No. 22-60203 consolidated with Nos. 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.

HINDS COUNTY BOARD OF SUPERVISORS; HINDS COUNTY SHERIFF TYREE JONES, IN HIS OFFICIAL CAPACITY,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

This case involves persistent threats to the safety of detained individuals—and the public—in Jackson, Mississippi, arising from defendants-appellants Hinds County's, the Hinds County Board of Supervisors' and Hinds County Sheriff Tyree Jones' (together, "the County") failure to abide by constitutional standards in its jails and to comply with related court orders. Given the nature and urgency of the issues, the United States respectfully requests that the appeal be set promptly for oral argument.

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INTRODUCTION

This case is about ending unconstitutional conditions of confinement that have persisted at the Hinds County Jail for more than a decade, putting detainees' lives and public safety at risk. These conditions include rampant violence, unjustified uses of force, proliferating contraband like weapons and narcotics, unsecured and indecent living conditions, escapes, perilously inadequate care of the mentally ill, and unlawful detention—all in violation of detainees' Eighth and Fourteenth Amendment rights.

The County's opening brief tells a tale of federal overreach and bias. But what the County refers to as a "constitutional abomination" (Br. 1) is a consent decree that the County negotiated just seven years ago and asked the district court to approve as a "reasonable and equitable" settlement (ROA.22-60527.64).[1] The County agreed that the decree's terms met the "need-narrowness-intrusiveness" standard of the Prison Litigation Reform Act (PLRA), 18 U.S.C. 3626. ROA.22-60527.267. The much-maligned "monitoring team with non-neutral views and opinions about how a detention center should operate" (Br. 1) is led by a monitor whom the parties jointly recommended as an "ideal candidate"; the parties expected her to "retain several subject matter experts to assist her." ROA.22-60527.276, 279.

The County neither meaningfully complied with the decree nor charted its own path to cure the abysmal jail conditions, despite the belated half-measures it eventually took under threat of contempt. See Part I.C, *infra*. This is especially true at the County's primary adult facility, Raymond Detention Center (RDC). Indeed, RDC looked "substantially the same" to the district court in a 2022 visit as it had three years prior. ROA.22-60527.2394. Tragically—perhaps foreseeably—

[1] "Br. __" refers to pages of appellants' opening brief. "ROA.___" refers to the electronic record on appeal.

seven detainee deaths occurred in 2021 from causes including assault, suicide, overdose, and illness. ROA.22-60527.2927-2930.

The "radical" new injunction and receiver orders of which the County now complains (Br. 2) represent the court's measured responses to the County's conduct after years of forbearance, undertaken with an eye to the PLRA and to relevant precedent. The County avoided contempt in 2019 by negotiating narrow additional terms of relief in a 2020 stipulated order. ROA.22-60527.1294. Those measures did not take. Again facing contempt (and the possibility of receivership) as deaths mounted in 2021, the County asked for more time to "right[] the ship" but, stunningly, thereafter moved for the consent decree's termination. ROA.22-60527.2185; see generally ROA.22-60527.2163-2186, 2216-2219. The court obliged on both fronts. It held a two-week evidentiary hearing, after which it "dramatically pared back" the decree, despite retaining core terms to address current and ongoing constitutional violations. See generally ROA.22-60527.2917-3075. Then, after giving the County all the time it sought to remediate contempt, the court found it had no choice in the face of the County's inaction but to impose a limited receivership to oversee RDC—a facility that County officials admit is unsafe. See generally ROA.22-60527.12253-12295; ROA.22-60203.6253, 6424.

The downsized new injunction and targeted receivership constitute a relief package carefully tailored to the facts and history of this case—not to "utopian

conceptions of how a jail should operate" or even to "best practices" (Br. 3). They reflect the district court's zealous execution of its duties under the PLRA to scrutinize terms of prospective relief and its obligation under the Constitution to effectively remedy violations of detainees' rights. See *Brown* v. *Plata*, 563 U.S. 493 526 (2011). The court properly used its "authority" to "fashion practical remedies when confronted with complex and intractable constitutional violations," and its orders must be affirmed. See *ibid.*

JURISDICTIONAL STATEMENT

These consolidated appeals arise from several district court orders relating to the County's motion to terminate or modify the consent decree and to the County's contempt of court. ROA.22-60527.2378-2404, 2751-2769, 2917-3075, 3191-3216, 3356-3372; ROA.22-60332.11975-11980; ROA.22-60527.12248-12319. The County timely appealed these orders. ROA.22-60527.2270-2272, 3114-3116, 3121-3122, 3350-3351, 3373-3376, 12235-12238, 12320-12325. The district court had jurisdiction under 28 U.S.C. 1331 and 1345. This Court has jurisdiction under 28 U.S.C. 1291, 1292(a)(1) and (a)(2).

STATEMENT OF ISSUES

This appeal presents the following issues:

1. Whether the district court properly found, after an evidentiary hearing, that current and ongoing violations of detainees' federal rights necessitated

continuation of a narrowed, minimally intrusive injunction to correct those violations.

2. Whether the district court properly exercised its discretion in imposing a limited receivership to oversee RDC as sanction for the County's persistent contempt of negotiated court orders designed to ameliorate unconstitutional conditions of confinement.

3. Whether the district court properly exercised its discretion in crafting a receivership that is tailored in scope and duration to curing persistently unconstitutional conditions of confinement at RDC and provides for County input and oversight.

STATEMENT OF THE CASE

1. Statutory Background

a. The Civil Rights Of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997 et seq.

The United States initiated this case under CRIPA, 42 U.S.C. 1997 *et seq.*, which permits the Department of Justice to investigate and seek redress for violations of the federal rights of individuals confined in state and local institutions. Congress enacted CRIPA in 1980 following federal court decisions casting doubt on the Attorney General's standing to challenge conditions in these facilities, aiming to protect the Department's "litigative efforts," which "enhanced

the lives of thousands of institutionalized individuals throughout the country." H.R. Conf. Rep. No. 897, 96th Cong., 2d Sess. 8-9 (1980).

CRIPA authorizes the Attorney General, on behalf of the United States, to initiate suits and intervene in actions against State entities to redress "egregious or flagrant conditions" that violate institutionalized individuals' federal rights and cause "grievous harm," pursuant to a "pattern or practice of resistance to the full enjoyment of such rights." 42 U.S.C. 1997a(a), 1997c(a)(1). The Attorney General may seek "such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights." 42 U.S.C. 1997a(a).

b. The Prison Litigation Reform Act (PLRA), 18 U.S.C. 3626 et seq.

The PLRA, passed in 1997, constrains how courts carry out their obligation to remedy violations of federal rights in prison conditions cases. See *Ruiz* v. *Estelle*, 161 F.3d 814, 817 (5th Cir. 1998), cert. denied, 526 U.S. 1158 (1999). Congress was concerned with "a sharp rise in prisoner litigation in the federal courts" and included in the PLRA "a variety of provisions"—largely focused on limiting how prisoners may bring private suits—"to bring this litigation under control." *Woodford* v. *Ngo*, 548 U.S. 81, 84 (2006).

The PLRA requires prospective relief in prison conditions cases to extend "no further than necessary to correct the violation of the Federal right of a

particular plaintiff or plaintiffs" and to satisfy the statute's "need-narrowness-intrusiveness" standard. 18 U.S.C. 3626(a)(1). Under that standard, a court must find that prospective relief is "narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." *Ibid.* The court also "shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Ibid.*

The PLRA specifies when prospective relief may be terminated. 18 U.S.C. 3626(b). As relevant here, the statute provides that prospective relief "shall be terminable upon the motion of any party * * * 2 years after the date the court granted or approved." 18 U.S.C. 3626(b)(1)(A)(i) and (b)(2). Prospective relief may continue if the court makes "written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right," and the relief meets the need-narrowness-intrusiveness standard. 18 U.S.C. 3626(b)(3).

2. Litigation Background

a. The Jail's Troubled History And The United States' Investigation

In the last decade, Hinds County has housed its detainees at four facilities: the Raymond Detention Center (RDC), which is the primary adult jail; a facility known as the Work Center, which houses lower-security and female detainees; the

Jackson Detention Center, which did not regularly house detainees when the orders on appeal were issued; and the Henley-Young-Patton Juvenile Justice Center, where the County has held youth charged as adults since 2019.[2] See ROA.22-60203.4648; ROA.22-60332.9010. The Sheriff is responsible for the County's detention services. See ROA.22-60203.6460. The County's Board of Supervisors, a five-member executive body, controls the detention budget and must approve many detention-related decisions such as modest procurements, contracts for facilities work and services, and staff salaries. See, *e.g.*, ROA.22-60203.6115-6118, 6348; ROA.22-60332.8949, 8974, 9043. The County has run through a string of one-term and interim Sheriffs in recent years, and the Board of Supervisors has undergone significant turnover and internal turmoil. See ROA.22-60527.2919-2920, 12273-12275.

The County admits it has known since RDC's opening in 1994 that it was "systematically and irretrievably flawed," with walls and a roof penetrable by detainees and the elements. Br. 4-5; ROA.22-60203.6039-6041. RDC was designed as a "direct supervision" facility (in which officers supervise detainees directly from within the jail's three housing pods) but functioned as such only until

[2] The complaint and consent decree refer to RDC as the "Hinds County Adult Detention Center." See ROA.22-60527.54, 210.

2012, when a major riot occurred and staff were no longer posted in units. See ROA.22-60203.4623-4625, 4635; see also ROA.22-60527.211.

The absence of basic jail safety measures (like functioning door locks)—and resulting unrest and escapes—has long been public knowledge in Hinds County. See, *e.g.*, ROA.22-60527.2921-2924 (collecting news articles and court documents). Unconstitutional conditions of confinement in the County's jails became a matter of public record in September 2013, following a grand jury report. ROA.22-60527.181-200. The report concluded that RDC was "in a deplorable condition and inadequately staffed," posing "major security risks" to detainees, staff, visitors, and the public. ROA.22-60527.181. The report attributed these problems to inadequate staffing, staff training, facility maintenance, discipline, classification, facility security, and population control measures. ROA.22-60527.188-198. Another report the following year found unchanged conditions, outnumbered and "frightened" jailers, and a Sheriff "incompetent" to operate the jail safely. ROA.22-60527.177-178.

The United States opened a CRIPA investigation in June 2014 and issued findings one year later. ROA.22-60527.144-145, 148-176. The findings letter echoed the grand jury report in concluding that the County was violating detainees' Eighth and Fourteenth Amendment rights through unsafe conditions and unlawful detention. See generally ROA.22-60527.148-176. The United States

acknowledged that the County had made some efforts—spending on repairs, hiring contractors to oversee reforms, planning initiatives—but "ha[d] not remedied the Jail's fundamental problems." ROA.22-60527.149. Changing the fundamentals would require increasing qualified staff, improving systemic physical security features, and changing policies and practices relating to detainee classification, use of force, lockdowns, unsanitary cells, and detainee processing. ROA.22-60527.149. The parties engaged in extensive negotiations to resolve these findings.

b. The United States' Complaint And The Parties' Consent Decree

In June 2016, United States filed a complaint alleging that the County engaged in a pattern or practice of Eighth and Fourteenth Amendment violations, including the failure to reasonably protect detainees from harm, use of excessive force, and unlawful detention. ROA.22-60527.53-62. These violations stemmed from: deficiencies in staffing and supervision (causing lapses in security, responsiveness, and delivery of essentials); a deteriorating and unsecured physical plant (enabling violence and the presence of contraband); insufficient staff training and use-of-force policies; inadequate administrative and investigative procedures; dysfunctional classification and housing assignment systems (affecting, in particular, vulnerable detainees and those with serious mental illness); and

insufficient coordination with the criminal justice system to ensure access to counsel and timely release. ROA.22-60527.56-57.

The parties simultaneously moved for entry of the consent decree. ROA.22-60527.64-200. The decree contained 14 substantive sections and five implementation-related sections designed to help the County achieve constitutional jail conditions, including appointment of a compliance monitor funded by the County.[3] ROA.22-60527.207-270. The decree memorialized the parties' agreement that its terms met the PLRA's need-narrowness-intrusiveness standard and that it would not adversely impact public safety or operation of the criminal justice system. ROA.22-60527.267 (citing 18 U.S.C. 3626(a)). The parties characterized the decree as a "fair and reasonable" product of extensive arms-length negotiation. ROA.22-60527.137-138. The court approved the decree and ordered the parties to implement it. ROA.22-60527.206.

[3] The substantive sections were Protection from Harm; Use of Force Standards; Use of Force Training; Use of Force Reporting; Use of Force Supervisor Reviews; Incident Reporting and Review; Sexual Misconduct; Investigations; Grievance and Prisoner Information Systems; Restrictions on the Use of Segregation; Youthful Prisoners; Lawful Basis for Detention; Continuous Improvement and Quality Assurance; and Criminal Justice Coordinating Committee. ROA.22-60527.216-258. The implementation-related sections were Implementation, Timing, and General Provisions; Policy and Procedure Review; Monitoring; County Self-Assessment Report and Compliance Coordinator; and Emergent Conditions. ROA.22-60527.258-266.

