

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OSCAR SANCHEZ, et al., *on their own and
on behalf of a class of similarly situated
persons,*

Petitioners/Plaintiffs,

v.

DALLAS COUNTY SHERIFF MARIAN
BROWN, *in her official capacity*, DALLAS
COUNTY, TEXAS,

Respondents/Defendants.

Civil Action No. 3:20-cv-00832

**PLAINTIFFS' ADVISORY REGARDING
STATISTICAL REPORTS BY THE TEXAS COMMISSION ON JAIL STANDARDS**

Under Rules 201(b)(2), 803(8), and 902(5) of the Federal Rules of Evidence, Oscar Sanchez and the other plaintiffs (*Sanchez* Plaintiffs) submit the following advisory regarding statistical reports that the *Sanchez* Plaintiffs presented during testimony of Deputy Chief Fredrick Robinson of the Dallas County Sheriff's Office and Patrick Jones, Vice President for Correctional Health Services at the Parkland Health and Hospital System, on April 23 and 24, 2020:

Dallas County Jail's low quarantine rate (Plaintiffs' Exhibit 12). During cross-examination of Chief Robinson on April 23, the Court admitted a report by the Texas Commission on Jail Standards (TCJS) on, among other things, the numbers of inmates (1) who tested positive for COVID-19 and (2) who the county jails in Dallas, Bexar, and Harris Counties and state-wide had separated from general populations in order to quarantine them as of April 22, 2020. *See* 4-23-20 Tr. 19:10-29:25 (Robinson); *see* 4-24-20 Tr. 117:13-121:6 (P. Jones) (testifying regarding Plaintiffs' Exhibit 12). The Court overruled hearsay objections to Plaintiffs' Exhibit 12 and

admitted it conditionally, subject to further proof of authenticity.¹ 4-23-20 Tr. 23:20-21. The exhibit should now be admitted for all purposes, as it is self-authenticating, it is not hearsay, and it is a public record that is not subject to exclusion as hearsay.

Authenticity. A “publication purporting to be issued by a public authority” like Plaintiffs’ Exhibit 12—which on its face bears the seal of the TCJS, displays the title “TCJS COVID-19 Form A”, and appears on the official “state.tx.us” domain²—is “self-authenticating”. Fed. R. Evid. 902(5); see *Rychorcowicz v. Welltec, Inc.*, No. 4:16-cv-00002, 2018 WL 3559131, at *7 (S.D. Tex. June 22, 2018) (collecting cases), *aff’d*, 768 Fed. App’x 252 (5th Cir. Apr. 18, 2019). The Court should overrule the authenticity objection to Plaintiffs’ Exhibit 12.

Hearsay. Nor does Plaintiffs’ Exhibit 12 run afoul of the hearsay rule, for at least two reasons: (1) because it qualifies as a party admission—and therefore “not hearsay”—under Rule 801(d)(2) and because (2) it satisfies the “Public Records” exception for a “record or statement of a public office” under Rule 803(8). See *Nat’l Urban League, Inc. v. Urban League of Greater Dallas & N. Cent. Texas, Inc.*, No. 3:15-cv-3617, 2017 WL 4351301, at *6 (N.D. Tex. Sept. 29, 2017) (“Printouts from government web sites also satisfy the public records exception to the hearsay rule”). The Court should also overrule any remaining hearsay objection to Plaintiffs’ Exhibit 12.

Dallas County Jail’s underperformance in reducing detainee population. TCJS statistics regarding Dallas County’s underperformance relative to peer counties in reducing its jail population warrant inclusion in the record as well. The statistics show that the Dallas County Jail

¹ See Fed. R. Evid. 104(b) (“The court may admit the proposed evidence on the condition that the proof be introduced later.”).

² TCJS updates the TCJS COVID-19 Form A report regularly. See https://www.tcjs.state.tx.us/wp-content/uploads/2020/04/TCJS_COVID_Report.pdf.

underperformed during March 2020, when Defendants claimed they made good progress in reducing the number of detainees. *See* 4-23-20 Tr. 30:5-31:6 (Robinson).³ The Court “may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2); *Sec. & Exch. Comm'n v. Nelson*, No. 5:05-CV-266-C, 2006 WL 8438721, at *1 (N.D. Tex. June 8, 2006) (“As Federal Rule of Evidence 201(d) states, ‘[a] court *shall* take judicial notice if requested by a party and supplied with the necessary information.’” The Court should take judicial notice of the statistics.

CONCLUSION

The *Sanchez* Plaintiffs respectfully request the Court to overrule authenticity and hearsay objections to Plaintiffs’ Exhibit 12, to admit Plaintiffs’ Exhibit 12 into evidence unconditionally, to take judicial notice of statistics on Dallas County’s underperformance in reducing population at the Dallas County Jail, and to award the *Sanchez* Plaintiffs all other appropriate relief.

Dated: April 29, 2020.

Respectfully submitted,

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³ Compare <https://www.tcjs.state.tx.us/wp-content/uploads/2020/03/AbbreRptCurrent.pdf> with <https://www.tcjs.state.tx.us/wp-content/uploads/2020/04/AbbreRptCurrent.pdf>.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via the Court's CM/ECG system on all counsel registered with that system, and via email, on April 29, 2020.

/s/ Barry Barnett
Barry Barnett

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**ORDER REGARDING STATISTICAL
REPORTS BY THE TEXAS COMMISSION ON JAIL STANDARDS**

Before the Court is the Plaintiffs' Advisory Regarding Statistical Reports by the Texas Commission on Jail Standards. Having considered the record and the submissions of the parties, the Court overrules the authentication and hearsay objections to Plaintiffs' Exhibit 12, admits Plaintiffs' Exhibit 12 into evidence for purposes of the temporary restraining order proceedings that commenced in this case on April 21, 2020, and takes judicial notice of TCJS statistics regarding changes in jail populations between March 1, 2020 and April 1, 2020.

SO ORDERED this ____ day of _____, 2020.

ADA BROWN
UNITED STATES DISTRICT JUDGE

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SO ORDERED this ____ day of _____, 2020.

ADA BROWN
UNITED STATES DISTRICT JUDGE