## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, et al.,

Plaintiffs,

v.

QUINCY BOOTH, et al.,

Defendants.

Civil Action No. 20-0849 (CKK)

## <u>DEFENDANTS' OPPOSITION TO PLAINTIFFS'</u> AMENDED MOTION FOR A PRELIMINARY INJUNCTION

#### INTRODUCTION

Plaintiffs seek a preliminary injunction against defendants Quincy Booth, Director of the District of Columbia Department of Corrections (DOC), and Lennard Johnson, DOC Warden, as DOC continues its extensive response to the COVID-19 pandemic. Plaintiffs' requested broad, systemic relief is unwarranted in light of the significant and effective actions DOC has shown that it is taking. Plaintiffs have not established that defendants acted with deliberate indifference, especially in light of the substantial discretion afforded them under the law—which is all the more necessary to respond to an evolving public health emergency.

The evidence shows that DOC's ongoing efforts are working: The number of COVID-19positive inmates in DOC facilities peaked late last month and is continuing to decline. Indeed, far
from responding to the pandemic unreasonably, DOC took immediate action *before* the first
COVID-19 case was reported in the District of Columbia, to prepare to control and contain the
spread of the virus and keep DOC residents safe. Within days after the District's first confirmed
case, Mayor Bowser declared a public health emergency, and DOC took further action, adapting

its policies and facilities in line with Centers for Disease Control and Prevention (CDC) guidelines: Restricting visitation, screening everyone entering the facilities, educating staff and residents about how to protect themselves from the virus, and communicating with public health officials for proper guidance. DOC has continued to act, by limiting inmate movement, reducing the inmate population (by almost 30% since the crisis began), implementing effective quarantine and medical isolation of potentially infected residents, and increasing facility sanitation and social distancing.

DOC has also fully assisted *amici* in their inspections and followed through on their recommendations, improving the ability of all its residents to obtain appropriate and timely medical care, contracting with outside professionals to clean the facilities, and ensuring that residents have access to necessary personal protective equipment, cleaning supplies, and clean linens. In addition, DOC has broadened its protocols to test all new intakes and every inmate transferred to another facility and, on May 22, 2020, began broader surveillance testing of residents at its facilities. DOC also continues to improve the ability of every inmate to have reliable and consistent access to confidential legal calls, purchasing additional equipment and reconfiguring existing systems and facilities to accommodate necessary social distancing.

Despite these unprecedented measures, plaintiffs seek preliminary injunctive relief, which in any form would be extraordinary. But the breadth and intrusiveness of the relief sought here is especially so. The declaration of the sole named plaintiff—Edward Banks—submitted in support of the preliminary injunction does not indicate any entitlement to relief even for himself: he does not indicate that he has been denied or delayed access to medical care; that he is unable to socially distance from others; that he currently lacks soap and water, clean towels and linens, or cleaning supplies. Without suffering any such actual or imminent harm, plaintiffs nevertheless ask this Court to take over core aspects of the District's correctional system. This request is inappropriate

in scope and untethered to any legal justification, especially given plaintiffs' failure to demonstrate a municipal custom or policy under 42 U.S.C. § 1983.

Although plaintiffs might argue that these are extraordinary times, this is no justification. The Supreme Court has made clear that even in the best of times, administering a correctional facility is an "inordinately difficult undertaking," requiring that correctional officials be given "substantial discretion" to address problems they face. The present circumstances only heighten the need for deference—the constitutional standard gives due regard to officials' need to respond quickly under challenging and rapidly evolving circumstances. Congress has spoken clearly as well, through the Prison Litigation Reform Act, which requires the exhaustion of administrative remedies and instructs in no uncertain terms that preliminary injunctive relief "must be narrowly drawn," "extend no further than necessary," and use the "least intrusive means." Yet plaintiffs' request for a preliminary injunction—seeking, among other things, carte blanche adoption of any recommendations that *amici* might make—would turn this established law on its head.

The requested preliminary injunction would deeply emmesh this Court in the administration of corrections in the District and effectively displace the proper role of local officials in managing their own operations, including their dedicated and continuing response to the unprecedented challenge posed by COVID-19. Such intervention is especially unwarranted now that defendants' steadfast actions are showing clear signs of progress. As discussed below, DOC has taken and continues to take extensive measures to ensure that the District's incarcerated population at both facilities—the Central Detention Facility (CDF) and the Correctional Treatment Facility (CTF)—remains safe and secure amid this pandemic. Continued court intervention is unnecessary and improper.

## **BACKGROUND**

## I. The District's Response to the COVID-19 Pandemic

## A. Planning and Strategy

On February 28, 2020, Mayor Bowser issued Mayor's Order 2020-035 vesting responsibility for coordinating the District's emergency response planning for COVID-19 with the D.C. Department of Health (DOH) and Homeland Security and Emergency Management Agency (HSEMA). Decl. of Lennard Johnson (Johnson Decl.) [20-1] ¶ 4. DOC began implementing operational and medical procedures based on guidance and recommendations from DOH and HSEMA. *Id*.

DOC began to take other actions to guard against this rapidly spreading global disease. On March 6, 2020, Director Booth activated the DOC Incident Command System and started holding daily meetings with the agency's division heads to discuss COVID-19 preventive measures at the DOC's facilities. *Id*.

On March 7, the District recorded its first confirmed case of COVID-19. *See* Gov't of the District of Columbia, Coronavirus Data, *available at* https://coronavirus.dc.gov/page/coronavirus-data.

By March 11, Mayor Bowser had issued a Declaration of Public Emergency and a Declaration of Public Health Emergency. *See* Mayor's Order 2020-045 (Mar. 11, 2020), *available at* https://tinyurl.com/yc9ktz8x; Mayor's Order 2020-046 (Mar. 11, 2020), *available at* https://tinyurl.com/y8dnbc2r. Two days later, DOC implemented a policy—based on guidance and recommendations from DOH and the CDC—requiring everyone entering a DOC facility to be screened for potential COVID-19 symptoms by conducting a temperature check and screening survey. Decl. of Dr. Beth Jordan (Jordan Decl.) [20-2] ¶¶ 4, 5. DOC's Medical Director and Health

Services Administrator, Dr. Beth Jordan, began meeting daily with DOC's healthcare contractor, Unity Health Care (Unity), to discuss the health of inmates and the measures being taken to prevent the spread of COVID-19. *Id.* ¶ 9. She similarly began seeking regular guidance from DOH and, along with Unity's Medical Director, began communicating regularly with Dr. Anne Spaulding from Emory University, one of the country's leading experts on infectious diseases and correctional health. *Id.* ¶ 10.

DOC's executive team started meeting daily to discuss the findings and updates of the Incident Command System. Johnson Decl. [20-1] ¶ 4. DOC also began participating in daily meetings of the Criminal Justice Coordinating Council (CJCC), ensuring DOC was sharing and receiving appropriate information regarding COVID-19 preventive measures with other detention stakeholders. *Id*.

### **B. DOC's Policies and Practices**

DOC promptly made changes within the facilities where DOC residents are housed. On March 15, 2020, both facilities halted all non-lawyer visits, Supp. Decl. of Lennard Johnson (Johnson Supp. Decl.), Ex. A ¶ 5, and increased the frequency of scheduled common-area cleanings to every two hours between 8:00 a.m. and midnight, and twice each night between midnight and 8:00 a.m., Johnson Decl. ¶ 6. Residents were given access to appropriate cleaning materials to clean their cells and began receiving a new bar of soap and a roll of toilet paper every week, free of charge. *Id.* ¶¶ 7–8. DOC also continued to provide residents with clean linens (a towel and sheets) every week. *Id.* ¶ 9.

To minimize the risk of virus transmission, DOC also modified resident movement and activity at its facilities, moving residents from their housing units only for court appearances, medical and dental appointments, work details, legal visits, legal calls, and for residents of CDF,

video conferencing. *Id.* ¶ 11. DOC also began placing posters throughout both facilities to remind staff and residents about measures they should take to prevent the spread of COVID-19. *Id.* ¶ 12.

In addition, all new residents entering a DOC facility began to be quarantined for 14 days before assignment to their permanent housing unit. Jordan Decl. ¶ 7. Everyone on quarantine has their temperature checked twice daily. Id. DOC's medical staff also began to meet regularly with staff and residents to discuss COVID-19 preventive measures. Id. ¶ 8. DOC conducted its first COVID-19 test on March 15. Id. ¶ 11. Medical staff would take a swab and send it to DOH for testing. Id. On March 26, DOC's first resident tested positive for COVID-19 and that resident's housing unit was immediately quarantined. Supp. Decl. of Beth Jordan (Jordan Supp. Decl.), Ex. B ¶ 5.

On April 4, 2020, DOC entered a "Medical Stay-In-Place" Order to minimize inmate movement, largely restricting inmates to their cells, modifying the recreation schedule to allow only small groups of inmates out of their cells at a time, and imposing social distancing. *See* App'x to *Amici* Report [47-1] (Medical Stay-in-Place Order included as Exhibit 6).

On April 17, 2020 "informed by some new guidance from Mayor's Order 2020-063, dated April 15, 2020," DOC issued a memorandum to all employees and contractors, to remind staff of the new procedures regarding COVID-19. *Id.* (Exhibit 11). The memorandum, among other things, directed correctional officers to enforce social distancing at all times, and stated that there would be multiple daily announcements over the public address system to remind staff and residents about the need to maintain social distancing. *Id.* at 1. The memorandum also announced that all DOC residents (except those in isolation) would be provided with one hour out-of-cell time each day and that DOC medical staff would visit each housing unit to remind staff and residents about the use of personal protective equipment (PPE), COVID-19 prevention, and how to submit sick

call slips. *Id.* at 2. In addition, the memorandum announced that residents in isolation units would be allowed to shower daily and allowed (with all other residents) a 30-minute unmonitored call to their attorneys each day. *Id.* at 2, 4. The memorandum also listed new procedures to document the amounts of cleaning materials and equipment in housing units and address shortages, and to verify and document that common areas are cleaned according to schedule. *Id.* at 3. Moreover, the memorandum announced that all visitors to DOC facilities (including staff, contractors, and inspectors) who failed the COVID-19 screening would be denied entry, and that staff responsible for those screenings would be retrained on the use of contactless infrared thermometers. *Id.* at 4. Finally, DOC noted that it had requested volunteers from the DOH Medical Reserve Corps to assist in screening. *Id.* at 5.

## C. Resident Release

Since before the pandemic began, residents in DOC custody have consisted primarily of individuals charged or prosecuted by the U.S. Attorney's Office, not the District. *See* D.C. Code §§ 23-101(a)-(c). Among the small minority prosecuted by the District, some residents are held pre-trial and some are serving misdemeanor sentences. DOC has no legal authority to unilaterally release individuals from its custody. Until March 18, 2020, its authority was limited to awarding no more than ten good-time credits per calendar month to each resident. *See* D.C. Code § 24-221.01c(a) (2016).

On March 18, the D.C. Council passed the COVID-19 Response Emergency Amendment Act of 2020. *See* D.C. Act 23-247 (Mar. 17, 2020), *available at* https://lims.dccouncil.us/downloads/LIMS/44469/Signed\_Act/B23-0718-SignedAct.pdf. Among other provisions, that law authorized DOC to exercise its discretion to award additional "good time credits" to those serving misdemeanor sentences "consistent with public safety." *See* D.C. Code ¶ 24-221.01c(c) (2020).

The very next day, DOC used its new discretion to double the maximum number of monthly sentencing credits a resident serving a misdemeanor sentence may receive from 10 to 20, *see* DOC Change Notice #20-002, March 18, 2020 [19-2], ¶ 2c, and it has since released dozens of residents through that procedure. *See* Defs.' Mem. in Opp'n to TRO [25] at 10; *see also* Notice of Filing of Superior Court Order [43] at 2 (noting that the number of individuals in DOC custody serving misdemeanor sentences had dropped, in two weeks, from 94 to 10) (quoting Order, *In re Sentenced Misdemeanants*, No. 2020 CNC 000120 (Super. Ct. of D.C. Apr. 14, 2020)).

# D. <u>Additional Measures Taken Before and After the Court's Temporary Restraining Order</u>

Before and after the Court issued its temporary restraining order on April 19, 2020 [51], DOC continued to take additional steps to prevent the spread of the virus.

## 1. Medical Care and Testing

DOC has recently expanded testing protocols to ensure that medical testing is readily accessible to residents.<sup>1</sup> In determining whether to test residents for COVID-19, DOC has relied primarily on CDC's "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (CDC Guidance).<sup>2</sup> Jordan Supp. Decl. ¶ 10. Recently, however, DOC has expanded the testing criteria beyond CDC Guidance. *Id.* ¶¶ 10, 11. DOC now tests any resident to be transferred to Saint Elizabeths Hospital or to a federal correctional facility.

On May 22 and 26, DOC medical staff hosted remote video conferences to provide an overview of health services at DOC and discussed specific measures they have taken to address the spread of COVID-19. *See* Jordan Supp. Decl. ¶ 17, Attach. 3 (Health Services PowerPoint Presentation). Although the meetings were open to the public, DOC made the presentations to inform D.C. Superior Court judges about health services at DOC facilities, and many judges attended. *Id.* 

The CDC Guidance is available online at https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf (May 24, 2020).

*Id.* ¶ 11. And as of May 18, DOC also tests cellmates of any resident who recently tested positive and all new residents upon intake. *Id.* ¶ 10. As discussed below, DOC has also improved its protocols to ensure that any resident on a quarantine or non-quarantine unit who displays symptoms of COVID-19 is offered a test in a timely manner.

Recent COVID-19 testing data shows a decline in positive cases in DOC facilities. Supp. Decl. of Reena Chakraborty (Chakraborty Supp. Decl.), Ex. C ¶ 8. The peak of COVID-positive residents occurred on April 24, 2020, when 55 residents were positive and—after a brief decline—there was a secondary peak on May 2, 2020, when 54 residents were positive. *Id.*; *Amici* Report [77] at 16 ("At both facilities, by mid-May 2020, the rate of new COVID-19 cases had dropped significantly from peak levels."). After May 2, 2020, there has been a downward trend in known positive cases and, as of May 24, 2020, only 17 residents remained positive (14 at DOC facilities and 3 in local hospitals). Chakraborty Supp. Decl. ¶ 8.

On May 22, 2020, despite already having robust testing protocols in place, DOC, in collaboration with DOH and Unity, took the step of conducting widespread testing of residents housed in quarantine and non-quarantine units. Jordan Supp. Decl. ¶ 13. Medical staff tested about 400 residents housed in CDF and CTF, including entire housing units with recent COVID-19 cases, the enhanced monitoring unit, all non-COVID patients in the infirmary, and a sampling of other units throughout DOC facilities. *Id.* The purpose of the study is to identify asymptomatic carriers of the coronavirus and, upon receipt of the study's results, DOC will coordinate with DOH to determine next steps. *Id.* As of today, 680 DOC residents have been tested for COVID-19. *Id.* ¶ 15.

This broader testing will likely result in a temporary spike in the number of COVID-19-positive DOC residents. Id. ¶ 13.

As with testing practices, medical staff have followed CDC guidance on the placement of inmates based on their potential exposure to COVID-19. *Id.* ¶ 5. Residents who may have been exposed to someone who tested positive are placed on a 14-day quarantine. *Id.* In practice, this means that if one resident on a housing unit tests positive for COVID-19, the entire housing unit becomes a "quarantine unit." *Id.* Newly arrived residents are similarly housed on an "enhanced monitoring unit" for two weeks and are separated from other housing units. *Id.* ¶ 6. Nursing staff visit residents on the quarantine unit and the enhanced monitoring unit twice daily to take their temperature, screen for COVID-19 symptoms, and address other concerns residents might raise. *Id.* When nurses note a fever or a resident complains of symptoms, the nurses call a medical provider (nurse practitioner, physician's assistant, or doctor) for the resident to be evaluated—generally within two hours—and the medical provider will test for COVID-19 during the evaluation if appropriate. *Id.* Residents who have been tested and are awaiting results are placed on cell-restriction on their housing unit until the test results come back. *Id.* ¶ 5.

Residents who test positive for COVID-19 are placed in isolation and checked by medical staff at least twice daily. *Id.* ¶ 4; Tr. of May 11, 2020 Hr'g (*Amici* Supp. Oral Rep.) Ex. D, at 27 ("[O]n both isolation and quarantine housing units, medical staff are conducting routine monitoring of inmates to identify those who need urgent care. For inmates in isolation, the level of routine monitoring is very high. It frequently includes multiple visits from both nursing staff and advanced medical providers on a daily basis."). Unity follows CDC guidance to determine if a resident can be cleared for release from isolation. Jordan Supp. Decl. ¶ 4. This determination requires that: (1) the resident be free from fever for at least 72 hours without the use of fever-reducing medications; (2) there are improvements in the resident's other symptoms, such as coughing and shortness of breath; and (3) at least 10 days have passed since the resident's first

symptoms appeared. *Id.* Until May 3, CDC guidance recommended only seven days since the first symptoms appeared, and DOC followed that guidance until it was updated to 10 days. *Id.* The only time residents are permitted to leave isolation prior to satisfying CDC's criteria is if they are released from jail. *Id.* 

Residents not on an isolation or quarantine unit who report or display any CDC-defined symptoms of COVID-19 or other symptoms of concern are offered the opportunity to meet with medical staff and get tested. *Id.*  $\P$  7. The primary way to report symptoms is by filling out a sick call slip and submitting it into the sick call slip box on each housing unit. *Id.* 

On April 13, 2020, DOC enhanced the traditional sick call process by having medical staff "walk the units" and talk with residents daily prior to staffing the sick call clinic on that housing unit. Id. ¶ 8. As a result, providers have been able to find additional residents to place on that day's sick call schedule who had not completed a slip but needed to be seen by medical staff. Id.  $^4$ 

On May 18, 2020, DOC and Unity updated its system on the non-quarantine/non-isolation units to provide residents care within 24 hours of submitting a sick call slip. *Id.* ¶ 9. Nurses or Medical Assistants are tasked specifically with visiting non-quarantine, non-isolation housing units each day to retrieve sick call slips so that the slips can be triaged within hours of the resident submitting one. *Id.* The new system enables residents on these units to submit sick call slips and be seen by a high-level provider within 24 hours, a significant enhancement to accessing care. *Id.* Additionally, the sick call slip now contains specific questions to screen residents for COVID-19,

The new system of walking the units daily directly addresses *amici's* concern that residents will not be able to access medical care if they are not able to submit a slip during their limited time outside of the cells. *See Amici* Report [77] at 11 (*amici* could not verify that this process is being implemented but noted that "[t]his type of process would provide an opportunity for inmates locked in their cells to communicate health problems directly to medical staff on a daily basis, and mitigate the current barriers to accessing medical care for inmates on non-quarantine housing units").

and residents who report experiencing possible COVID-19 symptoms will be seen the same day. *Id.*, Attach. 2 (New Sick Call Slip).

Consistent with CDC guidance, residents released from DOC's facilities are screened for COVID-19 symptoms and have their temperature checked prior to release, but they are not tested. *Id.* ¶ 12. Upon release, inmates are also provided PPE and—if they are symptomatic—advised to self-quarantine for 14 days and consult with their doctor. *Id.* If someone has COVID-19-related housing needs, Unity discharge planners work with District of Columbia Department of Human Services to help the released inmate find housing. *Id.* 

#### 2. Sanitation

DOC has also taken additional measures to improve cleanliness and sanitation at its facilities. Inmates have the opportunity to receive clean linens and clothing on a weekly basis by exchanging their dirty linens and clothing. Johnson Supp. Decl. ¶ 8. To ensure residents receive this opportunity, correctional officers are required to track the laundry exchanges for linens, uniforms, and personal laundry. Declaration of Kathleen Jo Landerkin (Landerkin Decl.), Ex. E ¶ 4; Declaration of Michele Jones (Jones Decl.), Ex. F ¶ 4. As of May 20, 2020, all inmates are provided fresh bed linens upon entering isolation, which are replaced weekly, and another set of clean bed linens upon release from isolation. Johnson Supp. Decl. ¶¶ 8, 9; Attach. 8 (Order with New Isolation Linen Policy).

Inmates also have access to sufficient and appropriate cleaning equipment and supplies. Declaration of Gitana Stewart-Ponder (Stewart-Ponder Decl.), Ex. G ¶ 10; *Amici* Supp. Oral Rep. at 40 (residents "have access at both facilities to cleaning material and equipment"). To clean their cells, residents in each unit have access to a medical-grade, peroxide-based surface cleaner and disinfectant, approved by the CDC for killing the virus. *Id.* Residents are not permitted to access

the cleaning solution directly because it could be harmful if ingested or sprayed into someone's eyes. *Id.* ¶ 11. Instead, correctional officers spray the solution onto paper towels and give them to residents. *Id.* ¶ 11. On April 25, 2020, DOC began requiring correctional officers to verify that each cell in both facilities is clean every day and to mark the time the cell was checked on the Housing Unit Cell Cleaning Verification Form. Landerkin Decl. ¶ 5; Jones Decl. ¶ 5. Supervisors review the forms, and correctional officers are disciplined for failure to comply with the protocols. Landerkin Decl. ¶ 7; Jones Decl. ¶ 7.

DOC continually works to improve its protocols to ensure that cleaning supplies are readily accessible. Since April 9, 2020, a DOC program analyst calls correctional housing units twice a day to ask if any cleaning supplies are needed and to confirm that cleaning is being done. Landerkin Decl. ¶ 9; Jones Decl. ¶ 9. The program analyst documents the calls and additional supplies are provided to the housing units as needed. Landerkin Decl. ¶ 9, Attach. 4 (Sample CDF Call Log); Jones Decl. ¶ 9, Attach. 4 (Sample CTF Call Log). Additionally, the Department of Youth and Rehabilitation Services (DYRS) sanitarian, Dwayne Coley, recently recommended replacing the paper towels inmates use to clean their cells with microfiber towels. *Id.* ¶ 12. DOC adopted the recommendation and ordered additional microfiber towels that arrived on May 18, 2020. *Id.* DOC has distributed one to each resident, and the new system should address many of *Amici's* concerns. *Id.*; *Amici* Supp. Oral Rep. at 41.

A detail of residents is also tasked with cleaning common areas throughout CDF and CTF. Stewart-Ponder Decl. ¶ 9. The detail—supervised by correctional officers—cleans all common spaces and housing unit common areas during the night. *Id.* During the day, the inmate detail cleans common areas and high-touch surfaces every two hours. *Id.* To ensure that these cleanings are taking place regularly, on April 25, 2020, DOC began requiring correctional officers to

complete a Housing Unit Sanitation Checklist verifying that common areas and high-touch surfaces (including tables, chairs, knobs and handles, television and remote controls, railings, and mailboxes) are cleaned every two hours and some items (including inmates' telephones, video visitation screen, exercise equipment and kiosk screens) are cleaned after each use. Landerkin Decl. § 6; Jones Decl. § 6. Supervisors then review the forms after each shift and officers who fail to comply are disciplined. Landerkin Decl. § 8; Jones Decl. § 8.

Since the Court issued its temporary restraining order, DOC has worked diligently to retain a sanitarian and professional cleaning services. While initiating the procurement process and searching for vendors, DOC began working with the DYRS sanitarian who visited CDF and CTF on April 30, 2020, and May 6, 2020. Stewart-Ponder Decl. ¶ 4. He provided DOC with his recommendations—related to chemical control, supervision of inmates during cleaning cycles, and disposal of PPE—all of which DOC implemented. *Id*.

DOC has now entered into contracts with a professional cleaning service for both facilities and a sanitarian. Stewart-Ponder Decl. ¶¶ 4, 5, 6. On May 12, 2020, professional cleaning service Rock Solid Group, LLC began cleaning CDF common areas, including showers and high-touch surface areas, throughout the day, from 6:00 a.m. to 11:00 p.m. in accordance with CDC guidelines. *Id.* ¶ 5. Spectrum Management, LLC began the same cleaning regimen in CTF on May 18, 2020. *Id.* ¶ 6. That day, DOC also entered into a contract with a sanitarian, Potomac-Hudson Engineering, Inc., to provide onsite inspections and cleaning procedure plans for three months, beginning the week of May 25, 2020. *Id.* ¶ 7. The District has also planned for long-term sanitarian services at its facilities by creating and funding a permanent DOC sanitarian position, posted on

The rolling cart phone on the isolation unit is sanitized after every use by a correctional officer at CTF and by an inmate detail at CDF Jones Decl. ¶ 6; Landerkin Decl. ¶ 11.

May 21, 2020. *Id.* ¶ 8, Attach. 4. These professional cleaning services will supplement inmate and staff cleaning and sanitation efforts throughout the public health emergency. *Id.* ¶ 9.

