

**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. _____

**DECLARATION OF STELLA YARBROUGH, ESQ. IN SUPPORT OF
PETITIONERS-PLAINTIFFS' MOTION
FOR A TEMPORARY RESTRAINING ORDER**

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

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

2. I am an attorney with the American Civil Liberties Union Tennessee and I am one of the counsel for Plaintiffs. I am licensed to practice 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 information I learned about the conditions at Shelby County Jail from visits on May 1, 2020 and May 9, 2020 and from phone calls from over fifty different people confined at the Shelby County Jail.

I. Description of the H pod of the Annex to the Shelby County Jail

4. The H pod has 32 cells that line an open, two-story communal area. The cells have see-through glass doors. Each cell can house two people, however, not every cell is at capacity. There are around forty men in the H pod.

5. Each cell has an open toilet area and a sink; only the two people who live in the cell can use the cell's toilet and sink. The beds in the cells are stacked on top of one another, like bunk beds, with one bed three-to-four feet below the other. The beds are lined with thin, plastic-covered mats. When two men are in the cell, they cannot stay six feet apart. A detainee in the H pod confirmed that detainees have not been instructed to sleep head to toe.

6. The central communal area has eight showers, a microwave, a clothes washer and dryer, ten four-person tables, eight phones, and two touch-screen kiosks that detainees can use to purchase commissary items. When I visited, there was a movie playing on a television set in the middle of the communal area.

7. During recreational time spent outside their cells in the communal area, detainees in the H pod can make phone calls, play cards at the tables, wash underclothes, take a shower, cook commissary food items in the microwave, or order items from commissary via the kiosk.

8. When I visited, there was water dripping from the ceiling in the visitation booth connected to the H pod; it puddled on the floor. Black mold was growing on the discolored, rotting ceiling tiles. When I visited a second time, one of the tiles had fallen apart and was on the floor.

II. Cleaning of H pod Cells, Communal Area, and Showers

9. Detainees are responsible for cleaning their own cells. To clean, they must ask the pod officer for supplies, which include paper towels, cleaning solution in a spray bottle, and bleach for the toilet. If a pod officer is not present in the pod—e.g. they are sitting at the “front desk” outside the pod—the detainee cannot clean the cell because they cannot get cleaning supplies from the officer. One detainee I visited said he tried to clean his cell every day but was not always able to because he could not access supplies from the officer.

10. “Rockmen”—detainees who volunteer for cleaning duties in exchange for privileges like double portions of food and more recreational time—clean the communal areas of the Jail.

11. The floors, tables, phones, and kiosks are cleaned once a day. Some pod officers allow rockmen to wipe down the tables more often. The detainees I spoke to said the cleaning solution the rockmen use is called “Razor Orange.” They did not know if it was a disinfectant or contained bleach. Showers are supposed to be cleaned daily but are only cleaned every two to three days. They are not wiped down in between individual use. Phones, tables, and kiosks are also not wiped down between individual use.

III. Laundry in the H pod

12. Detainees can wash their outer shirt and pants once or twice a week. They pass one set of dirty outerwear to rockmen, who collect the pod's laundry and deliver it to the laundry room to be washed outside the pod. The rockmen then deliver a second set of clean outerwear.

13. Undershirts, socks, and underwear—a detainee's "whites"—can be washed up to three times a week by rockmen in the pod's washer and dryer. Rockmen use bleach when washing whites. The rockmen did not wear gloves while they collected other detainees' laundry until around May 3 or 4, 2020. The "whites" are washed in large loads with other detainee's underclothes.

14. Towels are washed once a week and blankets are supposed to be washed once a month, however, the detainees with whom I spoke reported going two months without receiving a clean blanket.

IV. Personal Hygiene in the H pod

15. Soap is not automatically given out or available in the bathrooms or showers for free use—except when a detainee first enters the jail. On initial entry into the jail, each person is given a personal hygiene package that includes a small bar of soap.

16. Beyond the initial personal hygiene package, detained people must order soap from commissary using their own funds. Bars cost between \$1.00 and \$3.00. If a detainee cannot afford soap, they can ask the pod officer for free soap. The free soap consists of a small bar about the size of a bar of handwashing soap found in most hotels or washing one's hands and one small bottle of liquid soap for showering. The free soap does not last more than a week. If the pod officer does not have soap or does not want to give out soap, which often happens when officers are working double shifts or covering work duties for other officers who have called out sick, the detainee is forced to wait several days to get it.

