

<p>DENVER DISTRICT COURT 520 W Colfax Ave, Denver, CO 80204</p> <p><b>Plaintiff:</b> CHRISTOPHER BUTLER</p> <p>v.</p> <p><b>Defendant:</b> COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, and JILL HUNSAKER RYAN, AS THE EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT</p> <hr/> <p><b>Attorney for Plaintiff:</b> Jason Flores-Williams 1851 Bassett St 509 Denver, CO 80202 Reg. No. #49702 303-514-4524 <a href="mailto:Jfw@jfwlaw.net">Jfw@jfwlaw.net</a></p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <p>Case Number:  2020CV031147</p>
<p><b>COMPLAINT IN THE NATURE OF MANDAMUS: THAT THE DEPARTMENT OF PUBLIC HEALTH &amp; ENVIRONMENT MITIGATE THE COVID-19 CRISIS IN THE DENVER METRO JAIL<sup>1</sup></b></p>	

COMES NOW the Plaintiff, Christopher Butler, by and through his Attorney,  
Jason Flores-Williams, and states as follows:

**INTRODUCTION AND STATEMENT OF FACTS**

Christopher Butler has been in the Van Cise-Simonet Detention Center (“Denver  
Metro Jail”) since Feb. 18, 2020 and has:

1. Never been tested for Covid-19.

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<sup>1</sup> Plaintiff respectfully requests that this Honorable Court take Judicial Notice that the Colorado and U.S. Governments declared States of Emergency regarding the highly contagious virus on March 10 & 13, 2020, respectively. *See* CRE 201. Nb. This is a Colorado Rule of Civil Procedure 106 filing. *Infra*.

2. Requested sanitizer to clean the cell that he shares with seven others and was denied.
3. Reports that there is no testing for coronavirus of inmates entering the jail.
4. Reports that there is no testing of the general population.
5. Reports that inmates exhibiting symptoms are mixing with the general population.
6. Reports that inmates are only quarantined when they request it, so that potentially infected inmates are free to infect their cellmates and general population during recreation in the common area.
7. Reports that the quarantine is only three cells away from his cell. (A virus that spreads through the air and lives on surfaces for three days.)
8. Reports are that at least 14 to 22 inmates in the Denver Metro Jail have tested positive or are presumptively positive.
9. The Colorado Department of Health & Environment has taken no role in testing and preventing the transmission of Covid-19 amongst the inmate population in the Denver Metro Jail.<sup>2</sup>

Assuming the most utilitarian calculus, that the health and dignity of inmates in a jail are a lower priority in a time of national emergency, consider that tomorrow Christopher Butler could post bond after more than two months in this incubator and reemerge into the Denver community, or be acquitted in several months after we have managed to *flatten the curve*, and retransmit the disease.

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<sup>2</sup> See affidavit of Jason Flores-Williams. (Ex. "A")

These facts apply to all 2,200 people in the Denver jails right now.<sup>3</sup> The situation is a time bomb. Exigent is an understatement. The Department of Health & Environment is mandated to protect public health in the prisons during epidemics per C.R.S. §25-1.5-102, *inter alia. Infra*. This Honorable Court must order the Department to fulfill its mandate.

### **PARTIES**

1. The Plaintiff, Christopher Butler, is a resident of Denver, Colorado and is currently incarcerated in the Van Cise-Simonet Detention center located directly across from the Lindsey Flanigan Courthouse at 490 W. Colfax, Denver CO 80204.

2. The Defendant, the Colorado Department of Public Health and Environment (“CDPHE”) is an executive agency of the State of Colorado.

3. The Defendant, Jill Hunsaker Ryan, is the Executive Director of the Colorado Department of Public Health and Environment and is a Defendant in her official capacity.

### **JURISDICTION AND VENUE**

4. This court has subject matter jurisdiction to hear these claims under C.R.C.P. 106(a)(2).

5. Venue is proper in this Court pursuant to C.R.C.P. 98(c).

### **GENERAL FACTUAL ALLEGATIONS**

6. The relevant facts in this matter are as set forth in the Introduction and Statement of Facts.

### **COUNT I** **(Complaint for Mandamus)**

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<sup>3</sup> This could easily be styled and certified as a class action, but the virus has made the gathering of affidavits in support of certification a life and death risk. Further, this is a crisis where the facts are evident.

7. Plaintiff realleges and incorporates by reference the allegations contained in the proceeding paragraphs as though fully set forth herein.

8. Under C.R.C.P. 106(a)(2), mandamus relief is appropriate when: (1) the plaintiff has a clear right to the relief sought; (2) the defendant has a clear duty to perform the act requested; and (3) no other adequate remedy is available to the plaintiff. *Gramiger v. Crowley*, 660 P.2d 1279, 1281 (Colo. 1983).