Soon thereafter, the parties moved to appoint Elizabeth Simpson as monitor. ROA.22-60527.271-274. Her role was as "a court appointed expert to ensure implementation of and compliance with" the decree, independent of the parties and subject only to court supervision. ROA.22-60527.261, 271. She was expected to "retain several subject matter experts to assist her." ROA.22-60527.276. The parties described Simpson as an "ideal candidate" for the role. ROA.22-60527.277. The court granted the motion. ROA.22-60527.286.

The monitoring process began with the monitor and her team conducting an initial baseline visit and then routine site visits (in which the parties could participate) every four months. ROA.22-60527.262. The County was required to maintain and produce records necessary for the monitor's assessment. ROA.22-60527.261-262. The monitor then prepared a report analyzing conditions, assessing compliance, and proposing corrective action within 30 days of each visit, to which the parties could provide feedback before each report's filing. ROA.22-60527.262-264. The monitor was to provide the County technical assistance unless this would interfere with her independence or compliance assessment obligations. ROA.22-60527.265.

c. The County's Persistent Non-Compliance With The Consent Decree And The Stipulated Order

The first monitoring report, in May 2017, concluded that the County was in full compliance with only one of the decree's 92 provisions (appointing a

compliance coordinator), partially compliant with four provisions, and non-compliant with 85, while two were not yet applicable. ROA.22-60527.296. The report observed on its first page that gross understaffing—which left detainees "in charge" and free to damage facilities and harm each other—was an "overarching problem" that would prevent compliance "[n]o matter what other steps are taken to address operational problems within the facilities." ROA.22-60527.291.

Despite receiving extensive guidance and technical assistance from the monitoring team, the County had made so little progress by 2019 that the United States moved for contempt. ROA.22-60332.906-941. The County had achieved substantial compliance with only two of the decree's requirements—many of which should have been met by mid-2017—while the monitor's March 2019 report documented ongoing "[p]risoner-on-prisoner assaults, escapes, staff uses of force, and mass disturbances." ROA.22-60332.907-908 (citing ROA.22-60332.798-799, 830-843).

To avoid contempt, the County agreed to a stipulated order with more discrete steps and timelines for improving the jails' physical plant, increasing staffing and supervision, developing policies and procedures, enhancing population management, and improving services for youthful offenders. ROA.22-60527.1296-1303. The order, which the parties asked the district court to enter in

2020, stated that its terms complied with the PLRA's requirements in 18 U.S.C. 3626(a). ROA.22-60527.1297.

The district court found that contempt was "warranted," citing violent incidents in the monitor's reports and its own observations from an August 2019 visit—including broken locks and fire safety equipment, vermin infestation, and the "dehumanizing" absence of cell lighting and chairs. ROA.22-60527.1287, 1294. The court also expressed dismay that the monitor's reports documented instances of the outgoing Sheriff ignoring the decree, the monitor's recommendations, and the jail administrators' authority. ROA.22-60527.1290. Nevertheless, the court entered the order, cautioning that it would "do whatever it takes within the confines of the law to ensure the parties follow the Consent Decree and we finally see an end to the violence and neglect that has plagued the Jail all these years." ROA.22-60527.1295 (citing *Brown* v. *Plata*, 563 U.S. 493, 538 (2011), regarding the scope of its equitable powers).

d. The Renewed Threat Of Contempt And The County's Shifting Positions

The stipulated order did not work, either. By November 2021, the County was in sustained compliance with only three consent decree provisions, while six deaths in custody already had occurred in the calendar year. ROA.22-60332.8923, 8942. The district court ordered 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 RDC." ROA.22-60527.1991, 2018. The order charted the case's history and troubles identified in recent monitoring reports and a status conference: deaths, severe understaffing, unmitigated fire risk, nonfunctioning door locks, cells used as trash receptacles, excessive contraband, inadequate health care, staff overuse of chemical spray, detainee control of units, deficient COVID measures, and detention of acquitted people. ROA.22-60527.2007-2017. Again, the court invoked *Brown* v. *Plata*, where the Supreme Court affirmed "practical" and "efficacious" measures to cure intractable constitutional violations. ROA.22-60527.1991-1992, 2018; see also *Brown*, 563 U.S. at 526, 539, 541, 543. The court also drew parallels to earlier proceedings in that case, where the Ninth Circuit upheld as PLRA-compliant the appointment of a receiver to rectify California's noncompliance with successive negotiated orders. ROA.22-60527.1999, 2004-2005 (citing *Plata* v. *Schwarzenegger*, 603 F.3d 1088 (2010) (*Plata II*)).

The County claimed to be "righting the ship" and asked the court to hold in abeyance its decision on contempt until July 2022, citing a smattering of recent initiatives—particularly those spearheaded by the new jail administrator, Major Kathryn Bryan—and other "new players": the Board, the Sheriff, and facilities and engineering contractors. ROA.22-60527.2167-2181, 2185-2186. Only a few weeks after asking for more time, however, the County in January 2022 asked the

court to terminate or modify the decree under the PLRA, 18 U.S.C. 3626(b)(3). ROA.22-60527.2216-2218.

In February 2022, the district court held the County in contempt for breaking its commitments in the consent decree and stipulated order to fix constitutional violations (evidenced by the monitor's reports of escalating violence, facility destruction, gross understaffing, overdoses, and contraband) and for its complete noncompliance with 30 consent decree provisions—which the County did not contest. ROA.22-60527.2378-2389, 2397-2404. The court expressed concern with the County's shifting legal positions, minimization of detainee deaths, and admittedly fraught relationships among corrections leadership—indeed, in this short time, Major Bryan had departed. ROA.22-60527.2394. The court also observed that, although the County represented that there was an "upward trend" in RDC's operations, the court itself had visited the facility "last week" and it "looked substantially the same as when the Court visited nearly three years ago." ROA.22-60527.2394. The court reserved sanctions pending further proceedings. ROA.22-60527.2404. The County appealed. ROA.22-60527.2770-2772.

e. Further Proceedings On Contempt And Termination Of The Consent Decree

The district court held a two-week bench trial on contempt and the termination motion in mid-February 2022. The court heard testimony from all members of the monitoring team, Major Bryan, the Sheriff, the Board of

Supervisors' President, the County Administrator, representatives of the County's renovations and master planning contractors, and the mother of a detainee who died at RDC. See ROA.22-60203.4535-6701. The court received nearly 3000 pages of exhibits, including monitoring reports, quality assurance reports, incident reports, internal investigation documents, police reports, staffing reports, planning reports, jail policies, correspondence, invoices, and Board minutes. See ROA.22-60332.6892-9803.

After trial, the district court again held the County in contempt of the consent decree and stipulated order for continuing to house detainees in "A-Pod"—an RDC unit so poorly supervised and maintained that the Sheriff called it "unsafe" (ROA.22-60203.6424)—after slating it for closure, one of the County's many "broken promises." ROA.22-60527.2752-2755, 2757-2768. The court again reserved sanctions. ROA.22-60527.2768. The County moved for reconsideration of this order (ROA.22-60527.3080-3082) and also appealed it (ROA.22-60527.3121-3122).

f. The Court's Order Amending The Consent Decree

In April 2022, the district court partially granted the County's PLRA termination motion by "dramatically scal[ing] back" the terms of injunctive relief. ROA.22-60527.2918. To start, the court acknowledged that the County had "made a few changes" to attempt constitutional compliance, such as fixing "some door

locks," approving (but not implementing) a raise for staff, and "working on" obtaining cameras and trash dumpster cells. ROA.22-60527.2918. But it found that "[t]he underlying fundamentals" that existed at the consent decree's entry "are unchanged," citing historically low staffing, unprecedented levels of violence and death, and abuse and deprivation of vulnerable detainees. ROA.22-60527.2918. As the court later observed, RDC is a place in which "terror reigns." ROA.22-60527.2959, 2967. Because the hearing record showed that constitutional violations continued, the Court determined that it must retain "a limited number of provisions" to address these violations within the PLRA's bounds. ROA.22-60527.2918, 2939.

The court conducted its PLRA analysis by reviewing each section of the consent decree and considering whether its provisions remained necessary and narrowly tailored to address current and ongoing constitutional violations. ROA.22-60527.2942-3065. This analysis relied on the hearing evidence and focused on trends, incidents, and the County's responses in the preceding months and weeks. ROA.22-60527.2942-3065. The court referenced incidents at Henley-Young but did not separately assess conditions there because it believed that it must terminate the decree's youthful offender provisions to "avoid interference" with another consent decree at that facility. ROA.22-60527.3022-3026. It also determined that conditions at the Work Center—which the court found acceptable

and not reflective of deliberate indifference—satisfied the constitutional minimum, requiring the decree's termination at that facility. ROA.22-60527.2940-2942.

The court concluded that the County failed to meet minimum constitutional standards at RDC regarding detainees' protection from harm (arising from violence, sexual misconduct, self-harm, and isolated housing practices), use of excessive force, and unlawful detention. ROA.22-60527.2959-2971, 2993-2997, 2999-3002, 3007-3010, 3012-3014, 3018-3021 (protection from serious harm); ROA.22-60527.2976-2977, 2979-2982, 2989-2990 (use of force); ROA.22-60527.3037-3039 (unlawful detention). The court declined to terminate prospective relief but imposed a narrowed new injunction based on its findings and the PLRA's need-narrowness-intrusiveness requirement. ROA.22-60527.2942-3065; ROA.22-60527.12309-12319 (amended order).

The new injunction maintains but abbreviates most of decree's substantive sections—regarding protection from harm, use of force, incident reporting, sexual misconduct, investigations, grievances, restrictions on the use of segregation, lawful basis for detention, implementation, policy and procedure review, monitoring, and emergent conditions—limiting most requirements to a single, general directive without subpoints on implementation. ROA.22-60527.2942-3065; ROA.22-60527.12309-12319. It eliminates the decree's sections on continuous improvement and quality assurance, the criminal justice coordinating

committee, and the county assessment and compliance coordinator. ROA.22-60527.12309-12319. Both parties appealed. ROA.22-60527.3121-3125.[4] The court later reissued the new injunction to include youthful offender provisions, having reconsidered its decision to excise them after the other court's Henley-Young decree was terminated, as constitutional violations continued there. ROA.22-60527.12296-12319. The County again appealed. ROA.22-60527.12237-12238, 12323-12325.

g. Proceedings On Reconsideration Of Contempt And Receivership

Having acceded to the County's plea for more time to purge itself of contempt, the district court invited the County to make its case at a final mitigation hearing in July. The parties presented testimony from the Sheriff, the County Administrator, the monitor, and one member of her team, as well as several exhibits documenting recent assaults and an instance of excessive force at RDC. ROA.22-60332.12166-12343.

In a subsequent order, the court explained "regretfully" that, after giving the County "ample time and opportunity," it had become clear that "the County is incapable, or unwilling, to handle its affairs" such that "[i]t is time to appoint a receiver" to oversee RDC's operations. ROA.22-60527.12256 (amended order).

[4] The United States later moved for voluntary dismissal of its appeal, which this Court granted. April 12, 2023 Order.

To reach this conclusion, the court considered historical receivership examples and applied a multi-factored test from the district court decision preceding *Plata II* and *Brown*, which comports with this Court's receivership analysis and with the PLRA's need-narrowness-intrusiveness requirement. ROA.22-60527.12256-12277 (citing, *inter alia*, *Plata* v. *Schwarzenegger*, No. C01-1351, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005) (*Plata I*) and *Santibanez* v. *Wier McMahon & Co.*, 105 F.3d 234 (5th Cir. 1997)). This analysis incorporated the persistent risk of serious harm to RDC residents and the County's course of conduct over time, including the failure of less intrusive means, unmet promises, wasted resources, and its leaders' game of "accountability hot-potato." ROA.22-60527.12258-12277. The court found these factors favored receivership, not simply to sanction the County's noncompliance with the court's orders but rather to ensure compliance with those orders' fundamental purpose: "ameliorat[ing] the unconstitutional conditions at RDC." ROA.22-60527.12268. The County appealed. ROA.22-60527.3350-3351.

After soliciting the parties' written submissions on the scope of the receivership and hearing their positions at a conference, the district court issued two orders that named Wendell M. France, Sr., as receiver and outlined his duties. ROA.22-60527.12279-12295. The court gave France authority over daily operations at RDC within a system of substantive and budgetary input from the

County and oversight from the court. ROA.22-60527.12284-12295. The receiver's term was to extend no longer than necessary to correct unconstitutional conditions at RDC, which the court expected to occur no later than when detainees move from RDC to the County's new jail, projected to open in June 2025. ROA.22-60527.12275, 12293-12294. The County appealed these orders (ROA.22-60527.3373-3376).

In early November, the United States asked the district court to clarify or confirm under Rule 60(a) that the orders appointing the receiver were designed to comply with the PLRA, consistent with the receiver order they effectuated. ROA.22-60527.12014-12017. On a limited remand from this Court, the district court granted the clarification motion, affirming that it "unequivocally believed" when it issued the orders, "and still believes," that they "comply with the need-narrowness-intrusiveness standard of the PLRA." ROA.22-60527.12251. The district court combined the originally issued receiver orders (ROA.22-60527.3191-3216, 3356-3372) into a single order "that clarifies the [c]ourt's intent to include the particularized PLRA findings" by so stating throughout the orders. ROA.22-60527.12252, 12278, 12282, 12295 (quoting 18 U.S.C. 3626(a)(1)(A)). The County again appealed. ROA.22-60527.12235-12236, 12320-12322.

