

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

Favian Busby and Michael Edgington, *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. _____

**FIRST DECLARATION OF JOSH SPICKLER IN SUPPORT OF
PETITIONERS-PLAINTIFFS' MOTION
FOR A TEMPORARY RESTRAINING ORDER**

I, Josh Spickler, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746:

1. My name is Josh Spickler. I am over the age of 18 and I am competent to make this declaration.

2. I am an attorney with Just City, and I am one of the counsel of record for Plaintiffs in this action. I am licensed to practice law in the state of Tennessee.

3. I respectfully submit this Declaration in support of Plaintiffs' Motion for a Temporary Restraining Order. The purpose of this Declaration is to record the conversations that I had on May 13 and 16, 2020 with Favian Busby, a person detained pre-trial at the Shelby County Jail and a Plaintiff in this action.

I. Background

4. Mr. Busby is 38 years old. He has been detained since September 2018. He is being held at Shelby County Jail on \$264,000 total bond that he cannot afford to pay. He is charged with multiple of Unlawful Possession of Controlled Substance and Convicted Felon in Possession of a Firearm.

5. Mr. Busby is a veteran of the United States Marine Corp. He served for eight years, from 2000 to 2008. He was honorably discharged after being deployed to Okinawa for three and a half years during his active service.

6. He holds a four-year degree in finance from the University of Phoenix and is a graduate of Middle College High School in Memphis. He also attended Collierville High School.

7. Mr. Busby was born and raised in Memphis. He has a 14-year old daughter and a 13-year old son who live in Memphis. He also has a 2-year old daughter who lives in New York.

8. His brother, Edward Busby, lives in Memphis. Mr. Busby would stay with his brother, Edward Busby, if he were released. He would have access to his own room and would be able to quarantine for 14 days after his release.

II. Mr. Busby's Health Conditions

9. In September 2018, Mr. Busby was diagnosed with diabetes by a qualified medical doctor at the Jail. His blood sugar is checked three times per day, and he receives injections of insulin based on his blood sugar level. His blood sugar is measured and insulin administered by a nurse in the Jail.

10. Mr. Busby has also developed hypertension secondary to diabetes, which is managed with the medication lisinopril. He is supposed to take one tablet of this medication daily, which is received from the Jail. His blood pressure is supposed to be checked on a weekly basis, but he reports that it was last checked on April 15, 2020. Because his blood pressure has not been checked recently, he is not sure if he is taking the correct amount of medication.

11. On August 31, 2018, Mr. Busby fell from a second story balcony. The fall resulted in multiple fractures of his femur and a crushed hip. On September 1, 2018, he had surgery to implant a new joint where his femur connects to his hip. The joint was taken from a cadaver. Mr. Busby's doctors are concerned about his body rejecting the joint. He was told that he may have to have an additional major surgery to get the bone to graft properly. He is supposed to receive regular blood tests to check for infection but has not received a test since April 15, 2020.

12. Mr. Busby reports that the line for medication is crowded and requires very close contact with others. It is not possible to socially distance in the medication line. Depending on the nurse disbursing medication, Mr. Busby has to stand in this line on a daily basis to receive medication for his diabetes, hypertension and surgery recovery. Some nurses come into the pod,

and some pass out meds at the entrance to the pod. Regardless of how it is handled, it is impossible to maintain six feet of distance from others in the medication line.

III. Spatial Conditions and Inability to Practice Social Distancing in H Pod

13. Mr. Busby is in H pod, which is in the annex portion of the Shelby County Jail. The pod has 32 cells on two tiers. The east side of the pod consists of cells 1-10 on the lower tier and cells 15-24. Cells 1 and 2 are for a single-person, and Mr. Busby lives in one of the single-person cells. The west side contains two tiers, with cells 25-32 on the top and cells 11-14 on the bottom. There are ten, round, four-foot in diameter tables down the middle of the pod. The guard desk and control panel sit along the north wall, and the only entrance to the pod is on the south wall. There are three showers on the south wall between the door and a supply closet. A small, mesh enclosed basketball court sits in the northwest corner of the pod. Mr. Busby reports that there are currently 42 men in H pod. Twenty-six men live in two-person cells, and 16 have a cell to themselves, including Mr. Busby and a person in the other one-person cell. There are currently three empty cells.

14. Four people in Mr. Busby's pod tested positive in the April 24th round of testing and were moved to the 6th floor. Mr. Busby's pod is on the 1st floor. Prior to those positive tests, Mr. Busby reports that the men were frequently in close proximity to other people in detention, they did not have masks, and they shared common surfaces with everyone else in H pod. Mr. Busby recounts that at least one person lost his sense of smell. Another man who tested positive accompanied Mr. Busby to the medical unit on April 15th because he didn't feel well. They removed that man to the Shelby County Detention Center without testing him. He returned on May 7, 2020 and still had a dry cough and appeared ill.