9. The Plaintiff has a clear right to the relief sought.

10. The Dep't of Health & Environment ("CDPHE") has statutory mandates to, in addition to all other powers and duties imposed upon it by law:

- a. "investigate and control the causes of epidemic and communicable diseases affecting the public health." CRS §25-1.5-102(1)(a)(I);
- b. "investigate and monitor the spread of disease that is considered part of an emergency epidemic as defined in section 24-33.5-703(4) to determine the extent of environmental contamination resulting from the emergency epidemic, and to rapidly provide epidemiological and environmental information to the governor's expert emergency epidemic response committee, created in section 24-33.5-704.5." CRS §25-1.5-102(b)(I);
- c. "establish, maintain, and enforce isolation and quarantine, and, in pursuance thereof and for this purpose only, to exercise such physical control over property and the persons of the people within this state as the department may find necessary for the protection of the public health." CRS §25-1.5-102(c);

- d. “abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health.” CRS §25-1.5-102(d).

11. “Except as otherwise directed by executive order of the governor, the department shall exercise its powers and duties to control epidemic and communicable diseases and protect the public health as set out in this section.” CRS §25-1.5-102(b)(II).

12. CDPHE has promulgated regulations that, *inter alia*, require penal institutions, including the Denver County Jail, to:

- a. make “[p]ersonal observation and inquiry ... of each inmate, upon admission, as to chronic illness, or physical disability, vermin infestation, or possible communicable disease that may require medical attention. Such medical attention shall be immediately provided when necessary.” 6 CCR 1010-13-14.2.
- b. provide a “personal health evaluation ... within thirty (30) days following admission or as may be necessary because of an illness complaint, observable illness or an injury.” 6 CCR 1010-13-14.3.
- c. establish “[p]olicies and practices ... to insure proper environmental, occupational and personal health conditions for protection of the health and safety of the inmates and staff.” 6 CCR 1010-13-18.1.
- d. conduct a “routine operational maintenance program ... to keep the penal institution in a clean sanitary condition.” 6 CCR 1010-13-18.3.

13. These statutory mandates and regulations, if carried out, complied with, enforced, and/or otherwise fulfilled by CDPHE, will improve the safety and health of prisoners in the Denver Metro Jail, including the Plaintiff.

14. CDPHE's failure to fulfill its statutory mandate and its failure to enforce its regulations has contributed to a serious and shocking breach of medical safety procedures at the Jail, which increase the risk to every single prisoner and to every single employee at the Jail of contracting Covid-19.

15. CDPHE's failure to fulfill its statutory mandate and its failure to enforce its regulations has greatly increased the risk that the Plaintiff is now infected with Covid-19. The Plaintiff may even now be infected with Covid-19. And if he does become symptomatic with Covid-19, CDPHE's failure to fulfill its statutory mandate and its failure to enforce its regulations will have greatly decreased the likelihood that the Plaintiff will survive a Covid-19 infection.

16. The Plaintiff has a clear right to have and to rely on CDPHE's compliance with its statutory mandate.

17. CDPHE has a clear duty to perform the act requested, which is that it should be compelled to comply with its statutory mandate.

18. No other adequate remedy is available to the Plaintiff. The Plaintiff could theoretically raise this issue through the Jail's grievance procedure, but that would take weeks and likely result in no clear response. But more significantly, the Plaintiff contends that the scope of this problem is well beyond the capacity and capability of the Jail to address. This is a world-changing pandemic that requires the input of those with the skills and abilities to properly address the problem.

19. The Jail's personnel simply do not have the skills to properly address prisoner safety from Covid-19. This matter requires the elite expertise of CDPHE, which perhaps is the only governmental agency in the State of Colorado that has the ability and expertise to go into the Jail and figure out quickly and effectively what needs to be done immediately to substantially decrease the chances of a Covid-19 epidemic sweeping through the Jail.

20. As an example of this reasoning, the Plaintiff offers the idea that the Jail could theoretically attempt to lower the chances of a Covid-19 epidemic in the Jail by simply electing to release prisoners, including, perhaps, the Plaintiff. Although the Plaintiff, who has been convicted of no crime and is being held on pretrial detention, would otherwise welcome pretrial release, he acknowledges that a mass release of prisoners, some of whom may already have been infected with Covid-19, into the community without proper testing and instructions, may do more harm to the prisoners and to the community than keeping them in the Jail, despite the conditions inside the Jail.

21. The immediate involvement of CDPHE is urgently required. Only CDPHE has the expertise to assess what should be done. For that reason, the Plaintiff has no adequate remedy through the Jail.