The receivership never has gone into effect. On December 28, 2022, a motions panel of this Court stayed the new injunction and receiver orders pending

appeal. Dec. 28, 2022 Order 3. The district court immediately suspended the work of the monitor and receiver. ROA.22-60527.12243.

SUMMARY OF ARGUMENT

This Court should affirm the order amending the consent decree, the new injunction, and the receiver orders.

First, in partially granting and partially denying the County's motion to terminate or modify the consent decree, the district court properly found current and ongoing violations of detainees' federal rights necessitating the continuation of a narrowed, minimally intrusive new injunction. The court relied on evidence of jail conditions at the time the County sought termination, as the PLRA requires, which the parties presented through hours of testimony and more than a hundred exhibits during a two-week evidentiary hearing. Based on this evidence, the court correctly held that detainees at RDC experience current and ongoing violations of their Eighth and Fourteenth Amendment rights to reasonable protection from harm (arising from violence, sexual misconduct, self-harm, and isolated housing practices), freedom from use of excessive force, and the prohibition on unlawful detention. The court's analysis properly relied on specific, recent incidents and conditions to demonstrate ongoing risk of harm and on evidence of the County's

knowledge and conduct over the course of the litigation to find deliberate indifference.

Second, the district court properly exercised its discretion to appoint a receiver to sanction the County's contempt of court and ongoing violation of constitutional requirements. The district court took this serious measure only after years of restraint and patience, during which the less intrusive measures of a negotiated consent decree and stipulated order failed to remedy the violations. The court carefully adhered to both the PLRA's narrow tailoring requirement and to the leading precedent applying that requirement in the context of intractable constitutional violations, while simultaneously eyeing historical examples of receivership in corrections cases. This—after giving the County an opportunity to mitigate contempt on the timeline of its choosing—was no abuse of discretion.

Third, the district court properly exercised its discretion in defining the receivership's scope. The receivership is limited to oversight of a single jail facility, RDC, and its scope and duration avoid disruption of the County's plans to transfer detainees to a new jail. The appointment order grants the receiver substantial authority to achieve constitutional conditions at RDC, but that authority is subject to input and oversight by the County and court. This approach follows

those taken by other courts as a last resort when faced with state or local officials' abdication of responsibility for those in their custody.

ARGUMENT

I

THE DISTRICT COURT PROPERLY FOUND CURRENT AND ONGOING CONSTITUTIONAL VIOLATIONS THAT NECESSITATE THE CONTINUATION OF TAILORED PROSPECTIVE RELIEF

The County's first argument attacks the findings underlying the district court's conclusion that current and ongoing constitutional violations necessitate the continuation of prospective relief, erroneously portraying the evidence of harm as insufficiently current and the evidence of the County's "reasonable" response as robust. The County's challenge relies on misconstruing and cherry-picking both the district court's order and the record. The County provides this Court with no good reason to resolve the facts differently from the district court or to conclude that the PLRA mandated the consent decree's complete termination.

A. Standard Of Review

This Court reviews de novo a trial court's decision on a motion to terminate prospective relief under the PLRA, 18 U.S.C. 3626(b). *Ruiz* v. *United States*, 243 F.3d 941, 950 (5th Cir. 2001). "[A]pplication of the relevant sections of the PLRA requires the district court to make a finding of an ongoing constitutional violation," which this Court also reviews de novo. *Castillo* v. *Cameron Cnty.*, 238 F.3d 339,

347 (5th Cir. 2001). This Court "employs a clearly erroneous standard" in reviewing the factual findings underpinning the trial court's assessment of a violation, including its predicate finding of whether a defendant is deliberately indifferent. *Gates* v. *Cook*, 376 F.3d 323, 333 (5th Cir. 2004) (internal quotations marks and citation omitted). Factual findings are clearly erroneous only when, after reviewing the entirety of the evidence, the Court "is left with the definite and firm conviction that a mistake has been committed." *Ibid.* "Once the facts are established," the question of whether those facts constitute a constitutional violation is a question of law reviewed de novo. *Ibid.*[5]

B. The Court's Analysis On A PLRA Termination Motion

1. As relevant here, a district court must grant a party's motion to terminate prospective relief after the passage of two years unless the court makes "written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of [a] Federal right," and that relief meets the need-narrowness-intrusiveness standard. 18 U.S.C. 3626(b)(1)(A)(i) and (b)(3). The proponents of continuing relief bear the burden of proving "ongoing violations and

[5] The County makes no argument that the new injunction's specific terms violate the PLRA's need-narrowness-intrusiveness standard, rendering any such arguments forfeited. See, *e.g.*, *Spagnol-Bastos* v. *Garland*, 19 F.4th 802, 808 (5th Cir. 2021). The County similarly does not press—and thus forfeits—any arguments relating to its appeals of the district court's indicative ruling and order granting the United States' motion for reconsideration regarding excision of the consent decree's youthful offender provisions. *Ibid.*

that the relief is narrowly drawn." *Guajardo* v. *Texas Dep't of Crim. Just.*, 363 F.3d 392, 395 (5th Cir. 2005).

In assessing a PLRA termination motion, a court should allow the parties to present evidence on "existing" conditions in order to identify "ongoing constitutional violations." *Ruiz*, 243 F.3d at 950-951. It then must preserve consent decree sections that address the ongoing violations while excising provisions that are not "narrowly drawn" or the "least intrusive means" to correcting violations. *Id.* at 951. Construing the PLRA's operative text, this Court has held that a "current and ongoing violation is one that exists at the time the district court conducts" the termination inquiry, meaning at the "time termination is sought," not the "past" or "future." *Castillo*, 238 F.3d at 353 (internal quotation marks and citation omitted).

2. As to what constitutes a violation, the Fourteenth Amendment's due process clause protects the County's jail residents, who generally are pretrial detainees rather than convicted prisoners (protected by the Eighth Amendment's prohibition on cruel and unusual punishment). The Fourteenth Amendment proscribes punishment before adjudication of guilt and thus prohibits pretrial detention conditions that are designed to punish or that lack a reasonable relation to a "legitimate governmental objective." *Bell* v. *Wolfish*, 441 U.S. 520, 539 (1979).

Because the Fourteenth Amendment's protections for pretrial detainees are "at least as great as the Eighth Amendment protections available to a convicted prisoner," this Court considers Eighth Amendment precedents as proper guideposts for the Fourteenth Amendment's guarantees. *Hare* v. *City of Corinth*, 74 F.3d 633, 649 (5th Cir. 1996) (en banc) (citation omitted). The Supreme Court has held that the Constitution does not require "comfortable" prison conditions or tolerate "inhumane ones." *Farmer* v. *Brennan*, 511 U.S. 825, 832 (1994) (citation omitted). Accordingly, the Eighth Amendment provides certain guarantees: it proscribes using "excessive physical force against prisoners"; it imposes duties to "provide humane conditions of confinement" to "ensure that inmates receive adequate food, clothing, shelter, and medical care" and to "take reasonable measures to guarantee the safety of the inmates"; and it requires "protect[ing] prisoners from violence at the hands of other prisoners." *Id.* at 832-833 (citation omitted). Rampant "[v]iolence and sexual assault among inmates," or an atmosphere in which "terror reigns," may violate those obligations. *Alberti* v. *Klevenhagen*, 790 F.2d 1220, 1224 (5th Cir. 1986).

Violations of the right to reasonably safe conditions of confinement arise where conditions pose an objectively "substantial risk of serious harm" to detainees and officials show subjective "deliberate indifference." *Farmer*, 511 U.S. at 834, 839-840. A court assesses risk of harm based on the "totality" of

conditions. *Alberti*, 790 F.2d at 1224 (citation omitted). A court may consider whether conditions violate the Eighth Amendment "in combination" even when "each would not do so alone," but where the conditions have a "mutually enforcing effect" that produces "the deprivation of a single, identifiable human need." *Gates*, 376 F.3d at 333 (citation omitted); see also *Alberti*, 790 F.2d at 1223. "Systemwide deficiencies" may give rise to a substantial risk of serious harm. *Brown* v. *Plata*, 563 U.S. 493, 505 n.3 (2011) (citing *Farmer*, 511 U.S. at 834).

Deliberate indifference is "a state of mind more blameworthy than negligence," akin to "recklessly disregarding" the "substantial risk of serious harm." *Farmer*, 511 U.S. at 835-836. Officials "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," and "must also draw the inference." *Id.* at 837. This is a "question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence"; knowledge of a substantial risk may be inferred "from the very fact that the risk was obvious." *Williams* v. *Hampton*, 797 F.3d 276, 288 (5th Cir. 2015) (en banc) (citing *Farmer*, 511 U.S. at 842). Assessing deliberate indifference requires consideration of "evidence from the time suit is filed to the judgment," with a focus on "current attitudes and conduct" set against "the course of the [case's] timeline" to assess whether officials are disregarding a known risk and will continue to do so. *Valentine* v. *Collier*, 993 F.3d 270, 282 (5th Cir. 2021)

(citing *Farmer*, 511 U.S. at 846); see also *Williams*, 797 F.3d at 288. Defendants "may be found free from liability if they responded reasonably to [a known] risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 844.

To assess whether the use of force violates a pretrial detainee's rights, a court asks if force was "purposely or knowingly used" and if it was "objectively unreasonable." *Kingsley* v. *Hendrickson*, 576 U.S. 389, 397 (2015). Liability may arise for systemic violations where the failure to train officers or adopt policies results in unconstitutional uses (or risk) of excessive force, and this failure amounts to deliberate indifference to the rights of those in custody. See, *e.g.*, *City of Canton* v. *Harris*, 489 U.S. 378, 388 (1989); *Poole* v. *City of Shreveport*, 691 F.3d 624, 634 (5th Cir. 2012); see also *Farmer*, 511 U.S. at 832.

The Fourteenth Amendment also prohibits "improper use of the formal restraints imposed by the criminal process." *Jones* v. *City of Jackson*, 203 F.3d 875, 880 (5th Cir. 2000) (internal quotation marks omitted). Accordingly, officials "must ensure an inmate's timely release" from jail, and "may be liable for failure to promulgate policy or failure to train/supervise [on records regarding entitlement to release]" where they do so "with deliberate indifference to constitutional rights." *Porter* v. *Epps*, 659 F.3d 440, 446 (5th Cir. 2011); see also *Crittindon* v. *LeBlanc*, 37 F.4th 177, 186 (5th Cir. 2022), petition for cert. pending, No. 22-1171 (filed May 31, 2023).

C. The County Was Not Entitled To Complete Termination Of Prospective Relief Because The Record Shows That Jail Detainees Experience Current And Ongoing Violations Of Their Constitutional Rights

1. The Record Supports The District Court's Findings Of Current And Ongoing Constitutional Violations

The County's claim that the district court failed to find "current and ongoing" violations of detainees' rights relies on mistaken legal propositions applied to a few cherry-picked or misconstrued details from the order amending the consent decree (Br. 21-37)—not on this Court's precedent or that order's actual substance. In making this misguided argument, the County only challenges whether evidence of these violations was sufficiently current to justify continuing relief—not whether the harmful conditions existed at all, which the County apparently concedes. As explained below, the district court's analysis comports with this Court's precedents and clearly identifies constitutional violations. The County's assertions that the court insufficiently recited the statutory phrase "current and ongoing"; that it improperly considered historical context; that it relied on evidence that was either too old, too speculative, or too sparse; and that it "constitutionalized" the consent decree all lack merit. See Br. 21-28.

a. Contrary to the County's portrayal, the district court's order adheres to this Court's precedents on the PLRA termination analysis, including the assessment protocol identified in *Ruiz* and the meaning of "current and ongoing" violations defined in *Castillo*. The court collected volumes of fresh evidence on

jail conditions at the time the County sought termination during the February 2022 hearing. The court heard testimony from the entire monitoring team (which had issued its last report in late November 2021 and conducted a site visit in late-January and early-February 2022), the recently departed jail administrator, County officials and contractors. See generally ROA.22-60203.4535-6701. The parties introduced over a hundred exhibits relating to jail conditions and management in the preceding months. See generally ROA.22-60332.6892-9803. The court also toured RDC in person soon before the hearing. ROA.22-60527.3001.

Based on this record, the district court found that present conditions at RDC continue to violate detainees' constitutional rights. The court's order first articulated its key post-hearing findings—*i.e.*, that RDC's "underlying fundamentals" are "unchanged," evidenced by rampant violence, death, and neglect coinciding with the County's termination motion—and then properly placed them in context with the case's history.