## 3. Social Distancing, PPE, and Education

Since the pandemic began, the population and cell-occupancy at DOC facilities has been greatly reduced, creating an environment that is more conducive to social distancing and combating the spread of COVID-19. The combined population at CTF and CDF decreased from 1,846 on March 14, 2020 to 1,340 on May 24, 2020, a decrease of 27%. Chakraborty Supp. Decl. ¶ 5, Attach. 1 (Population Graph); *Amici* Supp. Oral Rep. at 7 (*amici* noting that there had been a significant reduction in population at both facilities, compared to when they conducted their first inspections). The percentage of the population housed in single cells rose from 44% of the combined CDF and CTF populations on March 4, 2020, to 71.9% of the population on May 21, 2020, a 61.2% increase in single-cell housing. Chakraborty Supp. Decl. ¶ 6, Attach. 2 (Single Cell Housing Graph).

DOC has undertaken extensive efforts to educate residents about COVID-19, and residents receive a constant stream of information about the disease and proper safety precautions. On April 28, 2020, DOC began providing residents with COVID-19 informational packets, as well as courses on digital tablets, and has since provided weekly cell-to-cell distribution of education materials regarding COVID-19, covering topics such as proper PPE usage, cleaning and disinfecting practices, and the importance of social distancing. Declaration of Amy Lopez (Lopez Decl.), Ex. H ¶ 12, Attach. 3 (Educational Materials Provided to Residents). Public address announcements are played throughout the facilities every two hours, reminding everyone of the importance of wearing PPE, social distancing, cleaning, and hygiene. Johnson Supp. Decl. ¶ 6, Attach. 5 (Text of Public Address Announcement). Flyers have been posted throughout CDF and

CTF with reminders to practice social distancing, wear PPE, and practice proper hygiene. Johnson Supp. Decl. ¶¶ 6, 7; Attachs. 1, 2, 3, 4, 6, 7 (Precautionary Tips Flyer, Safety Checklist Flyer, Hygiene and Social Distancing Flyer, Flyers Posted in CDF, Flyers, Mask Reminder Flyer). *See Amici* Report [77] at 13 ("relative to the signage *amici* observed during the April site visits, the defendants have increased the number of informational signs addressing the use of PPE, including donning, doffing and disposal, throughout the CDF and CTF").

Staff have also received extensive education regarding COVID-19. On April 27, 2020, DOC launched a mandatory online training module for staff regarding the disease; donning, doffing, and disposing of PPE; cleaning and disinfecting practices; the importance of social distancing; and screening procedures, including the use of infrared thermometers. Lopez Decl. ¶ 11, Attach. 1 (Staff COVID-19 Training). About 98% of staff have completed the training module online. *Id.* Additionally, paper copies of the training materials and reminders about COVID-19 precautions have also been provided to staff during roll call. *Id.*; Johnson Supp. Decl. ¶ 6.

Inmates and staff have access to sufficient PPE and are utilizing it appropriately. "Since amici's April 2020 site visits, personal protective equipment has been made much more widely available to inmates and staff at the CDF and CTF and most staff have been trained on proper donning, doffing and disposal procedures." Amici Report [77] at 17. All DOC staff are now required to wear gloves, masks and face shields at the agency's facilities, and all residents are required to wear masks outside of their cells. Johnson Supp. Decl. ¶ 4. Additionally, the District of Columbia Fire and Emergency Medical Services Department (FEMS) conducted on-site PPE fit tests for 40 DOC staff members on May 5, 2020, and trained two correctional officers as trainers. Id. ¶ 5. DOC has sought a vendor to fit test an additional 150 staff members and train 20

staff members on how to conduct the fit tests, who will then train the remaining DOC staff. *Id.* ¶ 5.

DOC has implemented new measures to ensure that staff is enforcing COVID-19 related protocols. A surveillance team monitors video footage and informs supervisors of any social distancing and PPE violations, and discipline has been imposed on correctional officers who fail to implement social distancing. Johnson Supp. Decl. ¶ 7. Beginning on April 25, 2020, at the end of each shift, correctional officers are required to complete a COVID-19 Housing Unit Checklist which asks officers to note whether: (1) the housing unit has cleaning and hygiene supplies, (2) staff and residents wear masks, (3) all residents were allowed to shower and allowed one hour out of their cells, (4) residents were reminded to social distance, (5) COVID-19 information was discussed during roll call, and (6) any residents reported feeling ill. Landerkin Decl. ¶ 7, Attach. 3 (Housing Unit Checklist); Jones ¶7, Attach. 3 (Housing Unit Checklist). In addition to supervisors reviewing these checklists every day and imposing discipline for failure to complete the forms, since May 10, 2020, DOC began requiring supervisors to conduct two unannounced walkthroughs and complete the same checklist to ensure that COVID-19 precautionary measures are being followed and the correctional officers are accurately completing the forms. Landerkin Decl. ¶ 10; Jones Decl. ¶ 10. Supervisors note and remedy any deficiencies they observe. *Id.* 

## 4. Staffing

Staffing across DOC operations has been improving over the last several weeks despite a number of challenges arising from the pandemic. DOC currently employs 945 correctional officers, and there are an additional 45 vacant correctional officer positions available to be filled. Stewart-Ponder Decl. ¶ 13. Filling these vacancies has proved difficult during the public health emergency. *Id.* Restrictions on physical gatherings have limited DOC's ability to hold correctional

officer recruitment events. *Id.* Those who apply for positions also cannot start right away; every new hire must pass recruitment testing, an extensive background check, and a course called Basic Correctional Training before they can take on the full duties of the job. *Id.*; Lopez Decl. ¶ 10. The current workforce has itself faced difficulties. As many as a third of correctional officers have been on leave and unavailable to work during portions of the pandemic, including leave related to COVID-19 quarantines and illnesses. Stewart-Ponder Decl. ¶ 14.

Despite the challenges presented by the pandemic, DOC has undertaken substantial efforts to increase staffing at DOC facilities. *Id.* ¶ 15. For instance, DOC called and sent return-to-work letters to individuals whose leave had expired (*e.g.*, individuals who were self-quarantining for two weeks and had not returned to work when the quarantine ended). *Id.* DOC has also continued its recruiting efforts, reaching out to the Mayor's Office of Veterans Affairs, which is advertising correctional officer positions and helping DOC identify potential candidates from their database of applicants. *Id.* ¶ 17. DOC will also hold a recruiting event for correctional officers—preemployment testing—on June 6, 2020. *Id.* 

Staffing has substantially improved in the last several weeks. About two weeks ago, 298 officers were unavailable for duty; as of May 18, 2020, that number has dropped to 251. *Id.* ¶ 16. On May 22, 2020, thirteen officers graduated from the training academy and reported to work at CDF and CTF on May 25. Lopez Decl. ¶ 10. Medical staffing has improved too. Notwithstanding the reduced resident population, Unity was recently approved to hire four additional staff, two nurse practitioners and two medical assistants, to assist with resident medical care. Jordan Supp. Decl. ¶ 14. Those positions have now been posted. *Id.* On April 27, 2020, members of the DOH Medical Reserve Corps began volunteering in the DOC facilities, primarily assisting with entry screenings. *Id.* ¶ 16.

## 5. Legal Calls

DOC has also implemented changes to facilitate legal calls and communications between residents and their attorneys. DOC case managers have been arranging approximately 200 emergency attorney calls per week. Supplemental Declaration of Camille Williams (Williams Supp. Decl.), Ex. I ¶ 4. *Amici* noted in their report that residents currently in isolation at CTF have consistent access to a rolling cart that houses a phone for resident use. *See Amici* Supp. Oral Rep. at 29. Except for a small number on one tier, residents in isolation at CDF similarly have access to a phone cart. *Id.* at 30; *see id.* at 32 (observing residents in isolation "are afforded confidentiality because the calls take place in their cells"); *id.* at 33 ("So clearly, there's been improvement on the isolation units in terms of access to legal calls."). <sup>6</sup>

In non-isolation units, many attorney calls by CDF and CTF inmates were previously conducted using telephones in case managers' offices, although for security reasons, the case manager would have to remain in or near the office during the call. Williams Decl. ¶ 4. Individual cell phones for all residents would be expensive and could pose security risks, including allowing the intimidation of witnesses and other illegal activity. *Id.* ¶ 6. However, to enable unmonitored emergency calls between residents and attorneys, DOC has now obtained 50 cell phones and 10 wired headsets with long cords that will enable case managers to dial the number of a resident's attorney and permit the resident to speak on the headset unmonitored while the case manager is sufficiently at a distance. *Id.* ¶ 5. Headsets will also be disinfected between each use. *Id.* DOC has also ordered 50 wireless headsets and expects them to arrive in early June 2020. *Id.* DOC posted

Currently, all residents have access to the rolling phone cart. Landerkin Decl. ¶ 11. For a short period of time, a small number of residents in isolation at CDF could not access the rolling phone cart used for legal calls and instead were permitted to make legal calls from a case manager's office or in the unit recreation room.

flyers in CDF and CTF on May 1, 2020, notifying residents about the availability of free legal calls. Johnson Supp. Decl. ¶ 10, Attach. 9.

In addition, DOC has harnessed digital tablets, previously used for educational and vocational programs, to facilitate secure messaging between residents and their attorneys. Lopez Decl. ¶¶ 4-6. DOC has configured accounts for many residents to permit unmonitored, secure messaging with their attorney and is working to expand access to all residents. *Id.* DOC has also configured the tablets to allow residents to fill out and submit grievance forms directly to the inmate grievance coordinator. *Id.* ¶ 7. DOC currently has approximately 500 tablets, with another 1,000 tablets that have been approved for purchase and should arrive in June 2020. *Id.* ¶¶ 5, 8.

## E. The Plaintiffs

Plaintiffs in this case are three individuals currently in DOC custody; plaintiffs Phillips and Banks reside at CDF, while plaintiff Smith resides at CTF. Compl. [1] ¶¶ 14–17. Plaintiff Phillips is incarcerated pending trial and was denied bond. *See id.* ¶ 14; *United States v. D'Angelo Phillips*, Case No. 2020 CF3 002932 (D.C. Super. Ct.). Plaintiff Banks has pled guilty to a felony and awaits sentencing. *See* Compl. ¶ 15; *United States v. Edward M. Banks*, Case No. 2019 CF1 010956 (D.C. Super. Ct.). Plaintiff Smith is incarcerated pending trial. Compl. ¶ 16.<sup>7</sup>

Plaintiff Banks is the only plaintiff who filed an affidavit in support of preliminary injunctive relief. He states that he does not regularly receive his out-of-cell time, the hot water tap in his cell did not work properly, and that he has "not been receiving a new face mask every day." Banks Decl. [70-35] ¶¶ 4–9, 13. His affidavit does not claim that he is suffering from a lack of

One of the original plaintiffs—Keon Jackson—has been released and is no longer a party. Memorandum Opinion [51] (Mem. Op.) at 7.

medical care or access to care. He also does not claim that he has filed any administrative grievance with DOC.<sup>8</sup>

## II. <u>Procedural History</u>

Plaintiffs filed their lawsuit on March 30, 2020. *See* Compl.; Amended Memorandum Opinion (Mem. Op.) [51] at 2. Along with the Complaint, plaintiffs filed a motion for class certification, an application for a temporary restraining order (TRO), and a motion for preliminary injunction. *See* Mot. to Certify Class [3]; Application for TRO [5]; Mot. for Prelim. Inj. [6]. Plaintiffs challenge their conditions of confinement, alleging generally that DOC's response to the pandemic poses an unreasonable and excessive risk to their health and safety in violation of the Fifth and Eighth Amendments. Compl. ¶¶ 8–9.

The Court held a TRO hearing on April 7, 2020, and heard argument for approximately two hours. After further discussions, the Parties agreed to the appointment of Grace Lopes and Mark Jordan "as *amici* of the Court to provide information on the actual conditions of the CTF and CDF and to make findings on Defendants' responses to COVID-19." *Id.* at 4; Consent Order Appointing Amicus [34]. *Amici* reviewed documents provided by the District and conducted unannounced and unescorted inspections of the CDF and CTF on April 10, 11, and 12. Mem. Op. at 4.9 *Amici* presented their preliminary findings orally at a telephone conference on April 15, and submitted their written report on April 18, 2020. *Id.* 

The Court entered a TRO on April 19, 2020, requiring specific actions in a number of areas.

DOC's Inmate Grievance Procedure is currently codified in DOC Policy and Procedure 4030.1K (Jan. 18, 2018), *available at* https://tinyurl.com/y89anbw3.

<sup>&</sup>lt;sup>9</sup> See Transcript (Apr. 15, 2020) at 10 ("[T]he Defendants have been very cooperative and responsive throughout this assessment process in terms of providing us with the data and information that we needed.").

See TRO [51]. DOC took immediate action to comply with the TRO. On April 22, the Court conducted a telephone conference to discuss the schedule for briefing on plaintiffs' amended motion for a preliminary injunction, during which the District consented to extend the TRO until at least May 15, 2020, to facilitate fact gathering ahead of plaintiffs' motion for a preliminary injunction. Minute Order (Apr. 23, 2020). On April 28, 2020, the Court issued a Consent Order which established a schedule for briefing and appointed *amici* to provide an oral report to the Court on May 11, 2020, answering questions on access to medical care; monitoring and treatment of inmates on isolation; access to telephone calls, showers, clean linens, and cleaning supplies; and social distancing. Consent Order [62] at 1. The Consent Order also directed *amici* to file a supplemental written report by May 20, 2020, to answer additional questions on staff training, retention of a sanitarian and professional cleaning services, and the education of staff and inmates about limiting the spread of COVID-19. *Id.* at 2.

On May 1, 2020, the Court granted the District's motion to join the United States as a necessary party. Order [63]; Mem. Opinion [64].

In their amended motion for a preliminary injunction, plaintiffs urge the Court to "extend and expand" the already broad relief granted in the TRO. Pls.' Mem. at 2. Specifically, plaintiffs ask the Court to appoint an expert to make recommendations regarding a broad release of categories of inmates. *Id.*; *see also* Pls.' Proposed Order [70-38] at 1–2. Plaintiffs ask the Court to order the District, within five days, to (1) hire a sanitarian and professional cleaning service for both facilities and ensure that "each DOC resident has access to proper and sufficient cleaning supplies to clean their cells and common areas, and provide training so that cleaning tools and

The District also agreed to extend the TRO "until the Court issues a decision on plaintiffs' Amended Motion for a Preliminary Injunction[.]" Consent Order [62] at 2.

products are used properly"; (2) to "implement a system for medical staff to visit each non-quarantine unit in DOC facilities to assess residents' health" and to provide "a plan to address staffing shortages"; and (3) to confer with plaintiffs and provide to the Court a plan for providing plaintiffs with information about the defendants' compliance. *Id.* at 2–3. Finally, plaintiffs ask the Court to order the District to provide a plan to "conduct a point prevalence survey as soon as possible to determine the spread of COVID-19 among residents and staff[,]" *id.* at 3, *i.e.*, test every inmate and staff member.<sup>11</sup>

### **LEGAL STANDARD**

A preliminary injunction "is 'an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). "The primary purpose of a preliminary injunction is to preserve the object of the controversy in its then existing condition—to preserve the status quo." *Aamer v. Obama*, 742 F.3d 1023, 1043 (D.C. Cir. 2014) (internal quotation marks omitted).

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, *and* that an injunction is in the public interest." *Winter*, 555 U.S. at 20 (emphasis added). The latter two factors merge when the government is opposing an injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

A plaintiff seeking emergency injunctive relief bears the burden of proving all four prongs of the standard before relief can be granted. *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288,

A "point prevalence survey" is a "data collection tool used to identify the number of people with a disease or condition at a specific point in time." *See* https://www.cdc.gov/hai/eip/antibiotic-use.html (May 20, 2020).

1292 (D.C. Cir. 2009). "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). *See also Disability Rights Council of Greater Wash. v. WMATA*, 234 F.R.D. 4, 7 (D.D.C. 2006) ("[T]he greater the scope of relief demanded, the greater the necessary showing to get it.").

#### **ARGUMENT**

# I. <u>Plaintiffs Are Not Entitled to Preliminary Injunctive Relief Related to Health and Safety Conditions.</u>

## A. Plaintiffs Cannot Show a Likelihood of Success on the Merits.

Demonstrating a likelihood of success on the merits is the "most important factor" in the preliminary injunction analysis. *Aamer*, 742 F.3d at 1038. Failing to meet the burden on this prong "is alone sufficient to defeat" a motion for emergency injunctive relief. *Smith v. Henderson*, 944 F. Supp. 2d 89, 96 (D.D.C. 2013). Plaintiffs must show not merely that success is a "possibility" but that it is "likely." *Winter*, 555 U.S. at 20–22. Plaintiffs cannot meet this burden.

Plaintiffs cannot complain that the District has done *nothing* to address the COVID-19 outbreak in DOC facilities; they argue only that the District's efforts are insufficient. Pls.' Mem. at 9. As the evidence shows, however, the District took immediate action, even before the first resident tested positive for COVID-19. *See* Background Section I.A. DOC swiftly mobilized its executive leadership to develop action plans, promptly began screening visitors, developed screening protocols for residents, and devised a system for isolating positive patients and quarantining those with symptoms. *See* above at 4–8. As demonstrated, DOC has worked diligently to respond to the COVID-19 crisis and continually improve the effectiveness of its response. *See generally* Background Section I.<sup>12</sup>

The "incidence of diseases or infections, standing alone," do not "imply unconstitutional confinement conditions, since any densely populated residence may be subject to outbreaks."

At bottom, plaintiffs complain not that the District's actions are entirely ineffective, but that the District is not moving quickly enough. Indeed, leaving aside the release issue, plaintiffs' proposed preliminary injunction [70-38] simply imposes a five-day time period for the District to provide a "system" or "plan" to demonstrate to the Court what the District is *already* doing. DOC has adapted its policies to increase the efficacy of its practices in limiting COVID-19's potential harm to inmates based on the best available knowledge. *See generally* Background Section I.

1. Plaintiffs Cannot Meet the Deliberate Indifference Standard, Which Gives Correctional Officials Substantial Discretion That Is Even Further Heightened in the Present Public Health Emergency.

Plaintiffs cannot show unconstitutional conditions of confinement in violation of either the Eighth Amendment (for convicted prisoners) or the Fifth Amendment (for pre-trial detainees). In an Eighth Amendment challenge to prison conditions, a plaintiff must show "deliberate indifference" by officials satisfying both "subjective and objective requirements." *Farmer v. Brennan*, 511 U.S. 825, 846 (1994). This requires showing "that officials had subjective knowledge of the serious medical need and recklessly disregarded the excessive risk to inmate health or safety from that risk." *Baker v. District of Columbia*, 326 F.3d 1302, 1306 (D.C. Cir. 2003) (quoting *Farmer*, 511 U.S. 825 at 837); *see Helling v. McKinney*, 509 U.S. 25, 35 (1993) (to demonstrate deliberate indifference, plaintiffs must show that jail officials (1) exposed inmates to "an unreasonable risk of serious damage" to the inmates' health (an "objective factor"), and (2) acted with "deliberate indifference" to posing such a risk (a "subjective factor")).

There can be no dispute that, under the Fifth Amendment as well, "liability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process." *Kingsley v.* 

Shepherd v. Dallas Cty., 591 F.3d 445, 454 (5th Cir. 2009). The Constitution does not require a detention facility to provide "foolproof protection from infection" by a communicable disease. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997) (tuberculosis).

Hendrickson, 135 S. Ct. 2466, 2472 (2015). After Kingsley, courts are divided whether the same deliberate indifference standard continues to apply to convicted prisoners as to pretrial detainees. See Burke v. Regalado, 935 F.3d 960, 991 (10th Cir. 2019) (noting the "[c]ircuits are split on whether Kingsley alters the standard for conditions of confinement and inadequate medical care claims brought by pretrial detainees"). The better interpretation is that "Kingsley does not control because it was an excessive force case, not a deliberate indifference case." Whitney v. City of St. Louis, 887 F.3d 857, 860 n.4 (8th Cir. 2018). Indeed, it would be incongruous for two different constitutional standards to apply to inmates housed in the same correctional facility. And it is notable that, prior to Kingsley, federal courts of appeals that had considered the issue uniformly held that the Farmer standard applies to substantive due process claims of pretrial detainees. See Caiozzo v. Koreman, 581 F.3d 63, 71–72 and n.3 (2d Cir. 2009) (citing cases).

But even if the deliberate indifference standard is now lower for pretrial detainees, the only change is that "the 'subjective prong' (or 'mens rea prong') of a deliberate indifference claim is defined objectively." Darnell v. Pineiro, 849 F.3d 17, 35 (2d Cir. 2017). Therefore, even assuming a lesser standard than under the Eighth Amendment, a pretrial detainee would still have to prove "that the defendant-official acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety." Id. (emphasis added).

Plaintiffs are therefore incorrect in arguing that they "do not need to show deliberate indifference in order to state a due process claim for inadequate conditions of confinement." Pls.' Mem. at 7. Deliberate indifference remains the standard, with the only possible permutation being that the subjective prong is treated objectively. *See Darnell*, 849 F.3d at 35. Thus, plaintiffs would

be only half correct when they argue that liability is premised on whether "Defendants knew or should have known that the jail conditions posed an excessive risk to their health." *Id.* at 12. At minimum, plaintiffs would also have to show that defendants recklessly failed to respond to that excessive risk. Plaintiffs do not come close to showing such deliberate indifference.

Importantly, in assessing liability, a court must account for the executive's legitimate interest in managing correctional facilities and must defer to the policies and practices of correctional administrators. "[R]unning a prison is an inordinately difficult undertaking," and the "safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Kingsley*, 135 S. Ct. at 2474 (quoting *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 326 (2012)). As the D.C. Circuit has explained: "We must accord '[p]rison administrators ... wide-ranging deference in the adoption and execution of policies and practices that *in their judgment* are needed to preserve internal order and discipline and to maintain institutional security." *Hatim v. Obama*, 760 F.3d 54, 59 (D.C. Cir. 2014) (quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (emphasis added)).

Moreover, the deference afforded to correctional officials is greatly heightened where, as here, they are responding to an unprecedented and rapidly evolving public health crisis. The Supreme Court has explained: "[L]iability for the deliberate indifference to inmate welfare rests upon the luxury enjoyed by prison officials of having time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 853 (1998). DOC officials have had no such luxury here, as the nation faces an unprecedented public health emergency, with the District itself and the surrounding metropolitan area a hotspot for the virus. This situation obligates correctional officials

to act quickly under difficult circumstances involving limited supplies and resources, constantly changing information and public health guidance, and the need to balance competing considerations related to institutional safety and security. Plaintiffs cannot show that this heightened standard for deliberate indifference has been met here.

The circumstances confronting DOC in operating its facilities in the midst of a pandemic are complex. But regardless of previous circumstances, to obtain an injunction now plaintiffs must show that "the deliberate indifference will continue 'during the remainder of the litigation and into the future." *Abdulrazzaq v. Trump*, 422 F. Supp. 3d 281, 290 (D.D.C. 2019) (quoting *Farmer*, 511 U.S. at 846). Plaintiffs here have failed to do this, because the evidence in the record shows that the District has taken numerous steps to slow the spread of the virus and to properly monitor and care for the residents in its facilities, and that those steps are effective. *See, e.g.*, Chakraborty Supp. Decl. ¶¶ 8–9 (showing steady decline in COVID-19 cases and residents in isolation).

# 2. DOC Responded Immediately and Reasonably to the Pandemic, and Its Response Is Effective.

Plaintiffs are not likely to succeed because the evidence demonstrates that what DOC is doing is working. The District has taken numerous, effective steps to combat the spread of the virus. *See generally* Background Section I. Although plaintiffs point to an increased rate of COVID-19-positive results among DOC residents since March 30, 2020, Pls.' Mem. at 1, plaintiffs fail to put this in context. From March 30 to May 25, 2020, the total number of positive cases in the United States increased over ten-fold from 163,569 to 1,637,456.<sup>13</sup>

See Centers for Disease Control, Number of COVID-19 Cases in the U.S., by Date Reported, January 22 to April 27, 2020, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/previouscases.html (May 20, 2020) and https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (May 25, 2020) (current case numbers).

Most importantly, the number of DOC residents currently positive for COVID-19 peaked at 55 on April 24, 2020, and has been declining since then. Chakraborty Supp. Decl. ¶ 8. 14 There are currently just 17 residents who have tested positive and not yet recovered. *Id*. 15 This clear progress, combined with the many measures DOC has taken to mitigate the further spread of illness, shows there is no need for preliminary injunctive relief.