22. Only CDPHE can address, if not solve, the problem. There is no other Colorado entity that can address the problem.

**SPECIAL CIRCUMSTANCES**

**COLORADO RULE OF CIVIL PROCEDURE 106(4)(VIII) IN LIEU OF MOTION  
FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

This Honorable Court is currently closed. Physically. Moreover, this is an exigent and evolving crisis. Normally, the appropriate legal procedure would be to simply apply for a Temporary Restraining Order per CRCP 65. And should the Honorable Court wish to proceed via TRO, Plaintiff has included that argument in the interests of judicial efficiency and in order to provide the Court with as much of a tool chest as possible during this logistically difficult time.

That said, Colorado Rule of Civil Procedure 106(4)(VIII) provides the Court with wide-ranging discretion to speed along these issues, have parties appear in person or telephonically, and resolve these issues on behalf of the People of Denver and State of Colorado.

“The court may accelerate or continue any action which, in the discretion of the court, requires acceleration or continuance.” C.R.C.P. 106(4)(VIII)

### **RULE 65**

“The purpose of a temporary restraining order (‘TRO’) is to prevent ‘immediate and irreparable harm’ to one of the parties in a lawsuit.” *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004) (citation omitted). “Due to the powerful nature of TROs, they are short in duration (no more than ten days), and may only be issued upon a strong showing that specific immediate and irreparable harm will occur absent the order.” *Id.* (citation omitted).

“To obtain a longer-lasting temporary order, a party may move for a preliminary injunction. A preliminary injunction is designed to preserve the status quo or protect rights pending the final determination of a cause. Like a TRO, its purpose is to prevent irreparable harm prior to a decision on the merits of a case. The moving party must

satisfy six factors to obtain a preliminary injunction: a reasonable probability of success on the merits; a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; lack of a plain, speedy, and adequate remedy at law; no disservice to the public interest; balance of equities in favor of the injunction; and, the injunction will preserve the status quo pending a trial on the merits.” *Id.* (citations omitted).

*there is a strong showing that specific immediate and irreparable harm will occur absent the order*

The bottom line is that there is a national emergency, and most people and entities simply do not have the experience and qualifications to properly address how to reduce the risk of contagion from an extremely contagious disease in a crowded, perhaps even overcrowded, public facility such as the Jail. The only entity in Colorado that has those skills is CDPHE.

The prisoners, prison guards, and the State urgently require CDPHE to investigate the current situation in the Jail and come up with an immediate plan to remedy the situation and reduce the risk to the Plaintiff and to the entire State of Colorado.

*reasonable probability of success on the merits*

There is a reasonable probability of success on the merits. The statutes and regulations are on the books. CDPHE must step up to the plate and enforce them.

*danger of real, immediate, and irreparable injury which may be prevented by injunctive relief*

There can be no question but that there is a clear and present danger of real, immediate, and irreparable injury that may be prevented by immediate injunctive relief. This is an international emergency that has reached into all corners of the world and is reaching into the Denver Metro Jail. The administration of the Jail clearly doesn't know

what to do; otherwise, it would have done something. The State urgently requires CDPHE to step in.

*lack of a plain, speedy, and adequate remedy at law*

The Plaintiff has no plain, speedy, and adequate remedy at law. He has nowhere else to turn. Only CDPHE can help, and it can/will only help if required to do so.

*no disservice to the public interest*

This case presents no disservice to the public interest. It is in the public interest to have CDPHE immediately step in and take control of the fight against Covid-19 in the Jail.

*balance of equities in favor of the injunction*

The balance of equities favor the injunction. If CDPHE does not act, the situation will clearly deteriorate inside the Jail until a public health catastrophe is created. Currently, the Jail has a public health crisis. The next step is undeniably catastrophe.

*the injunction will preserve the status quo pending a trial on the merits*

The injunction will actually fix the status quo (i.e., the problem) pending a trial on the merits. In reality, the trial on the merits will be so far in the future that it is most irrelevant. The Plaintiff will almost definitely no longer be in the Jail by the time a trial on the merits occurs.

WHEREFORE, the Plaintiff respectfully requests:

1. That the Court direct CDPHE to immediately comply with its statutory mandate contained in CRS §25-1.5-102.
2. That the Court direct CDPHE to immediately enforce its regulations contained in 6 CCR 1010-13-14.2, 14.3, 18.1, and 18.3.

3. That the Court issue a temporary restraining order directing CDPHE to immediately take the actions identified in requests #1 and 2 above.
4. That the Court issue a preliminary injunction directing CDPHE to take the actions identified in requests #1 and 2 above.
5. For such other relief as may be just and proper under the circumstances.

Respectfully submitted,

s/Jason Flores-Williams  
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