The court then assessed whether the County's current conduct relative to each substantive area of the decree contributed to or failed to stop the substantial risk of serious harm (and other constitutional violations) that detainees experience. See, *e.g.*, ROA.22-60527.2956-2967, 2993-2997. Where appropriate, the court considered whether the combined effect of certain systemic failures—such as inadequate staffing and supervision, paired with deficient incident reporting and

response practices (see, *e.g.*, ROA.22-60527.2967-2968, 2993-2997)—created and perpetuated constitutional violations. See *Gates*, 376 F.3d at 333; *Alberti*, 790 F.2d at 1224. In so doing, the court did not need to "exhaustively catalog conditions" but instead properly highlighted "examples of the nature of evidence presented at the hearings," without deciding whether each incident "individually constituted [a Fourteenth] Amendment violation." *Alberti*, 790 F.2d at 1225.[6]

The County claims that the district court did not sufficiently "identify" or "define" violations for purposes of the PLRA (Br. 37), but this critique has no clear basis in law or in the court's exhaustive 149-page order. The court undertook its PLRA analysis in the manner this Court prescribed in *Ruiz*. It identified three categories of constitutional violations—involving exposure to serious harm, use of excessive force, unlawful detention—that arise from features of detention in the County's facilities and that the consent decree's terms address. The court reviewed whether each decree section remained necessary in light of existing violations and then tightly narrowed the remaining sections' provisions to focus on bottom-line obligations to remedy each condition contributing to the violations. The County

[6] The court's order granting the United States' motion for reconsideration also properly performed this analysis as to the decree's youthful detainee provisions: the court identified current and ongoing violations of youthful detainees' rights to reasonably safe conditions, schooling, and programming, and it continued limited injunctive terms to correct those violations in compliance with the PLRA's need-narrowness-intrusiveness standard. See ROA.22-60527.12296-12308.

does not explain (or offer any authority on) the level of specificity that it believes is required, how the court's findings were deficient, or how they frustrated a proper need-narrowness-intrusiveness assessment. Br. 37. Without anything to support it, the argument must be dismissed.

b. The County's other critiques also fail. First, the County makes much of the district court's description of the violations it found as "ongoing" rather than "*current* and ongoing," suggesting that the court captured violations that did not exist at the time of the termination proceedings but instead in the past or future. Br. 21 (emphasis added). A keyword search of the court's order for dates, rather than for the word "current," shows that the facts the court invoked in finding constitutional violations were from the months and weeks leading up to the termination hearing and pertained to "current" conditions. Moreover, it is clear from context—such as the court's use of "ongoing" to describe assault trends in the four-month period leading up to County's termination motion (ROA.22-60527.2965-2966)—that "ongoing" was used as shorthand for the "current and ongoing" requirement, much as this Court has done. See, *e.g.*, *Guajardo*, 363 F.3d at 394-398; *Ruiz*, 243 F.3d at 950-951 (using "ongoing" and "existing"); *Castillo*, 238 F.3d at 347.

The County next complains that the district court violated *Castillo* by looking too far into the past—*i.e.*, more than "6 months before the last evidentiary

hearing in [the] case," on July 19, 2022. Br. 22-23. If this were the rule of *Castillo* (which it is not), the result would be nonsensical: the court only could have considered evidence starting from the two days before the County's January 21 termination motion, and half the six-month period would *postdate* the court's April 13 decision.

While omitting the past might be the County's best hope in defeating the district court's findings of risk of serious harm and deliberate indifference, this is not the law. Instances of harm and unsafe conditions in the recent past obviously inform whether a "substantial risk of serious harm" exists. Cf. *Ball* v. *LeBlanc*, 792 F.3d 584, 593 (5th Cir. 2015). Further, this Court requires the consideration of longstanding conditions and a defendant's conduct over a case's lifespan in deciding whether to find deliberate indifference to known risks. See, *e.g.*, *Valentine*, 993 F.3d at 282; *Williams*, 797 F.3d at 288.

The County also claims unpersuasively that the district court "impermissibly constitutionalized the consent decree" by considering compliance with its terms in assessing current and ongoing constitutional violations. Br. 25-26. But the court did no such thing. Rather, the court considered decree compliance among other evidence of risk of harm or as part of the deliberate indifference assessment. See ROA.22-60527.2959, 2964, 2968, 2970-2971, 2976-2977, 2982, 2989, 3038-3039. The County agreed in 2016 that the decree's terms were narrowly tailored, PLRA-

compliant steps for achieving the constitutional minimums at the jail. It was no error for the court to consider the failure to take those steps as evidence of ongoing, known risk of serious harm from the conditions the terms were designed to ameliorate. See, *e.g.*, ROA.22-60527.2982-2983 (citing untrained staff using "dangerous" force on youth as proof that lack of training violates the decree "*and* subjects detained youth[] to heightened risk of unconstitutional use-of-force" (emphasis added)).

Moreover, in many passages the County cites, the court noted consent decree noncompliance in analyzing whether the County was deliberately indifferent to dangerous conditions. See, *e.g.*, ROA.22-60527.2959 (citing failure to follow decree's staffing provisions and allowing level to drop to 58% of expert recommendation in January 2022 as evidence of "deliberate indifference toward maintaining staffing levels sufficient to prevent terror from reigning at RDC"). A jailer's "disregard" for "precautions he kn[ows] should be taken" supports such a finding. *Cope* v. *Cogdill*, 3 F.4th 198, 209 (5th Cir. 2021) (alteration in original) (quoting *Jacobs* v. *West Feliciana Sheriff's Dep't*, 228 F.3d 388, 397-398 (5th Cir. 2000)), cert. denied, 142 S. Ct. 2573 (2022); cf. *Gates*, 376 F.3d at 341 (holding that failure to address a problem known to be "urgent for more than a decade" supports the finding of deliberate indifference). The court did not err in assessing

the County's culpability by considering its compliance with decree terms that the County agreed were necessary to meet the constitutional floor.

c. The County also takes aim at the district court's consideration of evidence that it deems too old, speculative, or isolated to support "current and ongoing" constitutional violations—assertions that fail either on their face or once placed in the context of the court's order and the relevant law, as discussed below. Br. 23-25, 27-28. First, however, we address the County's stunning assertion that the seven in-custody deaths between mid-March and mid-November 2021—two months before its termination motion—do not "constitute a current and ongoing violation of federal rights." Br. 24. This Court has explained that "inmates need not show that death or serious injury has already occurred" to establish a constitutional violation, because the "'Eighth Amendment protects against future harm'" of which there is a substantial risk. *Ball*, 792 F.3d at 593 (quoting *Helling* v. *McKinney*, 509 U.S. 25, 33 (1993)). But where the evidence *does* show a pattern of recent deaths—by suicide, assault, overdose, or poorly addressed medical issues—it is impossible to see how this would *not* be relevant to whether there is a "substantial risk" of mortal harm. That there were fewer deaths in prior years only suggests increasingly perilous conditions, and that there were no deaths in the first few months of the current Sheriff's tenure (mostly after the termination hearing) has no bearing on risk of harm when the County sought termination. Cf.

Morales Feliciano v. *Rullan*, 378 F.3d 42, 54 (1st Cir. 2004) (A "district court's supportable finding that constitutional violations persist suffices to satisfy the requirements of the PLRA and to justify a comprehensive injunctive decree" even if "noteworthy advances have been made."), cert. denied, 543 U.S. 1054 (2005).[7]

The rest of the County's attacks—on the court's consideration of evidence tied to violations underlying decree provisions on use of force, sexual misconduct, investigations, and grievances—also fail.

Use Of Force. The court's order discussed unconstitutional conditions arising from excessive force with respect to the decree's three sections on use-of-force standards, training, and reporting. ROA.22-60527.2976-2977, 2979-2982, 2989-2991. The County does not contest that the incidents the court relied on reflect use of excessive force, but instead argues that they were too old—a 2018 or 2019 incident where officers used a beanbag gun on a sleeping detainee during a

[7] Tragically, by the date of this filing, there have been at least two more deaths at RDC on this Sheriff's watch, as well an escape of four detainees (one of whom was later found dead in New Orleans, another found dead in Mississippi after allegedly killing a pastor). See Rebecca Riess, Last of 4 Escaped Mississippi Detention Center Inmates Captured, CNN.com (May 4, 2023), available at https://perma.cc/GUE3-TUDA (last visited July 14, 2023); 50-Year-Old Detainee Found Dead in Cell at Raymond Detention Center, WLBT.com (April 24, 2023), available at https://perma.cc/2JRT-UX4C (last visited July 14, 2023); Roslyn Anderson, Two Investigations Underway in the Death of a Hinds County Inmate, WLBT.com, available at https://perma.cc/7R9D-HEH5 (last visited July 14, 2023).

shakedown (Br. 23)—or too thin—a "lone" Tasing of a prone inmate (Br. 27). But the County is wrong about the law, and the record.

First, as noted above, a court may rely on illustrative incidents rather than an "exhaustive catalog[]" of the evidence to establish unconstitutional conditions. *Alberti*, 790 F.2d at 1225. Further, the County's invocation of *Ball*, a three-plaintiff case in which this Court held that a district court improperly granted an overbroad facility-wide injunction, is inapt. Br. 27 (citing *Ball*, 792 F.3d at 599). The Attorney General brought this pattern-or-practice action on the United States' behalf under CRIPA and can seek "such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure" detainees' federal rights are protected. 42 U.S.C. 1997a. *Alberti*, a class action case more comparable to this one, makes clear that the court properly highlighted specific incidents to demonstrate the facility-wide violations it found (and formed the basis for facility-wide relief).

Second, while the beanbag incident the court cited was in 2018 or 2019, another similar incident took place a few weeks before the court issued its decision: a March 2022 shakedown where officers from a neighboring county used beanbag guns and Tasers to coerce compliance from seven RDC detainees, only one of which uses was justified. ROA.22-60527.2826-2827; ROA.22-60332.12297. This is on top of the October 2021 Tasing of a prone detainee, uses

of pepper spray to coerce compliance at RDC, and an untrained staff member's January 2022 floor restraint of a verbally noncompliant youth. ROA.22-60527.2976-2977, 2982; ROA.22-60332.8976. The court also cited testimony about the County's failure to implement and train staff on policies to prevent improper uses of force, to report on and learn from incidents, and even to heed the warnings of its own jail administrator about introducing Tasers without adequate training—lapses that predictably produce excessive force. ROA.22-60527.2976-2977, 2979-2982, 2989-2991. This evidence amply supported findings of current and ongoing violations that require correction through the new injunction's narrow terms. See *Gates*, 376 F.3d at 339.

Sexual Misconduct. The County also charges (Br. 23) that the district court improperly found current and ongoing federal law violations based on sexual misconduct. The court recounted testimony and monitoring reports reflecting the County's non-compliance with the Prison Rape Elimination Act (PREA), 34 U.S.C. 30307, and the Fourteenth Amendment in the months preceding the termination hearing: the absence of a mandatory PREA coordinator,[8] several apparent sexual abuse incidents at RDC and Henley-Young, and ongoing

[8] This role includes: developing, implementing, and overseeing PREA compliance efforts; educating detainees and staff on PREA's zero-tolerance policy for sexual abuse and harassment; receiving reports of incidents; reporting on and investigating incidents; and working with victims. See ROA.22-60203.5873-5874; see also 29 C.F.R. Pt. 115.

conditions that enable sexual abuse (lack of supervision, darkened cells, unsecured doors). ROA.22-60527.2999-3002. The County seems to suggest (Br. 23) that with the PREA compliance coordinator's return, violations ceased. But the continuing violation with which the court was concerned was the "sexual violence facing detainees"—illustrated by the highlighted incidents and conditions—to which the coordinator's unfilled absence reflected the County's deliberate indifference. ROA.22-60527.3001. That she returned does not undercut the current, ongoing risk of detainee-on-detainee sexual violence.

Investigations. The County argues (Br. 23-25) that the evidence the court cited was too old or too speculative to show that current and ongoing constitutional violations necessitated the decree's section on investigations. The court's analysis described the absence of criminal indictments stemming from documented detainee incidents, the late-November 2021 resignation of the Sheriff's sole overworked internal investigator, two deaths that initially went uninvestigated (March 2021) or insufficiently reported (July 2021), and the lack of functioning cameras. ROA.22-60527.3007-3008. As the court noted, however, the failure to investigate alone is not a Fourteenth Amendment violation; the court only maintained decree provisions because inadequate investigations were a "driving force" behind detainees' ongoing exposure to substantial risk of serious harm. ROA.22-60527.3009-3010 (citing, *inter alia*, *Geiger* v. *Jowers*, 404 F.3d 371, 373-374 (5th

Cir. 2005)). The court's attention to the most serious incidents within months of the termination hearing reflects its proper consideration of how jail conditions worked in combination to perpetuate present, ongoing risk—not to forestall conditions "that may possibly occur in the future." *Castillo*, 238 F.3d at 353; see *Gates*, 376 F.3d at 333; *Alberti*, 790 F.2d at 1224. Targeting those conditions with limited continued relief was proper.

Grievances. The County's attack on the evidence relating to grievances (Br. 23, 25) appears to duplicate its argument about investigations and fails for the same reasons. Here, too, the court acknowledged that grievances themselves are not actionable but that their mishandling can implicate risk of harm to detainees. ROA.22-60527.3012. It cited inadequate grievance responses identified in the November 2021 monitoring report, the botched handling of an October 2021 grievance about an unaddressed stabbing and protective custody request, and instances of detainees setting fires to get attention. ROA.22-60527.3013-3014. These illustrative incidents demonstrated the recent output of the County's insufficient efforts to identify and respond to instances of serious harm and were a proper foundation for further relief.