## a. Medical Care and Testing

Plaintiffs state, in conclusory fashion, that DOC's "system suffers from several systemic flaws that result in the ineffective provision of medical care." Pls.' Mem. at 10. *See also id.* at 11 ("This broken system has surely led to, and will continue to lead to, increased spread of the virus within DOC facilities."). <sup>16</sup> Plaintiffs are incorrect; the numbers show otherwise.

DOC's medical procedures for responding to COVID-19 were initially developed—and continue to be adapted—based on guidance and recommendations from DOH and the CDC. *See* Jordan Decl. ¶ 4; Jordan Supp. Decl. ¶ 3. *See* Interim Guidance on Management of Coronavirus Disease 2019 in Correctional and Detention Facilities, March 23, 2020 (CDC Guidance). Plaintiffs do not complain about any systemic failures of DOC to comply with the CDC Guidelines, pointing

 $<sup>^{14}</sup>$  *Cf.* Jordan Supp. Decl. ¶ 13 (the number of positives will likely increase temporarily as DOC implements increased testing).

DOC's statistic of positive residents includes "presumed positives," residents identified by medical staff as displaying potential symptoms of COVID-19 but who refused testing. Chakraborty Supp. Decl. ¶ 7. The results from the May 22 testing are not yet finalized and are not included in the total number of positives. Jordan Decl. ¶ 15.

Plaintiffs assert that one inmate's experience is "representative." Pls.' Mem. at 11. The experiences of non-plaintiff inmates, even if they occurred exactly as described, may be troubling, but they cannot evidence a practice or pattern by DOC.

only to isolated incidents.<sup>17</sup> As described in detail above, *see* Background Section I.B.1, DOC continues to take appropriate steps to prevent the spread of COVID-19. The data showing a steady decline of infections bear out this conclusion. Chakraborty Supp. Decl. ¶ 8. DOC has also recently addressed the potential barriers to medical care noted by *amici*, including implementing enhanced protocols to ensure that all residents have access to timely medical care. *See* Background Section I.B.1. Residents who report or display any CDC-defined symptoms of COVID-19 or other symptoms of concern can meet with medical staff and get tested. Jordan Decl. ¶ 5.

As of May 18, 2020, DOC expanded its testing criteria beyond CDC guidance and now also tests cellmates of any resident who recently tested positive and all new residents upon arrival. <sup>18</sup> *Id*.

In response to the Court's questions in its Minute Order of May 18, 2020, the District notes that DOC began testing all inmates before being transferred to Saint Elizabeths on May 5, 2020, and began testing those being transferred to other federal correctional facilities beginning on May 22, 2020. Jordan Supp. Decl. ¶ 11. In addition, DOC also provides all released inmates with PPE and—if they are symptomatic—advice to self-quarantine and consult a doctor. *Id.* ¶ 12. Incoming residents are provided with COVID-19 information, monitored closely, and—as of May 18,

See Pls.' Mem. at 12, 15. The CDC Guidance, as its name suggests, does not contain "requirements" but recommendations "specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors." CDC Guidance at 1.

On April 27, 2020, members of the DOH Medical Reserve Corps (DC MRC) began volunteering in the DOC facilities. Jordan Supp. Decl. ¶ 16. DC MRC volunteers assist nurses with taking temperatures as well as with conducting screenings at the CDF and CTF entrances. *Id.* Currently, DC MRC volunteers primarily assist with screening questions as Unity's nurses conduct temperature readings at CDF and CTF entrances. *Id.* 

2020—tested for COVID-19. Jordan Supp. Decl. ¶¶ 6, 12. DOC has also recently begun broader surveillance testing at its facilities and tested almost 400 inmates on May 22, 2020. *Id.* ¶ 13.

Plaintiffs complain that conditions on the isolation units are "still punitive, discouraging residents from self-disclosing COVID-19 symptoms for fear of being sent to the unit." Pls.' Mem. at 20; *see id.* at 21–23. But the evidence shows that DOC took early action, and continues to do so, to improve the conditions and communications capabilities of inmates in isolation, well beyond the constitutional minimum. *See* above at 4–8; 19–20.

#### b. Sanitation

DOC has now contracted with a sanitarian and professional cleaning services to clean DOC facilities and has announced a full-time sanitarian staff position. Stewart-Ponder Decl. ¶¶ 4, 5, 6, 8. These professional services are supplementing the efforts of inmates and staff to keep areas clean and sanitized. *See* Background Section I.B.2. After the Court issued its TRO, DOC moved swiftly to implement a variety of tools to ensure that cleaning protocols are followed and supplies are readily available, consulting with and implementing the recommendations of DYRS's sanitarian. Stewart-Ponder Decl. ¶ 4.

DOC has also developed checklists so that officers can verify that all cells are cleaned daily, that all residents have weekly access to clean laundry, and that high-touch and common areas are cleaned every two hours. Landerkin Decl. ¶¶ 4–6; Jones Decl. ¶¶ 4–6. DOC supervisors recently began unannounced spot-checks to ensure the accuracy of the officers' verifications and officers are disciplined for failure to comply. Landerkin Decl. ¶¶ 7–8; Jones Decl. ¶¶ 7–8.

Implementing changes in a system as complicated as a jail cannot be immediate; plaintiffs' allegations of isolated failures do not amount to a constitutional violation when adequate practices are in place and conditions are improving.

## c. Education, PPE, and Social Distancing

As described in detail above, *see* 15–17, DOC has taken significant steps to reduce its population, and to educate staff and residents about social distancing, PPE, and general infection-control practices. *See also Amici* Report [77] at 13 (91% of DOC's available workforce have participated in mandatory PPE training as of May 19, 2020); *See also id.* at 17 ("Since *amici's* April 2020 site visits, personal protective equipment has been made much more widely available to inmates and staff at the CDF and CTF and most staff have been trained on proper donning, doffing and disposal procedures."). Sufficient PPE is available to inmates and staff, who are utilizing it. All DOC staff are now required to wear gloves, masks and face shields at the agency's facilities, and all residents are required to wear masks outside of their cells. Johnson Supp. Decl.

Residents receive information about the disease and proper safety precautions in a variety of ways, in addition to the visual information posted throughout the facilities and regular publicaddress announcements. Last month DOC began providing residents with COVID-19 informational packets and courses on digital tablets, and weekly cell-to-cell distribution of education materials regarding COVID-19, covering topics such as proper PPE usage, cleaning and disinfecting practices, and the importance of social distancing. Lopez Decl., Ex. H ¶ 12; Attach. 3.

Plaintiffs nevertheless complain of inmates "clustering" and that "[u]nderstaffing may also contribute to disciplinary issues between residents and staff." *Id.* at 27. But staff enforcement, if imperfect, cannot be blamed for every case in which residents choose to congregate or cause "incidents." *Amici* Supp. Oral Rep. at 34–35. DOC's inability to control every action taken by every resident does not amount to a constitutional violation. *Cf.* Johnson Supp. Decl. ¶ 7 (A surveillance team monitors video footage for social distancing and PPE violations, and discipline

has been imposed on correctional officers who fail to implement social distancing).

## d. Staffing

Plaintiffs fail to confront—or even mention—the real-world constraints which caused DOC's "staffing limitations" and simply ask the Court to order the District to fix it. *See* Pls.' Proposed Order [70-38] at 2. *Cf.* Pls.' Mem. at 24 ("In spite of the Court's Order, understaffing persists."). <sup>19</sup> As explained, *see* above at 17–18, DOC's staffing has improved markedly in recent weeks, with more than 45 additional correctional officers reporting for duty who were unavailable two weeks ago, Stewart-Ponder Decl. ¶ 16. Far from exhibiting deliberate indifference, DOC continues to address its staffing issues head-on, by increasing and diversifying its recruiting efforts and sending out return-to-work letters. *Id.* ¶¶ 15–16. Moreover, medical staffing is improving too, with Unity receiving approval to hire additional staff, Jordan Supp. Decl. ¶ 14, and through the use of DOC Medical Reserve Corps volunteers. *Id.* ¶ 16. *See Amici* Report [77] at 8 ("[I]t appears staffing shortages are not having as severe an impact as was evident in the recent past.").

# 3. Plaintiffs Have Not Established a Municipal Policy or Custom Needed for Liability Under 42 U.S.C. § 1983.

Plaintiffs' claims cannot succeed because they make no attempt to show a municipal policy or custom causing any alleged constitutional violation. With over 1,300 inmates in DOC facilities, the fact that plaintiffs could find a number of inmates to complain about their individual problems with how the District is addressing the pandemic is neither surprising nor dispositive. "[E]pisodic failures of process do not make out a constitutional violation." *Lightfoot v. District of Columbia*,

Plaintiffs' isolated anecdotes of a small number of officers working long hours offer no indication that those officers' experiences are representative of the almost 1,000 correctional officers working for DOC. *See* Pls.' Mem. at 25.

246 F.R.D. 326, 335 (D.D.C. 2007) (quoting *Lightfoot v. District of Columbia*, 448 F.3d 392, 402 (D.C. Cir. 2005) (Silberman, S.J., concurring)).

Similarly, the isolated acts of a handful of correctional officers are insufficient to impose liability under 42 U.S.C. § 1983; instead, "[p]laintiffs who seek to impose liability on local governments under § 1983 must prove that 'action pursuant to official municipal policy' caused their injury." *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (*quoting Monell v. Dep't of Soc. Servs.* of New York, 436 U.S. 658, 691 (1978)). *Cf. Martin v. Malhoyt*, 830 F.2d 237, 255 (D.C. Cir. 1987) ("One instance, however egregious, does not a pattern or practice make.").

For purposes of municipal liability, an action will have "caused" constitutional injury only when there is an "affirmative link," such that the government policy or custom was itself the "moving force" behind the violation. *See Baker v. District of Columbia*, 326 F.3d 1302, 1306 (D.C. Cir. 2003). Generally, a § 1983 plaintiff can establish a policy or custom by reference to: (1) express municipal policy; (2) actions of a policy maker; (3) consistent conduct by non-policy makers (*i.e.*, "custom" with force of law); or (4) "deliberate indifference" to a risk of constitutional injury. *Id.* at 1306–1307 (citations omitted).

To the extent plaintiffs complain about the actions of correctional officers, those allegations would be actionable, if at all, under the third type of claim identified in *Baker*—a custom or practice. But to succeed under that standard, plaintiffs must put forth "evidence that the municipality's employees engaged in a persistent or regular pattern of conduct that gave rise to the alleged constitutional violations." *Egudu v. District of Columbia*, 72 F. Supp. 3d 34, 41 (D.D.C. 2014) (citing *Warren v. District of Columbia*, 353 F.3d 36, 39 (D.C. Cir. 2004)). Plaintiffs' anecdotes and hearsay do not meet that burden; the pandemic is a unique situation, and every

District employee and official is in uncharted territory. The District's responses to this unique public health emergency do not demonstrate a consistent pattern of unconstitutional conduct.

"Inadvertent errors, honest mistakes, agency confusion, even negligence in the performance of official duties, do not warrant redress under [42 U.S.C. § 1983]." *Silverman v. Barry*, 845 F.2d 1072, 1080 (D.C. Cir. 1988). *See also Ellis v. District of Columbia*, 84 F.3d 1413, 1424 (D.C. Cir. 1996) ("Even if mistakes were made in some instances, 'it is not reasonable to extrapolate a general policy of lawlessness from such mistakes."").

The adoption of policies to address the conditions "bear[s] heavily on the inquiry into deliberate indifference," *Helling*, 509 U.S. at 36, and "militates against a finding of deliberate indifference," even if those policies were "not perfectly enforced." *Abdullah v. Washington*, 530 F. Supp. 2d 112, 118 (D.D.C. 2008) (quoting *Scott v. District of Columbia*, 139 F.3d 940, 944 (D.C. Cir. 1998)). In this inquiry, courts may properly go beyond officials' mental states and consider "the constraints facing the official[s]" for context. *Wilson v. Seiter*, 501 U.S. 294, 303 (1991); *see Helling*, 509 U.S. at 37 ("The inquiry into this factor also would be an appropriate vehicle to consider arguments regarding the realities of prison administration.").

## 4. Plaintiffs Failed To Exhaust Their Administrative Remedies.

Prisoners must exhaust their administrative remedies before suing in federal court under the Prisoner Litigation Reform Act (PLRA). See, e.g., Price v. Lilly, 2020 WL 1065703, \*3 (D.D.C. Mar. 5, 2020) (citing 42 U.S.C. § 1997e(a) ("[n]o action shall be brought with respect to prison conditions ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted")); see also Porter v. Nussle, 534 U.S. 516, 532 (2002) (unanimous) ("hold[ing] that the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes,

and whether they allege excessive force or some other wrong"); *Hawthorne v. Gray*, 893 F. Supp. 2d 11, 14–15 (D.D.C. 2012) (granting motion to dismiss where prisoner challenging conditions in DOC facilities failed to exhaust his administrative remedies under the PLRA).

DOC's Inmate Grievance Procedure is currently codified in DOC Policy and Procedure 4030.1K (Jan. 18, 2018), available at https://tinyurl.com/y89anbw3; see, e.g., Hawthorne, 893 F. Supp. 2d at 14 (describing the Inmate Grievance Procedures (IGP) available to residents of DOC). There is no indication that any of the remaining named plaintiffs filed any grievances with DOC about COVID-19 or any other aspect of their confinement. Consequently, they have failed to exhaust under the PLRA. See Porter, 534 U.S. at 524 ("All 'available' remedies must now be exhausted; those remedies need not meet federal standards ...." Exhaustion is required under the PLRA "[e]ven when the prisoner seeks relief not available in grievance proceedings, notably money damages[.]") (citing Booth v. Churner, 532 U.S. 731, 739–41 (2001)).

# B. <u>Plaintiffs Have Failed To Show That They Will Likely Suffer Imminent and Irreparable Harm.</u>

"The failure to demonstrate irreparable harm is 'grounds for refusing to issue a preliminary injunction, even if the other three factors entering the [preliminary injunction] calculus merit such relief." Nat'l Min. Ass'n v. Jackson, 768 F. Supp. 2d 34, 50 (D.D.C. 2011) (quoting Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006)). "[P]roving irreparable injury is a considerable burden, requiring proof that the movant's injury is certain, great and actual—not theoretical—and imminent, creating a clear and present need for extraordinary equitable relief to prevent harm." Power Mobility Coal. v. Leavitt, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (citations and internal quotation marks omitted). If a party fails to make a sufficient showing of irreparable injury, a court may deny a motion for preliminary relief without considering the other factors. CityFed Fin. Corp. v. Office of Thrift Supervision, 58 F.3d 738, 747 (D.C. Cir.

1995); see Winter, 555 U.S. at 20. Past injury cannot justify injunctive relief, let alone preliminary injunctive relief. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 210–11 (1995) (citing Los Angeles v. Lyons, 461 U.S. 95, 105–106 (1983)).

Plaintiffs cannot demonstrate that they face irreparable harm that is both likely and imminent, especially given that the considerable efforts of DOC are working to slow and prevent the spread of COVID-19 in its facilities. *See generally* Background Section I. Indeed, the three plaintiffs have failed to show that they are facing any risk of imminent harm themselves. Mr. Banks was the only one to submit a declaration in support of plaintiffs' request for a preliminary injunction, and nothing in his declaration indicates that he faces any immediate threat or is being denied access to medical monitoring or care. *See* Banks Decl. [70-35]. Because the named plaintiffs cannot show that they themselves are at risk of irreparable harm that is both likely and imminent, they have no basis for preliminary injunctive relief.

#### C. The Balance of Equities and Public Interest Militate Against Preliminary Relief.

Even if plaintiffs could show a likelihood of success on the merits and that they would suffer irreparable harm without a preliminary injunction, they must additionally show both that "the balance of equities tips in their favor," and that "an injunction is in the public interest." *Sherley*, 644 F.3d at 392; *In re Navy Chaplaincy*, 738 F.3d 425, 428 (D.C. Cir. 2013) (plaintiffs cannot use a strong showing on some factors to make up for weak showing on others). These two factors "merge when the Government is the opposing party" and are thus analyzed together. *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 10 (D.C. Cir. 2019) (citation and internal quotation marks omitted). "[W]here the Court has a less intrusive means" of ensuring legal compliance, "the public interest would weigh towards choosing such options, especially where ... the plaintiffs seek a mandatory ('do this') rather than prohibitory ('don't do

this') injunction." *Garnett v. Zeilinger*, 313 F. Supp. 3d 147, 160 (D.D.C. 2018).

DOC does not dispute the gravity of COVID-19 or its responsibility to ensure the well-being of the individuals in its custody during a pandemic. *See* D.C. Code § 24-211.02(a). However, imposing plaintiffs' requested relief—even broader than that granted in the TRO—would disrupt the extensive efforts already underway to address the crisis, and divert staff attention and energy away from those efforts. *See District of Columbia v. USDA*, 2020 WL 1236657, at \*12 (D.D.C. March 13, 2020) (observing that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs") (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).

The relief requested by plaintiffs is overbroad and treads on the prerogatives of the executive in operating correctional institutions. Correctional officials "must have substantial discretion to devise reasonable solutions to the problems they face." *Florence*, 566 U.S. at 326. *See also Hatim*, 760 F.3d at 59 ("We must accord '[p]rison administrators ... wide-ranging deference in the adoption and execution of policies and practices ....") (quoting *Bell*, 441 U.S. at 547). Plaintiffs' requested relief would ignore that required deference and seriously impinge on the prerogatives of DOC and the Mayor. Indeed, plaintiffs' request for far-reaching relief would run roughshod over the broad authority of the Mayor to operate DOC's facilities, in contravention of long-standing case law. That relief is even more inappropriate in a declared public health emergency, when the executive's authority—and the need for clear, decisive action—should be at its zenith. *See, e.g., Jacobsen v. Massachusetts*, 197 U.S. 11, 25 (1905) (holding that a law mandating vaccinations during a smallpox outbreak was encompassed by government's inherent police powers to ensure public health and safety). *Cf. Lyons*, 461 U.S. at 112 ("In exercising their equitable powers federal courts must recognize '[the] special delicacy of the adjustment to be

preserved between federal equitable power and State administration of its own law.") (quoting *Stefanelli v. Minard*, 342 U.S. 117, 120 (1951)).

The preliminary injunction requested by plaintiffs would decrease the flexibility of responsible officials to respond as changing conditions warrant, not to mention divert necessary staff time and resources from those efforts to the monitoring of compliance with any Court-ordered relief. Already, DOC and the District have expended an additional approximately \$4 million on its response to COVID-19 in DOC facilities, including contracts with professional cleaners, communication equipment, additional cleaning materials, and staff expansions and overtime. Stewart-Ponder Decl. ¶ 18. Plaintiffs' requests for resource-intensive system-wide reform would undermine the monumental efforts already underway.

The balance of the equities and the public interest weigh in DOC's favor and counsel against granting a preliminary injunction.

#### D. Plaintiffs' Requested Relief Is Not Narrowly Tailored.

The PLRA's strict limits on preliminary injunctive relief apply to this "civil action with respect to prison conditions." 18 U.S.C. § 3626(a)(2); see id. § 3626(g)(2), (5) (defining "prison" as "any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law"). The PLRA constrains the authority of courts to order preliminary injunctive relief, requiring that such relief "be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). Even assuming that the Court finds that plaintiffs have sufficiently shown some constitutional harm that must be immediately corrected, plaintiffs' requested injunction is exceptionally broad, seeking to adopt almost two dozen specific actions from the TRO, and also

adding eight more. *See* Pls.' Proposed Order. These requests can hardly be construed as narrowly drawn, extending no further than necessary, and constituting the least intrusive means. Thus, the requested relief well exceeds what is permissible under the PLRA. *See* Am. Order [50]. *Cf. Valentine v. Collier*, 956 F.3d 797, 806 (5th Cir. 2020) (*per curiam*) ("These may be salutary health measures. But that level of micromanagement, enforced upon threat of contempt, does not reflect the principles of comity commanded by the PLRA.").

The PLRA builds upon the already well-established rule that injunctive relief must be "narrowly tailored to remedy the specific harm shown." *Nevada Dep't of Health & Human Servs. v. U.S. Dep't of Health & Human Servs.*, 435 F.3d 326, 330 (D.C. Cir. 2006); *see also USDA*, 2020 WL 1236657 at \*12 (observing that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs") (quoting *Califano*, 442 U.S. at 702).

Worse, only one named plaintiff—Mr. Banks—has offered a declaration, which speaks of individual concerns, including a loss of out-of-cell time, and does not allege any specific complaints about insufficient medical care or monitoring. *See* Banks Decl. [70-35]. <sup>20</sup> But plaintiffs ask, essentially, that this Court convert those complaints into broad, institutional reform litigation. It would be inappropriate for the Court to extrapolate individual allegations into system-wide

Mr. Banks has moved for release in his criminal case in Superior Court, *United States v. Edward Banks*, No. 2019 CF1 010956. DOC responded to Mr. Banks' motion, *see* Response of District of Columbia, No. 2019 CF1 010956, Ex. J, providing evidence demonstrating that his allegations there and here were inconsistent, and belied by the evidence, *id.* at 4–6, Attach. 1 (compilation of evidence cited in the District's response brief). According to the docket, Mr. Banks' request for relief was denied on May 26, 2020, after a teleconference hearing. *See* https://www.dccourts.gov/eaccess.

failures justifying the imposition of sweeping relief.<sup>21</sup>

DOC "has taken and continues to take measures—informed by guidance from the CDC and medical professionals—to abate and control the spread of the virus." *Valentine*, 956 F.3d at 806. Plaintiffs' overbroad requested relief would not aid those efforts and could well impair DOC's ability to continue fighting the virus.

#### II. Plaintiffs Are Not Entitled to Preliminary Injunctive Relief Related to Legal Calls.

Plaintiffs cannot meet any of the requirements for preliminary injunctive relief involving the asserted difficulties of residents calling their lawyers during the pandemic. Pls.' Mem. at 22–23.

First, plaintiffs have not shown a likelihood of success on the merits. DOC persists in its efforts to improve telephone access for its residents. DOC case managers have been arranging approximately 200 emergency attorney calls per week. Williams Decl. ¶ 4. On May 1, 2020, flyers were posted in CDF and CTF regarding the availability of free legal calls. Johnson Supp. Decl. ¶ 10, Attach. 9. To facilitate unmonitored attorney-client communication, DOC has obtained 50 cell phones and 10 wired headsets with long cords. Williams Decl. ¶ 5. Case managers will use these cell phones to facilitate secure, unmonitored attorney calls. *Id.* ¶ 5. DOC has placed an order for 50 wireless headsets and expects them to arrive in early June. *Id.* Before the COVID-19 pandemic, DOC had approximately 500 tablet devices that participating residents could use for their education in various educational and recreational programs. Lopez Decl. ¶ 5. To help increase resident access to attorney communications during the pandemic, on May 7, 2020, DOC

Numerous allegations in many declarations are from the time period *prior to* the TRO. *See* [70-7] ¶¶ 2–6; [70-8] ¶¶ 2–6; [70-10] ¶¶ 3–11; [70-11] ¶¶ 3–8; [70-14] ¶¶ 2–5; [70-15] ¶¶ 3–28; [70-18] ¶¶ 4–11; and [70-34] ¶¶ 3–13.

configured participating residents' American Prison Data Systems accounts to facilitate secure, unmonitored messaging with their attorneys, and has been working to configure such accounts for each resident. *Id.* ¶ 6. DOC has also been working with the Public Defender Service, the Federal Public Defender, and private attorneys to ensure each resident's attorney has access. *Id.* DOC cannot see the content of any message sent or received. *Id.* Additionally, the District has approved the purchase of 1,000 tablets to help expand attorney-client messaging capabilities. *Id.* ¶ 8. DOC expects to receive those devices in June. *Id.* Plaintiffs' claims also cannot succeed on the merits because of their failure to show any municipal policy or custom, or that plaintiffs have exhausted their administrative remedies, regarding any issue about communications with lawyers. *See* above at 33–36.

Second, plaintiffs also cannot show likely and imminent irreparable harm related to legal calls, especially in light of the actions that DOC has taken. *See* Background Section I.D.5. Indeed, these plaintiffs have not attempted to establish, through their own affidavits, that they are presently being denied adequate access to their lawyers. *See* Banks Decl. [70-35]. While plaintiff Banks notes that he (like every inmate) is expected to make legal calls during his one hour daily out-of-cell time, *id.* ¶ 6, he does not indicate that he was ever unable to make a call when he wanted.

Finally, the balance of the equities and the public interest favor the District. Not only would the District suffer the harms that preliminary injunctive relief would cause, as already detailed, but DOC has also determined that it should not provide individual cell phones to each resident, as plaintiffs request. Williams Decl. ¶ 6. In addition to the significant costs of such an effort, it would raise serious security concerns because residents could use the phones for illicit activity, such as witness tampering. *Id*.

