

REDACTED

EL PASO COUNTY COURT 270 S. Tejon Street, Colorado Springs, CO 80903	DATE FILED: May 12, 2020 σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. LETECIA STAUCH Accused.	
MEGAN A. RING Colorado State Public Defender Kathryn Strobel (No. 42850) El Paso County Public Defender 30 East Pikes Peak, Colorado Springs, CO 80903 719-475-1235 kathryn.strobel@coloradodefenders.us C. Colette LeBeau (No. 43164) Deputy State Public Defender 132 W B St #200 Pueblo, CO 81003 719-546-0004 Colette.lebeau@coloradodefenders.us	Case No. 20CR1358 Division: 15S
D-11 MOTION FOR VIDEO ACCESS TO CLIENT	

Leticia Stauch respectfully moves for an order granting counsel video access to Mr. Stauch or in the alternative, to authorize a bond to help prevent a public health outbreak of novel coronavirus, COVID-19 in our local jail and community. She requests that the Court grant the motion, or, alternatively, hold an emergency hearing on this motion.

In support, Ms. Stauch states the following:

1. Ms. Stauch is currently being held in El Paso County Criminal Justice Center (CJC) on no bond due to charges of First Degree Murder (F1).

2. Since mid- March of 2020, CJC has been allowing the Public Defender's Office to have client contact with all clients via video visitation. Our office has consistently been using this as the method of gaining access to our clients while keeping our clients, CJC staff, and ourselves safe from COVID-19 exposure.

3. Throughout the months of March and April, counsel met with Ms. Stauch an average of three to four days per week via online video visitation in accordance with jail policy and COVID-19 protocols. On May 4, 2020, a member of the defense team attempted to schedule a video visit with Ms. Stauch and the jail refused to permit the visit. That same day, Counsel contacted Day Shift Commander Lt. Eric Carnell to discuss the refused visit request. Lt. Carnell informed counsel that the

jail had changed their policy regarding professional video visitation and that Ms. Stauch and all inmates with her security designation were now prohibited from using the online visitation system. Counsel was instructed that the only way to visit or speak to Ms. Stauch would be to go to the jail in person.

4. On March 5th and 6th 2020 Counsel and members of the defense team re-contacted the jail to schedule a video visit and was told that counsel must enter the facility to meet with Ms. Stauch and that a video visit was not permitted.

5. Counsel explained that it was not possible for counsel to do an in person visit due to health concerns related to the COVID-19 pandemic. Counsel was subsequently informed that a video visit was not being granted and that the facility would allow counsel entry despite any personal health concerns counsel or any other member of the defense team might have.

6. Counsel has since learned that starting on May 5th, 2020, CJC instituted a new policy that REQUIRES in facility visitation for any clients that are [REDACTED]. There is no mechanism in place for attorneys to visit these clients in these wards other than to enter into the jail and visit with them. Further, when attorneys from the Public Defenders Office went in to do the visit with their client, there were 2 other attorneys in close proximity elevating the risk of spreading symptoms particularly when counsel was told despite exposure to a COVID-19 positive patient, counsel would be granted access to CJC over their objection. Another Public Defender reported that they were prohibited from bringing in their own antibacterial wipes to cleanse their visitation space because they were deemed “contraband” by jail staff.

7. As the court is aware, on March 11, 2020, the World Health Organization announced that that the outbreak of COVID-19, a respiratory illness caused by a novel coronavirus, is a PANDEMIC. This virus is both highly contagious and deadly. “. . . [W]e are deeply concerned both by the alarming levels of spread and severity, and by the alarming level of inaction.”¹ Current estimations are that between 20% and 80% of the world’s population will contract the virus. The current estimations of the rate of fatality fall between 1% and 6% of those who contract the virus. **The death toll in the United States alone is currently over 79,756 as of May 11, 2020 and continues to rapidly climb.**

8. Colorado is no exception and the situation is rapidly developing in Colorado. Colorado already has many cases identified across geographic regions of the state. The Governor declared a state of emergency on March 10, 2020. **As recently as today, Colorado has recorded 987 COVID-19 related deaths.**

9. The spread of the virus is accomplished through both airborne mechanisms (sneezing), touching of surfaces that are contaminated, and most commonly through touching other humans carrying the virus. It then enters the body through the mouth, nose, or eyes and infects the respiratory system.

10. There is currently no vaccine or cure. The most effective strategies to prevent spread is thorough hand washing and sanitizing with alcohol-based cleaners, avoiding touching of the face, and “social distancing.”

¹ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

11. Care around personal hygiene will not be enough to slow the spread of this disease. Public health officials across the country are asking that people engage in social distancing to help “flatten the curve.”² Social distancing involves avoiding human contact with all but a few other people. State and local leaders, as well as private event organizers, are cancelling group events across the country. Colleges, universities, and local public schools are cancelling classes.

