NO. 22-60203
CONSOLIDATED WITH
NO. 22-60301, 22-60332, 22-60527, 22-60597

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff - Appellee

V.

THE HINDS COUNTY BOARD OF SUPERVISORS; HINDS COUNTY SHERIFF, TYREE JONES, IN HIS OFFICIAL CAPACITY,
Defendants - Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

BRIEF OF APPELLANTS

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CERTIFICATE OF INTERESTED PARTIES

Under this Court's Rule 28.2.1, governmental parties need not furnish a certificate of interested persons.

SO CERTIFIED, this the 23rd day of June, 2023.

/s/ James W. Shelson
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STATEMENT REGARDING ORAL ARGUMENT

At the urging of the federal government and a monitor and her squad of consultants, the district court entered an injunction that violates the Prison Litigation Reform Act because it exceeds constitutional minimums and for other reasons. Further contrary to the Prison Litigation Reform Act, the district court has ordered the literal takeover of a local jail by entering a sweeping remedial order that gives a federal receiver and former consultant to the United States Department of Justice complete day-to-day control of the jail. Under the district court's orders, the jail is subject to perpetual federal oversight and operational control. The issues presented on appeal are complex and important and involve substantial matters of concern regarding the Prison Litigation Reform Act, the Constitution, and federalism. Oral argument would aid the Court's resolution of the case.

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INTRODUCTION

In June 2016, Plaintiff, the United States of America ("Government"), filed its Complaint against Hinds County, the Hinds County Board of Supervisors, and then-Hinds County Sheriff Victor Mason, in his official capacity (collectively, "the County"). The Complaint alleges the County subjected detainees in the County's detention facilities to a pattern and practice of conditions that violated their constitutional rights. Significant overreach by the federal government and the federal judiciary followed.

A 64-page consent decree was entered soon after the Complaint was filed, and a monitor with a team of consultants was appointed. The consent decree was a constitutional abomination given its excessive scope and detail. It ignited a sequence of events that set up the County for failure. No detention center with the design, construction, size, and budget constraints under which the Raymond Detention Center ("Jail") operated could possibly meet the minute, detailed requirements set forth in the consent decree. As but one example, paragraph 42 of the consent decree is 4-pages long. It contains 9 subparts, "A" through "I," and those subparts contain 21 additional subparts. Paragraph 42 is so long that the monitor broke it into 3 separate compliance evaluations. And with a monitoring team with non-neutral views and opinions about how a detention center should operate, it was a recipe for

disaster. As is not uncommon, the consent decree became a living document growing beyond its original minutiae to an even larger set of criteria added to it by the monitor and her consultants, which were fully accepted by the district court.

After 6 years of the monitoring team essentially aligning itself with the Government, the County sought termination of the consent decree under the Prison Litigation Reform Act, 18 U.S.C. § 3626 ("PLRA"). The district court granted the motion in part, finding the consent decree exceeded constitutional minimums, and entered a new injunction. The district court erred, however, by not entirely terminating the consent decree and instead issuing new prospective relief. Compounding this error, the district court appointed a receiver to run the Jail, the County's primary detention facility for adults. The district court's remedial orders are radical in scope. They strip the County of all authority over the Jail and vest the receiver with total authority to run the Jail on a day-to-day basis. The district court's new injunction and remedial orders violate the PLRA and should be reversed.

It is difficult to imagine a case where federalism and separation of powers concerns are more front and center. The County's management of its jail system and expenditure of its citizens' tax dollars are core functions of local government. Unlike a federal judge or a receiver, the County does not have the luxury of treating the Jail as the only thing it must legitimately fund. The County must allocate its finite tax

revenues on many things beyond just the Jail, such as schools, law enforcement, public health, mental health, roads and bridges, and other infrastructure issues.

Unlike a receiver, the County's elected officials do not have the luxury of focusing on only one facility and spending all their energy and efforts, not to mention unlimited money, to run a single facility. The receiver can simply send the bill to the County. Backed by the full weight of the federal court, the receiver knows the County has no choice but to pay it. Need new construction, new cameras, new radios, raises for employees—no problem, the County will pay for it. And, of course, the receiver is not accountable to the County's voters or taxpayers regarding how their money is spent. This is not how democracy works.

This case is not about utopian conceptions of how a jail should operate or even whether the County is operating the Jail pursuant to best practices. The Jail is flawed, no doubt, but the essential issue here is whether the County is violating the detainees' constitutional rights. It is not. This Court should reverse the judgments below and order judgment for the County or, at the least, vacate the district court's remedial orders appointing a receiver and setting the receivership's scope.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1345 and 18 U.S.C. § 3626. There is appellate jurisdiction pursuant to 28 U.S.C. §

1291 and/or § 1292(a) as the district court entered a permanent injunction with sanctions and appointed a receiver and refused to dissolve or appropriately modify an injunction.

STATEMENT OF THE ISSUES

I. Whether the district court erred under the PLRA by issuing a new injunction—instead of completely terminating prospective relief regarding the Jail—because the Government did not establish current and ongoing violations under the PLRA or that the County was deliberately indifferent.

II. Whether the district court erred in appointing a receiver to run the Jail.

III. Even if this Court finds a receivership is warranted, whether the receivership order exceeds the permissible scope of relief.

STATEMENT OF THE CASE

Factual Background. The County has operated the Jail, Work Center, Jackson Detention Center, and Henley-Young-Patton Juvenile Justice Center ("Henley-Young"). ROA.22-60203.6034. Hinds County took possession of the newly constructed Jail in 1994. ROA.22-60203.6040.

The Jail was systemically and irretrievably flawed from the start because, for example, the cells are not grouted so detainees can penetrate the perimeter wall and escape, and the roof of the Jail was not joined to the other adjacent wall structures

so there is systemic water intrusion. ROA.22-60203.6039-6040. These problems are original, systemic design flaws. ROA.22-60203.6041. They are not correctable without completely rebuilding the Jail. ROA.22-60203.6040, 6045. The day after the Jail opened, "there were lawsuits about the design and the construction. It's an albatross that this sheriff and this board inherited, and they are collectively trying to do their best job at tackling the maintenance issues." ROA.22-60203.4582.

Nevertheless, in 2016, 22 years after the Jail opened, the Government filed suit, ROA.22-60527.53-62, and a consent decree was entered. ROA.22-60527.205-270. The consent decree provided for a monitor and authorized the monitor to hire consultants. ROA.22-60527.260-261. Elizabeth Lisa Simpson was appointed the monitor. ROA.22-60527.286. Simpson retained three consultants. ROA.22-60527.1997-1998. The monitoring team was required to make quarterly in-person visits to the Jail and other facilities, but during the COVID-era, from June 2020 until January 2022, the monitoring team only visited the Jail remotely. ROA.22-60203.5702-5703, ROA.22-60527.2774. During this time, monitoring the County's detention facilities was Simpson's only employment. ROA.22-60203.5693. Monitoring has been lucrative for Simpson—her team billed the County $1.2 million as of December 2021. ROA.22-60332.7770.

A five-person Board of Supervisors governs Hinds County. ROA.22-60203.2250. The current Board members took office effective January 6, 2020. ROA.22-60203.2250. Three of the five members were new to the Board in January 2020. ROA.22-60203.2250-2251. A majority of the current Board was not in place when the consent decree was entered in July 2016. ROA.22-60203.2251-2252. After then-Sheriff Lee Vance succumbed to COVID-19 on August 4, 2021, ROA.22-60203.2251, Tyree Jones was elected Sheriff and sworn in on December 3, 2021. ROA.22-60203.2247. Like most of the Board, Sheriff Jones was not in office when the consent decree was entered. ROA.22-60203.2251-2252.

The Board's minutes document that the Board repeatedly has acted unanimously to improve conditions at the Jail and the County's other detention facilities. ROA.22-60332.7512, 7485, 7551-7553, 7594, 7596, 7685, 7655, 7311, 7317, 7332, 7350-7351, 7375. For example, staffing at the Jail is a concern, but the County has sought to address it. The County has retained a detention recruiter, expanded the area from which detention officers can be recruited, approved premium pay for detention officers, increased the salary of detention officers, offered uniform stipends for detention officers, incentivized college degrees in recruitment and pay, implemented retention incentives for continued employment, and implemented

biweekly pay and direct deposit. ROA.22-60203.4988, 6101-6102, 6154-6155, 6197-6198, 6220, 6295-6299, 6300, 6348-6349.

Further, the County contracted with Benchmark Construction and Cooke Douglas Farr, architects and engineers, to manage renovations to the Jail, ROA.22-60203.2276, and, given the systemic problems with the Jail, to assist the County in developing a master plan for constructing a new jail. ROA.22-60332.8070-8188. The Board has approved construction of the new jail. ROA.22-60203.6046-6054, 6067.

In the interim, the County made extensive renovations to the Jail. The Jail is divided into 3 pods—*i.e.*, pods A, B and C. ROA.22-60527.186. Each Pod has 4 living units. ROA.22-60527.186. Benchmark renovated the 4 living units on B-Pod. ROA.22-60203.2276. Fire hoses were reinstalled in all 3 pods at the Jail, fire alarm cabling has been installed in B-Pod, and Benchmark is overseeing the fire alarm installations in C-Pod. ROA.22-60203.2276-2277. Benchmark installed detention-grade light fixtures in B-Pod to prevent detainees from creating sparks with fixture wiring. ROA.22-60203.2277. Benchmark oversaw the refurbishment of all doors going from the Jail's Great Hall into the 3 pods, all doors leading into the living units in all pods, all recreation doors, and all cage doors. ROA.22-60203.2277. All sliding doors in units B-3 and B-4 were replaced with swinging doors, and cell doors in

units C-1, C-2, C-3, and C-4 were reinforced. ROA.22-60203.2277. Control panels for electronic door locks in B-Pod, C-Pod, and central control were replaced. ROA.22-60203.2277.