#### III. The United States Has Opposed Plaintiffs' Request Regarding Inmate Release.

The United States has opposed [80] plaintiffs' request for relief regarding the release of inmates, including the request for the appointment of an expert. The District defers to the United States on this issue.

#### **CONCLUSION**

For the foregoing reasons, the Court should deny plaintiffs' amended motion for a preliminary injunction.

Dated: May 26, 2020. Respectfully submitted,

KARL A. RACINE Attorney General for the District of Columbia

TONI MICHELLE JACKSON Deputy Attorney General Public Interest Division

/s/ Fernando Amarillas FERNANDO AMARILLAS [974858] Chief, Equity Section

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Counsel for Defendants

# EXHIBIT A

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, et al.,

Plaintiffs,

v.

Civil Action No. 20-00849 (CKK)

QUINCY BOOTH, et al.,

Defendants.

#### **DECLARATION OF LENNARD JOHNSON**

Pursuant to 28 U.S.C. § 1746, I, Lennard Johnson, declare and state as follows:

- 1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration, and testify based on my personal knowledge acquired in the course of my official duties, including my daily observations of conditions and procedures at District of Columbia Department of Corrections (DOC) facilities. I previously submitted a declaration in this matter [20-1].
- 2. I am the Warden of the DOC correctional housing facilities, which include the Central Detention Facility (CDF), the Correctional Treatment Facility (CTF), and the Central Cell Block. In this role, I am responsible for the care and well-being of all residents housed in DOC's correctional housing facilities. I am also responsible for the supervision of all DOC uniformed staff. I have worked for DOC since November 2014. Before that I worked as Chief of Security for the Maryland Reception, Diagnostic, and Classification Center, part of the Maryland Department of Public Safety and Correctional Services. I began my career in that agency as a correctional officer and worked my way up through the ranks, serving more than 20 years before I retired and joined DOC.

- 3. I provide this declaration to inform the Court about DOC's health and safety precautions related to COVID-19.
- 4. All DOC staff are required to wear gloves, masks and face shields at the agency's facilities and all residents are required to wear masks outside of their cells. On March 15, DOC halted all non-lawyer visits.
- 5. The District of Columbia Fire and Emergency Medical Services Department (FEMS) conducted on-site PPE fit tests for 40 DOC staff members on May 5, 2020, and two correctional officers were trained as trainers. DOC also submitted a request to the District's Emergency Operations Center for a vendor to fit test an additional 150 staff members and train 20 staff members on how to conduct the N95 fit tests. Once that training is completed, the 22 trained DOC staff members will conduct N95 fit tests for remaining DOC staff.
- 6. Staff are instructed to enforce and engage in social distancing at roll call, in training modules, through public address announcements throughout the day, and on signs posted throughout the facility. *See* Attachments 1-5 (Precautionary Tips Flyer, Safety Checklist Flyer, Hygiene and Social Distancing Flyer, Flyers Posted in Common Areas, Public Address Announcement). Additionally, a surveillance team monitors video footage and informs supervisors of any social distancing and PPE violations, and discipline has been imposed on correctional officers who fail to implement social distancing.
- 7. Flyers with instructions for wearing PPE and reminders of the PPE requirements are posted throughout the buildings. Attachments 6 and 7 are pictures of flyers posted in CDF and the mask flyer posted at building entrances.
- 8. Inmates have the opportunity to receive clean linens and clothing on a weekly basis by exchanging their dirty linens and clothing for clean ones.

- 9. As of May 20, 2020, all inmates are provided fresh bed linens upon entering isolation and another set of clean bed linens upon release from isolation. Attachment 8 is the posted order explaining the new policy.
- 10. On May 1, 2020, flyers were posted in CDF and CTF regarding the availability of free legal calls. Attachment 9 is a copy of the flyer.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on 5/24

LENNARD JOHNSON



### **COVID-19 PRECAUTIONARY TIPS**

# HELP SAFEGUARD YOUR HEALTH AND REDUCE THE SPREAD OF COVID-19.

WASH YOUR HANDS WITH SOAP AND WATER FOR AT LEAST 20 SECONDS.

IF YOU ARE FEELING ILL,
IMMEDIATELY NOTIFY UNIT
OFFICERS.

DISINFECTANT WILL BE SPRAYED IN EACH CELL. RESIDENTS ARE REQUIRED TO WIPE DOWN AND CLEAN THEIR CELLS AFTERWARD.

WIPE DOWN SURFACES SUCH AS TELEPHONES AND KIOSKS BEFORE USE.

PRACTICE SOCIAL DISTANCING. STAND OR WALK SIX (6) FEET APART FROM OTHERS.

J

4

5



# CORRECTIONAL OFFICERS' SAFETY CHECKLIST

PROTECT YOURSELF AND OTHERS BY FOLLOWING THESE STEPS:

PRACTICE SOCIAL DISTANCING BY STAYING AT LEAST SIX FEET AWAY FROM OTHER PEOPLE.
WEAR THE APPROPRIATE PERSONAL PROTECTIVE EQUIPMENT(PPE) AT ALL TIMES.
THOROUGHLY WASH YOUR HANDS FOR AT LEAST 20 SECONDS THROUGHOUT THE DAY.
AVOID TOUCHING YOUR FACE, PARTICULARLY THE MOUTH, NOSE AND EYES.
SANITIZE YOUR EQUIPMENT AND COMMONLY TOUCHED SURFACES BEFORE USE.
IF A RESIDENT APPEARS TO HAVE FLU-LIKE SYMPTOMS, REPORT HIM/HER TO MEDICAL IMMEDIATELY.
IF YOU ARE SICK, CONTACT YOUR HEALTHCARE PROVIDER AND REQUEST SICK LEAVE THROUGH YOUR SUPERVISOR.



#### **COVID-19 SYMPTOM CHECKLIST**

MILD TO SEVERE SYMPTOMS MAY APPEAR TWO (2) TO FOURTEEN (14) DAYS AFTER EXPOSURE TO THE VIRUS. IF A RESIDENT APPEARS TO HAVE ANY OF THE FOLLOWING, REPORT HIM/HER TO MEDICAL IMMEDIATELY.

FEVER
COUGH
SHORTNESS OF BREATH OR DIFFICULTY BREATHING
CHILLS
HEADACHE
MUSCLE PAIN
SORE THROAT
LOSS OF TASTE OR SMELL

PLEASE WASH YOUR

# HANDS

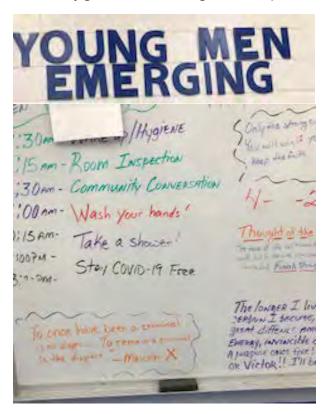


TO PREVENT THE SPREAD OF GERMS

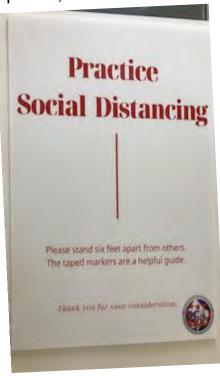
Wash Your Hands posters throughout common areas of facilities and housing units: April 22, 2020.



Hand hygiene- Housing Unit- April 22, 2020



Social Distancing- Throughout common areas of facilities, areas where staff and inmates once congregated, and areas susceptible to crowding. April 22, 2020.



COVID-19 Ways to stay safe- posters throughout common areas of facilities and housing units: April 22, 2020



From: Blackmon, Keena (DOC)

Sent: Thursday, April 9, 2020 6:18 PM

**To:** Booth, Quincy (DOC) <<u>quincy.booth@dc.gov</u>>; Stewart-Ponder, Gitana (DOC) <<u>gitana.stewart-ponder@dc.gov</u>>; Patten, Wanda (DOC) <<u>wanda.patten@dc.gov</u>>; Johnson, Lennard (DOC) <<u>lennard.johnson@dc.gov</u>>; Landerkin, Kathleenjo (DOC) <<u>Kathleenjo.Landerkin@dc.gov</u>>; Jones, Michele (DOC) <<u>Michele.Jones@dc.gov</u>>; Glover, Eric (DOC) <<u>eric.glover@dc.gov</u>>

Subject: Approved PA Announcement



#### **DOC PA Announcement**

The Department of Corrections takes the safety and well-being of all our staff, residents and contractors extremely seriously. We understand your heightened concerns regarding COVID-19 and we have undertaken several efforts to reduce the risk to everyone in our facilities.

- we require everyone entering our facilities to be medically screened for illness;
- we have enhanced cleaning of common areas every two hours;
- we have instituted a medical stay in place;
- and we have increased our communication through signs, PA announcements, and emails to staff.

In keeping with guidance from experts at the Centers for Disease Control and Prevention and DC Health, we encourage everyone to take the following simple steps to help stop the spread of COVID-19:

- Wash your hands with soap for 20 seconds, frequently. If DOC residents need additional soap, please notify your unit officer.
- Cover your cough with your upper arm or tissue that you immediately throw away and avoid touching your face.
- Avoid touching your eyes, nose and mouth with unwashed hands.
- Clean and disinfect frequently touched objects or surfaces such as railings, handles, and doorknobs.
- Practice social distancing by staying at least six feet away from other people.
- Don't shake hands with others.
- For DOC staff and contractors: If you're feeling sick, stay home. If you have a high temperature, you will not be allowed into the facilities.
- For DOC residents, if you're feeling sick, please notify your unit officer.

You can also visit <a href="https://coronavirus.dc.gov">https://coronavirus.dc.gov</a> for the most up-to-date information.

Thank you!

#### Photos: Central Detention Facility- Various Locations

#### Third Floor Admin and Medical area





#### **Medical- Social Distancing**



#### 3<sup>rd</sup> Floor Housing

#### **NORTH SIDE**



Quarantine Unit displays appropriate PPEs required and proper way to apply and remove



NOTICE that we Social Distance.

#### **SOUTH SIDE**



Quarantine Unit displays appropriate PPEs required and proper way to apply and remove



NOTICE that we Social Distance.

#### 2<sup>nd</sup> Floor Housing

# NW·2

Quarantine Unit displays proper PPEs to be worn, how to apply and remove.

#### **NORTH SIDE**



Isolation Unit displays proper PPEs to be worn how to apply and remove.



Quarantine unit displays proper PPEs to be worn, how to apply and remove.

Social Distancing signage is shared by all 3 units as they are in the same space on the North and South sides.

#### **SOUTH SIDE**



Quarantine unit displays proper PPEs to be worn, how to apply and remove.



Quarantine unit displays proper PPEs to be worn, how to apply and remove.

#### 1<sup>st</sup> Floor Housing

#### **NORTH SIDE**





Quarantine unit displays of Social Distancing and proper PPEs to be worn, how to apply and remove.

#### **SOUTH SIDE**



Quarantine unit displays of Social Distancing and proper PPEs to be worn, how to apply

Social Distancing signage is shared by all 3 units as they are in the same space on the North and South sides.

# Elevators throughout the facility displaying Social Distancing and various information about COVID-19



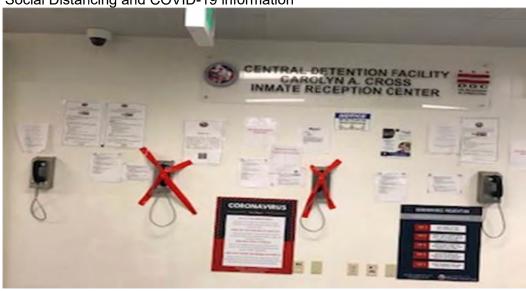




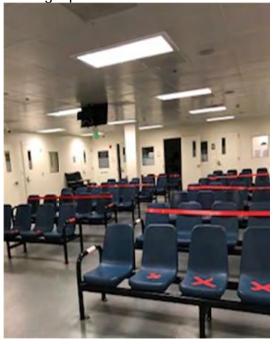


#### **INMATE RECEPTION CENTER (IRC)**

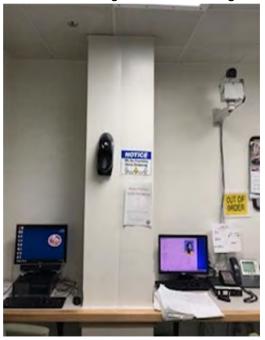
Social Distancing and COVID-19 information



Seating taped off and X'd to indicate off limits



Male Processing Social Distancing



#### **Additional Areas**







Hallway Closet

Door leading to outdoor rec

Officers Dining Room



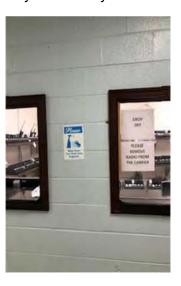
Door leading to Warden's Suite



KeyWatcher System



Time Clock stations



Radio Room

#### LET'S WORK TOGETHER

# EVERYONE ENTERING DOC FACILITIES ARE REQUIRED TO WEAR A MASK

TO HELP STOP THE SPREAD!





#### **CENTRAL DETENTION FACILITY**

**POST ORDER** 

## **Medical Restrictive Housing Unit** (Isolation) May 20, 2020

- I. **PURPOSE:** To establish policies and procedures for the safe, efficient and orderly operation of Housing Units.
- II. **POLICY:** It is the policy of the D.C. Department of Corrections (DOC) to operate housing units consistent with applicable Court Orders, American Correctional Association expected practices, DOC policies and D.C. regulations which dictate a safe, clean, secure and humane environment for inmates committed to our custodv.
- **APPLICABILITY**: To all employees involved in the management, service or III. operations of cell blocks.

#### IV. **DEFINITIONS:**

- **A. Donning:** the practice of putting on Personal Protective Equipment (PPE).
- **B. Doffing:** the practice of taking off Personal Protective Equipment (PPE).
- **C. Security Inspection:** An inspection of the housing unit involves a patrol of all areas in the housing unit. It shall include observation of windows, bars, locking mechanisms, keys, maintenance deficiencies, lighting, security equipment, plumbing, visual obstructions, fire hazard, condition of inmates, informal count of inmates and is documented in the unit logbook.
- **D.** Isolation: Cells for patients with suspected or confirmed contagious or infectious diseases. Inmates designated to be in isolation shall be housed in a cell alone
- E. Personal Protective Equipment (PPE): equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. PPE shall include at least gloves, mask, and face-shield.
- **F. Quarantine:** Cells in which inmates without symptoms exposed to infectious or contagious disease is placed. Inmates the medical provider designates for quarantine shall be housed in a cell alone.
- **G. Sallyport Principle:** Ensuring only one (1) door/gate is opened at a time. At no time should more than one (1) door/gate be opened at the same time with the exception of emergencies.

V. <u>DISTRIBUTION:</u> Each post shall have a hard copy of this post order. In addition, ALL post orders shall be accessible to Correctional Officers electronically via the "I" drive. Officers shall read and sign an acknowledgement that they understand their post orders, daily. Officers with questions about the contents of the post order shall immediately contact their zone supervisor for clarification.

#### VI. PROCEDURES:

- **A. Staffing:** Housing Units shall be staffed in accordance with the approved master roster.
- **B. PERSONAL PROTECTIVE EQUIPMENT-** Anyone entering the unit shall wear a mask and gloves (PPE) at all times. Gloves and mask shall be properly applied when first entering unit, NO EXCEPTIONS. Gloves and mask shall be properly removed right before exiting and properly disposed of, NO EXCEPTIONS in biohazard receptacle located in the sick call room. Hands shall be washed or use hand sanitizer immediately upon removing PPEs. PPE for doc staff shall be obtained the risk manager or designee. Officers shall not request PPE from the healthcare vendor for doc staff.
- **C. UNIT ADMISSION** all inmates housed on isolation units shall be directed by medical provider's orders. Inmates designated by medical as "Isolation" shall be housed in a cell alone.
  - Isolation- Cells for inmates with suspected or confirmed contagious or infectious diseases. Inmates medical designate as isolation shall be housed in a cell alone.
  - Medical doctor's order shall designate "isolation". Officers shall house inmates beginning with the cell at the far end of the housing unit. Each inmate/admission shall be housed in every other cell, e.g. first admission shall be housed in cell #10, second admission cell #11 (every other cell). When capacity is reached empty cells shall be filled.
  - 3. Inmates shall be wearing a mask when admitted to isolation units. Inmates shall be housed in cell alone.
  - Masks for inmates shall be supplied by medical. Additional masks shall be available on the unit. Inmates shall wear a mask at all times outside of his/her cell.
  - 5. Officers shall wear a clean mask and gloves when entering an inmate's cell. Once exiting cells the Officer shall properly remove gloves, wash hands or use hand sanitizer, and apply clean PPEs. If no physical contact with inmate, Officer may continue to wear mask.
  - 6. Each time an Officer/staff member makes physical contact with an inmate they shall properly remove PPEs, wash hands or use hand sanitizer and properly apply clean PPEs.

- Medical provider's orders shall include activities inmate may participate in, if any.
- 8. All inmates admitted to the isolation unit shall receive a new bed roll which includes two sheets, one towel and one blanket, when they first enter the unit. All inmates discharged from the isolation shall receive a new bed roll when they enter the housing unit they transferred to. Their bed roll in the isolation shall be laundered.
- VII. ACTIVITY- Inmates housed on the isolation unit shall NOT participate in video visitation. Inmates shall be offered a shower, daily. Using the "Isolation Unit Activity Record", the unit officer shall document the inmates name, DCDC#, date, time in and out of shower, and if any refusals, and the reason why. Medical shall determine what, if any, out of cell activities inmates may participate in.
- VIII. Accountability for Housing Reassignments: Inmates housed on isolation units shall not be reassigned to another housing unit unless physician's orders dictate. When a physician's order for re-assignment is written and received by the officer, the Compliance Officer shall coordinate movement with the officer in charge of the housing unit who shall document it by log book entry indicating name, DCDC Number, and Housing Unit to which reassigned.

#### IX. Security:

- A. All exterior/interior doors shall be secured at all times except for authorized and directly supervised movement. The Sally-port principle shall apply at all times, with no more than one door/gate opened at one time.
- B. Cell doors shall remain closed at all times.
- C. Knock and announce rule- all staff of the opposite gender must announce their presence upon entering the housing unit. Officers shall conduct irregular thirty (30) minutes security inspections of the entire unit to maintain cell control, discourage contraband trafficking and maintain appropriate surveillance.
- D. Patrols shall be recorded in the unit logbook indicating the name of the Officer conducting the patrol.
- E. All designated DOC employees shall utilize the Guard 1Plus Rounds Tracking System to conduct/document their rounds/inspections on each post that has been equipped with the technology.
- F. During patrols, the officers shall ensure that any inmate found lying on the floor does not need assistance or in distress.
- G. Tiers shall be cleared at all times, free from loitering and clothes drying on the rails.

- H. The key to the Housing Unit Control Module door shall never be left in the door lock. This door shall never be opened with inmates in the sally port or while a side gate is open.
- Only one Officer shall be in the Control Module at a time. No chairs or other furniture shall be in the sally-port area. Only one chair shall be allowed in the Control Module.
- J. All incidents or situations that could lead to an incident or unsafe condition shall be immediately reported to a shift supervisor.
- K. Staff shall not bring any personal items into the housing unit; i.e. newspapers, magazines, books, food items, medication, handbags or purses, radios, televisions, etc.
- L. **Cell Block Common Areas**. The unit OIC or designated staff shall visually inspect showers, dayrooms, and recreation areas, chase closets and storage area supply closets, cell tiers, and the control bubble.
- M. **Bar and Window Inspections:** All bars, doors, and windows shall be physically checked on each shift for damage, tampering, and integrity. The inspection is to be recorded on the Bar and Window form and turned into the Command Center. If a serious condition is found, the Zone Supervisor shall be contacted immediately and also logged in the maintenance logbook.

#### X. Inmate Search Procedures:

- A. All inmates entering or exiting the housing unit shall be searched for contraband. Officers shall wear PPEs, gloves and mask.
- B. Inmates may have their legal papers when going to court or a legal visit. Religious materials are authorized.
- C. At the conclusion of all legal and contact visits all inmates will be stripped searched prior to entry into the housing unit. Officers shall wear PPEs, gloves and mask.
- D. All inmates shall be searched (frisked) upon returning to the unit. When officers have probable cause to believe an inmate is in possession of contraband, he/she may be strip searched. All strip searches shall be conducted with a second officer present as backup and in a private setting. Officers shall wear PPEs, gloves and mask.
- E. Correctional Officers will only be allowed to strip search inmates of the same gender and all strip searches must be conducted in a private area, with a backup officer of the same gender as the inmate and the strip search must be documented in the strip search log book. Officers shall wear PPEs, gloves and

mask

F. During cell searches, inmates shall have handcuffs applied prior to opening the cell door. Inmates shall wear mask whenever they exit the cell. Officers/any staff shall also wear gloves and mask.

#### XI. Equipment Control:

- A. The unit OIC shall be responsible for maintaining an inventory of all cellblock equipment, Post Orders and keys. Any discrepancy shall be immediately reported to the Zone Supervisor and/or Shift Commander
- B. Accountability for keys, radios and restraints physical inventory at each shift change with an entry logbook and the relieving officer's signature on the submitted to the Command Center.
- C. The First Aid Kit shall be checked to make sure that the seal has not been broken. If the seal has been broken the nurses 'station shall be notified at once for re-stocking and a new seal, which the nurse shall be responsible for replacing on the First Aid Kit. This notification shall be recorded in the logbook, indicating the date, time, and the name of the person notified. The Zone Supervisor shall be notified if the seal is broken or the first aid kit is missing.
- D. The broken seal shall also be indicated on the equipment inventory sheet until it has been replaced.
- E. If it is necessary to use the First Aid Kit, the employee must record in the logbook the reason for breaking the seal and the items used from the kit.

#### XII. Count Procedures:

A. Counts shall be conducted at any time designated by the Shift Supervisor. Official counts shall be conducted at the following time:

#1 Shift	#2 Shift	#3 Shift
12:00 a.m.	8:00 a.m.	10:30 p.m.
1:00 a.m.	3:00 p.m.	
2:00 a.m.		
3:00 a.m.		
4:00 a.m.		

- B. All counts shall be conducted with the inmates standing by their assigned cell door. Once the officers have completed their count and the count is called into the count book, the inmates shall be released unless security reasons dictate otherwise.
- C. All officers assigned to the housing unit shall participate in the official count. It is mandatory that the OIC of the unit be present for all official counts
- D. Inmates shall remain quiet and by their cell until the counting officer gives the

- "O. K." command.
- E. While counting, officers shall allow nothing short of an emergency to distract them. Any disruption of the count process by inmates shall be cause for disciplinary action.
- F. Officers shall be positive they see a human body before counting an inmate as present.
- G. The counting officers shall remain in the area counted until the count is verified as correct.
- H. Each count shall be accurate and prompt. If there is any doubt as to the correctness of the count, a re-count shall be made
- I. No Inmate shall participate in the housing unit count.
- J. Each count is telephoned into the Count Supervisor during the official count.
- K. The OIC shall immediately prepare a count slip and forward this slip to the Count Supervisor. The unit OIC shall ensure that the count slip is turned in to the Count Supervisor within five (5) minutes of completion of the count.
- XIII. **Movement Control:** All inmate movement shall be escorted, and only by order of medical.
  - A. Each unit shall maintain a running count sheet of inmate movement to reflect an accurate total count of all inmates in the unit.
  - B. The running count sheet shall reflect Name, DCDC Number, time out, time in and movement to and from the total count of inmates in the unit.
  - C. Between the hours of 8:00 p .m. and 8:00 a.m. inmate movement shall be by officer escort only.

#### XIV. Contraband:

- A. Inmates are not permitted to have milk crates, cigarette lighters, furniture, any glass or metal items/objects, or any other contraband in their cell. Cleaning materials are not allowed to be kept in the cells (mops, buckets, brooms, scouring powder, disinfectant, etc.). All cleaning supplies and chemicals shall be secured when not in use.
- B. Bedding, clothing or any other material shall not be attached to cell bars or utilized in such a manner that would obstruct visibility into the cells or tiers, or not used for its intended purposes, i.e., blanket on floor for rugs, towel for foot rug, etc. Inmate misuse of government issued clothing and/or bedding is subject to Disciplinary Action.
- C. No items shall be attached to the walls or windows.
- XV. Conduct: Inmates are expected to conduct themselves in a manner sociably acceptable by respecting each other's space and keeping their person and assigned area clean and presentable at all times. All inmates are to wear identification wristbands at all times. Identification bands shall reflect inmates' name, DCDC number, and picture. Inmates without armbands are prohibited from all activities (mail, canteen, visiting, etc.) until armband is reissued through established procedures the next workday.