17. Neither the jail staff nor the detainees have access to hand sanitizer.

V. Meals in the H Pod

18. Meals are made on-site at the Jail; detainees I spoke with did not know where the kitchen was located. Detainees from the G and J pods in the Annex work in the kitchen.

19. Meals are delivered on large, rolling carts from the kitchen by a detainee; detainees push the carts into the pods. They are usually wearing hairnets; on or after May 3, 2020, they started wearing gloves and masks. They wear the same gloves when they go from pod to pod pushing the meal carts.

20. In the H pod, two detainees bring the meal cart to the pod officer. The pod officer then instructs everyone in the pod to line up. Men are inches apart from each other when they line up for meals. Rockmen then hand the individual food trays, made of Styrofoam, to each member of the pod. They are wearing gloves but do not change their gloves from tray to tray. Some rockmen wear the same gloves they wore to clean. Some rockmen wear masks, but they are the same masks they have been wearing for weeks.

21. Detainees then sit four men to a table—sometimes squeezing in five or six men if there is not enough available seating—to eat their meal.

22. They use the same metal utensils and cup for each meal; they are responsible for maintaining their own utensils and cups. They do not have access to a dishwasher or bleach for cleaning their utensils.

VI. Access to Medical Care

23. If a detainee does not feel well, they can request to be seen by a medical provider by placing a “sick call.” A sick call is a form on the kiosk and is submitted electronically. Once the sick call is submitted it can take two days or longer for a detainee to be seen. According to, a detainee in another pod on the second floor, each sick call costs \$3.00; the cost is billed to the

detainee's commissary account. If one does not have sufficient funds in one's account, the cost is billed to one's account. Any future funds deposited into the account go immediately to paying the medical debt and therefore cannot be used to buy other necessities like clothing, food, or soap from commissary. The detainee I spoke with was also charged \$2.00 for receiving Tylenol from a nurse. Other detainees report being encouraged to purchase ibuprofen through commissary for headaches and body pains.

24. Medications are distributed once or twice a day, as needed, during a "pill call," during which a nurse comes into the pod and distributes individuals' medications. Men line up to receive their medication twice a day—once in the morning and once in the evening. They stand inches apart in line.

25. There is no routine check of each person's temperature, nor are detainees asked about COVID-19 symptoms.

26. I have spoken with a number of detainees who have underlying health conditions, such as high blood pressure, diabetes, asthma, and auto-immune disorders, that make them particularly vulnerable to serious illness if they contract COVID-19. Jail staff has not communicated with them about their health conditions. Jail staff has not offered them additional health screenings, PPE, or enabled them to maintain six feet of distance from other persons. I am not aware of any evidence that detainees who are particularly susceptible to serious illness and death if they contract COVID-19 are treated any differently by the Jail than any other detainees.

VII. COVID-19 Protocols in the H Pod

27. On or about March 14, 2020, H pod was placed in "quarantine." Detainees were kept in their cells for twenty-three hours a day, with only a half hour of "rec time." Some days the "rec time" was staggered, meaning only half of the people in the pod would be let into the communal area at a time; other days, everyone in the pod was allowed to enter the communal area

at once. With such limited time in the communal area, showers, tables, and floors were cleaned less regularly. Rockmen were not permitted out of their cells to do their regular cleaning. Guards entered the pod less frequently as well, which resulted in detainees being unable to access supplies to clean their cells.

28. Detainees noticed that jail staff was calling out sick and missing work. Due to staff shortages, “rec time” was even more limited. People in H pod reported spending thirty to forty-eight hours at a time in their cells.

29. During this time, meals were served in the cells. They were distributed by rockmen; the rockmen initially did not wear gloves or masks. The rockmen were given gloves and a mask to wear on or about May 3, 2020; they did not change gloves when going from cell to cell.

30. On or about April 17 or 18, 2020, detainees were each given one mask. The mask is made of thin, blue material with elastic bands glued on the side. When I visited a member of the H pod, he with was wearing a mask that had a broken strap and stains on the front; he had been wearing it for over two weeks. He was given one additional mask on or about May 3 or 4, 2020 after he filed a written grievance. Some, but not all, detainees were also given a second mask. Given the deterioration of the masks worn daily for weeks, many detainees have stopped wearing their mask. Detainees were not required to wear masks while in the communal area during “quarantine.”

