

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

Favian Busby; and Michael Edgington, *on  
their own behalf and on behalf of those  
similarly situated*;

Petitioners-Plaintiffs,

v.

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

Respondents-Defendants.

Case No. \_\_\_\_\_

**DECLARATION OF MICHAEL R. WORKING IN SUPPORT OF PETITIONERS-  
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

I, Michael Working, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney practicing criminal defense in the Shelby County courts. I represent clients at all stages of their criminal prosecution, and I am familiar with the relevant appellate practices that accompany such representation.

2. I have been practicing law for fourteen (14) years.

3. I have practiced criminal defense for thirteen (13) of those years in Shelby County.

4. I am a graduate of The University of Memphis School of Law.

5. I am the President-Elect of the Tennessee Association of Criminal Defense Lawyers, and beginning in July, 2020, I will serve as President of the Tennessee Association of Criminal Defense Lawyers (“TACDL”) for a term of one year. I will then serve another year advising the ensuing President.

6. I continue to represent clients who are incarcerated in the Shelby County Jail at 201 Poplar. I have visited clients in the Shelby County Jail hundreds of times in the past 13 years.

7. I make this declaration of my personal knowledge based on conversations with my clients and familiarity with customs and practices inside the jail.

**I. COVID-19 Concerns at the Shelby County Jail**

8. Several of my clients have tested positive for the novel coronavirus. Several have not been tested despite being housed near and sharing a ventilation system with those who have tested positive for the virus.

9. Communication with clients has been almost impossible during the pandemic.

10. A process for privileged and private communications between defendants and attorneys is not currently provided by the Shelby County Sheriff’s Office.

11. Video conferencing is the only method available for communicating with most inmates. Those calls occur on a system with a sign posted above the screen that says to the best of my recollection, “these calls are being recorded.”

12. After the defense bar raised this concern with local judges, several attorneys informed me that the sign now says the calls are not being recorded.

13. I have seen the calls played before juries and believe that the calls can still be recorded. I have no direct knowledge of whether the calls are being recorded.

14. During the few opportunities I have had to communicate with clients via a five-minute free phone call that they are allowed, defendants mostly try to pass messages about their health status to their families.

15. My clients that have been able to contact me report that the Shelby County Jail is not adhering to public health protocols to protect them from contracting COVID-19 in the Jail.

16. For example, the Jail does not house detained people in a way that allows for social distancing of six feet or more at all times. Most clients are housed in open pods that do not allow for social distancing, but are encouraged to social distance the best they can by the staff.

17. Additionally, clients have reported the difficulty in receiving basic humanitarian and hygienic services in the jail.

18. The Jail has not provided any of my clients with any hand sanitizer.

19. The Jail has not provided my clients with disinfecting supplies or cleaning supplies.

20. The Jail has not provided my clients with reliable access to hand soap so that they can wash their hands. All clients have informed me that soap must be purchased through an inmate’s private commissary account. If an inmate cannot afford commissary, the Jail issues that inmate one bar of soap per week.

21. Clients have also reported that, due to depleted staff, their clothes had not been cleaned in the laundry for an entire week, meaning that detained people wore the same clothes for one week.

22. Further, the Jail does not test individuals for COVID-19 when they are booked into custody, nor does it test all staff who enter and exit the Jail on a daily basis.

23. I have had clients describe people in their pod who exhibit symptoms of COVID-19, including constant coughing, and various other symptoms of the virus. Those people have not been tested for COVID-19. One client noted that symptomatic detainees remained in their housing unit for “about two weeks” without ever being tested.

24. All clients state that jail staff or working detainees enter their pod to provide meals three times daily and a fourth time for mail call as is the regular practice before the pandemic.

25. Some clients have described that new people are added to their pod regularly about every other day. Others lawyers have told me that their clients have stated that they are housed in the “program pod” and new people have not been placed in their pod for seven months.

26. According to clients that tested positive for the virus and were assigned to sixth floor COVID-19 quarantine pods, those infected with the virus were also not provided hand sanitizer and were not allowed any soap other than the policy described above in ¶¶ 18-20.

27. Several clients housed on the fifth floor have expressed concern about contracting a respiratory virus from COVID-19 positive detainees quarantined on the sixth floor as both groups are breathing the same air through the same ventilation system.

## **II. Practices in Local Courts**

28. In my experience, it typically takes at best five business days for a request for a bond reduction motion to be heard by the court.

29. To revisit a client's initial *ex parte* bond setting, I would have to file a written motion for bond review, submit an order for a pre-trial report to be submitted to the trial court, possibly wait for the State to respond, and then set it on for a hearing. If the Court decided to issue a ruling on the bond request, I estimate the process would take approximately five days to two weeks in the local courts.

30. An appeal of a request for a bond reduction goes to the Tennessee Court of Criminal Appeals. This process typically takes several weeks, and again involves an opportunity for the state to respond, and an eventual order from the Court of Criminal Appeals. I estimate that this process under normal circumstances generally takes a month to six weeks.

31. For clients in jail pre-trial, this process is the primary method for seeking release.

32. To my knowledge, by statute, a state court writ of habeas corpus is only available where a petitioner raises: (1) a claim that a void judgment was facially invalid because the convicting court was without jurisdiction or authority to sentence the defendant; or (2) a claim that a defendant's sentence has expired. *Benson v. State*, 2019 WL 1388195 (Tenn. Ct. Cr. App. 2019) (discussing T.C.A. §§ 29-21-101, -130, citing *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000)). To my knowledge, a habeas petition in the Tennessee state courts is not available for pre-trial detainees.

33. Tennessee courts, including those in Shelby County, are issuing emergency closures and significantly slowing their operations in response to the COVID-19 pandemic.

34. Even when a client gets a court date, it is highly reliable that a defendant will not be transported to court as scheduled. Jail staff sometimes refuses to transport clients due to COVID-19 concerns.

35. All transportation between inmates in TDOC facilities and local jails has stopped.

36. Clients are also usually not brought to court from the attached jail. Until today, I had not seen any defendant, even those who are not my client, brought into a courtroom since March 10th, 2020 just days before the statewide court closure.

37. Court cancellations are common and vary by judge. Some court dates for incarcerated inmates are reset prior to court opening. Cases may also be reset prior to defense counsel being allowed into the courtroom because a particular prosecutor may not be present.

38. I am not aware of any avenue in the state court system through which a class of pretrial detainees could seek relief regarding the constitutionality of their confinement in the Shelby County Jail. As a TACDL officer, I have researched this issue often.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20 day of May, 2020.

/s/ Michael R. Working

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