



Hon. Sheryl H. Lipman
United States District Court Judge
Western District of Tennessee
167 North Main Street
Memphis, TN 38103

June 16, 2020

Re: *Busby v. Bonner*, No. 20-cv-2359-SHL

Your Honor,

Pursuant to the Court's June 12 Order (ECF No. 45), Plaintiffs respectfully suggest that either Dr. Homer Venters or Dr. Laura Brinkley-Rubinstein serve as the Court's independent inspector. Plaintiffs also respectfully submit herewith their proposal regarding the scope of the ordered Jail inspection. Drs. Venters and Brinley-Rubinstein are able and available to serve as inspector in accordance with the Court's schedule. The Parties conferred but were unable to agree on either a proposed inspector or the plan of inspection.

A. Proposed Inspectors

1. Dr. Homer Venters

Dr. Venters is widely acknowledged as an international leader in the provision and improvement of health services to patients in the criminal justice system, an award-winning epidemiologist, and a correctional health expert with over a decade of experience. Between 2008 and 2018, Dr. Venters variously served as the deputy medical director, medical director, assistant commissioner, and chief medical officer and assistant vice president of Correctional Health Services for the New York State Department of Health and Mental Hygiene and the New York City Health and Hospitals Corporation. *See Ex. A.*

While working for Correctional Health Services in New York, Dr. Venters successfully directed all aspects of medical care for 75,000 patients annually in twelve jails and the response to the infectious outbreaks of H1N1, Legionella, influenza, clostridium difficile, and MRSA. He also led a number of investigations concerning tuberculosis in correctional facilities. Dr. Venters has authored academic articles concerning screening for latent tuberculosis among jail populations, Hepatitis C testing and treatment in jail populations, and medical care for HIV patients in jails. His book, *Life and Death in Rikers Island* (Johns Hopkins Univ. Press, 2019), was a finalist in the social sciences category of the 2020 PROSE award for literature.

Since 2016, in conjunction with his teaching obligations at the Bloomberg School of Public Health at Johns Hopkins University and at the Albert Einstein College of Medicine, Dr. Venters has served as a medical and forensic expert, and he has had extensive experience with the effects of COVID-19 in correctional facilities. To date, Dr. Venters has inspected COVID-19 responses at four correctional facilities. Separately, he has conducted over fifty correctional facilities

inspections. Since the onset of the COVID-19 pandemic, Dr. Venters has been invited to provide expert opinions to the U.S. Senate, the National Academy of Sciences Committee on Law and Justice, the National Association of Counties, Justice and Public Safety Committee, and the Health & Welfare Council of Long Island.

2. Dr. Lauren Brinkley-Rubinstein

Dr. Brinkley-Rubinstein is Assistant Professor of Social Medicine at the University of North Carolina at Chapel Hill and an expert in correctional health. For the past 15 years she has been, among other things, a health criminology faculty fellow at St. Louis University and a faculty member at the Center for Prisoner Health and Human Rights at Brown University. *See Ex. B.*

Dr. Brinkley-Rubinstein has expertise in the response of correctional facilities to COVID-19. As the principal investigator of the COVID Prison Project, which tracks COVID-19 cases in correctional settings across the country, Dr. Brinkley-Rubinstein has an unmatched comparative perspective on the causes and consequences of correctional facility preparedness for the spread and treatment of COVID-19. Her March 28, 2020 paper, published in *Clinical Infectious Diseases*, an official publication of the Infectious Diseases Society of America, provides recommendations to correctional facilities to facilitate and augment COVID-19 mitigation policies.

Dr. Brinkley-Rubinstein also has extensive expertise in the organization and operation of correctional facilities as it relates to infectious diseases generally. She has visited and conducted research in correctional facilities around the country, including in Mississippi, North Carolina, Rhode Island, and Tennessee. She has published numerous articles in academic journals on the clinical care of incarcerated patients with HIV, Hepatitis B and C, and TB, and clinical infectious diseases generally.