**XVI.** Inmate Cell Movement: Correctional officers shall not move inmates from cell to cell, unless authorized by medical. If medical orders cell movement, notify the Zone Supervisor who will coordinate with the compliance officer.

#### XVII. Watch-Take Medications:

- A. The nurse shall submit the medication list to the housing unit officer.
- B. The nurse shall walk cell to cell accompanied by the officer and administer the medication.
- C. Once the nurse administers the medication to the inmate, the nurse and officer shall observe the inmate visually swallow the medication. Additionally, the nurse and officer shall have inmate open his/her mouth, lift the tongue, and have inmate open palms to ensure the inmate has swallowed the medication.
- D. If the inmate refuses the watch take process the officer shall write a disciplinary report on the inmate and make immediate notification through the chain of command.
- **XVIII.** Sick Call: is conducted seven (7) days per week in this unit.
  - A. Medical rounds shall be made at a minimum two times a day, every day.
  - B. Medical provider shall address inmate's sick call and chronic care needs the on unit.
  - C. At least once a day, medical shall walk cell to cell to determine if inmates require sick call. This round shall be logged in the Officers logbook located in the Control module to include the Medical staff name, time-in and time out.
  - D. In case of emergency (life threatening) the Command Center shall be notified to call the Medical Emergency Response Team (MERT).
  - E. Inmates may utilize the paper request Sick Call System.
  - F. Sick call shall be conducted on the unit, inside the sick call room.
  - G. When medical staff arrives on the unit to conduct sick call, the Correctional Officer shall assist the medical staff. Sick call shall not be delayed, postponed or canceled by any correctional staff member. Any delay or issue with sick call shall be reported to the Zone Supervisor immediately and logged in the unit logbook.
  - H. All inmates on the sick call list must either be seen by the medical staff or sign a refusal in the presence of the medical staff.
  - I. When sick call is being conducted in the housing units, the assigned staff shall

remain at the sick call room door throughout the process. HIPAA laws prevent the officer from sharing medical information. The officer shall view both the healthcare provider and the inmate at all times.

- J. **Mental Health** rounds shall be made at a minimum once per week (in addition to any routine scheduled or emergency visits).
- K. All staffs entering and exiting the unit shall practice donning and doffing respectively. (The practice of putting on (donning) and taking off (doffing) Personal Protective Equipment (PPE).
- XVII. Medical Emergencies: In case of medical emergencies (life threatening), the Nurses Station shall be notified by landline or a call made via walkie-talkie. The employee making the call shall give all necessary information to medical staff, i.e. location of the injured, or ill person, and whether the person is conscious. The assigned Officers shall take immediate life saving measures as required through CPR and Suicide Prevention Training until the medical staff arrive and relieve them. Officers shall assist the medical team until they are no longer needed. The Shift Commander shall be notified of all medical emergencies as soon as possible after contacting the medical staff. All staff shall be familiar with D.O. 6080.2 "Suicide Prevention". If an inmate is escorted from the unit, an officer shall accompany the inmate.
- XVIII. **Mail:** When handing out mail to inmates the following shall be adhered to:
  - A. Officers distributing mail in isolation units shall wear gloves. Once issuance of mail is complete gloves shall be properly removed and disposed of, and wash hands or use hand sanitizer.
  - B. Incoming mail shall be distributed by the number three shift daily. The officer distributing mail shall require armband identification for reception of letters and other mail.
  - C. All incoming legal mail shall be delivered by officers and shall be opened with the inmate concerned in attendance. Legal Mail shall be checked for contraband only and not censored or read by the staff.
  - D. All legal mail shall be receipted for by the addressee in the "Legal Mail" Logbook by the officer making the delivery.
  - E. Inmates shall not handle other inmate mail.
  - XIX. **Meals**: During meal time, inmates housed on isolation units shall receive meals on clam shells and the following shall be adhered to:
    - A. Officer shall wear gloves at all times when handling food trays.
    - B. Food carts shall be placed inside the common area for distribution.
    - C. Upon receiving the food cart, the Housing unit Officer shall immediately count the number of trays and sign for the amount of trays received. All discrepancies shall be noted on the receipt and the culinary unit notified of the discrepancy.

- D. Any discrepancies with food trays, concerns, or problems shall be immediately reported to the Zone Supervisor, who shall consult with the Food Service Supervisor on duty for resolution.
- E. A log book entry shall be made showing quantity of food trays delivered.
- F. The housing unit officer shall inspect food trays for contraband and quantity.
- G. When delivering food trays to cells, officer shall instruct inmate to stand at the far end of the cell, open tray slot and place food on slot, step back at least 6 feet, direct inmate to retrieve the tray and step to the back of cell, and lock the food slot.
- H. Special diet trays shall be issued promptly and directly to the inmate requiring the diet.
- I. At the completion of the meal, **ALL** trays shall be -removed from the unit.
- J. Food trays shall immediately be served without interruption unless an emergency exists.
- K. No inmate shall retain a tray or food items in their cell to include fruit.
- L. Clam shell trays shall be properly disposed of in a bio-hazard bag.

#### XX. Commissary:

- A. Inmates shall place commissary orders items on one of the two kiosks located in the unit. The kiosks are available for ordering twenty-four hours per day. Commissary orders via kiosk. All orders placed prior to noon on Friday shall be delivered on the following Tuesday.
- B. All inmates shall be locked down in their cells while commissary is being delivered.
- C. Commissary staff shall ensure that each inmate is positively identified and sign for their canteen as being delivered.
- D. Inmates on Disciplinary Restrictive Housing shall not be allowed to receive commissary.
- E. If the kiosk becomes inoperable the Officer shall notify the Commissary Officer at 202-523-7137 or the Contract Administrator at 202-790-6658 or 202-279-0833.
- F. Inmates housed on isolation units may order commissary. Once inmate completes kiosk/commissary order, staff, while wearing gloves and mask shall spray disinfectant on paper towel until damp, and thoroughly wipe the kiosk screen and box. Officer shall properly dispose of dirty paper towel and immediately properly remove gloves, wash hands or use hand sanitizer, and with dry hands apply clean gloves.
- XXI. Social Visits: All social visits including face to face and video visitation shall be

suspended for inmates housed on isolation units.

#### XXII. Legal Visits:

- A. Legal visitation is authorized seven (7) days a week, twenty-four (24) hours a day, including during count times.
- B. Legal Visits shall be conducted on the same level on which the inmate is housed during the time that visiting halls are opened for social visits.
- C. At all other times, Legal Visits are conducted in the visiting hall located on the Second Level.
- D. Inmates receiving Legal Visits after normal visiting hours shall be escorted from and to the housing unit.
- E. Legal Visits in progress at 8:00 p.m. on the first and third level shall be escorted to the second level visiting hall for completion of their visit.
- F. Inmates going on legal visits may have a pen or pencil and legal papers in their possession. Inmates receiving legal visits during the hours that the visiting halls are closed shall be strip searched for contraband when returning to the unit.

#### XXIII. Telephone Privileges:

- A. Inmate telephones are installed in all housing units for use by inmates only during out of cell time.
- B. The Control Module (bubble) telephone shall never be used for legal or personal calls by inmates. The C&P (Case manager) office is the only authorized telephone for inmate legal calls in each unit.
- C. Telephone calls to attorneys shall be conducted by the Case Managers upon receipt of a request form as soon as reasonably possible. After verification of the identity of the attorney, such communication shall be private.
- D. Emergency legal and long distance calls shall be scheduled through the Office of the Case Manager or Chaplain, by submission of a request form.
- E. Once inmate completes call, staff, while wearing gloves and mask shall spray peroxide solution disinfectant on paper towel until damp, and thoroughly wipe the telephone and receiver. Officer shall properly dispose of dirty paper towel and immediately properly remove gloves, wash hands or use hand sanitizer, and with dry hands apply clean gloves.
- **XXIV.** Laundry Services: Inmate's laundry to include sheets, towels, uniforms and personal laundry will be cleaned once a week in accordance with the approved schedule.
- **XXV.** Files and Records: Unit Logbook: The unit logbook is a written record of events occurring on the unit and listed chronologically on a daily basis to reflect, but not limited to, the following:
  - A. Date Day, Shift Number and names of officers assigned to the unit for that shift.
  - B. Equipment inventory and inmate count. The logbook should reflect any inmate assignment to, or reassignment from the housing unit.
  - C. Departure from the unit of any assigned officer for lunch, etc., showing time out and in.
  - D. All thirty (30) minute irregular security checks, to include window and bar and

- census checks.
- E. Time of all official counts and the time the count cleared
- F. Time and name of all staff members entering the unit, i.e. supervisors, medical personnel. Officers not assigned to the unit who enter shall be logged in, to include nature of business. General visitation on units, to include sallyport area, is prohibited.
- G. Entries into the Maintenance Logbook shall be made when deficiencies are found in the unit and require the maintenance staff to correct such deficiencies. Maintenance personnel shall check the unit log book on a daily basis and sign off after correcting the deficiency.
- H. All log book entries are to be written legibly and accurately. The logbook is an official document and should be treated as such.
- **Movement Sheet:** A movement sheet shall be maintained in each unit to reflect all inmate movement from and into the unit. The sheet shall reflect Name, DCDC Number, destination and the time. **Up to the minute maintenance of the movement sheet is mandatory.**
- **XXVII. Card File:** In order to identify and process movement of inmates in the facility, it is essential to know the location of an inmate at any given time. Each housing unit shall maintain a 3 x 5 card file system on all inmates housed in the unit. Data on the 3 x 5 card shall include the inmates name, DCDC number, race, sex, and age, date of commitment, charge bond, any special instructions, unit assigned, and photo. As inmates are transferred to another unit, the 3 x 5 card shall be turned over to the escorting officer; the card shall NOT be given to the inmate.
- **XXVIII.** Barber Services: Barber Service shall be suspended for inmates housed on isolation units.

#### XXIX. Inmate Property:

- A. Inmate property shall never be handled by other inmates and shall be maintained in a secure area.
- B. If an inmate is scheduled for court/medical trip etc., the inmate's property shall be stored in the inmate's cell.
- C. Anytime an inmate's property is moved without the inmate present, it shall be inventoried on the property inventory form and signed by the Officer doing the inventory and store in the storage area by the stairwell leading to the lower tiers in the unit. Upon the inmate's return, the shift in which the inmate is returning on, will re-issue the property to the inmate and the inmate will sign the property inventory sheet as to whether all property is accounted for and this receipt will be stored in the inmate 's folder.

#### XXX. Fire Evacuation:

- A. The Command Center shall be immediately notified of any fire, noting size, type, location and any other pertinent information. The unit staff shall retrieve an appropriate extinguisher and attempt to extinguish and/or control the fire.
- B. After a supervisor assesses the situation and determines that a unit must be evacuated, the following procedures are to be followed:

- 1) Command Center shall be notified who shall then dispatch officers to assist in the evacuation and open doors to the evacuation routes.
- 2) The main gate and side gate shall be opened and an officer stationed at the main gate to count the inmates as they leave.
- 3) Open one cell at a time; if possible, evacuating the inmates out of the block, down the recreation yard stairwell to the recreation yard, where the officer stationed at the yard door shall count the inmates as they enter the yard. This count shall be compared to the count taken as the inmates left the unit to ensure all inmates are accounted for on the yard.
- 4) After all inmates are out, the last officer in the unit shall check the unit, if possible, to make sure no one is left in any area of the unit. When the officer leaves the unit, the last thing he/she. shall do is remove the keys, wing cards and log book from the unit and turn them into the Command Center. The Control Module door is to be left open for the Fire Department.
- 5) In the event the electricity is out, manual controls shall be used. The control module door key shall be used to open the utility doors in the sally port that houses the controls. Set the controls to manual from electric and open the cell doors. If all doors do not open at this time, the officer must take the manual release key to each cell and insert in the slot above each door and manually release the door. Proceed with the evacuation.

#### XXXI. Sanitation:

- A. All detail Inmates shall undergo Bio-Hazardous Clean Up training. All training documentation shall be maintained by the NIPS Coordinator.
- B. Each detail inmate will fully understand that he may be required to cleanup blood, urine, feces, vomit, etc. during the execution of their duties.
- C. All inmates have the right to refuse any assignment. If they exercise that right, they will no longer be a candidate for work detail. The refusal shall be documented.
- D. All surfaces shall be disinfected using the peroxide solution after inmates have come in contact with surfaces such as telephones, kiosks, etc.
- E. Officer shall ensure detail inmates wear gloves and mask while cleaning unit. Officers and inmates shall properly doff PPEs once cleaning is complete.
- **XXXII. Library Services:** Law Library services shall be available once a week (Wednesday's) from 8:45a.m. 10:45a.m. DC Public Library (DCPL) services shall be on the unit every Wednesday of each month from 9:15a.m. 11:45a.m.
- **XXXIII.** Chemical Control: A SDS book shall be maintained in the housing unit control bubble. All chemicals shall be stored and secured in a designated area in the cellblock. Officers assigned to Southwest One shall dispense all chemicals in mop buckets for the inmates to clean their cells. The cleaning of the cells shall be under

the direct supervision of correctional officers.

- **XXXIV. Religious Services**: All inmates shall be afforded the opportunity to receive religious services offered on-unit.
- **XXXV. Suicide Prevention:** Inmates who demonstrate unusual or bizarre behavior will receive more frequent observation. All such behavior shall be reported immediately to the Zone Lt. and the Charge Nurse on duty. Any inmate expressing suicidal ideations, either verbally or physically, shall be immediately reported to the Zone Lt. and the Charge Nurse on duty. An Officer will remain cell side with the inmate under constant supervision until medical staff arrive and determine the status of the inmate. All activity involving an inmate presenting suicidal ideations will be recorded in the unit logbook. In the event of an actual suicide attempt immediately contact medical and initiate First Aid/CPR, if necessary. In the event of a suicide attempt by hanging the wonder knife shall be obtained from the unit First Aid kit and will be utilized to release the inmate.

#### XXXVI. First Responder's Responsibility:

- A. Separate the alleged victim and abuser;
- B. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; Use a camera/video recorder to visually document and record the crime scene.
- C. If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
- D. If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
- E. If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.
- F. **Verbal Notification:** Immediately report the information or incident directly to the PREA Coordinator. Any allegation of sexual activity as defined in this directive shall be reported as a possible sexual assault, sexual abuse or sexual misconduct. The employee shall not conduct any inquiry or investigation into the circumstances related to the allegation.
- **G. Written Notification:** Submit a written report providing any information received or observed that concerns sexual assault, sexual abuse, or sexual misconduct to the Warden, CCC Director, Office Chief or the highest ranking official on duty before the end of their workday.
- **H. Confidentiality:** Employees shall not discuss any aspect of the complaint with other employees or inmates except in accordance with this directive. Strict confidentiality shall be maintained, to the extent possible, at all times.

Lennard Johnson, Warden

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# **ATTACHMENT 9**

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# DCDOC& GLOBAL TELLINK (GTL)

FREE LEGAL CALLS





STAY CONNECTED DURING THE COVID-19 PANDEMIC

See opposite side for additional details.



#### GLOBAL TEL LINK (GTL)

# FREE, UNMONITORED AND UNRECORDED LEGAL AND EMERGENCY CALLS

- -Each legal call can last up to 30 minutes
- -Legal calls can be made **Monday thru Sunday from 9:00 AM to 6:00 PM**
- -Your attorney should send their name, phone number, client's name and DCDC number to **DCDOClegalcalllist@dc.gov** to be added to the new automated legal call system
- -Your attorney will send a notification letter in the mail to you explaining the new automated legal call system and how to reach them

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# DC DOC & SECURUS TECHNOLOGIES

FREE LEGAL CALLS





STAY CONNECTED
DURING THE
COVID-19 PANDEMIC

See opposite side for additional details.



#### SECURUS TECHNOLOGIES

# FREE, UNMONITORED AND UNRECORDED LEGAL AND EMERGENCY CALLS

- -Each legal call can last up to 30 minutes
- -Legal calls can be made **Monday thru Sunday from 9:00 AM to 6:00 PM**
- -Your attorney should send their name, phone number, client's name and DCDC number to **DCDOClegalcalllist@dc.gov** to be added to the new automated legal call system
- -Your attorney will send a notification letter in the mail to you explaining the new automated legal call system and how to reach them

# EXHIBIT B

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, et al.,

Plaintiffs,

v.

Civil Action No. 20-00849 (CKK)

QUINCY BOOTH, et al.,

Defendants.

#### **DECLARATION OF BETH JORDAN**

Pursuant to 28 U.S.C. § 1746, I, Dr. Beth Jordan, declare and state as follows:

- 1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration, and testify based on my personal knowledge acquired in the course of my official duties. I previously submitted a declaration in this matter [20-2].
- 2. I am the Medical Director and Health Services Administrator for the District of Columbia Department of Corrections (DOC). I have worked for DOC since June 2013. In these roles, I oversee DOC's healthcare contractor, Unity Health Care (Unity), ensuring that it is fulfilling its contractual obligations to DOC and adhering to medical standards set forth by DOC's accrediting bodies, the National Commission on Correctional Health Care (NCCHC) and the American Correctional Association (ACA). I also provide medical guidance to DOC on a variety of issues, often involving the opinions of other District agency medical staff and national subjectmatter experts on correctional medicine issues. Prior to working at DOC, I received my M.D. from the University of Arizona, where I also completed my residency, and I was on the Internal Medicine staff at the Mayo Clinic for nearly five years.

- 3. It is my professional opinion that DOC, as instructed by guidance from the District of Columbia Department of Health (DOH) and Centers for Disease Control and Prevention (CDC), is taking appropriate medical steps to prevent the spread of COVID-19 at its facilities. DOC's medical contractor, Unity, works diligently to provide the residents with access to necessary medical care.
- 4. Residents who test positive for COVID-19 are placed in isolation and checked by medical staff at least twice daily. Unity follows CDC guidance to determine if a resident can be cleared for release from isolation. The CDC recommends that an individual is deemed safe to leave isolation when: (1) the resident is free from fever for at least 72 hours without the use of fever-reducing medications; (2) there are improvements in the resident's other symptoms, such as coughing and shortness of breath; and (3) at least 10 days have passed since the resident's first symptoms appeared. Until May 3, 2020, CDC guidance recommended that residents remain isolated for seven days after the first symptoms appeared and DOC followed that guidance until the isolation time was updated to 10 days. The only time residents are permitted to leave isolation prior to satisfying CDC's criteria is if they are released from jail.
- 5. Medical staff determines whether a resident should go to quarantine or isolation based on CDC guidance. Residents who may have been exposed to someone who tested positive are placed on a 14-day quarantine. For example, if a resident tests positive for COVID-19, the residents' entire housing unit is placed on quarantine. And if another resident on that housing unit subsequently tests positive for COVID-19, the 14-day clock resets for that housing unit (and will reset anytime a resident on that housing unit tests positive). DOC first quarantined a positive resident's housing unit immediately after the first resident tested positive for COVID-19 on March 26, 2020. Residents who have been tested and are awaiting results are placed on cell-restriction on

their housing unit until the test results come back. Residents who test positive for COVID-19 are transferred to an isolation unit.

- 6. Newly arrived residents meet with Unity staff and are provided with information on COVID-19 in the inmate reception center. The new residents are housed on an "enhanced monitoring unit" for two weeks. They do not have contact with other housing units. These residents—along with residents on the quarantine unit—are seen twice daily by Unity's nursing staff. On these rounds, nurses take temperatures and ask the residents if they have any COVID-19 symptoms or other concerns. When nurses note a fever or a resident complains of symptoms, the nurses call a medical provider (nurse practitioner, physician's assistant, or doctor) for the resident to be evaluated. This evaluation generally occurs within two hours and, if deemed appropriate by the medical provider, testing for COVID-19 will occur during the provider's evaluation.
- 7. Residents at the Central Detention Facility (CDF) and the Correctional Treatment Facility (CTF) who are not on an isolation or quarantine unit and report or display any CDC-defined symptoms of COVID-19, or other symptoms of concern, are offered the opportunity to meet with medical staff and get tested. The primary way to report symptoms is by filling out a sick-call slip and submitting it into the sick call locked box on the housing unit. While traditional sick call protocol is the standard method for residents to access care generally within 24–72 hours, DOC and Unity have worked together on enhancing residents' access to care during the pandemic. Attachment A is a document containing a detailed explanation of the ways an inmate may access medical care.
- 8. On April 13, 2020, DOC enhanced the traditional sick call process by having medical providers walk the tiers and talk with residents daily prior to staffing the sick call clinic

on that housing unit. Providers have thus been able to find additional residents to place on that day's sick call schedule who had not completed a slip but needed to be seen by medical staff.

- 9. On May 18, 2020, DOC and Unity developed a new system on the non-quarantine/non-isolation units that brings patients to care within 24 hours of submitting a sick call slip. Nurses or Medical Assistants are tasked specifically with visiting non-quarantine/non-isolation housing units each day to pick up sick call slips so that the slips can be triaged within hours of the resident submitting one. The new system on these units enables residents to submit a sick call slip and be seen by a provider within 24 hours, a significant enhancement to accessing care. Additionally, the sick call slip now contains specific questions to screen residents for COVID-19, and residents who report experiencing possible COVID-19 symptoms will be seen within 24 hours. Attachment 2 is a copy of the new sick call slip.
- 10. In determining whether to test residents for COVID-19, DOC relies primarily on CDC's "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (CDC Guidance) and updates its protocols regularly. On May 18, 2020, DOC expanded its testing criteria beyond CDC Guidance and now also tests cell mates of any resident who recently tested positive and all new residents upon intake.
- 11. DOC also tests any resident being transferred to Saint Elizabeths Hospital (as of May 5, 2020) or a federal correctional facility (as of May 22, 2020).
- 12. Consistent with CDC guidance, residents released from DOC's facility will be screened for COVID-19 symptoms and have their temperature checked. They are not tested for COVID-19 prior to release, but they will be provided personal protective equipment. If they are symptomatic, they are advised to self-quarantine for 14 days and to consult with their doctor. If

someone has COVID-19 related housing needs, Unity discharge planners work with District of Columbia Department of Human Services to help the person find housing.

- 13. On May 22, 2020, DOC—in collaboration with DOH and Unity—tested about 400 residents housed in CDF and CTF, including entire housing units with recent COVID-19 cases, the enhanced monitoring unit, all non-COVID patients in the infirmary, and a sampling of other units throughout DOC facilities. The study will allow DOC to identify asymptomatic carriers and help its efforts to curb the spread of the virus. Upon receipt of the study's results, DOC will coordinate with DOH to determine next steps in accordance with Mayor's Order 2020-063, §5(1)(d). After DOC receives the results of the testing, I expect that we will see an increase in the number of COVID-positive residents, as the testing will pick up asymptomatic patients who would not otherwise be tested.
- 14. To support the enhanced protocols Unity recently implemented, Unity has been approved to hire four staff: two nurse practitioners and two medical assistants. The vacancies have been posted.
- 15. As of May 26, 2020, 680 DOC residents have been tested (two of whom were tested at the hospital). The results from the May 22, 2020 testing are not yet finalized and available.
- 16. On April 27, 2020, members of the DOH's Medical Reserve Corps (DC MRC) began volunteering in the DOC facilities. DC MRC volunteers assist nurses with taking temperatures as well as with conducting screenings at the CDF and CTF entrances. Currently, DC MRC volunteers—when they are available—primarily assist with screening questions at entry as Unity nurses conduct temperature readings. If a DC MRC volunteer is not available to ask the screening questions at entrances, a correctional officer typically asks the screening questions.

On May 22, 2020 and May 26, 2020, I hosted a half-hour long Zoom meeting with Dr. Eleni O'Donovan, Director of Correctional Medicine at Unity, to provide an overview of health services at DOC and discuss specific measures we have taken to address the spread of COVID-19. Though the meeting was open to the public, the presentation was made at the request of local judges and many D.C. Superior Court judges attended. Attachment 3 is the PowerPoint presentation from the meetings.