15. According to Mr. Busby, jail staff move throughout H pod in close proximity to the people being detained. Several of these staff members do not wear masks or gloves. If guards

need to access the control panel for the pod, distribute supplies, or do any number of tasks, they must cross the entire length of the pod weaving in and out of tables and chairs frequently occupied by the people housed in H pod. When the Jail changed to a COVID-19 protocol, they moved a desk into the sallyport outside the pod, but the guards still had to walk through the entire pod to get to the control desk.

16. Until May 14th, people being detained were on a rotating schedule of being allowed out of their cells for two or two and a half hours. People detained on side A would get out while people on side B were locked in their cells, and then they would switch. If a person was out during mealtime, they would eat at a small (4 feet in circumference) table with three other people. Mr. Busby reports that the tables are cleaned after each meal. Both during and after the COVID-19 protocol was in effect, people also sat at the tables to watch TV, play cards, talk, etc. People sitting at the tables are not able to keep six feet of distance between each other.

17. Mr. Busby reports that using the phone kiosk requires a person to stand shoulder to shoulder with other people. The kiosks are not sanitized or even wiped down between uses. They are only cleaned two times per day.

18. As of May 14, 2020, the Jail ended its COVID-19 protocol. Mr. Busby reports that officers are coming back in the pod more frequently, and things have returned to pre-COVID conditions in a matter of days. People are even getting haircuts in the pod again.

19. There has been no mention of re-testing, nor are officers social distancing from each other or detained people. For example, Mr. Busby has witnessed officers congregating in close proximity around a desk near his pod.

IV. Hygienic Condition in H Pod

20. According to Mr. Busby, the Jail provides a bar of soap and a small bottle of liquid soap to each detained person. Staff in the Jail often run out of soap and are unable to provide

additional bars if people run out. Mr. Busby reports that a person could go several days without soap if he runs out. Mr. Busby is able to purchase additional soap from commissary because he has funds in his commissary account. However, there are several other people who are not able to buy soap, and they may go days or longer without soap.

21. Mr. Busby reports that the pod has only been sprayed down with cleaning/sanitizing solution only once, on May 12, since concerns about the pandemic began in March 2020.

22. Mr. Busby has never seen hand sanitizer in the pod. He does not recall seeing guards or prison staff wash their hands or use hand sanitizer. The guards frequently come close to or have contact with people who are detained in the pod.

23. People detained in the Jail were provided one mask on or around April 22, 2020. Mr. Busby was only able to obtain one replacement mask by requesting one from a guard who was near him and had multiple masks in his hands. However, most of the other people detained in his pod have not received replacement masks.

V. Conditions in Other Pods

24. The pod adjacent to H pod, which has a similar layout, had three people test positive on May 8, 2020. Mr. Busby reports that occasionally, and often on weekends, when the staffing is insufficient, guards perform roving patrols in multiple pods at one time. Guards are constantly moving among the people in the pod and are often moving among different pods. Several guards do not wear masks. Those that do wear masks have used the same mask for several weeks.

25. Mr. Busby also reports that two people in pods G and J tested positive on May 8, 2020. People detained in the G and J pods are workers (known as “rockmen”), responsible for laundry, maintenance, and food preparation. After two people tested positive for COVID-19, the other men in those pods continued to perform their jobs as usual, moving throughout the Jail

performing their tasks, putting them in frequent contact with others despite having been exposed to COVID-19.

VI. Medical Treatment in Shelby County Jail

26. Mr. Busby reports that several people with COVID-19 symptoms have refused to tell nurses about their symptoms for fear of being sent to the 6th floor quarantine pods.

27. Mr. Busby reports that a man in his pod was sent out to quarantine, came back, and showed symptoms again but was not sent back to quarantine. He reports that people are not really being quarantined.

28. On May 19, 2020, two men from the quarantine pod 6A returned to H pod and described a very crowded quarantine environment where people were sleeping in “boats” on the floor and the conditions were described as filthy. Mr. Busby reports that there were more than 60 men in each of three pods on the 6th floor. One of the men who returned to H pod had been hospitalized due to COVID-19.

VII. Grievance

29. Mr. Busby filed a grievance on May 11, 2020, in which he requested PPE and to be allowed to comply with social distance recommendations. He asked for the Jail to release him if they could not provide those things. As of May 19th, he had not received any response to his grievance.

30. Mr. Busby has been paying close attention to news about COVID-19 and its spread throughout the community. He described an area within his pod where he maintains a collection of news clippings about the pandemic. Consequently, he is highly aware of the disease, how easily it spreads, and his particular vulnerability to severe illness or death given his diabetes and hypertension. He consistently expressed concern about his inability to follow the recommendations

of public health experts. He feels a great deal of anxiety about contracting COVID-19 while he remains in the Jail and often cannot sleep because he is so worried.

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

Executed on this 20th day of May, 2020 Memphis, Tennessee

/s/ Josh Spickler
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