The County poured beyond $3.2 million into the Jail trying to keep the doomed facility functional. ROA.22-60203.5991-5992. And, as mentioned above, the County's Board of Supervisors approved construction of a new detention facility rather than continue to pour money into the Jail. The new jail will cost $123 million. ROA.22-60203.6053.

Procedural Background. On June 23, 2016, the Government filed its Complaint against Hinds County, the Hinds County Board of Supervisors, and then-Hinds County Sheriff Victor Mason, in his official capacity. ROA.22-60203.46-56. Sheriff Mason lost his re-election bid in 2019. ROA.22-60203.2075. His successor, Lee Vance, became Sheriff in 2020, and was substituted as a Defendant. Vance succumbed to COVID-19 in 2021. ROA.22-60203.2075. Tyree Jones was elected as the new County Sheriff in November 2021 and was substituted as a Defendant in February 2022. ROA.22-60203.6273, 34.

The Complaint was brought under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, and the Eighth and Fourteenth Amendments to the Constitution. ROA.22-60203.46-56. The Complaint alleges the County subjected its

detainees to a pattern and practice of conditions that deprived them of their constitutional rights to reasonable protection from harm, freedom from excessive force and unlawful detention. ROA.22-60203.46-56.

On June 23, 2016, the same day the Government filed its Complaint, the parties filed a Proposed Settlement Agreement, which Judge William H. Barbour, Jr. signed on July 19, 2016 (Judge Barbour subsequently retired and the case was transferred to Judge Carlton W. Reeves on December 17, 2018). ROA.22-60203.57-136, 198-263. The Proposed Settlement Agreement included the 64-page, 167 paragraph consent decree. ROA.22-60203.200-263. The County's then-attorney signed off on the consent decree. ROA.22-60203.263. Appeasement did not work.

On June 24, 2019, the Government filed a Motion for Order to Show Cause. ROA.22-60332.906-915. On December 16, 2019, the parties filed a Joint Motion for Settlement Entry of Stipulated Order. ROA.22-60203.1339-1342. The Stipulated Order consisted of 8 pages and 60 paragraphs of detailed micro-management of the Jail. ROA.22-60203.1367-1386.

On January 6, 2020, a new Hinds County Board of Supervisors took office. ROA.22-60203.2250. A new sheriff, Lee Vance, was also elected. He contracted COVID-19 and passed away in August 2021. ROA.22-60203.2075. An election to replace Sheriff Vance was held in November 2021. ROA.22-60203.2076. The initial

vote among several candidates resulted in a run-off election between the two highest vote-getters. ROA.22-60203.2076. The run-off election was held on November 23, 2021. ROA.22-60203.2076. That afternoon, before the election results were known, the district court entered an Order to Show Cause directing that "[w]ithin 21 days, Hinds County shall show cause and explain why it should not be held in civil contempt and why a receivership should not be created to operate [the Jail]. A hearing will be scheduled shortly thereafter." ROA.22-60203.2101.

The County filed a Response to the district court's Order to Show Cause on December 14, 2021. ROA.22-60203.2246-2260. On January 21, 2022, the County filed a Motion to Terminate, or Alternatively, Modify Consent Decree ("Motion to Terminate") under the PLRA. ROA.22-60527.2216-3319. The district court set an evidentiary hearing on both its Order to Show Cause and the County's Motion to Terminate for February 14, 2022. ROA.22-60597.33.

On February 4, 2022 (10 days before the scheduled start of the evidentiary hearing), the district court entered its First Order of Contempt. The district court found the County in civil contempt for failing to comply with consent decree paragraphs 41-43, 48-49, 54, 60-62, 66-67, 72-74, 77, 94-97, 100, 103-104, 111, 113-114, 117, 131, 133, 135 and 159. ROA.22-60203.2461-2487. The district court

withheld imposition of a sanction pending further proceedings. ROA.22-60203.2487.

The evidentiary hearing began on February 14 and lasted until March 1, 2022. ROA.22-60203.4535-6701. On March 23, 2022, the district court entered its Second Order of Contempt, holding there was "clear and convincing evidence that Hinds County … has failed to comply with the Consent Decree and the Stipulated Order as they pertain to A-Pod." ROA.22-60203.2864-2882. As with the First Order of Contempt, the district court withheld imposition of a sanction pending further proceedings. ROA.22-60203.2881.

On April 13, 2022, the district court entered an Order granting in part the County's Motion to Terminate. ROA.22-60203.3031-3178. The district court determined that "on-going constitutional violations require a limited number of provisions of the consent decree to remain in place. At the same time, the County's alternative request—for the consent decree to be dramatically scaled back—is also due to be granted." ROA.22-60203.3031. The district court then entered an Order it called the new injunction. ROA.22-60203.3179-3188. As opposed to the consent decree, the new injunction consists of 10 pages and 18 separate provisions, which retained only 34 paragraphs of the consent decree—*i.e.*, paragraphs 38-39, 41-42, 44-46, 50, 52-53, 55-59, 61, 63-64, 66-69, 71-72, 74-77, 85-86, 92, 121, 130 and

161. ROA.22-60203.3179-3188. The district court terminated 58 of the 92 paragraphs of the consent decree, finding those 58 paragraphs exceeded constitutional minimums. ROA.22-60527.2917-3065. Four of the County's detention facilities—*i.e.*, the Jail, Work Center, Jackson Detention Center, and Henley-Young—were subjected to the consent decree, but the new injunction eliminated all provisions regarding the Work Center, Jackson Detention Center, and Henley-Young and concerned only the Jail. ROA.22-60203.3179-3188.

On April 20, 2022, the County moved the district court to reconsider its Second Order of Contempt, which the district court denied. ROA.22-60527.3080, ROA.22-60527.3191-3216. On October 31, 2022, the district court entered an Order Appointing Receiver and, separately, an Order Outlining Receiver's Duties and Responsibilities. ROA.22-60332.11767-11770, 11771-11783.

On November 2, 2022, the Government filed a Motion for Reconsideration that asked the district court to "restore" the provisions of the consent decree regarding Henley-Young that the district court had previously terminated, ROA.22-60527.3377-3380, and a Motion for Clarification that sought an after-the-fact declaration from the district court that its remedial orders complied with the PLRA. ROA.22-60527.12104-12107. The County opposed the Government's Motion for Reconsideration because, among other reasons, the Government's efforts to

"restore" the previously terminated provisions of the consent decree regarding Henley-Young constituted judge shopping. ROA.22-60527.12050-12052. The district court nonetheless entered indicative orders granting the Government's Motion for Clarification, ROA.22-60597.3537-3540, and granting in part and denying in part the Government's Motion for Reconsideration. ROA.22-60332.11975-11980.

On November 10, 2022, the County filed a Motion to Stay Case pending an appeal. ROA.22-60332.11825-11827. The district court denied this Motion. ROA.22-60332.11931-11943. The County then filed in this Court a Motion to Stay Injunction and Receiver Orders Pending Appeal. Opposed Motion to Stay (Doc. No. 70), *USA v. Hinds Cnty. Bd. of Supr.*, No. 22-60203 (5th Cir. filed Dec. 9, 2022). That Motion was granted. ROA.22-60332.12036-12038.

On December 5 and 7, 2022, the Government filed in this Court Letter Motions to Remand regarding the indicative rulings the district court made on its Motion for Reconsideration and its Motion for Clarification. Letter Motion (Doc. No. 63), *USA v. Hinds Cnty. Bd. of Supr.*, No. 22-60203 (5th Cir. filed Dec. 5, 2022), Letter Motion (Doc. No. 64), *USA v. Hinds Cnty. Bd. of Supr.*, No. 22-60203 (5th Cir. filed Dec. 7, 2022). On December 28, 2022, this Court entered an Order of limited remand to allow the district court to enter its indicative rulings on the

Government's outstanding motions. ROA.22-60332.12036-12038. The district court entered these rulings on January 30, 2023. ROA.22-60527.12248-12252, 12296-12308. In doing so, the district court entered an Amended Order that constituted its remedial orders, ROA.22-60527.12253-12295, and a (new) new injunction that "restored" the previously eliminated provisions of the consent decree regarding Henley-Young. ROA.22-60527.12309-12319.

Through a series of appeals, the County has appealed the entire case. ROA.22-60527.2770-2772, 3114-3116, 3121-3122, 3350-3351, 3373-3374, 3375-3376, 12235-12236, 12237-12238, 12320-12322, 12323-12325. On November 8, 2022, this Court granted the County's unopposed motion to consolidate all pending appeals—*i.e.*, cases 22-60203, 22-60301, 22-60332, 22-60527, and 22-60597. Clerk Order Granting Motion to Consolidate Cases (Doc. No. 56), *USA v. Hinds Cnty. Bd. of Supr.*, No. 22-60203 (5th Cir. entered Nov. 8, 2022). The Government cross-appealed regarding the district court's order amending the consent decree and its new injunction, ROA.22-60597.3127-3129, but later moved to dismiss its cross-appeal. Supplemental Electronic Record on Appeal (Doc. No. 125), *USA v. Hinds Cnty. Bd. of Supr.*, No. 22-60203 (5th Cir. entered Mar. 7, 2023). This Court dismissed the Government's cross-appeal on April 12, 2023. Clerk Order Granting

Motion to Dismiss Cross Appeal (Doc. No. 131), *USA v. Hinds Cnty. Bd. of Supr.*, No. 22-60203 (5th Cir. entered Apr. 12, 2023).

