

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

FRAZIER, *et al.*,

Plaintiffs,

v.

KELLY, *et al.*,

Defendants.

Case No. 4:20cv434-KGB

**PLAINTIFFS' SUPPLEMENTAL MOTION
FOR A TEMPORARY RESTRAINING ORDER**

Plaintiffs respectfully request that the Court immediately enter a temporary restraining order requiring the Defendants to undertake certain basic social distancing and sanitation measures.

For the reasons stated in their supporting brief, along with those explained in Plaintiffs' Memorandum in Support of a Temporary Restraining Order and Preliminary Injunction and supported by declarations from the Named Plaintiffs and Plaintiffs' experts, Plaintiffs respectfully request the Court order Defendants to adopt the measures requested in the attached Proposed Order. Unless it would delay the Court's consideration of the issues addressed herein, Plaintiffs

further request an opportunity to present expedited oral argument to the Court on the urgent need for this relief.

Dated: April 27, 2020

Respectfully submitted,

By: /s/Omavi Shukur

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**Pro hac vice motions forthcoming*

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CERTIFICATE OF SERVICE

I, Omavi Shukur, hereby certify that on April 27, 2020. I caused the foregoing to be filed via the Court's electronic filing system, which effectuated service upon all counsel.

*/s/ Omavi Shukur
One of the Attorneys for Plaintiffs and the
Putative Classes*

**IN THE UNITED STATES DISTRICT
COURT EASTERN DISTRICT OF
ARKANSAS CENTRAL DIVISION**

FRAZIER, *et al.*,

Plaintiffs/Petitioners,

v.

KELLEY, *et al.*,

Defendants/Respondents.

Case No. 4:20cv434-KGB

[PROPOSED] TEMPORARY RESTRAINING ORDER

WHEREAS plaintiffs Nicholas Frazier, Alvin Hampton, Marvin Kent, Michael Kouri, Jonathan Neeley, Alfred Nickson, Harold Scott Otwell, Trinidad Serrato, Robert Stiggers, Victor Williams, and John Doe filed their Complaint in this matter on April 22, 2020 (Dkt. No. 1);

WHEREAS, also on April 22, 2020, plaintiffs filed an emergency motion for temporary restraining order and preliminary injunction (Dkt. No. 2) and a memorandum in support of temporary restraining order and preliminary injunction with 12 supporting declarations (Dkt. No. 3), raising claims of violations of plaintiffs’ rights under the Eighth Amendment to the U.S. Constitution and the American with Disabilities Act with respect to defendants’ preparation for and response to the COVID-19 pandemic in Arkansas Department of Corrections correctional facilities;

WHEREAS, on April 4, 2020, the parties submitted a Joint Status Report after having met and conferred about a briefing schedule and a date for a hearing on the emergency motion for temporary restraining order and preliminary injunction;

WHEREAS, the Joint Status Report indicated that the parties could not agree on a briefing schedule and a date for a hearing on the emergency motion for temporary restraining order and preliminary injunction;

WHEREAS, after having received the Joint Status Report, the Court set the following schedule for consideration of plaintiffs' emergency motion for temporary restraining order and preliminary injunction:

1. Defendants' response to plaintiffs' pending emergency motion for temporary restraining order and preliminary injunction—if it chooses to file one—is due by 5:00 p.m. CT on Thursday, April 30, 2020;
2. Plaintiffs' reply brief in support of their motion for temporary restraining order and/or preliminary injunction—if it chooses to file one—is due by 12:00 noon CT on Monday, May 4, 2020;
3. The Court will conduct a hearing on plaintiffs' pending emergency motion for temporary restraining order and preliminary injunction on Thursday, May 7, 2020, beginning at 9:00 a.m. CT;
4. If the parties wish to file supplemental briefings with argument only following the hearing, such simultaneous briefings are due by 5:00 p.m. CT on Friday, May 9, 2020;

WHEREAS, under the current schedule, all evidence and argument pertaining to plaintiffs' emergency motion for temporary restraining order and preliminary injunction will be submitted to this court on Friday, May 9, 2020;

WHEREAS, on April 27, 2020, plaintiffs submitted a supplemental motion for temporary restraining order, requesting certain immediate temporary relief during the pendency

of the emergency motion for temporary restraining order and preliminary injunction;