18. I regularly review DOC's medical operations and modify them consistent with guidance and recommendations from DOH and CDC. Consequently, the information above is subject to change or modification based on this guidance and changing conditions.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on 5 26.20

BETH JORDAN, M.D.

h Jordan, MO

# **ATTACHMENT 1**

Residents in all housing units are able to access medical care on all housing units via six processes outlined as follows:

- 1. Sick Call- Sick call requests are collected daily by nursing staff, where they are date stamped, then triaged according to Unity's "Sick Call Triage" policy. The slips are then given to the unit clerk/medical assistant who schedules the resident's appointment. This scheduling process is trackable in the Electronic Medical Record (EMR). If the nature of the sick call request is not urgent or symptom-based, the resident might be assessed after 48 hours depending on the nature of the concerns. After the unit clerk/medical assistant schedules the appointment, the sick call slip is scanned into the EMR within 24 hours (and the hard copy is shredded for HIPAA compliance). Occasionally residents place their sick call slips in the resident grievance box or in the mail, which can cause the slip to be delayed in arriving to the nursing triage areas. Date-stamping the sick call slip, scheduling the appointment in the EMR, and viewing the clinical note in the EMR are all easy to track and essentially serve as an electronic log for this process.
- 2. Enhanced Access in Sick Call clinic- Each day in DOC's housing units, residents are seen by a nurse practitioner, physician's assistant, or physician on their unit's Sick Call clinic. Residents are placed on the sick call schedule in a variety of ways. One way, referenced above, is through the sick call request process. Patients may also be scheduled by the urgent care provider (for example, a blood pressure check after a patient is seen in urgent care for a high blood pressure reading). Chronic care providers can also place patients on the sick call schedule for similar, simple follow up needs. The sick call providers also receive all abnormal intake lab results and see patients to discuss and treat a positive result, such as for chlamydia or a syphilis infection. Lastly, sick call providers are also going out onto the tiers and seeing if there are residents not on the schedule who need to be seen that day. This enhancement enables those who may not have filled out a sick call slip, or those who may not want to discuss their COVID-19 status or other concerns in a public setting, to be seen by a provider in the sick call clinic that day. On any given day, more patients may be seen in the Sick Call clinic than were on the original roster. The sick call process can be tracked in the EMR. This enhancement commenced on 04/13/2020.
- 3. Urgent Care Clinic Residents are instructed in the Inmate Reception Center, the Intake Housing Unit and on all housing units that they can bring more urgent health concerns (including a wide range of symptoms that could be consistent with COVID) to a DOC officer's attention and be seen in at the DOC's Urgent Care Clinic, the same day of their complaint. Once alerted of a resident's complaint, DOC's correctional officers call medical staff who instruct the officers to bring the resident directly to the Urgent Care Clinic to be seen. Resident visits to the Urgent Care Clinic are documented in their EMR notes.
- **4. Chronic Care Clinic** Residents receive a comprehensive medical assessment during their initial intake screening. Those who present with a chronic medical condition are assessed, treated then scheduled for a follow-up appointment in the Chronic Care Clinic. The follow up appointments are usually scheduled 30 days out, but can be scheduled sooner, if necessary. Based on the stability of their condition, resident will have follow-up care appointments at either 30, 60 or 90 day intervals (or sooner as needed). These

- appointments are tracked in the EMR. If a patient presenting for a Chronic Care Clinic appointment exhibits COVID-19 related symptoms (e.g, as detected by vital signs), they will be placed under investigation for COVID 19.
- 5. Quarantine Housing Unit monitoring: Residents on the quarantine unit are seen twice daily by Unity's nursing staff. On their rounds on the quarantines housing units, nurses assess residents' vital signs and ask the residents if they have any COVID-19 symptoms or other concerns. These visits are noted in the EMR. As an enhancement designed to help pick up COVID-19 positive patients quickly, when nurses note any abnormal vital signs or have a resident complain of symptoms, the nurses immediately call a provider (NP, PA or MD) and the resident is seen (and generally swabbed) within two hours. Regular Sick Call clinic also occurs on all housing units under quarantine. Patients seen in sick call clinic that day may exceed the initial roster of patients scheduled if nurses note abnormalities in vital signs or want residents to be quickly seen given their complaints. This enhancement to care commenced 03/26/2020 with the first quarantine unit.
- **6. Medical Emergencies** When a resident has an acute medical emergency, DOC's correctional officers call Unity's Urgent Care Provider and a code is called to that Unit. The Medical Emergency Response Team promptly response to the call to assess the resident. If the resident requires treatment beyond what can be provided at DOC, 911 is called and DC Fire and Emergency Medical Services arrive to assess the need for the resident to be transferred to a higher level of care. Medical emergencies can be tracked through a resident's EMR.

# **ATTACHMENT 2**

PS 6001.I



#### DC Department of Corrections Sick Call Request Form

Name/Nombre:							
Date of Birth/Fecha de Nacimien	to:						
DCDC#	Housing Unit/Unidad		Cell/Celda #				
Check only one box per slip		Marque solo	una casilla por pa	pelata			
I wish to be seen at Sick Cal Dental Treatment Mental Health Other	11	Yo deseo el Tratamiento Salud Menta Otro		r			
have (check all that apply)			lo que correspond	la)			
A fever	Una fiel	ore					
Coughing	Coughing Tos						
Difficulty breathing/		ad para respirar/					
shortness of breath	falta de						
Headache/Body Ache	Dolor de cabeza o dolor corporal						
Upset stomach	Dolor d	Dolor de barriga					
Comments/Comentarios							
For any emergency ask the officer Para cualquier emergencia, pidale			le turno. 5/20/202	20			
Patient Signature/Firma del pacien	ite		Date/Fed	cha			
Medical Provider or Registered N	Nurse						
Date	Time		am	pm			

# **ATTACHMENT 3**

# Health Services at DC DOC

Beth Jordan, MD, CCHA
Medical Director and Health Services Administrator
DC Department of Corrections



Eleni O'Donovan, MD, MS
Director of Correctional Medicine
Unity Health Care



### Jail Inmate Population

- CDF + CTF:
  - ➤ ADP Pre-COVID (1800) today: 1333
  - > 70% pre-trial detainees or sentenced misdemeanants
  - ➤ 30% parole violators, sentenced felons and writs and holds
  - > 18% maximum security, 68% minimum security and the remainder minimum security
- 92% male and 8% female (including juveniles)
- Over 90% African American
- 5% Hispanic
- 3% White
- About 5 pregnant inmates/month
- 55% with history of some mental illness or SUD
- 9% with active mental health diagnosis
- Approximately 30 inmates daily have HIV/AIDS (which comprises 80% of our pharmacy budget)
- Approximately 25% with at least one chronic condition (HTN, Asthma, Diabetes, kidney disease, heart disease)

# Unity Health Care and the New Contract

- Providing care for DOC residents for almost 14 years
- Focus on comprehensive care and nationally recognized continuity of care
- Medication Assisted Treatment (MAT) for opioid use disorder started over 10 years ago
- New contract: recognizes DOC is one of the largest providers of mental health care in DC
  - All services provided through a Trauma Informed Lens DOC has brought in two of the nation's leading experts in Trauma Informed Care to train staff and residents
  - Shift from acute/crisis care to comprehensive and continuous management and rehabilitation – medication and therapy
  - Expanded mental health services with more group offerings
  - Nation's only jail-based SUD therapeutic units with MAT and SUD curricula expected to open in 2020

### **OHSA Mission**

 The Mission of the Office of Health Services Administration (OHSA) is to oversee the healthcare contract to ensure that the medical, dental and behavioral health (mental health as well as substance use disorder) needs of the entire inmate population are met with propriety and dispatch from admission, transfer or release; and the responsibilities also include prevention and health education.

# **Contract Monitoring**

- Joint audits with the healthcare vendor to ensure contract compliance as well as compliance with national and local standards – increased from 30 to nearly 200 audits over the past 7 years
- Accredited through the National Commission on Correctional Health Care (NCCHC)
  - CDF accredited since 2001 / CTF accredited since 2004
  - Only 15% of the nation's jails have NCCHC accreditation
- Accredited through the American Correctional Association (ACA)
  - CTF accredited since 1997 / CDF since 2010
  - Approximately 8% of nation's jails have ACA accreditation
- Worked with leading SME in medical care in incarcerated settings, leading national court monitor with QI/QA expertise.

### OHSA CQI MONITORING CALENDAR

October 2017- September 2018												
Audit Plan for DOC Medical Services (Delivery of Health Care)												
Service Area	<u>Oct</u>	Nov	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	May	<u>Jun</u>	<u>Jul</u>	Aug	<u>Sep</u>
Provider Sick Call (JP)					×							×
Dental Services - CDF												
(JP)	X						×					
Dental Services - CTF												
(JP)	X						×					
Radiology -CXR (JP)				х							×	
Radiology -Non-CXR												
(JP)				X							×	
Chronic Care- Mental												
Health (JP)		×				×				X		
Acute Mental Health												
(JP)		×				×				Х		
Mental Health-												
Stepdown (JP)				Х						X		
Discharge Planning												
(JP)			×							X		
Hospital Services (JP)					×					X		
Medical Records (JP)				Х					×			
Annual Physicals (CDF)												
(JP)	X								×			
Annual Physicals (CTF)												
(JP)	X								×			
Mental Health (												
includes AIMS testing												
& Depakote,Lithium												
levels) (JP)			×					×				
Involuntary Medication												
Adminstration (JP)			Х					Х				
Communicable Disease												
Tx (JP)			Х								Х	
Quality Management												
Program (QA) (JP)							Х					
Dialysis (JP)				Х								X
RSAT (JP)						X						

### Chronic Mental Health Audit 2019

Performance Measures	Reference	Benchmark	Mar-19
Screening and Mental Health assessment evaluations reflect DOCs Suicide Prevention protocol (See Intake audit)	C.5.10.2, C.5.10.2.1 ACA 4-ALDF-4C-19, 27-34 DOC PS 60001+ PS 6080 NCCHC J-G-01,04 NCCHC J-E-05, NCCHC-J-G-05	95-100%	100%
Screening questions that warrant an expedited mental health services encounter shall be referred to the mental health clinician for a comprehensive mental health assessment.	C.5.10.2.3 ACA 4-ALDF-4C-19, 27-34 NCCHC J-G-01,04 NCCHC J-E-05, NCCHC-J-G-05	95-100%	100%
Pt. referrals to MH services seen by qualified mental health professional within 2 business days of referral	C.5.10.2.3 ACA 4-ALDF-4C-19, 27-34 NCCHC J-G-01,04 NCCHC J-E-05, NCCHC-J-G-05	95-100%	93%
There is a comprehensive mental health assessment for each inmate as part of the history and physical if intake screen is positive	C.5.10.2.4 ACA 4-ALDF-4C-19, 27-34 NCCHC J-G-01,04 NCCHC J-E-05, NCCHC-J-G-05	95-100%	100%
All EMR notes on patients with mental health issues will be comprehensive with respect to assessment of condition and treatment plan	C.5.10.2.4 ACA 4-ALDF-4C-19, 27-34 NCCHC J-G-01,04 NCCHC J-E-05, NCCHC-J-G-05	95-100%	100%
Pre-segregation clearance exams will document potential impact on inmates mental health status if problem exist	C.5.10.2.4 ACA 4-ALDF-4C-19, 27-34 NCCHC J-G-01,04 NCCHC J-E-05, NCCHC-J-G-05	95-100%	100%

### Intake Screening

- New residents arrive with masks and are screened for COVID-19 with questions and a temperature check before progressing through routine intake procedures
- Those who screen positive at the jail's entrance are *immediately* taken to the IRC's medical area for COVID assessment and testing.
- Those who screen negative proceed to routine intake assessment Vitals, HIV and STD screening, tuberculosis screening, medical assessment (MD) and mental health screening including a suicide risk assessment, COVID testing
- Behavioral health clinicians complete a comprehensive behavioral health assessment at intake for those who screen positive - residents needing psychiatric follow-up are seen within 24 hours for intake
- Medications are verified and patients generally get their first dose medication in the IRC or that night after confirmation. Patients coming in on MAT have dose verified and MAT continued. Those in withdrawal can be initiated onto MAT.
- Intake clinical staff providing COVID patient education, which is documented in the EMR.

### **Health Care Services**

- Chronic Care Clinic- residents with chronic conditions. Followed up in general every 30, 60 or 90 days depending on control of condition.
- **Urgent Care Clinic-** open 24/7. For urgent/emergency care
- Sick Call Clinic- for acute and more routine care (new symptoms, medication refill, etc...) Residents generally seen within 24-72 hours.
- Infirmary for residents who need enhanced monitoring or a higher level of care
- Specialty Care Clinics- Dental, Infectious Disease, MAT, Radiology, Podiatry, Ophthalmology, Sports Medicine, Orthopedics, OB, Wound Care
- **Tele-medicine** Pulmonary specialist, Rheumatology, Endocrinology, Cardiac Subspecialist, Nephrology, Dental Sub-specialty
- Dialysis

### Multiple ways to access care

• SICK CALL: Patient placed on the sick call provider schedule by another provider for follow-up (blood pressure check, etc.) Patient seen within 24-hours after slip triaged by nurse. All housing units

 EXPEDITED SICK CALL: Patient places a sick call slip which is triaged by a nurse and patient seen within 24h. Non-quarantine/Non-isolation units

 Urgent care: Patient alerts staff member about an acute issue and is brought to the medical area for evaluation that day

### Multiple ways to access care

 Chronic Care clinic: Patients scheduled for routine appointments for chronic medical conditions

 Medical Emergency: Medical team deploys to unit (fall, chest pain). Team arrives within 4 minutes

 Medical rounds: Sick call provider walks tier checking in with residents, nurse temperature checks on quarantine units, COVID team assesses sick patients on isolation unit. Increases the number of patients seen in Sick Call clinic daily (adds those who haven't submitted a sick call slip)

# COVID-19 at the Jail

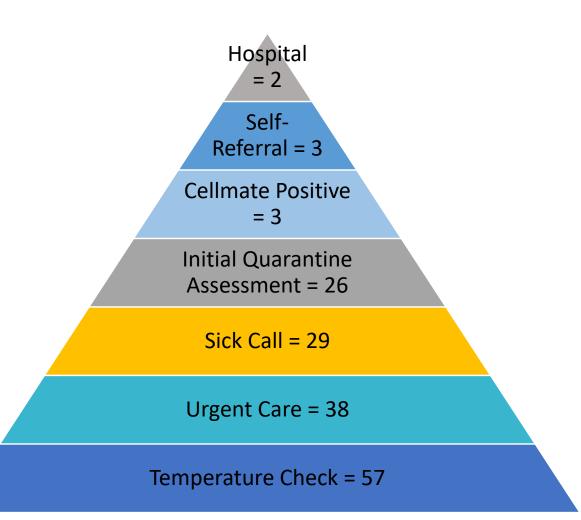
### **COVID** at the Jail

- Pandemic Policy in place since 2009
- Screening at entrances began March 13, 2020 with questionnaire and temperature taken
- Visitation stopped March 14, 2020
- Facility on Medical lockdown- movement very restricted
- First + on March 26, 2020 at CTF
- CDC Guidance-screening, quarantine, isolation and PPE
- DOH/DFL partnership for testing
- Working with national SME in Infectious Disease in Correctional Settings since March.
- DHS- Discharge planning for those in need of housing related to COVID status

### COVID at the Jail- as of May 22, 2020

- 368 tests performed (2 at Hospital)
- 189 COVID-19 (+) patients (2 tested at hospital)
  - CTF (69)/CDF (120)
- 176 (–) results
- 4 tests Pending
- 3 residents currently hospitalized
- 15 COVID-19 + in isolation
- 170 COVID-19 + patients recovered
- 1 COVID-19 related death

# Identification Paths for 158 COVID-19 Positives and 110 Negatives Through May 06, 2020





### **Testing**

1. DOH Public Health Lab – PCR (viral RNA) test

2. Abbot ID NOW Rapid PCR Machine – 2 at DOC – used for point of care testing for new intakes and symptomatic patients (can be sure positives are "true positives" but need to retest negatives as "false negative" rate is high)

### **Groups Tested**

- New intakes
- Patients with symptoms
- Close contacts of confirmed positives (cellmates)
- Transfers to some facilities (e.g. St. Elizabeth's and USMS)
- Broader surveillance testing started today

### Quarantine – Asymptomatic Patients

• 14 days

 All residents see a provider for an initial assessment at the start of quarantine

• Temperature/symptom check twice a day

Reset to "Day 0" if additional cases arise on the unit

### Isolation - Patients infected with COVID-19

 Nurse and 1-2 providers see patients sick with COVID-19 twice a day for vital signs (pulse oximetry, blood pressure, temperature, etc.) and an exam twice a day until discharge

Sicker patients 

more frequent visits, transfer to infirmary, or send to ER for further evaluation

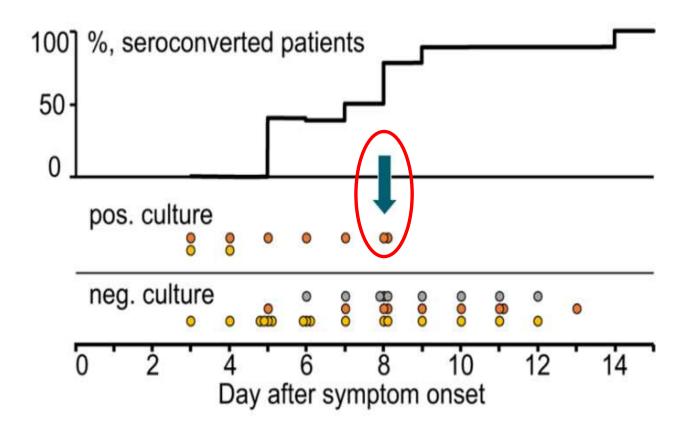
Follow-up visit with provider after discharge

#### Release from isolation

- For individuals who will NOT be re-tested to determine if they are still contagious:
  - The individual has been free from fever for at least 72 hours without the use of fever-reducing medications AND
  - The individual's other symptoms have improved (e.g., cough, shortness of breath) AND
  - At least 10 days have passed since the first symptoms appeared
- For individuals who had a confirmed positive COVID-19 test but never showed symptoms:
  - At least 10 days have passed since the date of the individual's first positive COVID-19 test AND
  - The individual has had no subsequent illness

https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Medicalisolation

Throat swabs
 Nasopharyngeal swab
 Stool



**Figure 2:** From Midgely et al. demonstrating inability to recover replication-competent virus from specimens collected more than 9 days after illness onset. Kaplan-Meier analysis shows time to inability to recover replication-competent SARS-CoV-2 from 14 U.S. patients. Last probability of successful isolation falls to 50% at day 4 after illness onset and to 20% at day 8. After day 9, probability approaches zero. Unpublished CDC data.

#### **Contact information**

• <u>Dr. Beth Jordan</u>- DOC's Medical Director and Health Services Administrator. <u>Beth.Jordan@dc.gov</u>. Cell phone: 202.594.6293.

<u>Dr. Eleni O'Donovan</u>- Director of Correctional Medicine at Unity;
 Local Program Director for The National Family Medicine Residency
 Program at Unity. <a href="mailto:eodonovan@unityhealthcare.org">eodonovan@unityhealthcare.org</a>

### **EXHIBIT C**

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, et al.,

Plaintiffs,

v.

Civil Action No. 20-0849 (CKK)

QUINCY BOOTH, et al.,

Defendants.

#### **DECLARATION OF REENA CHAKRABORTY**

Pursuant to 28 U.S.C. § 1746, I, Reena Chakraborty, declare and state as follows:

- 1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration, and testify based on my personal knowledge acquired in the course of my official duties. I previously submitted a declaration in this matter [44-3].
- 2. I am the Chief of Strategic Planning and Analysis of the District of Columbia Department of Corrections (DOC). I have worked for DOC for approximately 15.5 years; prior to that, I was a contractor with Anteon (now General Dynamics Information Technology) at DOC. My duties include strategic planning, analysis, and evaluation. My team and I also support DOC by providing information services as requested.
- 3. I make this declaration to explain the data and trends regarding the population of the DOC facilities and cases of COVID-19 among residents housed at DOC facilities.
- 4. The data regarding total population numbers and inmate location described below are extracted from a daily midnight snapshot of Jail and Community Corrections System (JACCS), DOC's official offender-management system and legal information system of record. The data are written to a set of tables used for analysis (our data warehouse) called the CENSUS tables. These

data do not represent the current state of the system at any given moment, only the status of the system at midnight for each day the data is loaded into the tables.

- 5. Attachment 1 is a graph showing the change in population from March 4, 2020, to May 24, 2020. The data from JACCS records show that the combined population at the Central Detention Facility (CDF) and the Correctional Treatment Facility (CTF) has decreased significantly since March 14, 2020. On the graph, it can be seen that the population at DOC facilities was 1846 on March 14, 2020. The population has declined by 506, or approximately 27%, as of May 24, 2020.
- 6. Attachment 2 is a graph showing the percent of CDF and CTF residents housed in single cells (cells in which the resident is the sole occupant) from March 4, 2020 to May 24, 2020 (data are at approximately ten-day intervals). The data from JACCS records show that as of March 4, 2020, of the 1772 residents housed in CDF and CTF combined, 800, or 44.6%, were housed in single cells. As of May 24, 2020, of the 1340 inmates housed in CDF and CTF combined, 963, or 71.9%, were housed in single cells. These data indicate there was a 61.2% increase in single-cell housing since March 4, 2020.
- 7. The data regarding COVID-19-positive residents described below are extracted from data provided to me by Unity Health Care regarding daily COVID-19 testing results and who Unity's medical team has deemed "recovered." "Presumed positive" residents are individuals who medical staff identified as displaying symptoms of COVID-19 but refused testing, and those residents are included in the totals of positive residents.
- 8. Attachment 3 is a graph showing the cumulative number of COVID-19-positive or presumed COVID-19-positive residents since the first confirmed positive for COVID-19 for a resident was received on March 26, 2020. This is represented on the graph by the purple line. The graph's green line depicts the cumulative number of residents deemed recovered. Finally, the gold

line shows, for each day noted, the number of COVID-19-positive residents current as of that date.

The data show that the peak of COVID-19-positive residents occurred on April 24, 2020, when 55

residents were positive. Subsequently after a brief decline, there was a secondary peak on May 2,

2020, when 54 residents were positive. After May 2, 2020, there has been a generally downward

trend in positive cases. As of the evening of May 24, 2020, a total of 17 residents were currently

positive; including three (3) at local hospitals, and, 14 at DOC facilities.

9. Attachment 4 is a table showing a statistical breakdown of residents based on their

COVID-19 status and whether they are in isolation housing. As the table shows, the number of

residents in isolation for COVID-19 peaked at 57 on May 4, 2020, and has steadily declined since.

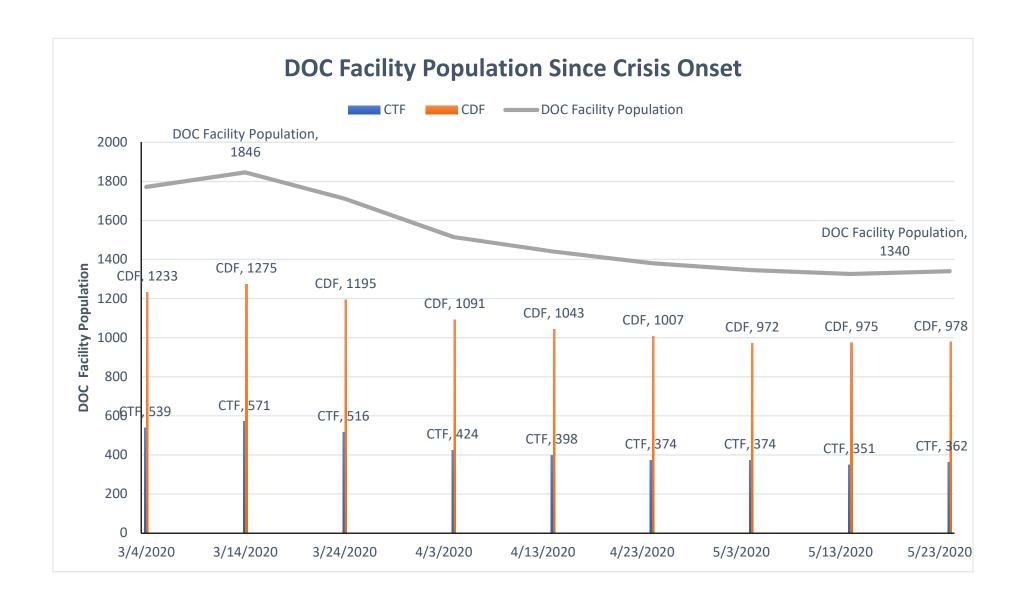
As of May 24, 2020, only 17 residents remained in medical isolation for COVID-19.