SUMMARY OF THE ARGUMENT

This Court should reverse the district court's new injunction because no prospective relief is warranted, and the district court erred by not completely terminating the consent decree. This is so because the Government did not meet its burden to prove current and ongoing federal rights violations or that the County was deliberately indifferent. Next, the district court erred under the PLRA regarding its analysis of "current and ongoing" violations, focusing on what it believed were "ongoing" violations as opposed to "current and ongoing" violations, relying on events that temporally were neither current nor ongoing, relying on conditions that may occur in the future, and constitutionalizing the consent decree. Also, the County has "responded reasonably" and therefore has not been deliberately indifferent. Even if this were not so, the district court did not sufficiently identify the federal rights violations it found.

Further, this Court should reverse the district court's order appointing a receiver to run the Jail. The order appointing a receiver must satisfy the need-narrowness-intrusiveness requirements of the PLRA, but it does not do so. The district court's receivership orders do not include a need-narrowness-intrusiveness

analysis. The Government filed a motion for clarification, asking the district court to "clarify" that the receivership orders satisfy the need-narrowness-intrusiveness requirements. This Court ultimately remanded this issue, and the district court granted the motion to clarify. In doing so, the district court combined the receivership orders into a single amended order, and mechanically recited that its receivership orders satisfied the need-narrowness-intrusiveness requirements. But it is not enough for the district court to state in conclusory fashion that the requirements of the order satisfy the need-narrowness-intrusiveness requirements. *Ruiz v. U.S.*, 243 F.3d 941, 950 (5th Cir. 2001). Moreover, the appointment of a receiver is not warranted under the seven factors the district court considered when it appointed a receiver.

Finally, even if this Court finds that a receivership is warranted, the scope of the receivership imposed by the district court exceeds the permissible scope of injunctive relief. A receivership is an extraordinary remedy to begin with but the district court's order delineating the scope of the receivership is a radically extraordinary remedy. That order provides the receiver "shall have all powers, authorities, rights, and privileges now possessed by the officers, managers, and interest holders of and relating to [the Jail], in addition to all powers and authority of a receiver at equity under all applicable state and federal law in accordance with

Fed. R. Civ. P. 66." ROA.22-60527.12284. Under the receivership order, the County has no authority over the Jail. Its only tasks regarding the Jail are to do what the receiver tells it to do and to write checks the receiver tells it to write. The receivership order should be vacated because it is not proportional to the scope of the alleged violation and extends further than necessary to remedy the alleged violation.

STANDARD OF REVIEW

The standard of review for a bench trial is that findings of fact are reviewed for clear error and legal issues are reviewed *de novo*. *One Beacon Ins. Co. v. Crowley Marine Servs., Inc.*, 648 F.3d 258, 262 (5th Cir. 2011). However, where the district court's decision to terminate or continue prospective relief turns on the application of § 3626(b) of the PLRA, as it does here, that interpretation is reviewed *de novo*. *Ruiz*, 243 F.3d at 950.

ARGUMENT

I. The District Court Erred In Not Terminating The Consent Decree Entirely.

Congress enacted the PLRA in 1996 to "extricate [federal courts] from managing state prisons." *Brown v. Collier*, 929 F.3d 218, 219 (5th Cir. 2019). Under the PLRA, federal courts may terminate prospective relief in prison litigation subject to delineated standards. *Ruiz*, 243 F.3d at 943. The PLRA strongly disfavors continuing relief through the federal courts, *Guajardo v. Tex. Dep't of Crim. Justice*,

363 F.3d 392, 394 (5th Cir. 2004), so "[c]ourts may refuse to terminate prospective relief only upon making specific findings regarding the continued necessity of such relief." *Ruiz*, 243 F.3d at 943. "Prospective relief" means all relief other than compensatory monetary damages. 18 U.S.C. § 3626(g)(7). The party moving to terminate prospective relief in the form of a consent decree bears the initial burden to prove the decree is immediately terminable under § 3626(b)(2) or that 2 years have passed since the Court approved the consent decree, subject to limitation provisions, 18 U.S.C. § 3626(b)(3). *Ruiz*, 243 F.3d at 944.

The district court approved the consent decree on July 19, 2016. ROA.22-60527.205-206. In January 2022, the County filed its Motion to Terminate under the PLRA. ROA.22-60527.2216-3319. The County satisfied its burden because more than 2 years passed between the consent decree's approval and when the County moved to terminate the decree. Once the County established that the consent decree is terminable, the burden shifted to the Government to prove the substantive requirements of § 3626(b)(3). *Guajardo*, 363 F.3d at 395-96. Those requirements are (1) the existence of a "current and ongoing violation" of a federal right; (2) that the prospective relief "extends no further than necessary to correct the violation of the [f]ederal right;" and (3) that "the prospective relief is narrowly drawn and the

least intrusive means to correct the violation." 18 U.S.C. § 3626(b)(3). Requirements (2) and (3) are the need-narrowness-intrusiveness analysis.

Two rules are settled regarding the first prong of the test—*i.e.*, current and ongoing violations. First, the "current and ongoing" inquiry is not synonymous with whether the defendant has complied with the consent decree. *Plyler v. Moore*, 100 F.3d 365, 370 (4th Cir. 1996). Second, "a current and ongoing violation is one that exists at the time the district court conducts the § 3626(b)(3) inquiry." *Castillo v. Cameron Cnty., Tex.*, 238 F.3d 339, 353 (5th Cir. 2001).

Regarding the second and third prongs of the test, a consent decree must not extend further than necessary to correct the violation of a federal right and must be the least intrusive means to correct the violation. Because pretrial detainees retain at least those constitutional rights that courts have held are enjoyed by convicted prisoners, the Eighth Amendment standard extends to pretrial detainees under the Fourteenth Amendment. *Aguirre v. City of San Antonio*, 995 F.3d 395, 420 (5th Cir. 2021). Two subparts govern the Eighth Amendment inquiry—namely, demonstration of a substantial risk of serious harm and deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

Substantial risk of serious harm is an objective inquiry, consisting of two components: (1) harm and (2) risk. Most federal courts equate "substantial risk" with

"pervasive conduct," as opposed to "isolated incidents[,]" which results in a "real and proximate threat[.]" *Lakin v. Barnhart*, No. 1:11-CV-332-JAW, 2013 WL 5407213, at *7-8 (D. Me. Sept. 25, 2013), aff'd, 758 F.3d 66 (1st Cir. 2014).

Deliberate indifference requires the satisfaction of two components: (1) the defendant's awareness of facts from which the inference could be drawn that a substantial risk of serious harm exists, and (2) the defendant actually drawing the inference. *Williams v. Hampton*, 797 F.3d 276, 281 (5th Cir. 2015). These components cannot be met if the defendant "responds reasonably" to substantial risks to inmate health or safety, even if the harm is not ultimately averted. *Farmer*, 511 U.S. at 844-85.

Against this backdrop, the district court erred by not completely terminating the consent decree and instead issuing a new injunction. The Government did not meet its burden to prove current and ongoing violations of federal rights, under the Eighth Amendment or otherwise. Nor was the County deliberately indifferent. Even if the Government had met its burden, the district court did not sufficiently identify the federal rights violations it found.

A. The Government did not prove "current and ongoing" violations.

The district court committed several errors regarding its analysis of "current and ongoing" violations. They include that the district court focused on "ongoing" violations as opposed to "current and ongoing" violations, relied on events that temporally were neither current nor ongoing, relied on conditions simply because those conditions may occur in the future, and constitutionalized the consent decree's provisions. The record also does not support "current and ongoing" violations regarding use of force or over-detention.

As a threshold matter, the district court finds a "current and ongoing" violation once throughout the entirety of its 149-page order amending the consent decree, making a conclusory finding of "current and ongoing sexual misconduct" that is untethered to any record evidence, ROA.22-60527.3002. However, the court refers to purported "ongoing" federal rights violations 9 times. ROA.22-60527.2918, 2939, 2966, 2994, 3009, 3053, 3061, and 3063.

The district court's focus merely on "ongoing" federal rights violations is more than semantics. The requirement that a violation be "current and ongoing" was added to the PLRA specifically to protect against courts prolonging consent decrees merely based on fears of future harm due to some harm that occurred previously. H.R. CONF. REP. 105-405, 133, 1997 U.S.C.C.A.N. 2941, 2984. Congress

amended the PLRA by changing the phrase from "current or ongoing" to "current and ongoing[,]" and the amendment explained that both "requirements are necessary to ensure that court orders do not remain in place on the basis of a claim that a current condition that does not violate [detainees'] Federal rights nevertheless requires a court decree to address it, because the condition is somehow traceable to a prior policy that did violate Federal rights, or that government officials are 'poised' to resume a prior violation of federal rights." *Id*. The district court's focus on "ongoing" violations impermissibly altered the Government's burden to prove "current and ongoing" violations.

Next, in assessing whether there are "current and ongoing" violations of federal rights, courts "must look at the conditions in the jail at the time termination is sought, not at conditions that existed in the past or at conditions that may possibly occur in the future ...." *Castillo*, 238 F.3d at 353 (citing cases). The district court did not hold the Government to this legal standard.