WHEREAS, the number of prisoners in Arkansas Department of Corrections facilities who are confirmed to be infected with COVID-19 increased dramatically from 61 prisoners on April 14, 2020, to 751 prisoners ten days later on April 24, 2020, <https://adc.arkansas.gov/coronavirus-covid-19-updates>, demonstrating the time-sensitive urgency of plaintiffs' claims;

WHEREAS, the court finds that COVID-19 poses a serious, substantial, and immediate risks to the health, security, and lives of prisoners in the custody of the Arkansas Department of Corrections;

WHEREAS, the court finds that, once contracted, COVID-19 can have life-threatening consequences for incarcerated persons, particularly for those who have underlying medical conditions, have a disability, or are over the age of 50;

WHEREAS, the court finds that Defendants were aware of these serious, substantial, and immediate risks to the health, security, and lives of prisoners in the custody of the Arkansas Department of Corrections;

WHEREAS, the court finds that, on March 27, 2020, the Arkansas Department of Health recognized that “[b]ecause of the congregate nature of correctional facilities and detention centers, these settings pose a high risk for transmission of COVID-19.” Ark. Dept. of Health, COVID-19: Guidance for State Correctional Facilities and Local Detention Facilities, https://adc.arkansas.gov/images/uploads/ADH_Guidance_-_COVID-19_Guidance_for_State_Correctional_Facilities_and_Local_Detention_Facilities_-_March_27_2020.pdf.

WHEREAS, the court finds that plaintiffs presented significant evidence that

defendants' policies and procedures departed significantly from the Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, issued by the Centers for Disease Control & Prevention on March 23, 2020;

WHEREAS, the court finds that plaintiffs have presented significant evidence of defendants' failures to comply with the Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities;

WHEREAS, the court finds that plaintiffs have presented significant evidence that at least some plaintiffs have serious medical conditions that qualify as a disability under the American with Disabilities Act and that render them particularly vulnerable to serious illness or death if infected with COVID-19;

WHEREAS, the court finds that plaintiffs will likely succeed on the merits of their Eighth Amendment claims because they have presented sufficient evidence that defendants were deliberately indifferent to plaintiffs' substantial risk of harm;

WHEREAS, the court finds that plaintiffs will likely succeed on the merits of their American with Disabilities Act claim because they have presented sufficient evidence that defendants failed to reasonably accommodate plaintiffs' disabilities;

WHEREAS, the court finds that there is a threat of irreparable harm to plaintiffs, due to the serious, substantial, and immediate risks of COVID-19 infection and subsequent illness and possible death;

WHEREAS, the court finds that there is a strong public interest in granting a temporary restraining order to minimize the spread of COVID-19 within Arkansas Department of Corrections facilities, as well as the surrounding communities, and to avoid the depletion of limited and vital health care resources in the State of Arkansas;

WHEREAS, the court finds that the balance of equities weigh heavily in favor of granting a temporary restraining order because defendants should already be implementing the specific practices in this temporary restraining order in accordance with the Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, and the substantial benefits to plaintiffs, as well as the public at large, to minimize the spread of COVID-19 and to avoid depletion of health care resources far outweigh the harms, if any, to defendants;

IT IS, THEREFORE, HEREBY ORDERED that defendants shall undertake the following measures to protect individuals incarcerated in Arkansas Department of Corrections facilities and Arkansas Department of Corrections staff:

1. Ensure that each incarcerated individual receives a free and adequate personal supply of: hand soap sufficient to permit frequent hand washing, paper towels, facial tissues, cleaning implements such as sponges or brushes, and EPA-registered disinfectants that are effective against COVID-19 infection, without costs;
2. Ensure that all individuals have access to hand sanitizer containing at least 60% alcohol or, to the extent such hand sanitizer is not permitted, the best alternative, consistent with CDC Guidelines;
3. Provide daily access to showers and clean laundry, including clean towels after each shower;
4. Disinfect frequently touched surfaces, including but not limited to doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones, at least three times a day with EPA-registered

disinfectants that are effective against the virus that causes COVID-19, as appropriate for the surface;