31. Some detainees have one pair of gloves, but most detainees do not have any. Detainees told me that the distribution of gloves was random as some pod officers would allow detainees to grab a pair and some would not.

32. Some guards do not wear masks or gloves. The guards who wear masks wear the same masks all day and do not change masks when they go from pod to pod. At times, guards

wear the masks below their mouth and nose. The guard who transports men to court often wears his mask on top of his head; he told other detainees, “Hey, it’s on my face!” when they asked him about it. Some guards wear gloves, but the detainees I spoke with do not know how often guards change their gloves and have not seen them put on new pairs when entering or exiting the pod.

33. Despite being nominally in “quarantine” during this time, a person held in H pod described being placed in a “tank,” or large holding cell, with thirty to forty other men while waiting to be brought into the courtroom on April 22, 2020. He said that most guards were wearing masks and gloves, but many detainees were not. While in the “tank,” men stand shoulder-to-shoulder as there are only four tanks to hold every man that has court that day. The tanks are located in the “court tunnel,” a tunnel that links the jail with the courthouse. Men can spend the entire day in the tank, waiting to be called into the courtroom by the judge.

34. On or about April 23, 2020, the jail tested approximately 260 detainees for COVID-19. Written results of the test were never given to detainees.

35. Some of the rockmen who still clean the pod refused tests and were never tested.

36. Five days after being tested, five men in H pod were moved to a different location. People in the pod were told that those five men had tested positive for COVID-19.

37. None of the five men in the pod who tested positive at the end of April had previously displayed symptoms of a COVID-19 infection. One person who refused a test shared a cell with one of the men who tested positive for COVID-19.

38. One man was removed from the pod for displaying symptoms before April 23, 2020. I spoke with him over the phone. He told me after he fell ill and tested positive for COVID-19, he was relocated to the Shelby County Correctional Facility and put into isolation with four other men.

39. Subsequently, several men in the H pod refused to be tested when tests were offered on April 23, 2020 out of a fear of being treated in the same way—that is, moved from the H pod, which affords them several privileges such as being able to attend programs, watch movies, and have access to a clothes washer and dryer and microwave.

40. Indeed, other Detainees who tested positive were moved from their regular pods into two “isolation” pods on the sixth floor. Over fifty detainees in the isolation pod reported to me that the first night they were placed in isolation, on or about April 28, 2020, guards entered the pod and sprayed pepper spray indiscriminately. Detainees were suffering from severe coughs, chest pain, and difficulty breathing due to COVID-19; the pepper sprayed greatly exacerbated their symptoms.

41. The man described in Paragraph 38 was moved back to H pod after 23 days; he was never re-tested for COVID-19. He has returned to his duties as a rockman, distributing food, wiping down communal surfaces, and washing clothes.

42. No additional tests have been offered to detainees since April 23, 2020.

43. On May 14, 2020, H pod was taken off “quarantine” protocols, meaning detainees now access the communal area for four or more hours a day and eat their meals in the communal area. Detainees are not able to maintain six or more feet of distance from one another either in the communal area or in their cells.

44. Other detainees on the sixth floor have reported to me that nursing staff has told them they would be removed from isolation on the sixth floor to their original pods on Wednesday, May 19, 2020. Many detained people on the sixth floor reported to me that they are still having symptoms of COVID-19, including fever, diarrhea, vomiting, chest pains, trouble breathing, and

body aches. They told me jail staff has said they will not be re-tested for COVID-19 before they are moved.

VIII. Visitation and Description of 3P pod

45. On May 1 and May 9, 2020, I spoke via video conference to a man in the 3P pod on the third floor of the jail.

46. The 3P pod has 21 barred cells that line an open communal area. Each cell can house two people. Each cell has an open toilet area and a sink; only the two people in the cell use the cell's toilet and sink. The beds are stacked on top of one another, like bunk beds, with one bed three-to-four feet above the other. It is not possible for two men in a cell to stay consistently six feet apart. The bars of the cell door allow for air to flow freely from the cells into the rest of the pod.

47. There are three showers in the communal area in 3P and every person in the pod uses two of the three showers. The third shower is not used because it is not private.

48. For four hours a day (two hours in the morning and two in the evening), the man I visited, and roughly twenty other detainees in the 3P pod, enter the communal area to make phone calls, watch television, take a shower, or order items from the commissary via the kiosk. It is not possible for all the men in 3P pod to stay six feet apart while they are in the communal area. When they watch T.V. in a sitting area, they are seated within touching distance of each other. There are no restrictions on how many men can be in the communal area at one time and neither the "recreation" time or meals are staggered.