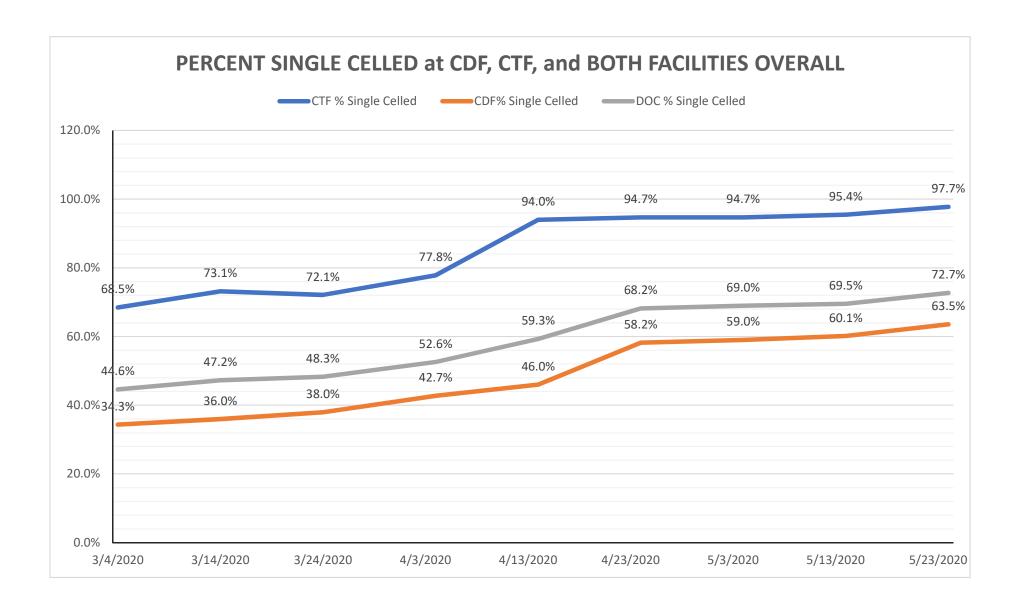
10. I declare under the penalty of perjury that the foregoing is true and correct to the

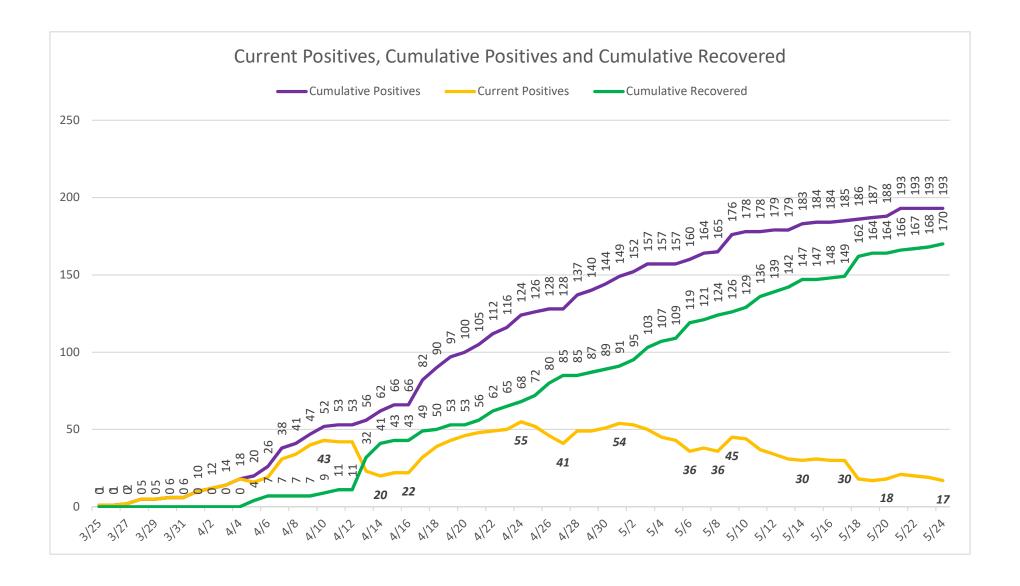
best of my knowledge, information, and belief.

Executed on May 26, 2020

REENA CHAKRABORTY







#### **DOC Resident Data March 25, 2020, to May 24, 2020**

Date	DOC Population	Cumulative Positives	In Isolation	Recovered	Fatalities	Percent In Custody Who Are Positive	Cumulative Positives Deemed Recovered
5/24	1340	193	17	170		1.3%	88.1%
5/23	1332	193	19	168	1	1.4%	87.0%
5/22	1331	193	20	167	1	1.5%	86.5%
5/21	1333	193	21	166	1		86.0%
5/20	1335	187	16	165	1		88.2%
5/19	1332	187	16	165	1		88.2%
5/18	1330	186	30	150	1	2.3%	80.6%
5/17	1330	186	30	150	1	2.3%	80.6%
5/16	1327	186	32	148	1	2.4%	79.6%
5/15	1327	184	31	147	1		79.9%
5/14	1326	180	32	142	1		78.9%
5/13	1327	182	38	138	1		75.8%
5/12	1349	179	40	134	1		74.9%
5/11	1348	179	44	130	1		72.6%
5/10	1348	177	45	127	1		71.8%
5/9	1337	166	34	127	1		76.5%
5/8	1338	164	42	118	1		72.0%
5/7	1338	160	38	117	1	2.8%	73.1%
5/6	1332	158	43	110	1	3.2%	69.6%
5/5	1343	158	52	101	1	3.9%	63.9%
5/4	1346	158	57	97	1	4.2%	61.4%
5/3	1346	152	52	96	1		63.2%
5/2	1340	144	52	89	1	3.9%	61.8%
5/1	1348	144	52	89	1	3.9%	61.8%
4/30	1350	140	51	88	1	3.8%	62.9%
4/29	1358	137	50	86	1	3.7%	62.8%
4/28	1366	132	46	85	1	3.4%	64.4%
4/27	1372	128	52	75	1	3.8%	58.6%
4/26	1373	126	53	72	1	3.9%	57.1%
4/25	1368	122	53	68	1		55.7%
4/24	1381	112	49	62	1	3.5%	55.4%
4/23	1392	110	47	62	1	3.4%	56.4%
4/22	1395	104	47	56	1	3.4%	53.8%
4/21	1402	99	45	53	1	3.2%	53.5%
4/20	1412	96	43	52	1	3.0%	54.2%
4/19	1412	90	40	50	1		55.6%
4/18	1408	90	40	50	1		55.6%
4/17	1428	82	31	50	1		61.0%
4/16	1430	75	31	43	1		57.3%
4/15	1431	65	22	43	1		66.2%
4/14	1441	62	21	40	1		64.5%
4/13	1442	56	23	32	1		57.1%
4/12	1442	53	44	9	0		17.0%
4/11	1442	52	44	9	0		17.3%
4/10	1467	52	43	9	0		17.3%
4/9	1480	47	38	9	0		19.1%
4/8	1490	33	54	7	0		21.2%
4/7	1496	37	45	7	0		18.9%
4/6	1517	28	39	7	0		25.0%
4/5	1517	20	39	7	0		35.0%
4/4	1515	18	28	4	0		22.2%
4/3	1545	14	11	0	0		0.0%
4/2	1568	12	13	0	0		0.0%
4/1	1598	12	10	0	0		0.0%
3/31	1612	6	8	0	0		0.0%
3/30	1626	6	7	0	0		0.0%
3/29	1630	5	6	0	0		0.0%
3/28	1630	4	4	0	0		0.0%
3/27	1647	3	1	0	0		0.0%
0/2/							
3/26	1677	1	1	0	0	0.1%	0.0%

### **EXHIBIT D**

1	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA				
2					
3	* * * * * * * * * * * * * * * * )				
4	EDWARD BANKS, et al., ) Civil Action ) No. 20-CV-00849				
5	Plaintiffs, )				
6	vs. )				
7	QUINCY L. BOOTH, et al., ) Washington, DC ) May 11, 2020				
8	Defendants. ) 2:00 p.m.				
	* * * * * * * * * * * * * * * )				
9					
10	TRANSCRIPT OF TELEPHONE CONFERENCE				
11	BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY, UNITED STATES DISTRICT JUDGE				
12					
13	APPEARANCES:				
14	FOR THE PLAINTIFFS: ARTHUR B. SPITZER				
15	(Appearing SCOTT MICHELMAN, ESQ.				
16	Telephonically) AMERICAN CIVIL LIBERTIES UNION OF THE DISTRICT OF COLUMBIA				
17	915 15th Street, Northwest Second Floor				
18	Washington, DC 20005				
19	STEVEN D. MARCUS, ESQ.				
20	JENNA MARIE COBB, ESQ. JONATHAN ANDERSON, ESQ.				
21	PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA				
	633 Indiana Avenue, Northwest				
22	Washington, DC 20004				
23					
24					
25					

•						
1	APPEARANCES, CONT'D:					
2	FOR THE DEFENDANTS: (Appearing	ANDREW SAINDON, ESQ. MICAH IAN BLUMING, ESQ.				
3	Telephonically)	PAMELA DISNEY, ESQ. FERNANDO AMARILLAS, ESQ.				
4		OFFICE OF ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA				
5		441 Fourth Street, Northwest Sixth Floor				
6		Washington, DC 20001				
7	APPEA	RING TELEPHONICALLY:				
8		ERIC GLOVER, ESQ.				
9		MICHELLE WILSON, ESQ. GENERAL COUNSEL				
10		DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS				
11		2000 14th Street, Northwest Washington, DC 20009				
12		GRACE LOPES				
13		MARK JORDAN (AMICI CURIAE)				
14 15	REPORTED BY:					
16	(Telephonically)	LISA EDWARDS, RDR, CRR Official Court Reporter United States District Court for the				
17		District of Columbia 333 Constitution Avenue, NW				
18		Room 6706 Washington, DC 20001				
19		(202) 354-3269				
20						
21						
22						
23						
24						
25						

```
1
                 THE COURT: All right. It's 2:00. This is Judge
2
       Kollar-Kotelly. This is in the matter of Banks, et al.,
 3
       versus Booth, et al., 20-CV-849.
 4
                 I have from the court staff the deputy courtroom
 5
       clerk, my law clerk and the court reporter.
 6
                 Somebody has not muted their phone.
 7
                 I have certain people which I will call on.
       will be speakers or potential speakers. They will be the
 8
 9
       amici experts; Plaintiffs, whom they've identified; the
10
       Defendants, including the Department of Corrections counsel;
       as well as the United States.
11
12
                 So let me find out whether -- Ms. Lopes, are you
13
       on the phone?
14
                 MS. LOPES: Good afternoon.
                                              Yes.
15
                 THE COURT: Good afternoon.
16
                 Mr. Jordan, are you on the phone?
17
                 MR. JORDAN: Yes, your Honor. Good afternoon.
18
                 THE COURT: Good afternoon.
19
                     Marcus, are you on the line?
                 Mr.
                 MR. MARCUS: Good afternoon, your Honor.
20
21
                 THE COURT: Good afternoon.
22
                 Mr. Anderson, are you on the line?
23
                 MR. ANDERSON: Yes, your Honor. Good afternoon.
24
                 THE COURT: Good afternoon.
25
                 Ms. Cobb?
```

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1
                 MS. COBB: Yes, your Honor. Good afternoon.
                 THE COURT: Mr. Perloff?
2
 3
                 Maybe's not on the line yet.
                 Scott Michelman?
 4
 5
                 He's not on the line yet. I should give him a few
 6
      moments in case he's muted.
 7
                 MR. MICHELMAN: I'm sorry. I was on mute, your
      Honor.
              This is Mr. Michelman. I was on mute. My
 8
 9
      apologies.
10
                 THE COURT: I know it takes a moment. Thank you
      for muting.
11
12
                 Mr. Perloff, are you on now or not?
13
                 MR. SPITZER: Your Honor, I believe he's listening
14
      on the public line.
15
                 THE COURT: Okay. Then that's all right.
16
                 Mr. Spitzer, are you on?
                 MR. SPITZER: Yes. I'm here, your Honor.
17
                 THE COURT: For the Defendant, Mr. Saindon?
18
19
                 MR. SAINDON: Good afternoon. I'm here.
20
                 THE COURT: Good afternoon.
                 Mr. Amarillas?
21
22
                 MR. AMARILLAS: Yes. I'm here, your Honor. Good
23
      afternoon.
24
                 THE COURT: Good afternoon.
25
                 Mr. Bluming?
```

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1
                 MR. BLUMING: Yes. Good afternoon, your Honor.
2
                 THE COURT: Good afternoon.
                 Ms. Disney?
 3
                 MS. DISNEY: Yes, your Honor. Good afternoon.
 4
 5
                 THE COURT: Good afternoon.
                 Mr. Glover?
 6
 7
                 MR. GLOVER: Yes, your Honor. Good afternoon.
                 THE COURT: Good afternoon.
 8
 9
                 Ms. Wilson?
10
                 MS. WILSON: Good afternoon. I'm here.
11
                 THE COURT: And, Mr. Walker, are you on for the
       United States?
12
13
                 MR. WALKER: I am on, your Honor. And good
14
       afternoon.
15
                 THE COURT: Good afternoon.
16
                 Somebody just came on. Did somebody come on that
       I had not called earlier?
17
18
                 What I would ask is we do have a public line
19
       that's automatically muted. So anybody who is not going to
20
       be on speaker, I'd ask that they be on that, simply so that
21
       when everybody comes on and off we don't keep hearing these
22
       clicks, particularly if they're not going to speak.
23
                 What I would ask is that, other than the principal
24
       speakers -- and the principal speakers obviously can refer
25
       to somebody else to answer the question, and that's fine;
```

1 and I'll remind myself to give you a moment to unmute so we 2 don't have that background jangling noise. So I will call 3 on you. 4 We are here based on the order that I signed on 5 April 28th, 2020, which was a consent order. And the amici 6 were directed to go back to the facilities and to provide an 7 oral report today answering -- there were five questions. And so I think the way I'm going to do this is 8 9 I'll state the question and then call on either Ms. Lopes or 10 Mr. Jordan. Just indicate whoever wants to answer it. And 11 once it's been answered, if I have questions, I'll do 12 followup and I'll let the party, since we only have five 13 questions, if there's a followup question that you want to 14 ask, before we move on to the second question. 15 So let me start with the first question: How 16 are --17 MS. LOPES: Your Honor --18 THE COURT: Sure. Who is this? 19 MS. LOPES: This is Grace Lopes. 20 Your Honor, we had some background information 21 that we wanted to provide to the Court and the parties first 22 that we thought would be helpful before we got into 23 Question 1. 24 THE COURT: Perfect. 25 MS. LOPES: Some of that background information I

will provide and some Mr. Jordan will be providing. He'll be addressing the first two questions and I'll be addressing the last three questions.

THE COURT: That's fine.

MS. LOPES: As a threshold matter, your Honor, there have been some changes that are material to the parties' consideration and the clients' consideration of the information that we'd like to convey this afternoon with respect to the five questions. So we thought it would be important to outline those changes now.

First, with respect to the jail, the population at the jail has decreased since our previous report to the Court in April. Last week, we were at the jail on May 7th and the population was 969 inmates, a significant reduction over the 1,020 who were there just a few weeks earlier when we reported on the population.

There's also been a change in terms of housing status, et cetera. As the Court may recall, there are 18 housing units at the jail. Most, albeit not all, have 80 cells. They're single versus double. Some cells are single cells; some cells are double cells.

We haven't had an opportunity to evaluate the data with respect to the prevalence of double celling versus single celling, though there are indications that there is less double celling at the jail now. And hopefully we'll be

able to provide that data to the Court and the parties in our final report.

The Defendants do report that there are limitations in their ability to operate some cells that are currently vacant now because of maintenance-related issues. We don't know the prevalence of those issues at this time.

At the time of our May 7th site visit, there were 15 housing units open. Three were closed. Ten were quarantine units and one was an isolation unit for inmates who were positive for COVID-19.

That is a shift from the distribution and characterization or classification of housing units relative to our prior visit because, as you'll hear in a minute, there are more inmates who are COVID-19 positive at the jail now than there were during our previous site visit.

With respect to the correctional treatment facility, the population there this past Friday when we were there also had decreased. And the population count was 364 inmates. It had been just a few weeks earlier hovering at around 400 inmates.

As you may recall, the CTF has the inpatient infirmary, a 26-room, 40-bed infirmary. And that infirmary served both facilities. It has 27 housing units. Most have the capacity of -- not all -- for 50 beds. There are four that have as many as 96 beds and then a handful of smaller

units.

No units with double cells at the time of our visit last week to the CTF. And that again is in contrast to our prior site visit in April at the CTF.

Eleven units at the CTF were closed. And in contrast to our previous visit, there were only four inmates on isolation status at the CTF. Those inmates were all housed in the inpatient infirmary.

There were no isolation housing units operating at all at the CTF and only one quarantine unit. There had been eight during our previous site visit.

So there's been a significant shift in the COVID-19-positive population at the facilities, which Mr. Jordan will be getting into in detail.

In terms of methodology with respect to this stage of our assessment, we obtained data of course from the site visits, observations and interviews; also, a review of documents that the Defendants produced in response to our request and analysis of various data sets that the Defendants also produced.

We've conducted unannounced and unescorted site visits on two dates at the jail and the CTF. We conducted observations in many of the housing units at both facilities, including cells and day rooms. We visited general population, maximum— and medium—security housing

units; we visited mental health units, special management units, both isolation units, one in each facility, that were operating. And when I say isolation unit at the CTF, I mean the infirmary, which has the inmates in isolation status now.

We visited quarantine units; we visited non-quarantine units and the medical units at both facilities and the visitor entry screening areas; and we also were on the administrative side briefly at both facilities.

We conducted structured and informal interviews in person and by telephone, including with the deputy director of the DOC, the DOC deputy director for case management services.

And we conducted in-depth, structured interviews with the medical director for the contractor who provides health services at both facilities -- that's Unity

Healthcare -- the nursing director for Unity Healthcare,

which has the responsibility for both facilities; the

warden, who has responsibility for both facilities; the

deputy warden at the correctional treatment facility; and

again, with dozens and correctional officers and some of

their supervisors assigned to posts throughout both

facilities.

And again, we spoke in smaller groups this time,

smaller groups of -- the smaller groups of inmates and individually with inmates. By our estimate, over 100 inmates were interviewed during this phase who are either on isolation, quarantine status or in the general population of both facilities.

We did conduct data analysis. The Defendants continue to provide us with access to the electronic health records; and we have conducted analysis of those records, which Mr. Jordan will be reviewing with the Court and the parties in a moment, in addition to the electronic health records.

We've also analyzed data sets related to COVID-19 testing; housing unit designations; admissions and housing assignments; sick-call requests; the hiring of the sanitarian; efforts to secure professional cleaning services, records related to that; directives and information related to implementation of the TRO as well that were provided to DOC and/or contract staff by DOC management.

And the Defendants have produced a significant amount of the data we've requested. They also produced certain data we did not request, such as video excerpts of activity on certain CTF housing units, which we have reviewed. And we have continued to receive documents in response to our request on an ongoing basis from the

1 Defendants. Most recently, this past Saturday afternoon was 2 the most recent installment. And we'd like to underscore that the Defendants 3 4 have been extremely cooperative and responsive, again, 5 throughout this stage of the process. 6 While we expect and will file our written report 7 by May 28th, we would like an opportunity to supplement the information we provide today with respect to the first five 8 9 questions in light of more recent data we've received from 10 the Defendants as it appears appropriate. 11 THE COURT: Okay. And can I just ask, the 12 supplement that you were talking about, would you want 13 another oral one or are you going to be supplementing it in 14 written format? 15 MS. LOPES: In writing. In writing. We can do 16 that in the report. 17 THE COURT: Okay. That was the question. 18 sorry. Go ahead. 19 MS. LOPES: Thank you. 20 And so with all of that in mind, I can turn this 21 over to Mr. Jordan, who at least preliminarily will address 22 what the data shows with respect to testing, and then 23 address the first two questions in the April 28th order. 24 THE COURT: Mr. Jordan? 25 MR. JORDAN: Thank you, your Honor.

As Ms. Lopes mentioned, since our last report to the Court three weeks ago, the impact of COVID-19 at the jail and CTF has changed significantly.

The first positive case of COVID-19 in the DOC facility was confirmed at the CTF on March 25th. The number

of cases at the CTF steadily increased until April 5th, when

April 16th was really the tail end of that decrease, when two inmates tested positive.

it peaked, and then it began to decline.

Then there was not another positive case at the CTF for approximately two weeks, until May 1st, when an inmate who had been transferred from the jail tested positive at the CTF.

As of last Friday, there were no isolation housing units at the CTF; and the four inmates who were COVID-19 positive were housed in the medical infirmary.

There was one quarantine housing unit at that time.

At the jail, the first positive case was confirmed on April 8th, two weeks after the first case at CTF. For the next week, the number of positive cases at the jail continued to rise, eventually peaking on April 15th, and then it began to decrease.

The most current data we have is through May 6th.

Inmates continue to present the symptoms and continue to be

```
1
       tested, albeit in smaller numbers than in mid-April.
2
                 As of last Thursday at the jail, there was one
 3
       isolation housing unit and all but two housing units were
 4
      quarantined, which is a significant difference relative to
 5
       the last time we reported to the Court.
 6
                 Unless there are any questions, I am prepared to
 7
      move to Question No. 1.
 8
                 THE COURT: No questions from me.
 9
                 Are there any questions from Plaintiffs' counsel?
10
                 MR. MARCUS: Yes, your Honor. This is Steven
11
      Marcus.
12
                 First, a preliminary question: Ms. Lopes had
13
      mentioned the written report. I believe she mentioned it
14
       coming in on May 28th. And we have a --
15
                 MS. LOPES: May 20th.
16
                 MR. MARCUS: Okay. The 20th, then.
17
                 MS. LOPES: I misspoke, then. My apologies.
18
       20th.
19
                 MR. MARCUS: Okay. And I had a preliminary
20
      question for Mr. Jordan.
                 You mentioned one resident was transferred from
21
22
       the jail to CTF and then tested positive on May 1st. Do you
23
       know why that resident was transferred?
24
                 MR. JORDAN: Let me clarify: More than one
25
       resident were transferred. But the resident who did test
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```
1
      positive was from the CDF. It was a group of inmates.
2
                 And my understanding is that it was a -- I would
 3
      need to confirm this, but my understanding based on a lot of
 4
       interviews is it was a cohort of inmates from the CDF who
 5
      were in a specific program. And there is a program at the
 6
      CTF called the Young Men Emerging program. And they were
 7
       transferred from the CDF to that program at the CTF as a
      group. One of them tested positive.
 8
 9
                 MR. MARCUS: Thank you.
10
                 That was all, your Honor.
11
                 THE COURT: Defense counsel, anything you wish to
12
       ask?
13
                 MR. SAINDON: Nothing right now. Thank you, your
14
      Honor.
15
                 THE COURT: And from the US, anything from you?
16
                 MR. WALKER: No. Thank you, your Honor.
17
                 THE COURT: So let's proceed.
18
                 I must say that I'm happy to hear that the numbers
19
      have gone down. I have a couple of questions about that,
20
      but I'll wait. And also, I'm happy the Department of
21
      Corrections has continued to be cooperative with the amici
22
      experts. Obviously, that makes it much better for all of us
23
       in terms of being able to get a handle on this.
24
                 So let me let you proceed, then. Mr. Jordan,
25
       you're starting with Question No. 1. Is that correct?
```

MR. JORDAN: That's correct. Thank you.

Question No. 1: At the jail, most inmates are housed in quarantine units presently. In contrast, at CTF most inmates are housed on non-quarantine housing units.

Access to healthcare at the jail and the CTF must be understood in the context of the current operating environment. On non-quarantine housing units, just like on quarantine, and isolation housing units, DOC has adopted a policy of confining inmates in their cells for 23 hours per day and releasing them for one hour per day. There are significant deviations in implementation of the policy, which I will discuss in a minute.

Unlike quarantine housing units and isolation housing units, medical staff do not routinely monitor inmates on non-quarantine housing units; and those inmates on non-quarantine housing units do not have daily interactions with medical staff unless they are taking daily medications.

On non-quarantine housing units, the primary method by which inmates are able to access medical care is through the submission of a sick-call request form.

Sick-call request forms are maintained by housing unit correctional staff, and inmates must request a form from an officer.

This lack of unimpeded access to forms is an

initial barrier to accessing medical care.

During our site visits, officers were unable to consistently produce the forms readily. In one case, an officer upon request gave us the wrong form.

In some cases, inmates said forms were not available and they had to write requests on paper that were not forms. And we observed this phenomenon in the sample that we reviewed that I will discuss below.

In the current operating environment, the barriers for inmates on non-quarantine housing units' access to healthcare are much more significant than they would otherwise be.

The problem appears particularly acute at the jail, where because of higher housing unit population levels and significant correctional officer staffing shortages, inmates do not receive an hour out of their cells daily consistent with the adopted policy.

Inmates are allowed out of their cells in small groups around the clock. Based on the number of inmates allowed out of their cells, which is impacted by the number of staff working on the unit at any time, inmates and staff report that two to three days can elapse between an inmate's release for their hour of out-of-cell time. This greatly reduces the opportunities inmates have to submit sick-call request forms to medical staff.