At the longest, "current and ongoing" should extend no further back than 6 months before the last evidentiary hearing in this case, which was held on July 19, 2022. ROA.22-60332.12166. But the district court began its decision by discussing the County's elections dating back to the Jail's opening in 1994. ROA.22-

60527.2919-2920. The district court then discussed conditions dating back to 2012. ROA.22-60527.2920-2927.

The district court's misfocused analysis did not stop there. The district court repeatedly relied on events that are not "current and ongoing" when it determined that some provisions of the consent decree remained necessary and cut-and-pasted those provisions into its new injunction. For instance, the district court included provisions in the new injunction regarding use of force training by relying on an alleged incident involving detention officers discharging bean bag rounds at a detainee during a shakedown, ROA.22-60527.2980, but the incident took place in "2018 or 2019." ROA.22-60203.4908-4914. The district court included provisions regarding protection from sexual misconduct based on the facility's Prison Rape Elimination Act ("PREA") coordinator being on leave from "mid-July 2021" until December 2021, three detainees were transported for "PREA-evaluations" in "July, August, and September" 2021, ROA.22-60527.2089, and a single PREA incident that occurred at Henley-Young in October 2021. ROA.22-60257, 2989, 2999, 3001. The district court included provisions regarding investigations based on two investigations, one in March 2021 and another in July 2021. ROA.22-60527.3007-3009, ROA.22-60203.4689-4690. The district court also included provisions regarding the grievance system based on a single grievance and response from

October 2021 and statements in a monitoring report from April 2021. ROA.22-60527.3012-3014.

The district court noted that the Jail "experienced an unprecedented seven in-custody deaths in 2021." ROA.22-60527.2918. Seven in-custody deaths in 2021 is unacceptable, especially to the County. The President of the Board of Supervisors testified that "[w]e got with the sheriff and others and tried to come up with a way to prevent the deaths in the future, and it's horrifying to have death when you are over a situation …. And we as a Board supported the sheriff to do whatever is necessary to prevent the death in the future." ROA.22-60203.6197. The in-custody deaths in 2021 do not, however, constitute a current and ongoing violation of federal rights. As the district court stated, the number of in-custody deaths in 2021 was unprecedented. It was also anomalous. There was one death at the Jail in 2016, one in 2017, one in 2018, none in 2019, and none in 2020. ROA.22-60203.5690. Sheriff Jones took office on December 3, 2021. ROA.22-60203.6342. There were no deaths at the Jail between when Sheriff Jones took office and July 19, 2022, the date of the last evidentiary hearing in the district court. ROA.22-60332.12324-12325.

Moreover, courts cannot rely on conditions "that may possibly occur in the future" when determining if there is a violation of a federal right, *Castillo*, 238 F.3d at 353, but the district court did just that. The district court included provisions in

the new injunction regarding investigations because it determined that inadequate investigations may be actionable if they are "the driving force behind" "ongoing" or future constitutional violations and that "inadequate investigations staff and lack of functioning cameras all but guarantee that deficient investigations will continue." ROA.22-60527.3010. The district court likewise included grievance provisions in the new injunction, finding a lone grievance response "provide[s] clear indications that the recurrence of harm is obvious, predictable and likely." ROA.22-60527.3013.

Further, the district court impermissibly constitutionalized the consent decree. In determining whether the Government met its burden of establishing a "current and ongoing" violation of a federal right, the district court erroneously viewed the consent decree as creating "minimal constitutional standards." ROA.22-60527.2924. The district court then repeatedly looked to whether the County was in compliance with the consent decree's provisions. ROA.22-60527.2959, 2964, 2968, 2971, 2976-2977, 2982, 2989, 3038-3039. This was error because the question governing termination of a consent decree is whether there are "current and ongoing" violations of federal rights and not whether the County has fully complied with the provisions of the consent decree:

> Congress could have authorized the courts to maintain jurisdiction over a consent decree where the defendants have failed to comply with the decree. However, it did not. Instead, Congress chose to allow the courts

> to maintain jurisdiction only where defendants are guilty of "current and ongoing" violations of a federal right. 18 U.S.C. § 3626(b)(3).

Imprisoned Citizens Union v. Ridge, 169 F.3d 178, 190 (3d Cir. 1999).

This settled principle seemed lost on the district court. For example, the district court cited the County's alleged non-compliance with provisions of the consent decree to include provisions in the new injunction regarding protection from harm. ROA.22-60527.2959, 2964, 2968. The district court also relied on the County's purported "fail[ure] to implement the Consent Decree provisions … reasonably necessary to protect detainees from unnecessary or excessive use of force" to conclude "one paragraph is necessary [in the new injunction] to comply with the Constitutional floor." ROA.22-60527.2976-2977. The district court further determined that "allowing new staff to begin work prior to receiving any training violates the Consent Decree and subjects" juveniles charged as adults to "heightened risk of unconstitutional use-of-force," so it included provisions regarding use of force training in the new injunction. ROA.22-60527.2982. The district court likewise relied heavily on the County's level of compliance with the consent decree to find an "ongoing" violation of detainees' rights regarding timely release from detention. ROA.22-60527.3038-3039.

The district court determined that the provisions of the new injunction, all of which are cut-and-pasted from the consent decree, are "minimum constitutional

standards." That determination is based only on the court's say-so. The district court erred in assessing the County's compliance with the consent decree to determine whether to discard portions of the decree or to cut-and-paste them into the new injunction. *Ridge*, 169 F.3d at 190.

Finally, regarding use of force, the district court essentially relied on a single incident, the October 2021 tasing of a prone detainee who refused to submit to handcuff restraints, to include the consent decree's use of force provisions in the new injunction. ROA.22-60527.2976-2977. Relying on a single use of force cannot amount to a "current and ongoing" violation of detainees' constitutional rights. *Castillo*, 238 F.3d at 354. The PLRA precludes such facility-wide relief based on a single incident. *Ball v. LeBlanc*, 792 F.3d 584, 599 (5th Cir. 2015) (citing *Graves v. Arpaio*, 623 F.3d 1043, 1049-50 (9th Cir. 2010)).

The County has in place a use of force policy that was approved by the Government and monitoring team. ROA.22-60203.2642, ROA.22-60527.2795-2796. The lone incident relied upon by the district court to include the consent decree's use of force provision in the new injunction is premised on a detention officer's failure to adhere to that policy. This Court has rejected prospective relief ordered under the PLRA on such narrow grounds. *Gates v. Cook*, 376 F.3d 323, 339 (5th Cir. 2004) (finding prospective relief "cannot stand" where it is "not

independently supported by additional conditions that constitute an Eighth Amendment violation").

Regarding over-detention, the Government did not prove that instances where the County over-detained an individual constituted a "current and ongoing" federal rights violation because over-detention amounting to negligence is not a due process violation. *Sanchez v. Swyden*, 139 F.3d 464, 469 (5th Cir. 1998). At most, the Government proved that detainees who have been inadvertently held after becoming eligible for release were over-detained due to negligence stemming from less-than-ideal information sharing systems or poor communication. ROA.22-60203.5634-5635. The Government cannot establish a current and ongoing violation based on negligent over-detention.

Because the Government did not prove "current and ongoing" violations of a federal right, the consent decree should have been terminated in its entirety, and the district court erred in entering the new injunction.

B. The Government did not prove deliberate indifference.

"Deliberate indifference is an extremely high standard to meet." *Valentine v. Collier*, 978 F.3d 154, 163 (5th Cir. 2020). The Jail has operational and structural issues. The County has responded reasonably to those challenges and was not deliberately indifferent. Therefore, the consent decree should have been terminated

in its entirety, and the district court erred in entering the new injunction. The district court erred by finding constitutional violations based exclusively on risks of harm without analyzing deliberate indifference. Two fatal flaws plague the district court's opinion in this regard.

First, if there were risks at the Jail that the County had not resolved by the time of its termination request, the district court found the County was deliberately indifferent to those risks. ROA.22-60527.2959, 2967, 2969-2970, 2996. This approach conflicts with *Farmer* and this Court's precedent because the County is "free from liability if [it] responded reasonably to the risk, even if the harm ultimately was not averted." *Valentine*, 978 F.3d at 163, (quoting *Farmer*, 511 U.S. at 844).

Second, the Government must establish both components—substantial risk of serious harm and deliberate indifference. *Hyatt v. Thomas*, 843 F.3d 172, 177 (5th Cir. 2016). The district court did not hold the Government to this legal standard. This is most evident by the district court's assessment of staffing, use of force, PREA issues, segregated housing, assault and deaths, and facility improvements and the new jail.

Staffing. The County has increased the salary for detention officers twice, once through a 5% increase in late 2021 and again by increasing the starting salary

for detention officers to $31,000 in early 2022. ROA.22-60203.4978, 4979, 6296-6297, 6100-6101, ROA.22-60597.7216. The County issued a COVID pay supplement to detention staff in the range of $2,000 to $4,000. ROA.22-60203.4979. The County also made it easier for detention staff to get paid, going from monthly to biweekly pay and allowing staff to choose to receive pay through direct deposit as opposed to only offering a paper check. ROA.22-60203.4934, 6100-6101. In addition, Sheriff Jones provided the county administrator and the Board a proposed step plan that creates a promotional ladder for detention officers and includes other incentives such as a uniform stipend and shift differential pay. ROA.22-60203.6297-6298. The County employs a detention recruiter dedicated to helping recruit new staff. ROA.22-60203.4988. The County also "approved overtime positions at [the Jail] for all law enforcement officers" to help fill-in staffing gaps. ROA.22-60203.4936. Even the monitor admits the County has "hired enough staff." ROA.22-60203.5737. The complaint is that the County is not retaining enough of the staff it hires. ROA.22-60203.5737-5738. That the County hired enough staff shows it is responding reasonably to staffing issues. That the County increased the salary for detention officers, issued a COVID pay supplement, and made it easier for detention staff to get paid, shows it is responding reasonably to retention issues.