IX. Cleaning of 3P pod Cells, Communal Area, and Showers

49. The communal area is cleaned by rockmen two to three times a day.

50. The men in 3P can only clean their cells when a “rockman” or a guard give them a bottle of cleaning spray through the bars of the cell. When they use the spray, they must use their own unwashed towel to wipe down surfaces.

X. Laundry in the 3P pod

51. Detainees in the 3P pod are given a change of clothes once a week. The man I visited said that his sheets, towel, and blanket have only been cleaned and replaced once in the last three weeks.

XI. Personal Hygiene in the 3P pod

52. The man I visited purchases soap to wash his hands and body from commissary. If a person in 3P cannot afford soap, they can receive soap from the jail but they sometimes have to wait several days for it to arrive and the bars of soap are small. The man I visited said that the free soap bars do not last more than three or four days.

53. There is no hand sanitizer in 3P for jail staff or detainees.

XII. Meals in the 3P Pod

54. As of May 9, 2020, detainees in 3P eat their meals in their cells. Meals are delivered on plastic “lunch” trays by rockmen, who are wearing a mask and gloves. They do not change gloves.

XIII. Access to Medical Care

55. Access to medical care in 3P is essentially the same as in H pod.

XIV. COVID-19 Protocols in the 3P Pod

56. The Jail gave detainees in 3P one mask each that they used for over one month. The mask is made of a thin, blue, cloth-like material with elastic bands glued on the sides. This mask was never cleaned. Men in this pod received one additional mask sometime around May 3

or 4, 2020. Guards instruct them to wear masks whenever they enter the communal area. They have never received any gloves.

57. Guards sometimes wear masks but never wear gloves. At times, guards wear the masks below their mouth and nose. The man I visited did not know if the guards who do wear mask change them with any frequency.

58. The last time detainees in 3P were offered a COVID-19 test was on or about April 23, 2020.

59. There has been one new person in 3P since the man I visited was placed in the pod. He was not sure whether that person was tested for COVID-19 or not.

60. The man I visited knows that many people in the jail are sick. He has heard other detainees say that entire pods are infected.

XV. Access to Court

61. Several detained people and at least two other sources have told me that local judges will not hear motions for bond reduction on the basis of COVID-19. Specifically, one local judge has stated that a pandemic does not relate to any of the factors he considers for the purposes of bond; he has stated that being at-risk or contracting COVID-19 is not a “change in circumstance” that warrants a new motion for a bond reduction.

XVI. Booking and Intake Procedures

62. Another detained person I spoke with works as a rockman in the intake area of the jail. He said that at any given time, twenty to forty people are going through the intake process, which can take between two and eight hours. During this time, people are kept closely together—within touching distance—and are not given masks or gloves. He has never observed jail staff take the temperatures of people being booked into the jail; nor has he seen jail staff ask those being

booked into the jail if they are experiencing COVID-19 symptoms or have been in contact with someone who has tested positive.

63. The phones and chairs that detained people use in the booking area are not wiped down or sanitized between individual use.

64. There is no hand sanitizer available for jail staff or people being booked into the jail.

XVII. Relocation of People Who Tested Positive for COVID-19

65. On May 19, 2020, I received several frantic phone calls from people detained in the 6B pod (where the jail was holding those who tested positive for COVID-19 in isolation) and their family members. They told me that jail staff were attempting to relocate these individuals back into the jail's general population. Detained people told me they were insisting on being re-tested, and confirmed to no longer be positive for COVID-19, before they would be moved back into their original pods. Jail staff responded by arming themselves with cans of mace or pepper spray and threatened to use the spray and physical force to move people out of the pod. One detained person I spoke with told me that people in his pod were wrapping their faces in their towels, preparing to be pepper-sprayed for their refusal to be moved.

68. He also said that over the past four to five days, people in the pod appeared to be getting sicker, and just this morning, another man in the pod was coughing up blood. The family member I spoke with was especially worried about their loved one because they have a history of poor physical health and had been very ill for the past three weeks. Both the detained person and their family member were extremely worried and upset about the threat of violence and the risk of exposing others in the jail to the virus.

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

Executed on this 20th day of May, 2020, in Nashville, Tennessee.

/s/ Stella Yarbrough

Stella Yarbrough

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