5. Thoroughly clean and disinfect all areas where people who have tested positive for COVID-19, or have been suspected of having COVID-19, spent time (e.g., cells, bathrooms, and common areas) with EPA-registered disinfectants that are effective against the virus that causes COVID-19, as appropriate for the surface;
6. Require that all Arkansas Department of Corrections staff wear personal protective equipment (“PPE”) consistent with the Centers for Disease and Control and Prevention’s Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, including masks and gloves, when interacting with visitors and incarcerated individuals or when touching surfaces in common areas;
7. Train all Arkansas Department of Corrections staff and people incarcerated in Arkansas Department of Corrections facilities on how to properly don, doff, and dispose of PPE;
8. Post signage through Arkansas Department of Corrections facilities communicating the following:
 - (a) *For all:* the symptoms of COVID-19 and hand hygiene instructions;
 - (b) *For incarcerated/detained persons:* how to report symptoms to staff;
 - (c) *For staff:* to stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow CDC-recommended steps for persons who are ill with COVID-19

symptoms including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor; and

- (d) Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision;
9. Provide an anonymous mechanism for incarcerated individuals to report staff who violate these guidelines so that appropriate corrective action may be taken;
 10. Take each incarcerated person's temperature daily (with a properly disinfected and accurate thermometer) to identify potential COVID-19 infections;
 11. Assess each incarcerated individual daily through questioning to identify potential COVID-19 infections;
 12. Conduct immediate testing for anyone displaying known symptoms of COVID-19;
 13. Immediately provide clean masks for all individuals who display or report potential COVID-19 symptoms until they can be evaluated by a qualified medical professional or placed in a non-punitive quarantine and ensure the masks are properly laundered with replacements as necessary;
 14. Ensure that individuals identified as having COVID-19 or having been exposed to COVID-19 are properly quarantined in a non-punitive setting, with continued access to showers, recreation, mental health services, reading materials,

commissary, phone and video visitation with loved ones, communication with counsel, and personal property;

15. Assure incarcerated people are told that they will not be retaliated against for reporting COVID-19 symptoms;
16. Respond to all emergency (as defined by the medical community) requests for medical attention within an hour;
17. Produce and implement a comprehensive written plan to ensure adequate spacing of six feet or more between incarcerated people, to the maximum extent possible, so that social distancing can be accomplished (this plan shall include an account of current and projected numbers of incarcerated people in shared spaces at any given time);
18. Provide frequent communications 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 and practices;
and
19. Prohibit Arkansas Department of Corrections staff from entering correctional facilities if they test positive for COVID-19 or exhibit symptoms of having contracted COVID-19.

So ordered this ____ day of April, 2020

Kristine G. Baker
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

FRAZIER, *et al.*,

Plaintiffs,

v.

KELLEY, *et al.*,

Defendants.

Case No. 4:20cv434-KGB

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' SUPPLEMENTAL MOTION
FOR A TEMPORARY RESTRAINING ORDER**

COMES NOW Plaintiffs, through undersigned counsel, and in support of their Supplemental Motion for a Temporary Restraining Order state as follows:

Plaintiffs respectfully request that the Court immediately enter a temporary restraining order requiring the Defendants to undertake certain basic social distancing and sanitation measures. Although the parties are set to present argument to the Court on Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction ("Motion") ten days from now, it is essential that these basic preventive measures be taken immediately to slow the rapid spread of the virus in ADC facilities. If preventative measures are not taken immediately, hundreds of additional incarcerated people and staff in ADC facilities throughout Arkansas will likely contract the virus. Over the last ten days alone, the number of ADC incarcerated people infected has increased by

more than 500 percent, *see* CORONAVIRUS (COVID-19) UPDATES, ADC, <https://adc.arkansas.gov/coronavirus-covid-19-updates> (counting the number of incarcerated people infected on April 17, 2020); Rachel Herzog, *State Virus-Case Count Rises by 111 on Sunday*, Arkansas Democrat Gazette, Apr. 26, 2020, <https://www.arkansasonline.com/news/2020/apr/26/state-virus-case-count-rises-by-168-202/?news-arkansas> (reporting the number of cases as of April 25, 2020), including more than 800 cases at a single ADC facility. *State Virus-Case Count Rises by 111 on Sunday, supra*. Under these unprecedented circumstances in the midst of a public health crisis, an immediate temporary restraining order is more than warranted because “irreparable injury will occur before the hearing for a preliminary injunction required by Rule 65(a) can be held.” Wright & Miller, 11A Fed. Prac. & Proc. Civ. § 2951 (2020).