Use of force. The district court overlooked numerous facts demonstrating the County's reasonable response to any purported risk created by inadequate use of force training. The County provided use of force training to new recruits during the basic academy and use of force in-service training for existing staff. ROA.22-60203.4952, ROA.22-60527.2033. "All new officers receive eight hours of [use of force] training in the basic recruit academy and there is a plan to have all existing staff receive the specified refresher instruction during annual in-service training …. The [use of force] training includes a continuum of appropriate force responses to escalating situations, de-escalation tactics and defensive tactics[.]" ROA.22-60527.2830. David Parrish, one the monitor's consultants, testified that investigators from the County's Internal Affairs Division have enforced the use of force policy at the Jail, officers who misuse OC (*i.e.*, pepper spray) are held accountable, and both supervisors and officers are going through training. ROA.22-60203.4643. Major Kathryn Bryan was the jail administrator from June 2021 through January 2022. ROA.22-60203.4926. She testified that after every use of force, officers are "required to do a report for that event," which allows for a review of the event to make sure things were done right. ROA.22-60203.5048. The accuracy and quality of use of force reports has improved over time. ROA.22-60527.2080, 2833. Internal Affairs investigations reflect that while some officers violate the use of force policy

when they use force or deploy OC or a Taser, those officers appear to be held accountable. ROA.22-60527.2825.

PREA Issues. The district court focused on the PREA coordinator's absence from mid-July to December 2021 and found sexual misconduct "went essentially unchecked" during this time and the County had "taken little to no efforts to abate [sexual misconduct] in the past six months . . . ." ROA.22-60527.2999-3001. The district court treated an incident of sexual assault at Henley-Young as dispositive and decided to include provisions regarding sexual misconduct in the new injunction. ROA.22-60527.3001-3002.

The district court's finding that sexual misconduct "went essentially unchecked" overlooks substantial evidence demonstrating the County's lack of deliberate indifference to sexual misconduct while the PREA coordinator was out. The County appointed other officers to handle PREA issues while the coordinator was on leave, ROA.22-60203.5872, 5922, including Major Bryan (who was a PREA auditor) and two other individuals. ROA.22-60203.1429. One of these officers investigated a PREA complaint in October 2021 while the PREA coordinator was on leave and concluded the complaint was unsubstantiated. ROA.22-60527.2840. The County also kept PREA notices posted "in various areas throughout the facility" while the PREA coordinator was out, ROA.22-60203.5873, kept open alternative

means for reporting PREA complaints, ROA.22-60527.2841, nursing staff continued to screen newly admitted detainees to identify sexually abusive or at-risk detainees, ROA.22-60527.2840, and medical and mental health staff continued identifying PREA-eligible detainees through their work and continued performing their PREA-related duties when PREA incidents were reported. ROA.22-60527.2841. The district court also relied on a single PREA incident at Henley-Young that occurred while the Jail's PREA coordinator was out, but the Henley-Young facility had its own PREA coordinator. ROA.22-60203.5476-5477, 5924.

Despite indicating it was considering the record through the 6 month period prior to its April 13, 2022 order, the district court overlooked the PREA coordinator's return in January 2022. ROA.22-60527.3002. Upon returning, the PREA coordinator investigated a PREA complaint in January 2022 involving a detention officer, she substantiated the PREA allegations, and the County fired the officer. ROA.22-60527.2840. Since returning, the PREA coordinator has provided training. ROA.22-60527.2840.

Segregated housing. The district court focused on risk of harm to detainees with serious mental illness housed in segregated housing and suggested, based on two detainees housed in an unspecified location who were observed "covered in feces" with sores and who had lost "considerable weight[,]" that conditions in

segregated housing violate the Eighth Amendment. ROA.22-60527.3018-3022. The district court made no mention of the County's efforts to address potential risks to detainees with serious mental illness housed in segregation when it cut-and-pasted consent decree provisions regarding segregated housing in the new injunction. ROA.22-60527.3021-3022.

Since June 2021, the County has conducted an interdisciplinary review of the detainees held in segregation, which is "an every seven day review by security, classification, and mental health, in the form of a joint" meeting to discuss each detainee held in segregation and whether that detainee can be removed from segregation. ROA.22-60527.2190, 2851. The County conducted these meetings to assess detainees with serious mental illness, coordinate efforts to provide care and security for those detainees, help address suicide risk, and facilitate care for detainees at risk for serious mental illness. ROA.22-60527.2190. These meetings are effective in identifying and addressing risks to detainees in segregation with serious mental illness. ROA.22-60527.2859.

Moreover, "[m]ental health staff continue to perform weekly rounds for detainees … in segregation" and "offer[] mental health services to … detainee[s] who [are] not already on the mental health caseload." ROA.22-60527.2851. Detainees housed in segregation who are on the mental health caseload have

therapeutic sessions with a Qualified Mental Health Practitioner ("QMHP"), the QMHP makes weekly rounds for all detainees being held in segregation to assess their status and needs, and the County has documented efforts to assess all detainees with serious mental illness housed in long-term segregation. ROA.22-60527.2856. For detainees with serious mental illness housed in segregation who are on medication, nurses offer daily visits as part of medication pass. ROA.22-60527.2856. In response to security staffing shortages making it more difficult to have an escort available to walk with nurses, the County tasked the Jail's fire safety officer with escorting nurses during medication pass. ROA.22-60527.4805.

Assaults and death. The district court focused on assaults and deaths at the Jail but made little mention of the County's ongoing efforts to improve Jail conditions. The Government may point to 7 in-custody deaths in 2021 at the Jail, ROA.22-60527.2918, to attempt to show the County was deliberately indifferent. That effort should fail. There were no deaths at the Jail between when Sheriff Jones took office on December 3, 2021, ROA.22-60203.6342, and July 22, 2022, the date of the last evidentiary hearing below. ROA.22-60332.12324-12325. Major Bryan testified that the accomplishment she is most proud of as the jail administrator "is that we went three consecutive months without an inmate overdose. And I'm most proud of that because operationally, things had to be going better for that to happen."

ROA.22-60203.4977. Just as with no inmate overdoses for 3 consecutive months, things had to be going better operationally for there to be no deaths at the Jail for more than 7 months from December 3, 2021, through July 22, 2022.

Facility improvements and the new jail. The County's reasonable response to risks of harm at the Jail is further shown by its efforts to both maintain the Jail and construct a new jail, all while operating on a limited budget. During the two years before its Motion to Terminate, the County paid more than $3 million to Benchmark for extensive work at the Jail including fixing cell doors, fixing light fixtures, toilets, and HVAC system, replacing, refurbishing, and certifying all fire pumps and the fire sprinkler risers, replacing servers for cameras and workstations, devising plans to upgrade all misfunctioning cameras, and fixing the facilities' roof. ROA.22-60203.5960-5966, 5976-5977, 5980, 5991-5992. Recognizing the Jail's numerous design flaws and relying on its experience designing jails and correctional facilities, Cooke Douglas Farr recommended the County develop a new jail facility to replace the Jail. ROA.22-60203.6054-6055. The County approved Cooke Douglas Farr's recommendation and is currently constructing a new, $123 million state-of-the-art jail. ROA.22-60203.6046, 6053. The County, moreover, has been dedicating nearly one quarter of its entire budget ($18 million) to detention services. Far from

turning a blind eye to risk of harm at the Jail, the County is replacing that ill-fated facility while doing what it must to maintain the Jail's viability.

C. The district court did not sufficiently identify the violations found.

Defining a federal rights violation justifying continued prospective relief is critical to satisfying the PLRA's need-narrowness-intrusiveness requirements. "Under the PLRA, plaintiffs are not entitled to the most effective available remedy; they are entitled to a remedy that eliminates the constitutional injury." *Ball*, 792 F.3d at 599 (citing *Westefer v. Neal*, 682 F.3d 679, 683-84 (7th Cir. 2012)). Here, the district court did not define with any specificity the "ongoing," let alone "current and ongoing," violations it found to justify continued prospective relief. ROA.22-60527.2977, 2981-2982, 2990, 2993-2997, 3007-3010, 3011-3014, 3018-3021. These loose references to constitutional violations borne from generalized, speculative fears of harm preclude meaningful analysis of whether each corresponding remedy "eliminates the constitutional injury" and meets the need-narrowness-intrusiveness standard.

II. The District Court Erred in Appointing a Receiver.

A receiver should not have been appointed to run the Jail. Running a jail is not as easy as the Government pontificates or as the district court decrees. Federal courts have traditionally "adopted a broad hands-off attitude toward problems of

prison administration" because "[t]he Herculean obstacles to effective discharge of these duties are too apparent to warrant explication." *Procunier v. Martinez*, 416 U.S. 396, 404 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401, 414 (1989). Prisons "require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Id*. at 405. For all those reasons, "courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform." *Id*. at 405. And where state penal institutions are involved, federal courts have further reasons for deference to the local jail authorities. *Id*. Judicial recognition of those facts reflects "a healthy sense of realism" because the problems of prisons "are complex and intractable" and "are not readily susceptible of resolution by decree." *Id*. at 404-05. But the district court was undeterred by this "healthy sense of realism" and the "Herculean obstacles" to running jails by decree. Egged on by the Government, the monitor, and the monitor's squad of consultants, the district court adopted the radical, hands-on approach of decreeing that a receiver shall run the Jail. The district court erred.