Overdetention. The County's challenge regarding overdetention is that such a claim must be proved by more than negligence, and this standard never can be met by the types of evidence on which the district court relied. Br. 28 (citing

Sanchez v. *Swyden*, 139 F.3d 464, 469 (5th Cir. 1998)). As an initial matter, *Sanchez* is inapposite, as it involved an isolated claim of wrongful detention and false imprisonment based on mistaken identity, which is not at issue in this case. 139 F.3d at 468. In any event, this Court has held that officials may be liable for overdetention where they "fail[]to promulgate policy or failure to train/supervise [on records regarding entitlement to release]" and do so "with deliberate indifference to constitutional rights." *Porter*, 659 F.3d at 446. The evidence below included instances of overdetention, the absence of a "functional database" to track release dates, and a practice of returning released detainees to jail. ROA.22-60527.3038-3039. The district court properly found that the County's longstanding failure to adopt adequate protocols—shown by its noncompliance with decree provisions designed to prevent wrongful detention—violated the Constitution.

2. The Record Supports The District Court's Deliberate Indifference Findings

The County asks this Court to revisit the volumes of evidence that the district court considered and use a handful of its chosen details to reach a different conclusion on deliberate indifference. Br. 28-37. This Court should decline the invitation to disturb the district court's factual findings. See *Gates*, 376 F.3d at 333. The court considered "the totality of the record evidence," and there was "more than enough * * * to prove subjective awareness of a substantial risk of

serious harm." *Ball*, 792 F.3d at 595. The record included the belated half-measures the County touts, but the fact that the County did *something* did not require the court to find that it responded "reasonably" or adequately to avoid liability. See Br. 29 (quoting *Farmer*, 511 U.S. at 884). Indeed, the evidence also included the County's awareness of longstanding hazards, its conduct over the course of the litigation, and the jail's conditions at the time termination was sought: "unsafe," either wholly or in part, according to the President of the Board of Supervisors and the Sheriff. ROA.22-60203.6253, 6424. Efforts inadequate to resolve longstanding problems do not rebut a showing of deliberate indifference, *Gates*, 376 F.3d at 340-342, especially where the County knew the precautions it must take to mitigate risk, *Cope*, 3 F.4th at 209.

As discussed below, the County's assertions that certain evidence refutes the district court's factual findings on deliberate indifference lack merit. See *Ball*, 792 F.3d at 592.

Staffing. The district court did not clearly err by declining to find that the County's belated half-measures to increase staffing constituted a reasonable response. Understaffing was a "perennial focus of th[e] litigation" (ROA.22-60527.2959), and the monitor warned in her very first report that severe understaffing was an "overarching problem" that would render all other corrective measures futile unless solved. ROA.22-60527.291. Nevertheless—and despite

years of warnings, technical assistance, and negotiated injunctive relief terms to address the problem—staffing was at an "all-time low" in January 2022. ROA.22-60527.2959 (quoting ROA.22-60203.4619-4620); see also ROA.22-60527.12259 (collecting monitors' warnings).

The court did not err in declining to credit the County's deficient staffing efforts as a reasonable response. ROA.22-60527.2918 (acknowledging an approved-but-unimplemented pay raise for corrections officers); see also ROA.22-60203.6348-6349. The measures the County claims to have undertaken (Br. 29-30) came on the eve of termination proceedings, and most were unapproved or unimplemented by the February 2022 hearing. Although a 5% raise for corrections officers came in December 2021, as of the February hearing the County had not yet implemented a salary increase to $31,000, direct deposit for all employees, or bimonthly pay; nor had the Sheriff so much as submitted his retention pay, recruitment, and uniform stipend proposals to the Board. ROA.22-60203.4934, 6101-6102, 6297, 6348-6349. The COVID pay supplement was a one-time award funded with federal relief money. ROA.22-60203.6102. The County approved overtime for law enforcement officers to work at the jail but the Sheriff refused to take steps that would incentivize officers to take these assignments, so the effort produced no additional staffing. ROA.22-60203.4936-4937. The County has a recruiter but does not share what, if anything, he has accomplished, nor does it

acknowledge its prolonged failure to make use of a detention staffing consultant its counsel selected with the monitor in 2020. ROA.22-60203.5580-5581, 6294-6295. That the County has perhaps hired enough staff but never managed to retain them (ROA.22-60203.5737) is not a reasonable response, either.

In sum, the court properly dismissed these late and incomplete efforts to improve staffing as insufficient to overcome the deliberate indifference demonstrated through the County's failure to correct the "longstanding, pervasive, [and] well-documented" problem of understaffing, and its resulting dangers. *Williams*, 797 F.3d at 288 (citation omitted); *Valentine*, 993 F.3d at 282; see also *Gates*, 376 F.3d at 341-342.

Use Of Force. The County is incorrect, as well, that the district court overlooked evidence that it reasonably responded to the risk created by inadequate use-of-force training, policies, and accountability measures. See Br. 31-32. In concluding that the County's conduct reflected deliberate indifference to detainees' rights to be free from excessive force, the court highlighted testimony from the monitor's team and the recent jail administrator, Major Bryan, about the County's ongoing failure to implement use-of-force policies, to provide adequate (or any) pre- and in-service training to officers, and to heed Major Bryan's warning about introducing Tasers without sufficient training. ROA.22-60527.2976-2977, 2979, 2981-2982. These lapses persisted despite numerous incidents showing that they

enabled uses of excessive force to continue. See pp. 38-40, *supra*. Implementing adequate policies and training on use of force was required in the consent decree—the terms of which the County once agreed were narrowly tailored and necessary to achieving constitutional conditions—and the failure to take such steps evinces the County's deliberate indifference. See *Cope*, 3 F.4th at 209.[9]

Much of the evidence the County claims the district court overlooked is either what the court considered—and was not helpful to the County's cause—or was not in the hearing record. See Br. 31. The County touts its use-of-force training, but for this it cites Major Bryan's testimony describing the inadequacy of this training and a monitoring report showing some of it was not fully implemented. ROA.22-60203.4952-4954; ROA.22-60332.8934. The County's cited "plan" to offer "refresher instruction" appears in an April 2022 monitoring report that postdates the termination hearing; it does not reflect any such measures in place, despite their requirement in the 2016 decree, and it notes deficits in existing training content. ROA.22-60527.2830.

[9] The County does not contest on appeal that its officers used excessive force, a claim that is judged using the objective unreasonableness standard of *Kingsley* v. *Hendrickson*, 576 U.S. 389, 397 (2015). Deliberate indifference may be required, however, to establish liability for systemic violations relating to the failure to adopt policies or to train officers on excessive force. See *City of Canton* v. *Harris*, 489 U.S. 378, 388 (1989); *Farmer*, 511 U.S. at 832-833.

The County claims improvement in enforcing its policies, but for this cites the testimony of a monitoring team member who said only that "some" officers were held accountable for improper use of force and that the staff member who had held them accountable had resigned. ROA.22-60203.4643. The post-hearing monitoring report also notes that officers remained untrained and instances of inappropriate force continued. ROA.22-60527.2825-2827. And while it is true that Major Bryan testified that use-of-force reports are "required," this testimony did not reflect compliance (ROA.22-60203.5048), and monitoring reports from before and after the hearing document improvement but also "discrepancies" in reporting (ROA.22-60332.8980; ROA.22-60527.2833). This is not enough to overturn the court's findings of deliberate indifference.

Sexual Misconduct. The County mischaracterizes the district court's findings and the evidence of its efforts to abate sexual misconduct, which did not reflect a reasonable response to ongoing risk. The court acknowledged the County's progress on sexual misconduct had "all but deteriorated" by the time of the termination proceedings. ROA.22-60527.2999. The court reiterated that conditions in which "terror reigns"—like those at RDC, where basic amenities, lighting, locking doors, security measures, and supervision are lacking—permit the finding of a constitutional violation *per se*. ROA.22-60527.3000-3001 (citing *Jones* v. *Diamond*, 636 F.2d 1364, 1374 (5th Cir. 1981) (overruled on other

grounds)). Here, sexual misconduct incidents continued to mount, conditions ripe for manipulation by would-be abusers persisted, *and* the County allowed the mandatory role of PREA coordinator to go essentially unfilled during a six-month absence—facts which, taken together, demonstrated the County's deliberate indifference. ROA.22-60527.3001-3002; see also pp. 40-41, *supra*.

Having no response to other circumstances from which the court inferred deliberate indifference (*i.e.*, housing detainees in a facility where they may freely assault each other), the County focuses on the PREA coordinator's absence. Br. 32-33. Although the County claims that others adopted the coordinator's responsibilities, the monitor expressed concern in her report and testimony (which the County cites (Br. 32)) that the duties were given to individuals whose identities and qualifications were uncertain; she could not confirm, and it does not appear, that Major Bryan was one of them. ROA.22-60203.5922-5924; ROA.22-60332.8990-8991. Relying primarily on the post-hearing April monitoring report, the County claims that protective measures remained in place during the coordinator's absence. Br. 32-33. But while the report states that medical staff continued their normal duties during the coordinator's absence, it also states that staff were "unclear" on who held the role and that no "real coordination" occurred. ROA.22-60527.2841. That the coordinator returned to her duties in January 2022 does not negate the inference of deliberate indifference from the County's conduct

over her six-month absence, particularly given its failure to mitigate ongoing environmental risks. ROA.22-60527.3002. Further, the County misses the point by glossing over a "single" violent sexual assault that took place among youth at Henley-Young, noting that the facility has its own PREA coordinator. Br. 33. The testimony it cites refers to yet another instance of sexual impropriety that staff enabled and failed to properly address. ROA.22-60203.5472-5477. These are not reasons for this Court to overturn the district court's findings.

Use Of Segregation. The County again mischaracterizes the court's findings and the evidence in order to make the case for its reasonable response to known risks of serious harm arising from its use of segregated housing. See Br. 33-35. The court observed that "problems with segregation and booking [where the County often holds detainees in isolation] have existed 'since the beginning.'" ROA.22-60527.3020-3021 (citing ROA.22-60203.4607). Chief among the court's concerns was the County's continued use of booking cells for long-term housing despite the prohibition of this practice in the decree, this practice's status as a longstanding concern for the monitoring team, inadequate or falsified welfare checks, and two deaths in such cells. ROA.22-60527.3018-3020 (citing ROA.22-60203.4635-4636, 4693, 4702, 5424-5425, 6391-6393). The court observed, too, that facility staff worried that detainees in segregation (some of whom have serious mental illness) lacked food and hygiene support—a problem not addressed until

contempt proceedings commenced. ROA.22-60527.3020 (citing ROA.22-60203.5147, 5618; ROA.22-60332.9790-9791). The court also noted among "the County's many broken promises" its plan to open a mental health unit. ROA.22-60527.3021 (citing ROA.22-60203.5583). The County knew it should have taken such precautions, having agreed to many decree provisions to correct unconstitutional conditions. See ROA.22-60527.239-242. But it did not do so, evincing deliberate indifference to the risks of its segregated housing practices. *Cope*, 3 F.4th at 209.

The County relies (Br. 34-35) primarily on descriptions of interdisciplinary team (IDT) meetings and the work of mental health staff in the April 2022 monitoring report to rebut deliberate indifference. But that report does not characterize the County's efforts favorably. It describes IDT meetings as a mechanism "finally" initiated in June 2021, which did not show promise for serving their intended purpose—limiting the use of segregation for detainees with serious mental illness—until the eve of termination proceedings, especially as the County failed to create a mental health unit to house this population. ROA.22-60527.2851-2852; see also ROA.22-60203.5148-5149. The report attributed the reinvigorated IDT meetings to Major Bryan (ROA.22-60527.2859), whose tenure ended before the report even was finalized. The report stated that weekly rounds did occur, but the lack of security staff meant that weekly therapy sessions

(required in the consent decree) were held inconsistently, and some detainees could not be reached for medication pass. ROA.22-60527.2856. The monitoring team's mental health expert opined that "the current level of mental health services" provided to detainees in segregation was not sufficient to meet their needs. ROA.22-60203.5149. This was not a reasonable response.

Assault And Death. The County also fails (Br. 35-36) in its attempt to turn record-high mortality in the calendar year preceding the termination motion into evidence of a reasonable response to dangerous conditions. It claims that "things must be going better operationally" at the jail, pointing to a six-month period under Sheriff Jones' watch when no deaths occurred and Major Bryan's proudest "accomplishment" of three months without an overdose. Br. 36. The court, considering both jail conditions and the County's conduct, disagreed: it found the "underlying fundamentals" were "unchanged." ROA.22-60527.2918.