All of Plaintiffs’ requested relief should be implemented immediately in order to stem the viral outbreak that is already underway. Nevertheless, Plaintiffs selectively chose the relief in the Proposed Order because they are commonsense, precautionary measures that should not be controversial to implement. For this reason, Plaintiffs’ counsel asked Defendants, during our meet and confer this past Friday, on April 24, 2020, to jointly agree to much of the relief requested in the Proposed Order. In response, Defendants have stated that they are unable to agree to the entry of any partial temporary restraining order in advance of their written response and a court hearing. Accordingly, Defendants’ refusal to agree to various basic life-saving measures in the Proposed Order calls for this Court’s immediate intervention.

As outlined in Plaintiffs’ Memorandum in Support of a Temporary Restraining Order and Preliminary Injunction, COVID-19 poses a serious and immediate threat to the lives of incarcerated people in ADC custody throughout the State. Plaintiffs’ Mem. in Support, at 7-11.

There is no cure for COVID-19, *id.* at 4, and once contracted, it can have life-threatening consequences for incarcerated persons, particularly for those who have underlying medical conditions, have a disability, or are over the age of 50. *Id.* at 10-11. Defendants are well aware of these risks, as they have repeatedly stated publicly. *Id.* at 29-33. As ADC’s spokesperson recently admitted, ADC “knew the virus would eventually make its way into the state’s prison system.” Paige Cushman, *‘It’s Like Mad Max in Here’, Arkansas Inmate Says Conditions Woeful Amid Outbreak*, ABC7 News (KATV), (Apr. 15, 2020), <https://katv.com/news/local/its-like-mad-max-in-here-inmates-at-arkansas-prison-panic-amid-outbreak>. Furthermore, as Defendant Wendy Kelley, ADC Secretary, explained, “Once it gets in, it will be disastrous.” John Moritz, *Federal Prison Has Positive Virus Tests; Bureau Reports 3 Cases at Forrest City*, Arkansas Democrat Gazette, Apr. 4, 2020, <https://www.arkansasonline.com/news/2020/apr/04/federal-prison-has-positive-virus-tests/>. This perilous situation is only compounded by the fact that ADC prisons are so overpopulated that the Arkansas Board of Corrections declared a prison overcrowding emergency that went into effect on March 2, 2020. Ark. Parole Bd. Minutes, (Feb. 27, 2020), <https://www.paroleboard.arkansas.gov/Websites/parole/images/02%2027%20Mins.pdf>.

Defendants’ awareness of the unique danger that COVID-19 poses to incarcerated persons, and the need for immediate action, are exemplified by the situation at the Cummins Unit, one of ADC’s largest facilities. As of April 14, 2020, ADC reported only 61 COVID-19 cases among people incarcerated in prisons statewide. CORONAVIRUS (COVID-19) UPDATES, *supra*. But, as of April 27, 2020, 856 people incarcerated at Cummins alone have been confirmed to have contracted the virus. John Moritz and Andrew Moreau, *State’s Case Total Surpasses 3,000*, April 27, 2020, https://ao.pressreader.com/@Reader12758581/csb_AwGEJVWEgjMTdb0ivHdEbRQMD3LgtYf

kVwe85rr0Oir1aIdn2pvdtygU2bAvIgNz. This ongoing, dramatic deterioration in health conditions due to Defendants' failure to implement and follow adequate protective measures, despite prior knowledge of the substantial risks to people incarcerated in ADC facilities, demonstrates the need for this Court to order the basic social distancing and sanitation steps outlined in the Proposed Order.

The contrast between this case and Fifth Circuit's recent decision in *Valentine v. Collier*, is instructive. In *Valentine*, the Fifth Circuit Court of Appeals stayed the district court's "reticulated preliminary injunction" that "regulate[d] in minute detail" operations of the Texas Department of Criminal Justice ("TDCJ") to mitigate the spread of COVID. *Valentine v. Collier*, --- F.3d ---, 2020 WL 1934431, at *3-4 (5th Cir. Apr. 22, 2020). In so doing, the Fifth Circuit stressed that TDCJ had already "adopted and implemented several rounds of measures guided by ever-changing CDC recommendations," and that the district court's injunction "largely overlap[ped] with TDCJ's COVID-19 policy requirements and recommendations." *Id.* at *3 (citation omitted). Here, however, ADC has not implemented the CDC's recommendations, and Plaintiffs are not seeking an injunction that would essentially overlap with what ADC is already doing, but simply in minute detail. *See* Complaint ¶¶ 100-24 (ECF No. 1) (detailing the ways in which ADC has departed from the CDC Guidance, which forms part of the basis for Plaintiffs' requested relief). Instead, Plaintiffs are requesting that Defendants generally be required to take the essential measures that the CDC has recognized to be necessary to mitigate the spread of the virus. Because ADC (unlike TDCJ) has failed to take these measures voluntarily, this Court's immediate intervention is required.