The district court erred as a matter of law by not analyzing the need for a receiver, or the scope of the receivership, through the need-narrowness-intrusiveness requirements. The district court first announced it was appointing a receiver in its

order denying the County's motion for reconsideration of the court's second order of contempt. ROA.22-60527.3191-3216. That order makes no mention of the need-narrowness-intrusiveness requirements. The district court next entered an order appointing receiver, ROA.22-60527.3356-3359, and an order regarding the scope of the receivership, ROA.22-60527.3360-3372. Those orders do not mention the need-narrowness-intrusiveness requirements.

Recognizing that the district court skipped a key statutorily required step, the Government moved for clarification, asking the district court to "clarify" that the receivership orders satisfy the need-narrowness-intrusiveness requirements. ROA.22-60597.3404-3407. The district court issued an indicative ruling, stating it would use what it called "the 'magic words'" and "clarify" that its receivership orders satisfied the need-narrowness-intrusiveness requirements. ROA.22-60597.3539. This Court remanded this issue following the entry of the district court's indicative ruling. On remand, the district court granted the Government's motion to clarify. ROA.22-60527.12248-12252. In doing so, the district court combined the receivership orders into a single amended order. ROA.22-60527.12252.

On the last page of the 26-page amended order, the district court stated "the relief ordered here 'is narrowly drawn, extends no further than necessary to correct

the violation of the Federal right, is the least intrusive means necessary to correct the violation of the Federal right' and will not have an 'adverse impact on public safety or the operation of a criminal justice system.'" ROA.22-60527.12282. In appointing a receiver to take over the Jail, the district court considered seven factors, giving mere after-the-fact lip mechanical service to the need-narrowness-intrusiveness requirements. ROA.22-60527.12257. As explained below, the district court's analysis of the seven factors does not satisfy the need-narrowness-intrusiveness requirements.

Factor 1—risk of harm. The district court stated there is a grave and immediate threat of harm to detainees. ROA.22-60527.12259. The district court's analysis of the risk of harm overlooks that "the propriety of the relief ordered … cannot be assessed without ascertaining the nature and scope of any ongoing constitutional violations. Proof of past violations will not do; nor is it sufficient simply to establish that *some* violations continue. The scope of permissible relief depends on the scope of any continuing violations …." *Brown v. Plata*, 563 U.S. 493, 567 (2011) (Alito, J., dissenting). Accord, *Castillo*, 238 F.3d at 353 (noting that to determine if there is a federal rights violation, courts must look at the conditions at the time termination is sought, not at past conditions or conditions that may possibly occur in the future). As explained, *supra* pp. 21-28, the purported violations

are not "current and ongoing constitutional violations," and the County was not deliberately indifferent. Further, the district court's remedy "is not proportional to the scope of the violation" and "it extends further than necessary to remedy the violations," so it cannot stand. *Brown*, 563 U.S. at 531. The Supreme Court "has rejected remedial orders that unnecessarily reach out to improve prison conditions other than those that violate the Constitution." *Id*. This factor militates against a receivership.

Factor 2—less intrusive means. The district court "considered other sanctions, which are both less and more intrusive than imposing a receivership." ROA.22-60527.12267. That misses the point. The district court imposed a receivership as the final sanction for the court's two orders of contempt. ROA.22-60527.3216. The two orders of contempt are based on violations of the consent decree. ROA.22-60527.2378-2404, 2769. Because the district court found that the consent decree exceeded constitutional minimums, ROA.22-60527.2917-3065, it was extinguished and replaced with the new injunction. ROA.22-60527.3066-3075. The new injunction was entered on April 13, 2022. ROA.22-60527.3066. Just 107 days later, the district court announced it was appointing a receiver. ROA.22-60527.3216. Instead of giving the County a chance to comply with the new injunction, the district court held the County in contempt for violating the consent

decree, extinguished the consent decree because it exceeded constitutional minimums, entered a new injunction, and imposed a receivership as a final sanction for violations of a consent decree that no longer exists because it exceeded constitutional minimums. This was purportedly done to achieve compliance with a new injunction that operated for 107 days before the district court appointed a receiver. This approach is problematic for several reasons.

A receivership is an intrusive remedy meant to achieve compliance with a constitutional mandate and it should be resorted to only in extreme cases, *Jenkins v. Aylor*, No. 3:15-cv-46, 2016 WL 2908410 at *6 (W.D. Va. May 17, 2016), but the purported constitutional mandate—the consent decree—is gone and this is not an "extreme case" warranting a receivership. The district court terminated the consent decree because it exceeded constitutional minimums. ROA.22-60527.2918. The Government has not challenged that finding on appeal, and the district court did not find that the County violated the new injunction.

Next, the district court imposed a receivership as the final sanction for violations of the now-terminated consent decree, ROA.22-60527.3216, but a decree exceeds appropriate limits if it is aimed at eliminating a condition that does not violate federal law or does not flow from such a violation. *Horne v. Flores*, 557 U.S. 433, 450 (2009). The receivership orders are not aimed at eliminating a condition

that violates federal law because those orders are a sanction for violating the consent decree, which was extinguished. The monitor assessed 92 provisions of the consent decree for compliance. ROA.22-60203.5701-5702. Thirty-four of those provisions are in the new injunction, 58 are not. ROA.22-60527.2917-3065, 3075. This means the district court imposed a receivership as the final sanction for contempt for the County's violation of the consent decree, although 63% (58 of 92) of the provisions of the consent decree exceeded constitutional minimums and are no longer part of any order applying to the County. ROA.22-60527.2917-3065, 3075.

Finally, the County offered evidence that it could remedy the alleged constitutional violations without a receivership. For example, the district court singled out A-Pod as the section of the Jail that presented the greatest risk of harm to detainees, ROA.22-60527.3201, but did not consider any remedies particular to A-Pod. A-Pod is different from B-Pod and C-Pod because physical plant improvements have been made to B-Pod and C-Pod that have not been made to A-Pod. ROA.22-60332.12178. The physical plant improvements to B-Pod and C-Pod cost approximately $3.2 million. ROA.22-60203.5991-5992. One of the monitor's consultants, David Parrish, admitted that B-Pod and C-Pod are "in far better shape than when we started this process." ROA.22-60332.12292. Physical plant improvements have not been made to A-Pod because they would cost $4 to $5.5

million. ROA.22-60332.12196. The County is building a new jail that will cost $123 million. ROA.22-60203.6053. The County cannot afford to make those physical plant improvements to A-Pod and build a new jail. ROA.22-60332.12196-12197, 12216. As even the monitor recognizes, the County's resources are finite. ROA.22-60203.5797.

The County planned to close A-Pod and was set to begin moving the detainees in A-Pod to B-Pod in June 2022. ROA.22-60332.12180. One of the monitor's consultants visited the Jail on May 31, 2022. ROA.22-60332.12181. He tested positive for COVID-19 that evening. ROA.22-60332.12267-12269. A COVID-19 outbreak ensued at the Jail. ROA.22-60332.12180-12181. The County was forced to use the available space in B-Pod for quarantine and had to scuttle its plan to move detainees from A-Pod to B-Pod. ROA.22-60332.12180. Nonetheless, shutting down A-Pod is but one example of a far less intrusive means than a receivership to address issues with staffing and A-Pod. Even the monitor agreed there are less intrusive options than a receivership. ROA.22-60203.5798-5799. The monitor conceded that "to the extent they can close a housing unit it is a good development …. I think moving detainees out of A-Pod would be a good thing." ROA.22-60332.12257-12258.

A receivership is a remedy of last resort that should be taken only when absolutely necessary. *LaShawn A. by Moore v. Barry*, 144 F.3d 847, 854 (D.C. Cir. 1998); *District of Columbia v. Jerry M.*, 738 A.2d 1206, 1213 (D.C. Ct. App. 1999). The district court had options much less intrusive than a receivership. This factor militates against a receivership.

Factor 3—risk of confrontation and delay. The district court erroneously concluded that "the County continually obstructs and frustrates the initiative of would-be contributors." ROA.22-60527.3207. The district court found that inactivity by the County led the monitor to use her budget to fund a development consultant and a human resources consultant to do work the County should have paid for directly. ROA.22-60527.3208. This is misleading. The monitor's budget is funded entirely by the County. ROA.22-60527.3207-08. The district court stated that "[f]orcing the Monitor to shoulder the burden of financing and spearheading essential initiatives contributes to further delays in work and staffing shortages." ROA.22-60527.3208. While the district court says the monitor was forced to shoulder the burden of financing and spearheading essential initiatives, all the monitor did is send the County's money to two consultants. That the money came out of the monitor's budget is of no moment because all the funds in the monitor's budget came from the County. The monitor and her consultants have been paid in

full. And while the district court says the monitor sending the County's money to two consultants, instead of the County itself doing so, contributed "to further delays in work and staffing shortages," the district court cited nothing in the record to support that claim. ROA.22-60527.3207-3208.

