

EXHIBIT 1

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

NICHOLAS FRAZIER, et al.,
Plaintiffs, No. 4:20CV434 KGB

v.

WENDY KELLEY, et al.,
Defendants. Thursday, May 7, 2020
Little Rock, Arkansas
9:12 a.m.

**TRANSCRIPT OF HEARING ON MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE KRISTINE G. BAKER,
UNITED STATES DISTRICT JUDGE**

APPEARANCES (VIA TELEPHONE):

On Behalf of the Plaintiffs:

MS. SARAH EVERETT, Attorney at Law
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4 MS. PATRICIA OKONTA, Attorney at Law
5 MR. OMAVI SHUKUR, Attorney at Law
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14 On Behalf of the Defendants:

15 MS. JENNIFER L. MERRITT, Senior Assistant Attorney General
16 MR. JERRY D. GARNER, Assistant Attorney General
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24 Proceedings reported by machine stenography and displayed
25 in realtime; transcript prepared utilizing computer-aided
transcription.

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I N D E X

PLAINTIFFS' WITNESSES: DIRECT CROSS REDIRECT

Anita Daniel 28 36 47
Eldon Vail 49 79

DEFENDANTS' WITNESSES:

James Banks 166 183
Dexter Payne 201 214 237

EXHIBITS RECEIVED:

Plaintiffs' 23 and 56.....50
Plaintiffs' 69.....60

1 unless someone exhibits symptoms. The question would be what
2 symptoms do you need to see to test an inmate.

3 THE COURT: Mr. Banks, do you make -- can I a
4 question? This is the Court.

5 Mr. Banks, just tell me what role you play in deciding who
6 gets tested.

7 THE WITNESS: I don't. We have instructed our staff
8 that if he were to tell a correctional officer or nurse that, he
9 would be taken to the medical unit and he would be examined,
10 take his temperature. The medical staff would do that in
11 determining whether he met the threshold that was established
12 and met by the Department of Health to be tested or not. We
13 would simply pass him on to the medical provider if we needed to
14 be in that process. We provide enough access to medical staff
15 by the resident that he could present himself.

16 BY MS. IRISH:

17 Q. And you referred to some Department of Health guidance as
18 to who gets tested. What specific items are you referring to?

19 A. Again, the Department of Health decides when they are to be
20 tested, and my understanding is the guidelines from the medical
21 providers who decides, just like if I go to my doctor, whether I
22 get tested or not based on what they observe and see.

23 We will send them regardless of what we see. Just based on
24 what they say, then they decide what they see and interpret
25 through the medical department and trained medical people, and

1 positive for COVID-19; is that correct?

2 A. I'm not sure of the date, but there was a worker at
3 Cummins.

4 Q. All right. And about a couple weeks later, the first
5 inmate at Cummins tested positive; correct?

6 A. Yes, some weeks later.

7 Q. Now, do you agree when an incarcerated person or a staff
8 member at a prison tests positive for COVID-19, certain
9 procedures have to be implemented to reduce the spread of the
10 virus; right?

11 A. That's correct. Those orders are in the best -- are best
12 for the security and operations of our facility.

13 Q. Now, one of the procedures that would be best for the
14 security of your facility if a staff member or an incarcerated
15 person tested positive for COVID-19 is you test every inmate who
16 had contact with the positive inmate or staff person; correct?

17 A. Would you repeat the question.

18 Q. One of the measures you should take or the ADC should take
19 is when somebody in prison tests positive for COVID-19 is test
20 every person who has had contact with the positive staff member
21 or incarcerated person; is that correct?

22 A. That would be a decision made by the Department of Health
23 and our medical advisers.

24 Q. And you have no position either way as to whether or not
25 that would be advisable?

1 indulgence.

2 THE COURT: Sure.

3 (Pause in proceedings.)

4 MR. SHUKUR: Nothing further from plaintiffs. Thank
5 you.

6 THE COURT: Redirect.

7 MR. GARNER: Briefly, Your Honor.

8 THE COURT: Let me give everybody their update on
9 time. I think that defendants have remaining 15 minutes and
10 plaintiffs have remaining --

11 THE CLERK: 23ish.

12 THE COURT: About 23ish.

13 You may proceed with redirect.

14 MR. GARNER: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. GARNER:

17 Q. Mr. Payne, staff members who are not wearing masks, that
18 violates your directive; right?

19 A. Yes, that's correct.

20 Q. You were questioned earlier about a decision to test
21 inmates at the Cummins Unit; is that right?

22 A. Yes.

23 Q. Who makes decisions about COVID-19 testing?

24 A. The Arkansas Department of Health and our medical providers
25 which is Wellpath.