

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY
ANDREW G. CELLI, JR.
MATTHEW D. BRINCKERHOFF
JONATHAN S. ABADY
EARL S. WARD
ILANN M. MAAZEL
HAL R. LIEBERMAN
DANIEL J. KORNSTEIN
O. ANDREW F. WILSON
ELIZABETH S. SAYLOR
KATHERINE ROSENFELD
DEBRA L. GREENBERGER
ZOE SALZMAN
SAM SHAPIRO

ATTORNEYS AT LAW
600 FIFTH AVENUE AT ROCKEFELLER CENTER
10TH FLOOR
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000
FAX: (212) 763-5001
www.ecbalaw.com

DIANE L. HOUK
EMMA L. FREEMAN
DAVID BERMAN
HARVEY PRAGER
SCOUT KATOVICH
NICK BOURLAND
ANDREW K. JONDAHL
ANANDA BURRA
MAX SELVER

April 14, 2020

Hon. Rachel P. Kovner
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Hassan Chunn, et al. v. Warden Derek Edge*, 20 Civ. 1590

Dear Judge Kovner:

Along with the Cardozo Civil Rights Clinic, and Alexander A. Reinert, we represent Petitioners in the above-referenced case.

In further support of Petitioners' request that the Court permit Dr. Homer Venters to inspect the Metropolitan Detention Center, we write to draw the Court's attention to another pending federal action brought on behalf of pretrial and convicted individuals in the District of Columbia's correctional facilities, concerning the prison officials' COVID-19 response and seeking substantially the same relief as sought by Petitioners here. In that case, the court recently ordered an independent expert inspection of the District of Columbia's Department of Corrections' jails. *See Banks, et al., v. Booth*, No. 20 Civ. 849 (CKK) (D.D.C.), Dkt. 34 (Order attached as Ex. A). The Order requires defendants to permit the experts to visit the facility unannounced with cameras and other equipment, and permits them to speak with staff and residents and to review documents.

Additionally, we write to provide the Court with the authorities relied upon by Petitioners during yesterday's tele-conference. In addition to the orders cited on page nine of Petitioners' April 11, 2020 letter to the Court, we also addressed *United States v. Erie Cty., NY*, No. 09-CV-849S, 2010 WL 986505, at *3 (W.D.N.Y. Mar. 17, 2010) (holding that it was necessary to allow experts access to jail employees during Rule 34 inspection in order for them to properly understand the jail's practices and protocols) as well as *In Re the Matter of Conditions at Metropolitan Detention Center, West Building, Brooklyn, Brooklyn, New York*, Admin. Order 2019-03 (permitting inspection of all housing units of the West Building of the MDC and allowing representative from Federal Defenders to speak directly with incarcerated people)

EMERY CELLI BRINCKERHOFF & ABADY LLP
Page 2

(attached as Exhibit B).

Respectfully submitted,
/s/
Katherine Rosenfeld

Enc.

cc: All Counsel (via ECF)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, *et al.*,

Plaintiffs,

v.

QUINCY BOOTH, in his official capacity
as Director of the District of Columbia
Department of Corrections, *et al.*,

Defendants.

No. 1:20-cv-849 (CKK)

CONSENT ORDER APPOINTING AMICUS

The Court hereby appoints Grace M. Lopes and Mark Jordan as *amici curiae* to provide information to the Court. The specific information that the Court seeks from *amici* is listed in the attachment to this Order, and further orders regarding form and deadlines for reporting to the Court will issue later.

Further, the Court ORDERS that Grace M. Lopes and Mark Jordan shall be able to enter Department of Corrections (“DOC”) facilities, including Correctional Treatment Facility (“CTF”) and the Central Detention Facility (“CDF”) unannounced and bring with them cameras, cell phones, writing implements, and any other equipment required to conduct their site visits. Once in the facilities, Grace Lopes and Mark Jordan shall be permitted to inspect areas of the facilities without limitation, and shall be permitted to speak with staff and residents in confidence and outside of the presence of DOC supervisors and staff.

It is further ORDERED that Grace M. Lopes and Mark Jordan shall be permitted to review all pertinent DOC records and documents, electronic or otherwise, and video footage in connection with their investigation. The DOC is also ORDERED to preserve all pertinent documents and video footage.

It is further ORDERED that the DOC shall make all CTF and CDF managers and staff available for interviews, including telephonic interviews conducted by amici.

It is further ORDERED that *amici curiae* be provided by DOC with a sufficient supply of full personal protective equipment to safely enable their inspections at the time of those inspections.