In addition, contrary to TDCJ, there is ample evidence that ADC "subjectively believed[d] the measures they are taking are inadequate," as necessary to satisfy the subjective component of

the Eighth Amendment standard. *Valentine*, 2020 WL 1934431, at *4. On March 27, 2020, the Arkansas Department of Health (ADH) issued its guidance for the management and mitigation of COVID-19 in state correctional facilities (ADH Guidance), in which ADH provided a link to the CDC Guidance, which calls for much of the relief Plaintiffs have requested. Ark. Dept. of Health, COVID-19: Guidance for State Correctional Facilities and Local Detention Facilities, https://adc.arkansas.gov/images/uploads/ADH_Guidance_-_COVID-19_Guidance_for_State_Correctional_Facilities_and_Local_Detention_Facilities_-_March_27_2020.pdf. Notably, ADC has posted the ADH Guidance on its website. ADC, Coronavirus (COVID-19) Updates, <https://adc.arkansas.gov/coronavirus-covid-19-updates>. Moreover, in a letter, dated April 4, 2020, the Arkansas Civil Liberties Union advised Defendants to take many of the protective measures requested in the Proposed Order after an ADC facility staff had tested positive for the virus. Complaint ¶ 126. Defendants failed to implement those measures, and the first incarcerated person in Cummins Unit tested positive eight days later, on April 12, 2020. Max Brantley, *Coronavirus Cases Explode at Cummins Prison*, Arkansas Times, Apr. 13, 2020, <https://arktimes.com/arkansas-blog/2020/04/13/coronavirus-cases-explode-at-cummins-prison>. The number of confirmed infections among incarcerated people in Cummins Unit has since skyrocketed to 856 in two weeks, as of April 27, 2020. *State's Case Total Surpasses 3,000*, *supra*. Clearly, Defendants knew that their policies and procedures were inadequate to protect Plaintiffs from the risk of substantial harm from COVID-19. In refusing to institute the remedial measures requested by Plaintiffs, Defendants invite the same dire consequences in ADC facilities beyond the Cummins Unit, such as Varner Unit, which has had at least 383 medical grievances filed in 2020, or East Arkansas Regional Unit, which has had at least 663 medical grievances filed in 2020.

Defendants should have undertaken these protective measures long before Plaintiffs filed this motion or brought this suit. They have no reasonable justification for failing to act because the measures necessary to slow the spread of coronavirus in carceral facilities are broadly agreed upon by public health and corrections experts. As explained in the expert declaration of Dr. Marc Stern, Defendants must, among other things, ensure that incarcerated people have sufficient protective equipment, are provided adequate cleaning supplies for themselves and their surroundings, be confined in settings that allow them to appropriately socially distance, and have regular access to free and immediate testing if they suspect they have contracted the virus. Stern Dec., ¶ 13. Additionally, Defendants must prohibit correctional officers and staff who have contracted the virus—or suspect they have contracted the virus—from entering correctional facilities until they have completely recovered.

Nonetheless, as demonstrated in Plaintiffs' Motion and accompanying submissions, Plaintiffs are denied even the most basic ability to protect themselves, thereby increasing the likelihood that they will contract COVID-19 and fall seriously—and even fatally—ill. Plaintiffs' Mem. in Support, at 28. Plaintiffs are housed in close quarters, where they are forced to eat, sleep, bathe, and perform all daily life activities in a communal setting. *See* Serrato Dec., ¶ 4 (reporting that there are only 2.5 feet between each bed in contravention of CDC recommendations that individuals remain 6 feet apart); *see also* How COVID-19 Spreads, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>. The risks posed by ADC's congregate settings are exacerbated by lack of access to PPE for incarcerated people, and a lack of per-use cleaning of shared facilities like toilets, sinks, and showers, which are used by an entire barrack before they are sanitized. *See* Stiggers Dec., ¶ 4 (noting that he shares toilet and sink and that he uses the shower at the same time as 5 other individuals in contravention

