should be presented to the District Attorney, criminal defense counsel, and/or the presiding Judge for consideration of release on less restriction conditions than detention.

REASONS FOR PROPOSING COURT APPROVAL OF THE CONSENT DECREE

Counsel for the parties decided to settle the case because of the risks of litigation and the need for a quick and effective resolution to protect members of the Class and Subclass from COVID-19. The lawyers cannot control what would happen if the case went to trial. It would also take many months to litigate the case to trial and to receive a judgment from the Court. A settlement achieves immediate protections from the pandemic for members of the Class and Subclass. Plaintiffs' counsel believes that these protections are substantial and that they may exceed what could be obtained through litigation. Counsel for both parties believe the settlement is fair and reasonable.

PROCEDURE AND DEADLINES TO OBJECT TO THE CONSENT DECREE

The Court has set a hearing to consider whether to approve the proposed Consent Decree. That hearing is set to occur on _____, 2021 at the U.S. District Court for the Western District of Tennessee.

If you agree with the proposed Consent Decree, which is available from your respective pod counselor, you do not need to do anything. Once the Court enters the Consent Decree, everyone in the Jail and in the Class and Subclass will benefit from it automatically. If you are a member of the Class or Subclass and wish to object to the terms of the Consent Decree, you must do so in writing no later than _____, 2021.

Your written objections should be addressed as follows:

Clerk of the Court
RE: Busby et. al v. Bonner et al., 2:20-cv-02359-SHL-atc
U.S. District Court for the Western District of Tennessee
167 North Main Street #242
Memphis, TN 38103

ADDITIONAL INFORMATION

Should you have questions or seek additional information regarding this matter, you are directed to contact counsel for Plaintiffs as follows:

ACLU of Tennessee
Re: Shelby County Class
Action
P.O. Box 120160
Nashville, TN 37212
800-351-4313