12. The same factors that make cruise ships hotbeds³ for contagion spread, are the same conditions for jails: many people living in a closed space, shared ventilation, common food preparation space, communal living/bathing/toileting/eating, limited ability to leave the facility when symptomatic or after potential exposure to the virus. Further, the jails face the additional challenge of “jail churn”⁴ where members of the community regularly move in and out of the facility bringing illnesses with them into the jail and then after infection out to the community. **There are at least 5 jails in the Denver area that have confirmed cases of COVID-19.** According to the Denver Post, the largest outbreak is in the Van Cise-Simonet Center in downtown Denver with 84 confirmed COVID-19 Cases. Smaller outbreaks affecting 10 or fewer people have been reported in Adams, Arapahoe, Douglas, and Jefferson County jails. CJC has done very few tests and it is not known to this office how many positive cases are in CJC. We do know that one El Paso County Deputy who was working in CJC Intake and Release passed away from exposure to COVID-19. It is reasonable to believe he may have been exposed while working in CJC.

13. One does not have to look far to see a cautionary tale of just how quickly this deadly virus can spread through a correctional facility. According to a recent report from Colorado Public Radio, on May 1st there were 246 confirmed cases of COVID-19 at the Sterling Correctional Facility compared to early April when there were just 8 inmates showing symptoms. Further, similar to CJC this particular facility has significant capacity and infrastructure challenges to creating distance between inmates because the facility has the capacity to house up to 2,585 inmates. It is an older facility which is using an old ventilation system. The showers and bathrooms are communal and do not allow for appropriate social distancing. There are shared cells allowing the illness to spread. Inmates are not being provided adequate sanitized conditions to include no masks or personal hand sanitizer. There is one confirmed COVID-19 inmate death at this time.

14. There is no effective way for CJC to ensure safe conditions for clients or attorneys entering the facility and that is the reason video visitation access to our clients was implemented. CJC simply cannot accomplish the important task of creating social distance between inmates. It is an older facility which is using an old ventilation system. The showers and bathrooms are communal and do not allow for appropriate social distancing. There are shared cells allowing the illness to spread. Inmates are not being provided adequate sanitized conditions to include no masks or personal hand sanitizer.

² What flattening the curve means and why it is important: <https://www.nbcnews.com/science/science-news/what-flatten-curve-chart-shows-how-critical-it-everyone-fight-n1155636>.

³ The CDC is currently recommending that travelers defer cruise ship travel worldwide. “Cruise ship passengers are at increased risk of person-to-person spread of infectious diseases, including COVID-19.” <https://wwwnc.cdc.gov/travel/page/covid-19-cruise-ship>

⁴ “The pathway for transmission of pandemic influenza between jails and the community is a two-way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility. On release from jail, infected inmates can also spread infection into the community where they reside.” *Pandemic Influenza and Jail Facilities and Populations*, American Journal of Public Health, October, 2009.

15. The risk of community spread poses a unique threat to vulnerable populations, specifically persons over 60 year of age, persons living with diabetes, heart disease, or lung disease, and persons under treatment or suffering conditions that created immunosuppression (immunotherapy and chemotherapy). These heath conditions are more common among incarcerated persons.

16. The Office of the State Public Defender has been following the CDC and CDHE guidelines in management of our office. At the direction of the State Public Defender, attorneys in this office should not be going into the jail until it is safe for them, for jail staff, for clients, and for everyone else that person then comes into contact with over the next 2 to 14 days. For these reasons, counsel is requesting a court order granting client access to [REDACTED] via video visitation. To do so is a violation of the U.S Constitution, 6th Amendment Right to Counsel and the Due Process Clauses of both the state and federal constitutions.

17. This Court's jurisdiction over the litigants in this courthouse imposes on the Court an obligation to exercise its powers to protect the individual litigants as well as the community it serves. Where national or state leaders are not acting with sufficient speed to address this public health disaster, this Court must. In addition, CJC has issued a policy whereby they will allow counsel to have access to our clients in a contact room or with an open trap in circumstances where there is a Court Order to do so. This demonstrates that this Court has the authority to guarantee access to clients in whatever appropriate manner is requested.

18. For the reasons stated above, if the Court does not grant an order requiring counsel to have video visitation access to Ms. Stauch, the due process and equal protections rights under the United States and Colorado Constitutions will be violated. U.S. Const. amend V & XIV, Colo. Const. Art. II sec. 6 & 25. Ms. Stauch therefore requests that this Court grant this order allowing access to Ms. Stauch or grant her a bond so that she is able to have video and phone access with counsel from the safety of her home.

Respectfully submitted,
MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER



Kathryn Strobel (No. 42850)
Deputy State Public Defender



C. Collette LeBeau (No. 43164)
Deputy State Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on 5/12/20 I served the foregoing document by E-Filing through ICCES same to all opposing counsel of record.