In any event, half the six-month period the County cites (mid-January to mid-July 2022) was *after* the court entered its mid-April order amending the consent decree. If this Court is to consider events that were not before the district court in the first instance, then it also should consider that the subsequent months of the Sheriff's tenure have seen at least two in-custody deaths and an escape that resulted in two more detainee deaths and one civilian death. See note 7, *supra*. Whatever good came of Major Bryan's administration, the Sheriff ended it by

accepting her resignation days before it was to become effective. See ROA.22-60203.6414-6416. The district court did not err in declining to consider a pause in the death toll as evidence of the County's reasonable response.

Facility Improvements. The County's decades-late efforts to improve the jail's physical plant and build a new facility (Br. 36-37) do not amount to a reasonable response, either.[10] The County long has known of RDC's design, construction, and persistent maintenance problems; the County admits its awareness dating back to 1994, and the district court further documented that these troubles were public knowledge, as discussed earlier. See Br. 4-5; ROA.22-60527.2920-2924; see also pp.7-10, *supra*. That the County tried to fix these longstanding problems in 2020 (Br. 36)—under threat of contempt, which it avoided by negotiating a stipulated order mandating maintenance and master planning measures—reflects disregard for risk, not attention to it. See *Valentine*, 993 F.3d at 282; *Williams*, 797 F.3d at 288.

This is especially so because the County has known since the first monitoring report that such endeavors would be pointless without resolving staffing deficits. ROA.22-60527.291. Nevertheless, the County poured money

[10] Even if the County could establish that it reasonably responded to known risks with respect to the jail's physical plant, it could not credibly argue that the district court improperly burdened it with prospective relief in this area. The new injunction does not address facility maintenance or improvement. See generally ROA.22-60527.12309-12319.

into renovations and repairs that still-unsupervised detainees destroyed soon thereafter. ROA.22-60203.6000-6001, 6575. These efforts did not even produce a full complement of locking doors. See ROA.22-60203.5617. As for the new jail, the district court rightly explained that a facility "to be completed in 2025 cannot credibly solve today's constitutional problems," particularly where that construction depends on uncertain funding streams and the new facility has only a third of RDC's capacity. ROA.22-60527.2937-2938. This is hardly any response to presently unconstitutional conditions, much less a reasonable one.[11]

II

THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN APPOINTING A RECEIVER TO OPERATE RDC AS SANCTION FOR CONTEMPT OF COURT ORDERS DESIGNED TO RESOLVE UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT

No one in this litigation has said that it is "easy" to run a jail (Br. 37): not the United States, not the district court, certainly not the County. The County highlights the Supreme Court's observation in *Procunier* v. *Martinez* that federal courts exercise restraint when addressing the complexities of corrections (Br. 38) but ignores *Procunier*'s further admonition that this practice "cannot encompass any failure to take cognizance of valid constitutional claims." 416 U.S. 396, 405

[11] Given its findings of widespread, current and ongoing violations of detainees' constitutional rights, the court would have been well within its discretion to retain even more of the consent decree's detailed provisions to ensure a tailored but "efficacious" remedy. *Brown*, 563 U.S. at 539, 541, 543.

(1974), overruled on other grounds, *Thornburgh* v. *Abbott*, 490 U.S. 401 (1989). When a jail's "practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights." *Id.* at 405-406.

That is what the district court here did after years of restraint and patience, acting well within the bounds of the Constitution, the PLRA, this Court's precedent and other relevant authorities. The receivership is narrowly tailored to resolving otherwise uncorrectable violations of detainees' rights at RDC. The County's arguments to the contrary rest on mischaracterizations of the district court's orders and of core precedents relating to courts' equitable powers in prison conditions cases. Br. 37-55.

A. Standard Of Review

This Court reviews a trial court's imposition of an equitable remedy in a prison conditions case for abuse of discretion. *Ball* v. *LeBlanc*, 792 F.3d 584, 598 (5th Cir. 2015); *Gates* v. *Cook*, 376 F.3d 323, 333 (5th Cir. 2004). This Court also reviews the imposition of contempt sanctions for abuse of discretion and "will not substitute [its] judgment for that of the district court." *United States* v. *City of Jackson*, 359 F.3d 727, 731 (5th Cir. 2004); see also *In re U.S. Bureau of Prisons*, 918 F.3d 431, 438 (5th Cir. 2019). Likewise, this Court "review[s] a district

court's appointment of a receiver for an abuse of discretion." *Netsphere, Inc.* v. *Baron*, 703 F.3d 296, 305 (5th Cir. 2012), cert. denied, 574 U.S. 974 (2014).

This Court only will find an abuse of discretion if the trial court "(1) relies on clearly erroneous factual findings when deciding to grant or deny the [prospective relief,] (2) relies on erroneous conclusions of law when deciding to grant or deny the [prospective relief], or (3) misapplies the factual or legal conclusions when fashioning its [prospective] relief." *Ball*, 792 F.3d at 598. A trial court abuses its discretion if it violates the PLRA in fashioning equitable relief. See *id.* at 598-600.[12]

B. Courts Must Employ Tailored And Effective Measures, Including Receivership, To Correct Constitutional Violations

"[T]he scope of a district court's equitable powers" to craft a remedy for constitutional violations uncorrected by state or local authorities "is broad, for breadth and flexibility are inherent in equitable remedies." *Swann* v. *Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 15 (1971); see also *Brown* v. *Plata*, 563 U.S. 493, 538 (2011) (same). The "nature and scope of the remedy are to be determined by the violation." *Milliken* v. *Bradley*, 433 U.S. 267, 281-282 (1977).

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[12] The County's opening brief again makes no meaningful argument that the district court erred in issuing several of the orders it has appealed: both of the court's orders holding it in contempt, the order appointing Mr. France as receiver, and the court's indicative ruling and order on the United States' motion for clarification of the receiver orders. Any such arguments are forfeited. See, *e.g.*, *Spagnol-Bastos* v. *Garland*, 19 F.4th 802, 808 (5th Cir. 2021).

In crafting a remedy for unconstitutional conditions of confinement, a district court "ha[s] ample authority" to "address each element contributing to the violation." *Hutto* v. *Finney*, 437 U.S. 678, 687 (1978). If a defendant has balked at "repeated opportunities to remedy the cruel and unusual conditions," then, "taking the long and unhappy history of the litigation," the court is "justified in entering a comprehensive order to insure against the risk of inadequate compliance." *Ibid.* Moreover, "[w]hen the totality of conditions * * * violates the Constitution, the trial court's remedies are not limited to the redress of specific constitutional rights" but can include case-specific measures necessary to achieve constitutional compliance. *Miller* v. *Carson*, 563 F.2d 741, 751 (5th Cir. 1977).

The PLRA does not alter federal courts' bottom-line obligation to ensure constitutional compliance. While courts must be sensitive to state and local interests in managing corrections, they "nevertheless must not shrink from their obligation to enforce the constitutional rights of all persons" and "must consider a range of available options" to achieve this, "including appointment of * * * receivers." *Brown*, 563 U.S. at 511 (internal quotation marks and citation omitted).[13] "[C]onstitutional violations in conditions of confinement are rarely

[13] Indeed, several courts of appeals have acknowledged the availability of receivership as a remedy for persistent constitutional violations in a variety of state and local institutions. See, *e.g.*, *Morgan* v. *McDonough*, 540 F.2d 527, 533 (1st Cir. 1976) (approving a receivership to desegregate a public high school where "usual remedies" like contempt proceedings and consent decrees were "plainly not

susceptible of simple or straightforward solutions," and the PLRA "should not be interpreted to place undue restrictions on the authority of federal courts to fashion practical remedies when confronted with complex and intractable constitutional violations." *Id.* at 525-526.

C. The District Court Applied The PLRA's Requirements And Other Appropriate Equitable Factors To Guide Its Discretion In Appointing A Receiver

1. The Receiver Orders Incorporated The PLRA's Need-Narrowness-Intrusiveness Requirement

This Court easily can dismiss the County's charge (Br. 38-39) that the district court failed to analyze the receiver orders under the PLRA's requirements. The district court considered receivership with an eye to both historical precedents and to the leading post-PLRA model from lower court proceedings in *Brown* v. *Plata*, where a district court appointed a receiver to oversee administration of health services in California's prisons. See *Plata* v. *Schwarzenegger*, No. C01-1351, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005) (*Plata I*). The Ninth Circuit later affirmed the district court's refusal to terminate that relief under 18 U.S.C. 3626(b). *Plata* v. *Schwarzenegger*, 603 F.3d 1088, 1093-1098 (2010) (*Plata II*).

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very promising"), cert. denied, 429 U.S. 1042 (1977); see also *Gautreaux* v. *Chicago Hous. Auth.*, 178 F.3d 951, 954 (7th Cir. 1999) (describing scope of a receivership over the Chicago Housing Authority); *LaShawn A. by Moore* v. *Barry*, 144 F.3d 847, 851 (D.C. Cir. 1998) (discussing powers of receiver appointed to manage the District of Columbia's child welfare system).

The district court's November 2021 show-cause order invoked *Plata II* and cited its analysis under the PLRA of the availability of receivership and the propriety of a receiver's appointment after the failure of less drastic measures. ROA.22-60527.2004-2005 (citing *Plata II*, 603 F.3d at 1093-1094, 1097). Indeed, both parties addressed whether a receiver should be appointed in light of the PLRA's requirements before the termination and contempt hearing. See ROA.22-60527.2293; ROA.22-60527.2585-2599.

The district court's adherence to the PLRA's requirements is clear in its subsequent analysis of whether to appoint a receiver. See generally ROA.22-60527.12253-12278. The court reiterated *Brown*'s acknowledgment that receivership is an allowable remedy under the PLRA and then applied the multi-factored receivership analysis from *Plata I*. ROA.22-60527.12258-12277 (citing *Brown*, 563 U.S. at 526, and *Plata I*, 2005 WL 2932253, at *23). This was not mere "lip service" to the PLRA. Br. 40. The *Plata* factors—risk of harm, less intrusive measures, confrontation and delay, leadership, bad faith, wasted resources, quick and efficient remedy—both expressly incorporate the PLRA's requirements (in the second factor) and reflect a rigorous analysis of whether there is any "realistic alternative" to receivership.[14] *Plata I*, at *24-25, 33. This mirrors

[14] *Plata I* drew these factors from other pre-PLRA receivership cases. *Plata I*, 2005 WL 2932253, at *23 (collecting cases). As the district court noted, the factors also align with those this Court has applied in considering the propriety of

the aim of the PLRA's need-narrowness-intrusiveness standard: avoiding federal intervention in corrections unless "absolutely necessary" to achieving constitutional compliance. *Id.* at *33. Indeed, the *Plata I* court concluded that appointing a receiver complied with the PLRA's requirements "in light of" this multi-factored analysis. *Ibid.*

There can be little question, then, that in adopting this analysis, the district court designed the receiver orders to comply with the PLRA. As the court later clarified in amending the receiver orders, it "unequivocally believed" when it issued them, and "still believes," that they "comply with the need-narrowness-intrusiveness standard of the PLRA." ROA.22-60527.12299-12300. The amended orders explicitly reflect this conclusion. ROA.22-60527.12278, 12282, 12295.

2. The District Court Properly Analyzed The Plata *Factors To Conclude That Receivership Was An Appropriate And PLRA-Compliant Contempt Sanction*

The district court properly exercised its discretion—as constrained by the PLRA and under the guidance of the *Plata* factors—to impose a receivership at RDC based on the record, the case's history, and the law. The County's version of

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receivership to preserve a judgment debtor's property, which include the validity of a claim to property, danger to that property, the absence of less drastic remedies, and the likelihood of achieving more good than harm. ROA.22-60527.12258 (citing *Santibanez* v. *Wier McMahon & Co.*, 105 F.3d 234, 241 (5th Cir. 1997)).

the *Plata* analysis should not compel this Court to displace the district court's sound judgment.

Risk Of Harm. The district court's assessment of the first *Plata* factor ("[w]hether there is a grave and immediate threat or actuality of harm to plaintiffs") properly rested on a record of present conditions at RDC, developed in more than two weeks of evidentiary proceedings in February and July 2022. ROA.22-60527.12259-12265 (citing *Plata I*, 2005 WL 2932253, at *23). The court found that this record—which showed substantial risk of serious harm in the form of "death, rampant physical and sexual assaults, and neglect of the seriously mentally ill"—"overwhelmingly indicates that RDC is an institution where terror reigns." ROA.22-60527.12259 (internal quotation marks omitted) (quoting *Alberti* v. *Klevenhagen*, 790 F.2d 1220, 1226 (5th Cir. 1986)). The main factor contributing to these conditions was the "egregious," all-time low number of staff at RDC while the detainee population soared, affecting "nearly every facet of operations at RDC." ROA.22-60527.12259-12262. This deficit left suicidal detainees unwatched, officers afraid to report to work, housing units unsupervised and given over to detainee control, vulnerable detainees subject to violence and abuse, excessive force unchecked, and contraband rampant. ROA.22-60527.12259-12265.