B. Proposed Scope of Inspection

Plaintiffs propose an unannounced inspection of the facility to last no more than two days. A representative of counsel for both parties should be permitted to attend the inspection and the Jail should provide the inspector and counsel with adequate personal protective equipment (“PPE”). The inspector should submit a written report to the Court and the Parties addressing the Scope of Inspection, as defined below, as soon as possible after the inspection and in any event before June 27, 2020.¹

The inspector should be ordered to determine the measures the Jail has taken since March 12, 2020, the date on which Governor Bill Lee issued Executive Order No. 14 declaring a state of emergency, to (a) conform to the CDC’s “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities” (March 23, 2020); (b) prevent

¹ Pursuant to Fed. R. Evid. 706(c)(2), the inspector may receive reasonable compensation at a rate to be determined by the Court. Because Plaintiffs are impecunious, Defendants should bear these costs. *See Webster v. Sowders*, 846 F.2d 1032, 1039 (6th Cir. 1988) (observing that the District Court had the authority to allocate the Rule 706(b) costs “to the party against whom it granted a preliminary injunction when the parties obtaining relief were impecunious.”); *McKinney v. Anderson*, 924 F.2d 1500, 1511 (9th Cir. 1991) ((holding that Rule 706 gives the district court discretion to apportion all costs to one side, and this may be particularly appropriate when one of the parties in the action is indigent.).

the spread of the virus; and (c) identify and protect the members of the class (as defined in the Court's June 10, 2020 Order (ECF No. 38)) (the "Scope of Inspection").

The Jail should be ordered to produce to the Court, the inspector, and the Parties by close of business on June 22, 2020 documents sufficient for the inspector to address the Scope of Inspection.² The inspector should be empowered to make further requests for documentation and information in writing to address the Scope of Inspection, such documentation and information to be provided simultaneously to the Court and to the Parties. All materials should be provided in electronic, searchable format.

The inspector should have latitude to review all parts of the facility. At a minimum, the inspector should be ordered to inspect the jail entry and staff screening facilities; intake and processing areas; medical unit; dining areas and food preparation areas; court access areas and path of travel between housing units and court access areas; any areas where "trustees" or other incarcerated people with jobs work, including where they access cleaning materials and PPE; new admission housing area; two general population cells and two housing areas of each type (i.e. dorm-style housing units, double-cell units, single-cell units); segregation housing (including administrative or non-punitive segregation/protective custody and punitive segregation housing); quarantine housing; and, medical isolation housing, including dayrooms, showers, telephone areas, and toilets. The inspector should also be ordered to speak with staff and detainees during the inspection, alone or in groups, regarding the Scope of Inspection and to conduct further interviews as needed after the inspection.

Respectfully submitted,

/s/ Andrea Woods

² These documents should include (1) logs of requests submitted to the Jail kiosk requesting medical care or sick calls since March 12, 2020; (2) COVID-19 response and mitigation plans; (3) cleaning and disinfecting practices, including logs regarding cleaning and sanitization; (4) policies for requesting sick calls or other medical care; (4) COVID-19 screening and testing procedures; (5) procedures and practices to identify and protect the Class members, including relevant health care policies; (6) documents showing the Jail's COVID-19 testing capacity for staff and detainees; (7) records of the COVID-19 testing conducted to date (including the type of test, dates administered, and reason for testing) and the results of that testing as well as the Jail's response and medical records respecting any individuals who tested positive; (8) a daily count of the Jail population from March 12, 2020 to June 22, 2020; (9) any sick calls or related requests for medical care regarding cough, fever, loss of taste or smell, chills, shortness of breath, chest pains, GI issues, or other reports consistent with symptoms of COVID-19, including and responses thereto and related medical records; (10) documentation showing any transports to external medical facilities during the relevant time period, including the detainee's name, date, and reason for transport; (11) a log or roster of all persons housed in solitary confinement during the relevant time period, or anyone housed in such a manner that they could not access kiosks in the Jail; (12) information provided to incarcerated people about COVID-19, including posters and policies; (13) information provided to jail staff about COVID-19, including any training materials; (14) an organizational chart, including the educational and medical credentials, of the medical staff in the Jail, including how many FTE are serving each role; (15) employee attendance records for the relevant time period, including for medical staff; (16) a PPE inventory log for the relevant time period; (17) the Jail's outbreak and disaster preparedness plans; (18) copies of the Jail's Americans with Disabilities Act (ADA) policies; and (19) any communications with any person in an ADA coordinator role, health care coordinator role, or custody chain of command regarding COVID-19; (20) logs regarding guard movement; (21) logs regarding maintenance of cleaning equipment, such as dishwashers.