Dated: April 8, 2020

/S/
Colleen Kollar-Kotelly
United States District Judge

ATTACHMENT

Amici curiae are directed to review the following documents:

- The “DC Department of Corrections’ COVID-19 Response FAQs,” *available at* <https://doc.dc.gov/page/coronavirus-prevention>
- The declarations and documents filed by Defendants:
 - Dkt. No. 19-3 (Unity Health Care Coronavirus Protocol)
 - Dkt. No. 19-4 (DOC Coronavirus Screening Protocol Flowchart)
 - Dkt. No. 19-5 (DOH guidance, Email from Shreya Khuntia)
 - Dkt. No. 19-6 (Medical Plan for Pandemic Influenza)
 - Dkt. No. 20-1 (Declaration of Lennard Johnson)
 - Dkt. No. 20-2 (Declaration of Beth Jordan)
 - Dkt. No. 22 (SEALED DOC Pandemic Plan)
- The declarations and documents filed by Plaintiffs
 - Dkt. No. 5-2 (Exhibits in Support of TRO)
 - Dkt. No. 23-11 (Declaration of Michael Hannon)
 - Dkt. No. 24-1 (Declaration of Doreen Deterville)
 - Dkt. No. 24-2 (Declaration of Lennette Nesbitt)
 - Dkt. No. 26-1 (Declaration of Kamal Donchy)
 - Dkt. No. 26-2 (Declaration of James Guillory)
 - Dkt. No. 26-3 (Declaration of David Randolph)
 - Dkt. No. 26-4 (Declaration of Micheal Cohen III)
 - Dkt. No. 26-7 (Declaration of Jean Johnson)

Amici curiae are directed to answer the following questions:

MEDICAL

- (1) When residents display COVID-19 symptoms, as defined by the CDC, are they seen by medical staff?
- (2) When residents display COVID-19 symptoms are they tested for COVID-19?
- (3) Are there requests for a sick call based on suspected COVID-19 symptoms where there is no response?

- (4) Is the response time for sick call requests of suspected COVID-19 symptoms for a resident to be seen by medical staff reasonable (assuming time of request and response time are recorded)?
- (5) Are residents suspected of COVID-19 isolated from other people?
- (6) Are new residents who enter DOC quarantined for 14 days?
- (7) How frequently do DOC medical staff and/or Unity Health Care staff meet with DOC staff and residents to inform them about COVID-19 symptoms and precautions, and what information is conveyed?
- (8) What visitor screening is conducted? Do the thermometers used for visitor screening work and are they used properly?
- (9) How do the conditions of the quarantine housing compare to conditions in non-quarantine housing, and are residents deterred from reporting symptoms?

ENVIRONMENTAL HEALTH & HYGIENE

- (1) What are the quantities of personal protective equipment and cleaning products in the DOC stockpile?
- (2) Are residents provided with a weekly bar of soap?
- (3) Do staff who interact with visitors and residents have access to, and wear, sufficient personal protective equipment (different personal protective equipment and/or other protective equipment)?
- (4) Are staff and prisoner-workers given masks and gloves, particularly in food service (where workers also wear hair/beard guards), and are they instructed to wear that equipment?
- (5) Do residents have access to cleaning supplies in sufficient quantity and concentration, including rags, to clean their cells?
- (6) Do housing units, and particularly common spaces such as bathrooms and showers, appear to be sufficiently cleaned?
- (7) Do professional cleaning crews clean hallways and common areas (not in housing units)? Do inmate details clean the housing units' common spaces?
- (8) Are residents of CTF able to access hand sanitizer?
- (9) Is social distancing possible in common areas in units, and what is the approximate size of common areas?

(10) Approximately how many residents share a cell, and what is the approximate size of the cell?

(11) Do all residents have access to sinks, soap, and toilets?

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

In Re the Matter of
Conditions at the Metropolitan Detention
Center, West Building, Brooklyn, New York

ADMINISTRATIVE ORDER
2019-03

----- -x

In order to obtain current and comprehensive information on the conditions at the Metropolitan Detention Center, West Wing (“MDC”) located in Brooklyn, New York following the fire that occurred there on January 27, 2019 and reported recurring power outages, it is hereby

ORDERED that a representative of the Federal Defenders of New York and the U.S. Attorney’s Office, Eastern District of New York be permitted to inspect each housing unit in the West Building and speak directly to inmates. This visit shall occur today, February 1, 2019.

SO ORDERED

Brooklyn, New York
Dated: February 1, 2019

_____/s/_____
DORA L. IRIZARRY
Chief United States District Judge