The County does not refute any of these conditions existed but instead contends that they were not "current and ongoing" violations, referring back to its earlier arguments under the PLRA's termination provision. Br. 40-41. Setting aside that the receivership is not subject to termination here, the County simply is wrong about the court's order. The order rested on evidence developed during the February termination and contempt hearing (see pp. 18-20 and Part I.C.1, *supra*), which the court allowed the County to refresh at the July mitigation hearing. See ROA.22-60527.12259-12265. Indeed, the court expressly accounted for evidence the County offered at the mitigation hearing regarding pay and retention initiatives, which it properly dismissed as too little, too late to overcome the overwhelming and persistent risk to detainees' safety. ROA.22-60527.12261; see also *Morales Feliciano* v. *Rullan*, 378 F.3d 42, 54 (1st Cir. 2004) ("However laudable the advances may be, the district court's supportable finding that constitutional violations persist suffices to satisfy the requirements of the PLRA and to justify a comprehensive injunctive decree."), cert. denied, 543 U.S. 1054 (2005). This was no error.

Less Intrusive Means. The district court properly analyzed the second *Plata* factor, as well: "[w]hether the use of less extreme measures of remediation have been exhausted or prove futile." *Plata I*, 2005 WL 2932253, at *23. In considering this factor, the *Plata I* court acknowledged that its remedy must satisfy

the PLRA's codification of a court's "authority to issue prospective relief that fully remedies constitutional violations, while mandating that the relief not be overly broad." *Id.* at *25. The court here took the same considerations into account. It acknowledged, first, that while "less intrusive means"—the 2016 consent decree and the more "manageable" 2020 stipulated order—had fixed the Work Center, "conditions at RDC are severely deficient." ROA.22-60527.12266. Nor was there improvement by the time of the July mitigation hearing, held on the timeline of the County's choosing and after three months under the new injunction. ROA.22-60527.12267. Like the *Plata I* court, the court then considered other options for achieving constitutional conditions: monetary sanctions (unlikely to succeed); a prisoner release, or closure of A-Pod (too radical); requiring the individual defendants to reside at RDC (too extreme). ROA.22-60527.12268-12269. The court also considered that the County never had proposed an alternative to receivership, either, before resolving that this was a "remedy proportionate to the constitutional violations and gravity of harm faced by detainees at RDC." ROA.22-60527.12269.

The County's critiques of this analysis miss the mark. The County claims that receivership was an improper sanction for violating an "extinguished" decree that was not tethered to the constitutional floor (Br. 41-43), but this mischaracterizes the court's deliberate relief package. The court "revised" the

decree to "excis[e] those *provisions* that exceeded the constitutional minimum" while retaining its substantive core—indeed, nearly every decree section—to address current and ongoing constitutional violations. ROA.22-60527.12256 (emphasis added); see also ROA.22-60527.12309-12319. It held the County in contempt and imposed sanctions not merely for the County's failure to comply with decree terms but with its central purpose: achieving constitutional conditions of confinement. See ROA.22-60527.2390, 2393-2394, 2755, 12265, 12269, 12271, 12275, 12277. The receivership thus targets the County's "refus[al] to take responsibility" for "ensuring the health and safety of detainees" at RDC by appointing a third party to oversee that task. ROA.22-60527.12277-12278. This remedy is narrowly tailored to correcting the violations the court found and minimally intrusive on the County's affairs in achieving that goal, as the receivership is limited to RDC, does not interfere with the County's plans for a new jail, and is meant to cease when detainees are transferred there. See ROA.22-60527.12265, 12275, 12309-12319.

The County also charges that it should have been allowed more time to comply with the new injunction, but it offers no basis for this supposed entitlement. Br. 41-42. In any event, the district court considered this plea for even more time—having already given the County until July 2022 to purge its contempt—but reasonably concluded "we have been there and done that," and

there is "no sense in granting the County more time to do nothing. ROA.22-60527.12269.

Finally, the County's complaint that the district court failed to "consider any remedies particular to A-Pod" (Br. 43-45) is untrue. As noted above, the district court considered closing A-Pod but deemed this "more radical" than receivership in consideration of relevant precedent. ROA.22-60527.12268 (collecting cases). Moreover, testimony at the mitigation hearing showed that dangerous conditions (including perilously inadequate staffing and supervision, assaults, and fires) were then present in all three of RDC's housing units. See ROA.22-60527.12270; ROA.22-60332.12205, 12232, 12234-12236, 12283, 12286-12288, 12290, 12292-12293. A remedy limited to A-Pod would be an ineffective solution to facility-wide constitutional violations at RDC. It was no abuse of discretion for the court to adopt a more "practical" remedy to the "complex and intractable constitutional violations" before it. *Brown*, 563 U.S. at 525-526.

Risk Of Confrontation And Delay. The third *Plata* factor is "[w]hether continued insistence [on] compliance with the [c]ourt's orders would lead only to confrontation and delay." *Plata I*, 2005 WL 2932253, at *23. The district court's order highlighted instances reflective of the persistent internal "struggle" and "inertia" that prevented the County from meeting its obligations under the court's orders and the Constitution: the former Sheriff's circumvention of the lauded

former jail administrator; leaving the monitor to carry out policy development and staffing initiatives required in the consent decree and stipulated order; failing to procure basic furnishings about which the court had repeatedly inquired; allowing jail conditions to deteriorate over time; and refusing to cooperate with the monitor once the court amended the consent decree. ROA.22-60527.12269-12271. The court properly concluded that this "pattern of obstinance indicates that lesser measures will not bring RDC into compliance with the Constitution" and would lead to "nothing but further delay, as well as further needless death and morbidity." ROA.22-60527.12271 (quoting *Plata I*, 2005 WL 2932253, at *29).

The County's response to this well-supported assessment of the third *Plata* factor (Br. 45-49) is emblematic of its conduct in this litigation, as it fails to grapple with its own grave omissions while attacking those enlisted to assist. The County focuses on the monitor, apparently conceding the rest of the evidence the court found to demonstrate its "obstinance," and its critiques miss the mark. To start, the County's suggestion (Br. 47-49) that the monitor and her team are biased or set against its success has no basis in the record. The County agreed to monitoring by a "team of professionals" when it signed the consent decree. See ROA.22-60527.212, 260-265. The County and United States jointly selected Elizabeth Simpson and recommended her to the court as an "ideal candidate," whom they understood would "retain several subject matter experts to assist her."

ROA.22-60527.276, 279. The County did not publicly question the monitoring team's qualifications—or even express dissatisfaction with their work—before the termination proceedings. See, *e.g.*, ROA.22-60203.5855-5858, 6456-6457. This concern thus has no merit or bearing on the question of confrontation and delay.[15]

The County attacks unpersuasively the court's assessment of two aspects of its interactions with the monitor. First, the court's concern with the County's outsourcing of policy development and human resources consulting to the monitor was not about failing to pay for services, as the County suggests. ROA.22-60527.12269-12270. Instead, the trouble was that the County placed completion of its compliance obligations on the monitor rather than "spearheading" those initiatives itself, while depleting the monitor's resources for assessing and assisting with compliance. ROA.22-60203.5576-5579. Moreover, the County underutilized the consultants that the monitor procured. See ROA.22-60203.4938-4940, 5580-5581. It is unsurprising that the County made slow progress in developing policies

[15] The County also complains (Br. 47) that monitoring team members were allowed to testify as experts. It is not clear what difference this made or how it proves bias. The monitoring team communicated with the court in conferences and written reports for years and its members have "always been deemed" experts per the plan of the consent decree. See ROA.22-60203.4611. Moreover, status as an expert is less significant at a bench trial, because "there is no risk of tainting the trial by exposing a jury to unreliable evidence." *Whitehouse Hotel Ltd. P'ship* v. *C.I.R.*, 615 F.3d 321, 330 (5th Cir. 2010).

and no progress in increasing staffing over six years. See, *e.g.*, ROA.22-60527.2774, 2795-2796.

Second, the County's rationalization of why it failed to timely provide documents to the monitor only supports the need for oversight. See Br. 46-47. The County complains that once it got its wish for the consent decree to be pared back, it could not comply with the monitoring requirements (retained in the new injunction)[16] because the decree provision requiring a compliance coordinator was deleted and the coordinator resigned. Br. 46. Apparently, having the flexibility to carry out obligations as it wishes suits the County just as poorly as express directives do. This supports the need for a receiver.

Wasted Resources. The district court's assessment of another *Plata* factor—"[w]hether resources are being wasted"—also properly favored receivership. ROA.22-60527.12271-12273. The court pointed to the County's conduct in several areas that reflected "a huge waste of the taxpayer's resources": inconsistent and shifting priorities; spending on repairs but not achieving staffing and supervision levels necessary to stop a cycle of physical plant destruction; hiring and training staff who quit; retaining a temporary jail administrator on contract; and planning an expensive new jail without investing in practices and

[16] The County does not specifically challenge the retention of these provisions on appeal.

personnel to ensure safety at RDC or the new jail once it opens. ROA.22-60527.12271-12273. In consideration of all this, the court concluded that failing to appoint a receiver would perpetuate "a massive waste of money and, more importantly, life." ROA.22-60527.12272 (quoting *Plata I*, 2005 WL 2932253, at *31).

The County's attack on this conclusion is largely limited to its physical plant investments, and it comes out of both sides of the County's mouth. On the one side, the County gripes that it made repairs and underwent planning initiatives "under the now defunct consent decree and the stipulated order," compliance with which was a "true waste of resources." Br. 49, 52. On the other, the County wants credit for every dollar it spent pursuant to those court orders to repair RDC and plan for a new jail, resting on the words of its own contractors that these efforts have been "aggressive" and "reasonable." Br. 49-51.

This misses the point. The court heard all this evidence and acknowledged the County's substantial expenditures against limited budget. See ROA.22-60527.12271-12272. The court's concern was that undertaking these efforts without simultaneously improving staffing and supervision rendered them futile—a waste of resources that both the County's facilities contractor and the monitoring team verified due to a cycle of repair and destruction. See ROA.22-60203.6000-6001, 6575. Moreover, the court did not question the case for a new jail—indeed,

it disavowed interference with this plan in crafting the receivership—but rightly concluded that building a new jail without correcting staffing and supervision deficits would leave RDC's detainees in suffering and spread its troubles to the new facility. ROA.22-60527.12265, 12272.

The County also misses the point as to its retention of the temporary jail administrator, comparing his fees to the costs of monitoring. Br. 51-52. The court was concerned with the County's admitted waste of resources hiring and training people who do not stay—a pattern that extended to the hiring of a temporary, part-time jail administrator. ROA.22-60527.12271-12272 (citing ROA.22-60203.6382). The County has no response to this. Nor does it contest the court's observation elsewhere that Mr. Shaw was "wholly unqualified for the role," which further supports the conclusion that his retention was a waste. ROA.22-60527.12276. The court's assessment of wasted resources was proper.

Leadership. The district court properly weighed "[w]hether there is lack of leadership to turn the tide within a reasonable period of time," too. See *Plata I*, 2005 WL 2932253, at *23. The court heard the Sheriff's admission that "the buck stops with him" but expressed justifiable skepticism that he or the County's other leaders would take meaningful responsibility for rectifying constitutional violations, as each gave testimony casting blame on someone (or something) else. ROA.22-60527.12273; see also ROA.22-60527.2933 (describing County's "finger-

pointing" at the February 2022 hearing and frequent changes of leadership and position). The court also noted discord within the County's Board of Supervisors, which, in the context of the County's longstanding failure to rectify deadly conditions at RDC, the court found to support the need for further intervention. ROA.22-60527.12273-12274 (collecting news articles and citing *Plata I*, 2005 WL 2932253, at *23).

Here, the County tries to refute the district court's conclusions by pointing to COVID—the impact of which no one doubts but which the County uses as both sword and shield[17]—and to the supposed bias of the monitoring team, addressed above. Br. 52-53. The County's next claim (Br. 53), that the court did not tie dysfunction on the Board of Supervisors to shortcomings at RDC, is simply wrong. Indeed, the County's brief highlights the very same statement of the Board President about not "kicking the can down the road" that the district court cited in demonstrating County leadership's shifting commitment to and then disavowal of the consent decree. Compare Br. 53 (quoting ROA.22-60203.6224) with ROA.22-60527.2932 (quoting same) and ROA.22-60527.12268 (citing same). That the Board approved jail expenditures over time does not negate the frustration of aims

[17] For instance, the County criticizes the monitoring team for visiting the jail remotely during much of the pandemic (Br. 5) but then blames a team member for a COVID outbreak that supposedly thwarted the County's plans to move detainees out of A-Pod once in-person monitoring visits resumed (Br. 44).

caused by its broader shifts in positions and priorities. See ROA.22-60527.2933-2939, 12254, 12261-12262, 12272-12275. The court properly found this factor favored receivership.

Bad Faith. The County is correct that the district court bypassed the "bad faith" factor in the receivership analysis, just as the *Plata I* court did. ROA.22-60527.12275 (citing *Plata I*, 2005 WL 2932253, at *30). But it certainly did not find "good faith," or that the County "will comply with the law." Br. 54 (quoting *Netsphere, Inc.* v. *Baron*, 703 F.3d 296, 307 (5th Cir. 2012)). To the contrary, the court found that the County "offers a litany of excuses," and "wishes to abdicate responsibility for ensuring the health and safety of detainees in its custody." ROA.22-60527.12277-12278. As this Court acknowledged in *Netsphere*, if a "governmental organization will not comply with the law" by fixing "institutions where constitutional violations [are] occurring," then receivership is proper. 703 F.3d at 306-307 (citing *Plata II*, 603 F.3d at 1094). This is such a case.