of CDC recommendations regarding regular cleaning of frequently used surfaces); Kent Dec., ¶ 5 (reporting that the facility has refused to provide incarcerated people protective masks in contravention of CDC recommendations that individuals wear protective masks in settings that they cannot appropriately social distance); *see also* Use of Cloth Face Coverings to Help Slow the Spread of COVID-19, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>; Cleaning And Disinfecting Your Home, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/disinfecting-your-home.html>. Furthermore, Plaintiffs are at the mercy of security and medical staff, who may carry the virus without showing symptoms, and who often fail to take even simple precautions like wearing face masks and disposable gloves. *See* Kouri Dec., ¶ 13 (recounting that nurses distributing medication were not wearing masks and told incarcerated people to stop worrying and asking about it).

As outlined in Plaintiffs' briefing, measures to improve sanitation and social distancing inside the prison will not eliminate the serious and urgent risk for incarcerated people who are ill, incarcerated people with disabilities, or incarcerated people aged 50 or older. Plaintiffs' Mem. in Support, at 28-29, 36-37. Accordingly, Plaintiffs appreciate the opportunity to present their evidence and arguments at the May 7 hearing in support of the appointment of an independent monitor to identify those incarcerated people for whom temporary release to home confinement is necessary and appropriate. Complaint, Prayer for Relief, ¶ f.xix. However, in the interim, Defendants have no reasonable justification for failing to institute the basic preventative measures that Plaintiffs have requested. Such measures are recommended by Plaintiffs' medical expert, who has extensive experience in corrections, Stern Dec., ¶¶ 1-2, 13, and courts have directed the institution of similar protective measures in response to COVID-19 in other prisons. *See* Plaintiffs' Mem. in Support, at 44-45 (citing Op. and Order, *Cameron v. Bouchard*, No. 20-10949 (E.D. Mich.

Apr. 17, 2020), ECF No. 12 (ordering Defendants to undertake protective measures on the basis of only Plaintiffs' Complaint and TRO motion)).

As demonstrated by the conditions in ADC's Cummins Unit, if these measures are not taken, it is highly likely that COVID-19 will continue to spread through ADC facilities, such as the Varner Unit and the East Arkansas Regional Unit, before this Court has an opportunity to hold the May 7 hearing. Under these circumstances, a TRO is amply justified. As explained at pages 24-26 of Plaintiffs' Memorandum in Support of a Temporary Restraining Order and Preliminary Injunction, all of the four criteria for issuing such a TRO favor Plaintiffs. Most important is the need for a TRO to prevent irreparable injury over the next ten days. As another court in this Circuit recognized in granting a TRO to protect the plaintiff from serious health risks pending a determination of the plaintiff's preliminary injunction motion, there is "no question but that irreparable injury exists' when the harm contemplated is 'a life threatening illness.'" *Heather K. by Anita K. v. City of Mallard, Iowa*, 887 F. Supp. 1249, 1260 (N.D. Iowa 1995) (quoting *Harris v. Blue Cross Blue Shield of Mo.*, 995 F.2d 877, 879 (8th Cir. 1993)).

For the reasons stated above, along with those explained in Plaintiffs' Memorandum in Support of a Temporary Restraining Order and Preliminary Injunction and supported by declarations from the Named Plaintiffs and Plaintiffs' experts, Plaintiffs respectfully request the Court order Defendants to adopt the measures requested in the attached Proposed Order. Unless it would delay the Court's consideration of the issues addressed herein, Plaintiffs further request an opportunity to present expedited oral argument to the Court on the urgent need for this relief.

Dated: April 27, 2020

Respectfully submitted,

By: /s/Omavi Shukur

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**Pro hac vice* motions forthcoming

*Attorneys for Plaintiffs and the Putative
Classes*

CERTIFICATE OF SERVICE

I, Omavi Shukur, hereby certify that on April 27, 2020, I caused the foregoing to be filed via the Court's electronic filing system, which effectuated service upon all counsel.

*/s/ Omavi Shukur
One of the Attorneys for Plaintiffs and the
Putative Classes*