The district court also stated that the County showed "brazenness" by not turning documents over to the monitor for a May 2022 site visit. ROA.22-60527.3208-3209. The consent decree required the County to designate a full-time compliance coordinator. ROA.22-60527.266. The compliance coordinator was Synarus Green, but the requirement of a full-time compliance coordinator exceeded constitutional minimums and the district court eliminated this requirement. ROA.22-60527.3065. Green was the person who gathered and produced documents to the monitor. After the compliance coordinator requirement was eliminated, Green resigned. ROA.22-60332.12137. The County thus had to replace Green with a person new to the task of meeting the monitor's document demands, and it had to develop a new system for electronically managing and complying with those demands. ROA.22-60332.12137-12138, 12140-12141, 12145-12146, 12151. Although the district court issued the new injunction, the monitor's document demands did not decrease. ROA.22-60332.12140-12141. Regardless, the monitor testified that she received some but not all the documents she wanted for the May

2022 site visit. ROA.22-60332.12266. The May 2022 site visit was the monitor's seventeenth site visit to the Jail. ROA.22-60527.3225. The monitor not getting documents to her satisfaction for one of seventeen site visits is hardly "confrontation and delay" by the County, especially given the County had to transition the monitor's document demands from Green to a new person and new electronic system. Although the monitor claims that not getting documents adversely affected her ability to conduct interviews, her report shows she conducted more than 30 interviews of Jail personnel without incident. ROA.22-60527.3228-3230.

The monitor and her consultants are supposed to be the "eyes and ears of the court," ROA.22-60527.3061, but those eyes and ears are not neutral. This became most evident when the Government designated the monitor and her consultants as expert witnesses. ROA.22-60527.2441. The County moved to strike the Government's experts—*i.e.*, the monitoring team—because, among other reasons, a summary of the facts and opinions to which they were expected to testify was not disclosed. ROA.22-60527.2445. The district court denied the County's motion and its continuing objections at trial to the monitor and her consultants giving expert opinion testimony. ROA.22-60527.12002, ROA.22-60203.4610-4611, 5354. Thus, the monitor and her consultants were permitted to offer expert opinion testimony against the County at trial. Adding insult to injury, the monitor conferred with the

Government before her testimony in the district court and at breaks during hearings. ROA.22-60332.12241. At the Government's request, the monitor also conferred with the Government regarding the exhibits that would be used during testimony at hearings. ROA.22-60332.12243. The monitor and her consultants are not neutral.

Elizabeth Lisa Simpson is the monitor. Simpson has retained three consultants at the County's expense—*i.e.*, Dr. Richard Dudley, Jim Moeser, and David Parrish. ROA.22-60203.5911-5912. The Government recommended all three consultants to Simpson. ROA.22-60203.5693-5694. The receiver previously worked for the Government's Department of Justice as a consultant. ROA.22-60527.3270, 3358. The district court left it to the discretion of the receiver whether the monitoring team remains necessary once the receivership is in place. ROA.22-60527.3215. The monitoring team has a financial interest in continuing to "monitor" this case. ROA.22-60203.5691, 5794. Since fall 2019, Simpson's only employment has been as the monitor in this case. ROA.22-60203.5693. The monitor conceded not everything is defined in the consent decree, and some of those provisions now comprise the new injunction, "so there has to be some judgment as to what is required when determining compliance." ROA.22-60203.5937. The monitor and her consultants invariably exercise their "judgment" against finding compliance so that

the cycle of monitoring continues. And now a receiver has been added to the mix at the County's expense. This factor militates against a receivership.

Factor 4—wasted resources. The district court stated the County has engaged in a huge waste of the taxpayer's resources. ROA.22-60527.3209. The first complaint is that the County makes repairs to the Jail, but detainees later damage the facility, and some repairs must be made again. ROA.22-60527.3209. It is more complicated than that. The repairs were made under the now defunct consent decree and the stipulated order. ROA.22-60527.225-226, 1297-1299. Gary Chamblee has worked for Benchmark Construction since 1997. ROA.22-60203.5951. He has worked on detention facilities for at least 20 years. ROA.22-60203.5952. The County hired Benchmark in January 2020 to oversee the repairs at the Jail that were required under the stipulated order. ROA.22-60203.5953-5961. Chamblee identified the extensive work required by the stipulated order that was completed at the Jail. ROA.22-60203.5964-5985. The repairs made at the Jail cost $3.2 million as of February 2022. ROA.22-60203.5991-5992.

The physical plant of the Jail was systemically flawed from its inception in 1992. Robert Farr, II is a senior managing principal with Cooke Douglas Farr, an architectural engineering firm specializing in correctional facilities. ROA.22-60203.6028. Farr is a design strategist and provides quality control review and cost

estimating. ROA.22-60203.6029. The County engaged Cooke Douglas Farr in January 2020 as a consultant regarding the work specified in the stipulated order and to develop a master plan for the County's detention system. ROA.22-60203.6030-6032. The County adopted a master plan in January 2021. ROA.22-60203.6032-6033, ROA.22-60332.8070. The intent of the master planning process was to explore the viability of reinvesting in the County's existing detention facilities versus building a replacement facility. ROA.22-60203.6034-6035. Farr testified that the Jail is "at its end of usable life without significant investment" and that there are "systemic problems within the original construction of the facility." ROA.22-60203.6038-6039. The primary systemic problems are: (1) the cells are not grouted so detainees can penetrate the perimeter wall and escape, (2) the roof of the Jail was not joined to the other adjacent wall structures so there is systemic water intrusion, (3) grout was placed in the drainage systems so the drains cannot be cleaned out to function properly, (4) the mechanical systems, such as the air handling units, are in the housing pods so one must enter the pods to repair them, and (5) the Jail design does not allow a detainee classification system to function properly. ROA.22-60203.6039-6040, 6044. These problems are original, systemic design flaws. ROA.22-60203.6041. They are not correctable without completely rebuilding the Jail. ROA.22-60203.6040, 6045. Given these realities, the County decided to build

a new jail in phases with an initial 200 beds being operational in June 2025, 600 beds being operational in June 2026, and a total of 792 beds completed by January 2028. ROA.22-60203.6046-6053, 6067. The total cost of the new jail is $123 million. ROA.22-60203.6053. The new jail will be "state of the art." ROA.22-60203.6056.

Although the district court noted that opening a new jail in the future does not establish constitutional conditions for those detained in the Jail now, ROA.22-60527.3210, Farr testified that since December 2019, "the County has been moving aggressively to address the needs of the facilities and to bring them into compliance with the stipulated order and to work diligently to" satisfy the consent decree. ROA.22-60203.6054-6055. Regarding the County's decision to build a new jail, the monitor testified, "You have to balance how much investment would have to be made in the other facilities and what you would end up with after that investment. So I think it is probably a reasonable decision." ROA.22-60203.5769.

The next complaint is that the County paid Frank Shaw $72,000 to serve as the acting jail administrator for 6 months ($12,000 per month). ROA.22-60527.3210. The district court cited no record evidence that Shaw's compensation was exceptional. For context, the County has been paying the monitor and her consultants approximately $275,000 per year (nearly $23,000 per month—*i.e.*, nearly double Frank Shaw's monthly pay) at the rate of $175 per hour. ROA.22-

60203.5691, 5794. On average, the monitor bills the County approximately $80,000 per year just for herself. ROA.22-60203.5695. The true waste of resources is the massive costs the County incurred during the 6 years it attempted to comply with a consent decree that exceeded constitutional minimums. This factor militates against a receivership.

Factor 5—leadership. The district court believes that no County official will take responsibility for the Jail, the County Board of Supervisors is dysfunctional, and media reports have been critical of the Board. ROA.22-60527.3211. The district court recognized that Sheriff Jones testified that the buck stops with him, but claims that the Sheriff blamed COVID, the monitor, and the previous jail administrator, Major Bryan, for "the facility's shortfalls." ROA.22-60527.3211. The record is replete with evidence, including that one County sheriff died from COVID, that COVID adversely impacted the County's ability to comply with the consent decree and the stipulated order. ROA.22-60203.4604-4605, 4713, 4811-4812, 4872-4873, 4972, 5230-5232, 5525, 5570-5571, 5590, 5975-5976, 6003, 6011, 6036-6037, 6190-6191, 6198-6199, 6212, 6276, 6286, 6481-6482, 12190-12192, 12197-12198, 12215, ROA.22-60332.12180-12185. As shown, *supra* pp. 47-48, the monitoring team is not neutral. Sheriff Jones did have disagreements with Major Bryan, but

Sheriff Jones was Major Bryan's boss, and he affirmatively takes responsibility for the Jail. ROA.22-60203.5025, 6460. This is a non-issue.

The district court further complained that the County Board of Supervisors is dysfunctional. ROA.22-60527.3211. The district court made no attempt to tie this claim to any alleged shortcomings with the Jail. The uncontroverted evidence is that every issue regarding the Jail that has come before the Board for a vote received unanimous support. ROA.22-60203.6100, 6102-6103, 6214. The County's general fund budget is $80.5 million. ROA.22-60203.6092. 22% of the entire general fund budget goes to detention services. ROA.22-60203.6093. The County pays approximately $3 million per year to a third-party provider for medical and mental health services at the Jail. ROA.22-60203.6099. In the two years preceding February 2022, the County spent approximately $4 million on repairs to the Jail. ROA.22-60203.6223-6224. These expenditures were approved by the Board. The Board President testified, "We've been in office two years. We've been working overtime at [the Jail] as a Board …. So we're not kicking the can down the road with this Board." ROA.22-60203.6224.

The district court next cited media reports critical of the Board. ROA.22-60527.3211-3212. Those reports are hearsay and were not offered or admitted into evidence. This factor militates against a receivership.