Quick And Efficient Remedy. The final *Plata* factor is "[w]hether a receiver is likely to provide a relatively quick and efficient remedy"—a question "judged relative to the scale of the project." *Plata I*, 2005 WL 2932253, at *23, 31. The court answered this question cautiously in the affirmative, noting that the project of reforming RDC was "modest" compared to California prison healthcare overhaul in *Plata I*, but that it expected "steady progress" under a qualified candidate.

ROA.22-60527.12275-12276 (citing *Plata I*, 2005 WL 2932253, at *31). The court added that "[t]he opening of the new jail, projected for completion in June 2025 * * * represents a natural projected end-date to the receivership," allowing the receiver to focus solely "on achieving constitutional compliance for the remaining life of RDC." ROA.22-60527.12275.

The County's argument is that no witness testified as to the exact duration of a receivership (which is true) and that it is instead "completely open-ended because the district court put no time limit on the receivership" (which is false). Br. 54-55. The County cites Justice Scalia's dissent in *Brown*, but this says nothing about expiration dates for needed prospective relief, nor does the County offer any other authority. Br. 55 (quoting 563 U.S. at 564). In any event, the County knows how to invoke the mechanism Congress created to "constrain the discretion of courts issuing structural injunctions"—the PLRA's termination provision, 18 U.S.C. 3626(b)—and the County may do so if it finds the receivership's anticipated endpoint unsatisfactory. *Brown*, 563 U.S. at 564 (Scalia, J., dissenting).

III

THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN CRAFTING A RECEIVERSHIP THAT IS TAILORED IN SCOPE AND DURATION TO CURING UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT AT RDC

The County's claim that the receivership "exceeds the permissible scope of injunctive relief" does little more than list the terms in the receiver's appointment

order and restate points already made in challenging the district court's imposition of the receivership. See Br. 55-61. The County makes no argument that any one term of that appointment is improper and offers no authority to suggest as much. While the principles of democracy the County invokes are indeed important, the district court incorporated them carefully and in keeping with precedent.

A. Standard Of Review

As above, where a trial court imposes an equitable remedy like a receivership under the PLRA, this Court reviews that remedy for an abuse of discretion. See *Gates* v. *Cook*, 376 F.3d 323, 333 (5th Cir. 2004). In reviewing the remedy's scope, this Court considers the PLRA's "limit[ations] [on] a court's ability to fashion injunctive relief." *Ball* v. *LeBlanc*, 792 F.3d 584, 598 (5th Cir. 2015).

B. The Receivership Is Properly Limited In Scope And Anticipated Duration

As discussed, the receiver orders are not the product of the district court's "itching" to appoint a receiver, as the County contends (Br. 56), but of the court's restraint and adherence to the PLRA and precedent. See pp. 12-23 and Part II.C.1, *supra*. The court raised the prospect of contempt and receivership in November 2021 but did not impose this remedy until August 2022, after extensive briefing, evidentiary hearings, and all the time the County sought to mitigate contempt. Although the County suggests dissonance between the court's "paring back" of the

decree and the receivership decision (Br. 55), this reflects nothing more than the court's adherence to the PLRA's requirements when faced with the County's near-simultaneous requests for more time to comply with the decree and to terminate it. The new injunction is an abridged version of the consent decree, premised on the same unconstitutional conditions, and there are many "obvious through-line[s]" between the two orders—such as their equivalent core provisions on sufficient staffing. ROA.22-60527.12140. The court did not impose "new conditions on the County, only to then measure its efforts to comply using an entirely different metric"; instead, its "decision to impose a receivership stem[med] from a long timeline of worsening Constitutional violations." ROA.22-60527.12141.

The hollowness of the County's generalized complaints about the receivership's scope is apparent from its recitation of the appointment order's terms without pointing to a single principle or authority that they violate. See Br. 56-58. The court tasked the receiver with achieving compliance with the new injunction and the Constitution at RDC. ROA.22-60527.12284. The role entails oversight of day-to-day operations at RDC, control of RDC's personnel and operational functions necessary to execute that role, and creation of RDC's budget, all in cooperation with the Sheriff and Board of Supervisors and under the court's oversight. ROA.22-60527.12284-12295.

To be sure, the receiver position "is significant in its scope and dimension," as the court acknowledged. ROA.22-60527.12295. But it comports with receiverships that other courts have created "when confronted with complex and intractable constitutional violations" in corrections cases. *Brown* v. *Plata*, 563 U.S. 493, 526 (2011). The court drew on these prior cases and adopted similar terms and limitations. See ROA.22-60527.12256-12278 (citing, *inter alia*, *Plata* v. *Schwarzenegger*, No. C01-1351, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005) (*Plata I*) (appointing receiver to administer and deliver health care in California prison system); *Newman* v. *State of Alabama*, 466 F. Supp. 628 (M.D. Ala. 1979) (appointing receiver to operate Alabama prison system); *Crain* v. *Bordenkircher*, 376 S.E. 2d 140 (W. Va. 1988) (discussing appointment of receiver to oversee closing of West Virginia penitentiary and construction of new facility)).[18]

Moreover, the court tailored the receivership to the underlying violations, minimized its intrusion on the County's operations, and included checks and balances on the receiver's authority. For instance, the receivership is limited to

[18] The appointment order here is similar to the one issued in *Plata I*, which the Ninth Circuit later declined to terminate in *Plata II*. See Doc. 473, *Plata* v. *Schwarzenegger*, No. C01-1351 (N.D. Cal. Feb. 14, 2006). The district court in *Plata I* also drew on *Shaw* v. *Allen*, another case in which a district court imposed a receivership to operate a county jail and defined the receiver's powers in a manner that comports with the district court's approach here. See *Plata I*, 2005 WL 2932253, at *23, 28, 31-32 (citing *Shaw*, 771 F. Supp. 760, 762-763 (S.D. W. Va. 1990)).

RDC, consistent with the court's finding that conditions at the Work Center met the constitutional floor (and that the Jackson Detention Center was not then housing detainees). See ROA.22-60527.12254, 12277, 12283-12284. Its scope is modest as compared to the receiverships imposed in cases like *Plata* and *Newman*, which turned over part or all of statewide prison operations to court-appointed officials. Further, the court grants the receiver daily operational control of RDC but requires continuous coordination with the Sheriff and Board of Supervisors, without displacing them from their role entirely. Compare ROA.22-60527.12278, 12283-12295, with *Shaw* v. *Allen*, 771 F. Supp. 760, 764-765 (S.D. W. Va. 1990), and *Newman*, 466 F. Supp. at 636. And the receivership has an anticipated expiration date tethered to the County's plans to transfer RDC's detainees to a new jail (with which the court declined to interfere). ROA.22-60527.12265, 12293 (contrasting with *Crain* v. *Bordenkircher*, 420 S.E. 2d 732, 733 (W. Va. 1992)).[19]

The County also ignores that the appointment order contains checks on the receiver's authority and preserves a meaningful role for the County to participate

[19] The County argues that the receivership's scope is improper because the United States "did not bother with a class action," and relief under the PLRA must be limited to the plaintiffs before the court. Br. 58 (citing *Ball*, 792 F.3d at 599). But CRIPA, the basis for this lawsuit, permits the Attorney General to pursue a pattern-or-practice action on behalf of the United States (not individuals), and to obtain "such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure" detainees' rights are protected. 42 U.S.C. 1997a. The receivership is properly drawn to the plaintiff before the court and the facility-wide constitutional violations it proved.

in the substance of RDC's operations and budgeting. See ROA.22-60527.12285 (mandating that the County "work closely with the [r]eceiver to facilitate the accomplishment of the [r]eceiver's duties," and subjecting the receiver's decisions to court review); ROA.22-60527.12286 (describing notice-and-comment process for receiver's proposed plans of action); ROA.22-60527.12286-12288 (describing process for review and dispute of receiver's proposed budgets, and periodic budget reports from the receiver to the Board of Supervisors); ROA.22-60527.12289 (requiring receiver to consult with parties on conflicts with state or local law); ROA.22-60527.12294 (requiring receiver to prepare a transition plan to return RDC to the County, and allowing parties to seek receiver's removal). This reflects a prudent balance between the County's interest in controlling its affairs and the need to rectify constitutional violations that the County has failed to address.

The County's contention that the court failed to satisfy the PLRA's substantive and technical requirements thus fails. Br. 58-59. The limited nature of the receivership and the checks and balances that the court built into it clearly evince the court's adherence to the PLRA's need-narrowness-intrusiveness standard. The court rigorously applied that standard in initially imposing and outlining the contours of the receivership (see Part II.C, *supra*), and it later confirmed as much when it reissued its orders to confirm that it "believed" and "still believes" that each of its orders meets the PLRA's test. See

ROA.22-60527.12251 (citing *Ruiz* v. *United States*, 243 F.3d 941, 950 (5th Cir. 2001)); ROA.22-60527.12295.[20] The court's amended appointment order further confirms the court's conviction, explaining that "each of the duties and responsibilities listed above is necessary to remedy the ongoing constitutional violations at RDC" and finding that the duties satisfy 18 U.S.C. 3626(a)(1)(A). ROA.22-60527.12295.

The County's assertion (Br. 59-60) that the district court's treatment of Henley-Young "reinforces" its point that the receivership's scope violates the PLRA in fact proves the opposite. The County claims that the court placed Henley-Young under receivership when it granted the United States' motion to reconsider excision of the consent decree's youthful offender provisions, but that is wrong. The order granting the reconsideration motion says no such thing, nor do

[20] Sections 3626(a) and 3626(b) of the PLRA contain similar but distinct requirements for ordering and terminating prospective relief, respectively. *Ruiz*, the case the County cites in describing a court's duty in *imposing* relief (Br. 58-59), in fact discusses *termination*, holding that Section 3626(b)(3) requires "particularized findings, on a provision-by-provision basis." 243 F.3d at 950 (citation omitted). This Court has not held that the same analysis is required in both scenarios. See *Gates*, 376 F.3d at 336 n.8 (noting that this Court's precedents regarding Section 3626(b)(3) do not apply to the distinct requirements of Section 3626(a)(1)); see also *Dockery* v. *Cain*, 7 F.4th 375, 380 n.4 (5th Cir. 2021) (acknowledging circuit split as to whether the "current and ongoing" violation requirement of Section 3626(b)(3) applies to the imposition of prospective relief). Whether a different or less exacting analysis is acceptable in imposing relief ultimately is of no moment, however, because the district court stated it was holding itself to the *Ruiz* standard in reissuing the receiver orders.

the amended receiver orders contain any reference to Henley-Young; to the contrary, they extend specifically and exclusively to RDC. See generally ROA.22-60527.12253-12308. This underscores the narrowness of the receivership, not its overbreadth.

The County's final two arguments again contest the fact of the receivership, not its scope, and they can be addressed together. The County argues first that it has acted "reasonably" with respect to RDC, absolving it of liability for unconstitutional conditions and rendering the receivership an unlawful invasion of its institutional role. Br. 60-61 (citing *Valentine* v. *Collier*, 978 F.3d 154, 165 (5th Cir. 2020)). Second, the County claims the receivership disrupts the democratic process. Br. 61 (citing *Plata I*, 2005 WL 2932253, at *31). But this case is not like *Valentine*—where this Court held that prison officials acted reasonably in responding to the early days of the COVID-19 pandemic—and instead is one like *Plata I*, where prisoners' suffering met "entrenched paralysis and dysfunction," and the court found itself "at the end of the road with nowhere else to turn." *Plata I*, 2005 WL 2932253, at *1, 31; see also Part I, *supra*.

Echoing *Plata I*, the court here held that at RDC, "the dire circumstances that drove this settlement persist," while the County "refuses to take responsibility," offering a "litany of excuses" that "boils down to the same argument: conditions at RDC are out of [its] hands." ROA.22-60527.12277.

There is no question that, as the *Plata I* court noted, receivership is a "debilitation" of the normal democratic process. *Plata I*, 2005 WL 2932253, at *31. But, as in *Plata I*, the court below had no choice but to "grant" the County's "wish" to "abdicate responsibility for ensuring the health and safety of the detainees in its custody." ROA.22-60527.12277-12278; see *Plata I*, 2005 WL 2932253, at *31 (describing receivership as a "disturbing" but unavoidable product of the state executive branch's relinquishment of responsibility to the federal judicial branch). While federal courts must be "sensitive" to the local interest in self-governance and to administrators' expertise, they "may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration." *Brown*, 563 U.S. at 511.

The district court gave the County many years and opportunities to correct unconstitutional conditions in its jails. When the County failed to do so, the court was well within its discretion to adopt a stronger, targeted measure designed to finally put an end to persistent violations of detainees' rights.

CONCLUSION

For the foregoing reasons, this Court should affirm the order amending the consent decree, the new injunction and receiver orders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 23, 2023, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Katherine E. Lamm
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CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS APPELLEE:

(1) complies with the type-volume limitation set by this Court's order of August 14, 2023, because it contains 17,914 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

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Date: August 23, 2023