Factor 6—bad faith. The district court made no finding that the County acted in bad faith. ROA.22-60527.3213. One of the monitor's consultants, David Parrish, conceded that the County has "made some good faith efforts to do things." ROA.22-60332.12304-12305. Parrish has "nothing bad to say about the efforts of the staff." ROA.22-60332.12307. Parrish testified that there has been no bad faith by the staff and that they are certainly operating in good faith. ROA.22-60332.12307-12308. A receivership should not be imposed where a governmental entity will comply with the law. *Netsphere, Inc. v. Baron*, 703 F.3d 296, 307 (5th Cir. 2012). The County is acting in good faith to comply with the law. This factor militates against a receivership.

Factor 7—likelihood of a quick and efficient remedy. "Remedial devices should be effective and relief prompt." *Morgan v. McDonough*, 540 F.2d 527, 533 (1st Cir. 1976). The district court cited nothing from the record supporting its contention that a receivership is likely to provide a quick and efficient remedy. ROA.22-60527.3213-3214. The monitor testified that she believed the quickest way to compliance is a receiver, but when asked how quick is that she admitted she did not know. ROA.22-60203.5796. The monitor admitted she had no facts which indicate what the rate of progress would be under a receiver. ROA.22-60203.5940. Further, the duration of the receivership is completely open-ended because the

district court put no time limit on the receivership. ROA.22-60527.12293. This factor militates against a receivership.

"The PLRA is … best understood as an attempt to constrain the discretion of courts issuing structural injunctions—not as a mandate for their use …. [S]tructural injunctions … raise grave separation-of-powers concerns and veer significantly from the historical role and institutional capability of courts. It is appropriate to construe the PLRA so as to constrain courts from entering injunctive relief that would exceed that role and capability." *Brown*, 563 U.S. at 564 (Scalia, J., dissenting). The receivership imposed by the district court exceeds "that role and capability." It should not stand.

III. The Receivership Order Exceeds The Permissible Scope Of Relief.

Even if this Court finds that a receivership is warranted, the scope of the receivership imposed by the district court exceeds the permissible scope of injunctive relief. The district court declared that "the New Injunction is substantially less onerous than its predecessor ... Under the New Injunction, the County exercises greater control of the prison than it did previously." ROA.22-60527.3345-3346. What the district court giveth, it taketh away. In issuing the new injunction, the district court claimed to give the County greater control over the Jail, but 107 days later the court appointed a receiver and vested the receiver with total control.

The district court was itching to impose a receivership for quite some time. In November 2021, the district court entered an order requiring the County to "show cause and explain why it should not be held in civil contempt and why a receivership should not be created to operate [the Jail]." ROA.22-60527.2018. In January 2022, the County filed a motion to terminate the consent decree under the PLRA. ROA.22-60527.2216-2219. The district court was not pleased. It claimed the County's motion "appears to be a last-ditch effort to prevent a federal takeover of the [Jail]." ROA.22-60527.2393. As it foreshadowed in its show cause order, a "federal takeover" of the Jail by the district court was inevitable. When it came, it was not subtle.

The order delineating the scope of the receivership provides that the receiver "shall have all powers, authorities, rights, and privileges now possessed by the officers, managers, and interest holders of and relation to [the Jail], in addition to all powers and authority of a receiver at equity under all applicable state and federal law in accordance with Fed. R. Civ. P. 66." ROA.22-60527.12284. The County's authority over the Jail is completely gone. And it only gets worse for the County from there.

"The PLRA greatly limits a court's ability to fashion injunctive relief." *Ball*, 792 F.3d at 598. But, unconstrained by the PLRA, the district court gave the receiver "all executive, management, and leadership powers for the defendants with respect

to the custody, care and supervision of Hinds County detainees at [the Jail]." ROA.22-60527.12284. The receiver is in charge of the day-to-day operations of the Jail. ROA.22-60527.12284. The receiver has "the duty to control, oversee, supervise, and direct all administrative, personnel, financial, accounting, contractual, and other operational functions for [the Jail]." ROA.22-60527.12284. The receiver has "the power to hire, fire, suspend, supervise, promote, transfer, discipline, and take all other personnel actions regarding employees or contract employees, who perform services related to the operation of [the Jail]." ROA.22-60527.12285. It does not stop there.

The receiver is authorized to establish personnel policies, negotiate new contracts, and renegotiate existing contracts. ROA.22-60527.12285-12286. The receiver shall determine the Jail's annual budget, "including for staff salaries and benefits, medical and mental health services (including the medical provider contract), physical plant improvements, fire safety, and any other remedies needed to address the constitutional deficiencies documented in this case." ROA.22-60527.12286-12287. The County must "bear all costs and expenses of establishing and maintaining the Receivership, including, as necessary, budgeted rent, office supplies, reasonable travel expenses, and the compensation of the Receiver and their personnel." ROA.22-60527.12293. This includes "salaries and consulting fees" for

an uncapped number of staff. ROA.22-60527.12292. The receivership has no end date. It "will end as soon as the Court finds that Defendants have remedied [the Jail's] unconstitutional conditions and achieved substantial compliance with the Court's Orders." ROA.22-60527.12293. The County has no authority to run the Jail, so it is perplexing that the district court charges the County with remedying "unconstitutional conditions."

Nonetheless, a remedy shall extend no further than necessary to remedy the violation of the rights of a "particular plaintiff or plaintiffs," 18 U.S.C. § 3626(a)(1)(A), which means that "the scope of the order must be determined with reference to the constitutional violations established by the specific plaintiffs before the court." *Brown*, 563 U.S. at 531. Here, the Government is the sole plaintiff. The Government did not bother with a class action. "The PLRA limits relief to the particular plaintiffs before the court." *Ball*, 792 F.3d at 599. There are no detainee plaintiffs before the Court.

Further, the receivership orders do not satisfy the need-narrowness-intrusiveness requirements. In entering its after-the-fact amended receivership orders, ROA.22-60527.12253-12295, the district court mechanically recited that they satisfy the need-narrowness-intrusiveness requirements. ROA.22-60527.12278. That is not sufficient. It is not enough for the district court to state in

conclusory fashion that the requirements of the decree satisfy the need-narrowness-intrusiveness requirements. *Ruiz*, 243 F.3d at 950. Rather, the district court must make particularized findings, on a provision-by-provision basis, that each requirement imposed by the consent decree satisfies the need-narrowness-intrusiveness requirements, "given the nature of the current and ongoing violation." *Id*. The district court made no particularized findings on a provision-by-provision basis in any of its receivership orders. ROA.22-60527.12253-12295. And the district court's mechanical recitation that the receivership orders meet the need-narrowness-intrusive requirements came only after the Government reminded the district court it needed to do so. The need-narrowness-intrusiveness requirements "cannot be circumvented by a mere recitation of key statutory language." *Ruiz*, 243 F.3d at 951.

The district court's treatment of Henley-Young reinforces this point. In finding that the consent decree exceeded constitutional minimums, the district court stated there is a separate consent decree governing Henley-Young, and the court "wishes to avoid interference with that Consent Decree." ROA.22-60527.3026. The district court deleted all provisions regarding Henley-Young from the consent decree in this case, finding that "concerns about Henley-Young are best submitted to the discretion and sound judgment of the Presiding Judge [Daniel P. Jordan III] in that case." ROA.22-60527.3026. The Henley-Young case before Judge Jordan was

subsequently dismissed, and the Government moved to have the Henley-Young provisions that the district court previously excised from the consent decree reinstated in this case. ROA.22-60527.3377-3380. The district court granted the Government's request. ROA.22-60527.12296-12308. The district court thus first removed the Henley-Young consent decree provisions from this case, issued a new injunction with no provisions regarding Henley-Young, and then issued a new, new injunction that "reinstated" the Henley-Young provisions the court previously "submitted to the discretion and sound judgment" of Judge Jordan. ROA.22-60527.3026, 3066-3075, 12316-12317. In doing so, the district court subjected Henley-Young to the receivership with the stroke of a pen.

Next, the receivership imposed by the district court "violates the terms of the governing statute, ignores bedrock limitations on the power of Article III judges, and takes federal courts wildly beyond their institutional capacity." *Brown*, 563 U.S. at 550 (Scalia, J., dissenting). This Court has admonished that "federal judges are not policymakers. 'The Constitution charges federal judges with deciding cases and controversies, not with running state prisons.' …. The Eight Amendment does not mandate perfect implementation. And 'prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause.' [The prison's]

measures may have been unsuccessful. But they were not unconstitutional." *Valentine*, 978 F.3d at 165. The same analysis applies to the Jail.

Finally, the district court's receivership is a "debilitation of the democratic process." *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2005 WL 2932253 at *31 (N.D. Cal. Oct. 3, 2005). Federal courts do not have plenary power to restructure the operation of local and state governmental entities, *Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406, 419-420 (1977), but the district court exercised such power here. The district court divested the County of any operational control over its Jail and appointed a federal receiver to run the Jail. The County's Board of Supervisors and the Sheriff are elected officials; the receiver is not. ROA.22-60203.5914-5915. The County's elected officials are accountable to the voters; the receiver is not. ROA.22-60203.5798. The bottom line is that the district court replaced the County's elected officials with an unelected receiver. This Court should restore to the County the authority to run its Jail.

CONCLUSION

This Court should reverse the judgments below and order judgment for the County or, at the least, vacate the district court's remedial orders appointing a receiver and regarding the scope of the receivership.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was filed on this 23rd day of June, 2023, with the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Fed R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), it contains 12,927 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally-spaced typeface, including serifs, using Word, in Times New Roman 14-point font, except for the footnotes, which are in proportionally-spaced typeface, including serifs, using Word in Times New Roman 12-point font.

Respectfully submitted,

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