At the CTF, housing unit populations are lower and inmates consistently reported that they receive their hour of out-of-cell time every day during either the a.m. or the p.m. shift.

Notwithstanding the identified barriers to accessing medical care, we reviewed copies of all sick-call request forms collected by medical staff between April 20th and April 30th, 2020, at both facilities. We analyzed them to determine whether the request forms were collected timely and whether inmates were seen timely. There were a total of 136 requests from the jail and CTF. 82 percent of them were from the jail; 18 percent of them were from the CTF. We were able to analyze from the jail 63 requests to access -- requests for care to assess the timeliness of the collection.

And just on a methodological note, we used the date the forms were signed and dated by the inmate as a proxy for the date that they were submitted to medical. Of the 63 forms, 75 percent were picked up either the day of or the day after they were submitted; 20 percent of them were collected two to three days after they were submitted; and 5 percent were collected four days after they were submitted.

At the CTF, we analyzed the 17 requests that were in the data. 65 percent were picked up the day of or the day after they were submitted; 24 percent were collected two

to three days after they were submitted; and 12 percent were collected 14 and 15 days, respectively, after they were submitted.

From that data, we selected a sample of submitted sick-call requests from both facilities to determine whether inmates who submitted sick-call requests were seen by medical and on what timeline.

In the future, we hope -- in the written report, we hope to address whether the encounters addressed a complaint in the sick-call request form. But at this point, we limited our analysis strictly to timeliness.

We attempted to select only requests from inmates housed on non-quarantine housing units. However, based on our review, we do need to confirm the dates that all housing units were designated as quarantine before we can be confident that we limited it to non-quarantine housing units.

requests for care for this analysis. In 16 of those 24, the inmate was seen within two days of submission. In six of the 24 cases, the inmate was seen three to five days after the submission of the form. One inmate was seen eight days after submission of the form; and in one case, there was no record of the inmate having been seen after submitting the form.

We included in our sample nine requests that included reported symptoms of coughing, shortness of breath, loss of taste, and fever-related symptoms. Of those nine, three were seen the day after the requests were submitted; four were seen two days after the request was submitted; and two additional were seen four and five days, respectively, after the request was submitted.

It's noteworthy that in one of those two cases, one that was seen four days after the request was submitted, it was referred -- the case was referred for a COVID-19 test; and in that case, the inmate did test positive.

At the CTF, we reviewed 11 of the total 25 sick-call requests that had been submitted during our period of review. Of those 11, six were seen two days after the submission; three were seen three to four days after submission; one was seen six days after submission; and one was seen 15 days after the submission.

In none of those cases were there any symptoms consistent with COVID, including cough or fever-related symptoms or shortness of breath.

It is noteworthy that on May 5th, Unity Healthcare issued a sick-call triage protocol. The protocol requires that every sick-call request form be classified either as Level 1, which requires emergency or urgent care, or Level 2, which requires a scheduled appointment. Included

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1
       in the Level 1 criteria is shortness of breath,
2
       hyperventilation, respiratory distress and COVID symptoms,
 3
       which are described as headaches, GI symptoms, shortness of
 4
       breath, cough and fever.
 5
                 In sum, there are barriers to inmates on
 6
       non-quarantine housing units submitting sick-call requests.
 7
       And when those requests are submitted, there are at times
       delays in both the collection of the sick-call requests and
 8
 9
       in patients being seen by medical staff.
10
                 That is the end of my presentation with
       Question 1. If there are questions, I could address those
11
12
       now or move to Question 2.
13
                 THE COURT: I have a question about the protocol
14
       that Unity Healthcare started: When did it go into effect?
15
       They put it out May 5th. Is it operational at this point or
16
       not?
17
                 MR. JORDAN: As far as -- it was issued. I do not
18
       know if it's operational.
19
                 MS. LOPES: They've reported that it is.
20
                 THE COURT: Okay. And that's Ms. Lopes?
21
                 MS. LOPES: Yes.
22
                 THE COURT: Okay. That's okay. I just want to
23
       make sure the comments are ascribed to the right people.
24
                 Plaintiffs' counsel, do you have any questions
25
       about what has been presented so far?
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1 MR. MARCUS: One question, Mr. Jordan. 2 Steven Marcus. 3 Do you know of any efforts on DOC's part to have medical staff walk the non-quarantine housing units or make 4 5 periodic visits to non-quarantine housing units? 6 MR. JORDAN: I am not aware of any efforts. 7 not aware of efforts. I do know that their efforts on the quarantine and 8 9 isolation housing units is very staff intensive, as I'll 10 describe in a minute, with respect to what they are doing, 11 especially on the isolation units. There are a lot of hours 12 of medical staff work going to those units. And I don't 13 know if that impacts the non-quarantine units or not, but I 14 do know that they have extended a lot of resources 15 monitoring on those other units. 16 MR. MARCUS: One brief followup, Mr. Jordan: 17 you able to quantify the correctional officer -- the

you able to quantify the correctional officer -- the shortage of correctional officers? You mentioned that as one reason why there was impeded access to sick-calls forms. Do you have any quantitative data on that front?

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MR. JORDAN: I do not have quantitative data on that front. We are still awaiting data on officers who are unavailable for duty and vacancies. So we weren't able to in the aggregate.

On the housing unit level, we routinely observed,

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and staff reported, managers reported, that they are currently staffing lower than the levels that they normally staff at because they do not have sufficient staff to staff them at their normal levels. So there are some housing units that would normally have five or even six correctional officers that have three or four correctional officers. MR. MARCUS: Thank you, Mr. Jordan. THE COURT: Defense counsel, DC, anything you want to ask? MR. SAINDON: Thank you, your Honor. Andrew Saindon. A quick question for Mr. Jordan. You said that at the jail, out of 24 requests, 16 were seen within a day or two of the request. But I didn't catch the next category. What was that number? MR. JORDAN: Six were seen three to five days after the submission of the form; one was seen eight days after the submission; and in one case, there was no record of the inmate being seen. MR. SAINDON: That's all I have. Thank you. THE COURT: Mr. Walker, anything that you want to ask? MR. WALKER: No, your Honor. Thank you. THE COURT: One quick question, and you may get to it later: Who gets tested? I know that you indicated that the -- I guess in the jail, in the breakdown, that two were

1 seen four to five days later who were tested, and it came 2 back positive. 3 So is it once they're seen that there's a decision by the medical people as to whether to test? 4 5 MR. JORDAN: A medical provider -- and the medical 6 providers, Unity's providers, are advanced practitioners. 7 They include doctors, physician's assistants and nurse practitioners. They will make a decision about who to test. 8 9 And it's based on their assessment of the patients. So it's 10 not only symptoms, but also objective data by all signs and 11 history, exposure. And so a provider has to make that 12 decision. 13 THE COURT: Okay. Let me let you move on, then, 14 to I guess Question 2. 15 MR. JORDAN: Question 2. Yes. Thank you, your 16 Honor. 17 As of May 8th -- I'm going to begin my discussion 18 with isolation units. And as of May 8th, there was one 19 isolation unit at the jail. At the CTF, all inmates in 20 isolation were housed in individual cells in the infirmary. 21 According to the management of the medical 22 program, the expectation is that inmates in isolation are 23 monitored by nursing staff twice per day and, additionally, 24 by advanced care providers twice per day. 25 A position called the COVID provider of the day

has been created; and this person is responsible for coordinating daily rounds by medical providers and serving as a communication liaison with DOC security staff.

We sampled the cohort of inmates who were on isolation status at the jail and CTF as of April 19th, 2020, and reviewed their electronic health records.

At the jail, there were 85 inmates on isolation on or after April 19th at some point. That doesn't necessarily meet concurrently, but at some point after April 19th. We sampled 25 of those inmates, who collectively spent a total of 257 days on isolation in our review period.

On 84 percent of the days in our review, the inmates were seen at least two times by a medical provider.

On 92 percent of those days, the inmates were seen at least once by a provider.

In most cases, when an inmate was not seen by a provider on a given day, there is documentation in the health record of an unsuccessful attempt due to the inmate refusing, insufficient correctional staff to escort the provider, or an incident that precluded the provider from entering the unit.

On 84 percent of days, inmates were monitored by nursing staff twice per day. And there was only one day when an inmate did not have his or her vital signs taken at least one time.

At the CTF, 14 inmates were on isolation on or after April 19th, and we reviewed a sample of seven of those inmates, who collectively spent 71 days in isolation in our review period.

On 76 percent of those days, the inmates were seen twice daily by a provider. On 93 percent of days, they were seen at least once by a provider -- I'm sorry. They were seen once by a provider. At least once. I'm sorry. And there were no days on which the inmates did not have their vital signs taken at least once.

Now switching to quarantine units: On quarantine housing units, nursing staff conduct temperature checks twice per day. Providers do not routinely assess inmates on quarantine housing units.

To assess the monitoring practices on these quarantine units, we sampled inmates housed on quarantine units at the jail and at CTF on or after April 19th of 2020.

At the jail, we reviewed health records of 20 inmates, who collectively spent 195 days on quarantine status during our review period. On 62 percent of those days, the inmates had their temperatures taken twice. On 29 percent of those days, the inmates had their temperatures taken once. And in most cases, when an inmate's temperature was not taken a second time, it was because the inmate refused to have his or her temperature taken.

1 On 7 percent of the days, an inmate did not have 2 his temperature taken. However, in all of those cases, the 3 inmate refused both temperature checks each of those days. At CTF, we reviewed the health record of eight 4 5 inmates who spent 112 days on quarantine. On 96 percent of 6 those days, the inmates had two temperature checks; and on 4 7 percent, they had one temperature check. In sum, on both isolation and quarantine housing 8 9 units, medical staff are conducting routine monitoring of 10 inmates to identify those who need urgent care. For inmates 11 in isolation, the level of routine monitoring is very high. 12 It frequently includes multiple visits from both nursing 13 staff and advanced medical providers on a daily basis. 14 And that concludes my presentation on Question 2. 15 THE COURT: Okay. When you say "collectively," I 16 take it you're talking about putting all the days together 17 for the -- it's not each inmate, but it's actually all together for -- if you had 14, it's a total amount. Is that 18 19 correct, just to make sure? 20 MR. JORDAN: That's correct. So we took a sample 21 of inmates and calculated for each one how many days each 22 individual spent, and then we totaled those. So we really 23 calculated the number of inmate days on isolation. 24 THE COURT: Okay. Plaintiffs' counsel, any

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questions?

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                 MR. MARCUS: Yes. Steven Marcus here.
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                 Mr. Jordan, when you said "seen by medical
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      provider" for residents on isolation units, does that
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       include the twice-daily temperature check or is that a
 5
       separate event you're describing?
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                 MR. JORDAN: That's limited to advanced care
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      providers, so doctors, physician's assistants, nurse
      practitioners.
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                 MR. MARCUS: Okay. That's my only question.
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                 THE COURT: So nursing would be doing the two
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       times per day and then you'd have these advanced care
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      people, which are separate. So they're seen four times a
13
      day?
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                 MR. JORDAN: That's correct. That is the goal.
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       They do not always achieve it, but that is what -- the
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      practice they're trying to implement.
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                 THE COURT: DC, any questions?
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                 MR. SAINDON: Not right now. Thank you, your
19
      Honor.
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                 THE COURT: All right. United States, any
21
      questions?
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                 MR. WALKER: No, your Honor. Thank you.
23
                 THE COURT: Then in terms of No. 3, is that you,
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      Mr. Jordan, or Ms. Lopes?
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                 MS. LOPES: It's me, your Honor.
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MR. JORDAN: That is Ms. Lopes.

THE COURT: Okay.

MS. LOPES: Question 3 -- I'll just read it for the record: Is the DOC providing consistent and reliable access to legal calls, personal telephone calls, running water, daily showers and clean clothing and clean linens to all inmates on isolation status?

We limited our review to the isolation units that have been operating recently. So that's one unit at the jail and the infirmary at the CTF.

I'll take each category separately.

First, with respect to personal calls at the CTF, inmates and staff reported that inmates can make personal calls daily when they are in isolation status in the infirmary at CTF. We observed that happening. A telephone is actually placed on a rolling cart and it is moved from cell to cell down the infirmary corridor so that inmates who are housed in the infirmary can access the phone. We did not receive any complaints from the inmates who are on isolation in the infirmary about their daily access to the phone.

And the situation at the jail is somewhat different. So in the isolation unit that was operating at the jail, when we were there last week, again, rolling carts were used on some of the tiers and the same process of

moving the rolling cart with the telephone from cell to cell was occurring.

But the rolling carts were not available to inmates on one segment of the housing unit, on the Lower 1 tier. And those inmates did not have access to the telephone at their cell door. They were reportedly accommodated by being provided access to a telephone in an office area on the housing unit.

The inmates reported that they do not always have access to that office area. It is not a daily occurrence for them. And there is some difficulty, apparently, getting this rolling cart -- operating it on this lower tier, which contributed to the problem. So that was one limitation.

It certainly was a step n the right direction compared to what the situation was when we were there in April when, you know, there was an inability, complete inability, for inmates on isolation to make any personal phone calls. But there was that limitation, and it was evident in that part of the housing unit at the jail.

With respect to legal calls at both facilities, the Defendants recently implemented a system -- and I don't know how much, your Honor, you know about this system and whether you want me to just explain how it works for these 30-minute unmonitored legal calls.

THE COURT: Yes. I would go ahead. I'm familiar

with it, but why don't we put it on the record for everybody else.

MS. LOPES: Okay. A system was very recently established where Defendants worked with their service providers -- and there are different service providers at both facilities -- to create or establish access for legal calls through these 30-minute unmonitored legal calls.

Information about how this operates is posted on the DOC website and signage is posted in the housing units. It was first posted, I am told, at the beginning of May. The signage -- the signage is intended to notify inmates and apparently staff about how the system works.

And essentially, attorneys are required to email the DOC case management kind of generic email address to register for the system.

Case managers now, who work to implement the system, are viewed as essential employees, pursuant to this emergency order or under this emergency order that's in effect in the District, so that a number of them have come back to work. They weren't working until recently; and in the last week or so, they have come back to work, many of them, and are working to implement this new system.

The attorney then notifies -- once the attorney registers through the case management office for participation in this system, the attorney then is required

to notify their client by mail that they've registered for the system and also notify their client about how to contact them.

The clients or inmates explain that there are delays and there have been delays in receiving their regular mail. And so some of them still have had difficulty receiving their regular mail, which may or may not affect how this is working.

But legal calls are now happening with somewhat greater frequency on the isolation units. And what we observed on the isolation units is that the rolling -- the phones on the isolation units, both the isolation in the infirmary at the CTF and then the isolation units at the jail, is that the phone on the rolling cart is being used for that purpose. And we are told that those are unmonitored calls, and the inmates are afforded confidentiality because the calls take place in their cells and not in the day rooms and not in the offices of the case managers. So that is occurring.

We haven't had an opportunity to verify this data, but on Saturday we did receive data from the Defendants on three weeks of operations related to this system, the last three weeks of operations related to this system.

And, you know, I have a lot of questions about the data that we'll have to talk through with the Defendants.

We just haven't had an opportunity to do that since we got it on Saturday.

But there are indicated in these data reasons for why calls were not completed. And as a general matter, in the three-week period, roughly 15 percent of the calls that were scheduled through this new system -- it was indicated that they were not completed due to staffing shortages, security issues, limitations of the availability of phones on housing units and disruption.

So clearly, there's been improvement on the isolation units in terms of access to legal calls. It appears that additional progress may be necessary.

I would think, that the Court and the parties should be aware of, and this is a situation that we stumbled upon, which was that legal calls that are scheduled through this system are being conducted in the offices of case managers with the case manager present. So I observed multiple -- two inmates, three inmates, conducting legal calls in the case manager's office with the case manager clearly within earshot when I was at the jail. So that -- and that appears to be the practice. So that's one thing that I wanted to raise.

With respect to running water at both facilities for inmates in isolation, there was no apparent issue and no

complaints that we heard about with respect to the infirmary or with respect to the isolation unit at the jail.

With respect to showers at the CTF and the infirmary and access to showers in isolation at the jail, first at the CTF, inmates and staff reported that inmates were allowed out of their cells in the infirmary daily to shower. There were no complaints, and expectations appeared to be very clear that inmates had to be allowed out of their cells to shower if they were on isolation status. There was no blanket rule prohibiting showers that staff articulated at the jail.

And staff and inmates both affirmed that inmates are allowed out of their cells to shower when they are on isolation status, but that it does not occur on a daily basis. Some inmates reported multiple-day delays. They recognized that they had been allowed to shower several days earlier, but hadn't been allowed to shower within the past couple of days.

And staffing -- it appears from talking to staff and inmates that, again, what contributes to this is staffing limitations combined with incidents and disturbances that contribute to the inability of the Defendants to provide daily access to showers.

So, you know, there is significant tension and there are significant issues, particularly at the jail --

this is really an issue at the jail -- that contribute to creating a lot of challenges for the staff and the inmates.

And there are a lot of issues. And that delays the ability of the limited staff who are available to provide consistent daily out-of-cell time. It's an issue. It's moving in the right direction in terms of -- that it's more frequent, but it's still not consistently being afforded on a daily basis.

With respect to clean clothing and clean linens in isolation, staff and inmates reported clothing and linen exchanges had occurred that week and that there had been very recent increased frequency. It's too premature to make any judgments about consistency, but clearly there is a recent effort to address it that was reported by both staff and inmates. And while we were there, we observed linen exchanges at both facilities occurring.

THE COURT: I have a question. When you say "incidents or disturbances," can you give me an idea of what we're talking about?

MS. LOPES: Yeah. There are fights. You know, there are inmates that are angry. You know, there are objects thrown; there's food thrown; there's bags of substances thrown around. I mean, it's a tense environment, and there are disturbances.

Because they're not getting a lot of out-of-cell

time, and feel that they're punished, inmates -- some, you know, are refusing to go back in their cell. And there are -- you know, there are issues between the inmates and the staff around going back into cells that escalate and, you know, issues related to getting out to use the phone.

The facility is on -- in the non-isolation housing units, it is clear that the Defendants are trying to provide recreation to everyone; and they're doing that by allowing recreation to occur on a 24-hour basis.

So inmates -- they're told, and staff have confirmed, and even our cursory review of the logbooks in the housing units also confirm this, that inmates are being afforded the opportunity to leave their cells to take a shower or call home in some instances at 1:00, 2:00, and 3:00 a.m. because they weren't able to provide that opportunity during, you know, the day or the evening. So instead, you know, the staff will provide that opportunity at 1:00, 2:00, or 3:00 a.m. And that leads to problems as well.

So, you know, it's a tense environment. And, you know, the inmates -- many inmates feel as though they're being unduly punished because they are, you know, locked down for a significant part of the day. They are, you know, generally idle, and it's a very difficult and stressful situation for them. It's also a very difficult and

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       stressful situation for the staff. They're understaffed.
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      And, you know, there's significant overtime. Staff are
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       tired. And it's a very stressful mix of factors, your
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      Honor.
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                 THE COURT: What I was curious about, you labeled
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       these as disturbances. I take it the records themselves
 7
       indicate some of the descriptions of what you've indicated
 8
      were the problems. Is that correct?
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                MS. LOPES: Yes. Yes. Yes, your Honor.
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                THE COURT: Okay.
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                MS. LOPES: Yes.
12
                THE COURT: So, Plaintiffs' counsel, any
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      questions?
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                MR. MARCUS: Yes. This is Steven Marcus here.
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                Ms. Lopes, when you observed the case managers in
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       their office during the scheduled legal calls, were case
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      managers wearing PPE as far as you could observe?
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                MS. LOPES: This all happens -- yes. Yes.
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      Wearing a mask. And I have to look at my notes about the
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      gloves, whether they were wearing gloves. Not wearing a
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       gown, but wearing a mask. Definitely they were wearing a
22
      mask. And I'd have to look at my notes.
23
                MR. MARCUS: Okay.
24
                MS. LOPES: It'll take me a while to access that.
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                MR. MARCUS: Do you have a sense of how many
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1 residents on the isolation unit or roughly how many 2 residents on isolation units at the jail don't get to shower 3 every day? 4 MS. LOPES: No. It's frequent enough that both 5 staff and inmates have reported it to us. But no. 6 MR. MARCUS: And as far as the residents who 7 receive their hour out of cell at 1:00, 2:00, or 3:00 in the 8 morning, are you aware of how frequent that is? 9 MS. LOPES: It's common. It's recognized as a --10 you know, as something that they have to do in order to 11 afford everyone the opportunity to be out of their cell. 12 MR. MARCUS: Okay. And the rolling phone cart: 13 Did you observe the cart being wiped down between uses or 14 does a staff member push it from cell to cell? 15 MS. LOPES: A staff member or detail inmates. 16 I didn't observe the -- with sanitation, but I know that 17 Mr. Jordan did. 18 MR. JORDAN: I did not observe the sanitation. 19 I will say that I did have conversations with 20 inmates when I was interviewing them in which they said it 21 was the detail's job, the inmate detail's job, to move the 22 cart from one cell to the next. And they had stated that 23 the detail had been locked down for a prolonged period on 24 the day that we were there, and that therefore other 25 inmates' access to the phone was limited because of that,

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       because the detail inmate whose job it was to move the phone
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       was locked down. And that created a lot of frustration as
 3
       well on the unit.
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                 THE COURT: Excuse me. Can I just ask, was there
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       sanitation of the phone between inmates, leaving aside the
 6
       cart?
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                 MS. LOPES: We just didn't observe it, your Honor.
       But we have observed it in housing units without the cart.
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 9
       We certainly have observed it, you know, where they had the
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       phones mounted on the walls in the day rooms. We have
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       observed the cleaning of the phones. And the rolling carts,
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       we just didn't observe it and we didn't inquire about it.
13
       We certainly can follow up on that.
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                 THE COURT: I would appreciate it.
15
                 And what about if they're in the case manager's
16
       office? Is there any cleaning of the phone between calls?
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                 MS. LOPES: We'll have to check.
18
                 THE COURT: Okay. Sorry, Mr. Marcus. Go ahead.
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                 MR. MARCUS: And I just have one last question.
20
                 Are the detail inmates that work on the isolation
21
       units -- are those people who are also housed on those units
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       and have tested positive?
23
                 MS. LOPES: Yes.
24
                 MR. MARCUS: Okay.
25
                 MS. LOPES: Yes.
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                 THE COURT: DC, anything? Any questions?
                 MR. SAINDON: Nothing at this time. Thank you,
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 3
       your Honor.
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                 THE COURT: How about --
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                 MR. GLOVER: Your Honor? Your Honor? This is
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      Eric Glover. I just wanted to clarify one issue that
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      Ms. Lopes brought up.
                 The agency did provide her with data with regard
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 9
       to emergency calls conducted at the facility about that
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       recent issue over the weekend that she referenced. Those
       emergency calls were slightly different than the standard
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12
       30-minute legal calls that the residents have. However,
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      when Ms. Lopes follows up with staff, I'll explain it
14
       clearly. So I just wanted to be very clear.
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                 THE COURT: Okay. And, United States, any
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      questions?
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                 MR. WALKER: No questions from the United States.
18
       Thank you, your Honor.
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                 THE COURT: And I guess we're moving to Question
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       4.
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                 MS. LOPES: That question is: Do DOC residents
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      have access to cleaning materials and cleaning equipment to
23
       clean their cells?
24
                 Again, they have access at both facilities to
25
       cleaning materials and cleaning equipment. Availability is
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not uniform from housing unit to housing unit. So some housing units have more cleaning supplies and cleaning materials available than others.

The Defendants recently began to issue paper towels which are sprayed with a peroxide solution to inmates at the jail. It's highly regulated at the jail in the sense that staff are involved, the paper towels are sprayed, and a limited number are provided.

Inmates report that because it's so -- you know, it's four or five paper towels that have been sprayed with this peroxide solution that they're given, these are not highly absorbent paper towels; and inmates report that it's difficult to get their cells clean with what is provided so that they continue to rely upon the ripped towels and the ripped T-shirts to supplement in order to clean their cells.

At the CTF, access to the paper towels and the peroxide solution is not as highly regulated; and inmates appear to be able to use the solution and the paper towels more independently and are better able to clean.

But appropriate sanitation is, you know, a continuing issue at both facilities, and clearly especially deficient at the jail.

And then I know for the next set of questions, whether in the final report -- and I can say that the Defendants -- from all of the documentation I've reviewed

and from the interviews I've conducted, the Defendants are working to secure the contract with the professional cleaning service for the secure side of the facility. That would not include the cells, but it will include the common areas and the day rooms in the housing units. And I believe it's anticipated that it will start this week, which is something we can confirm.

THE COURT: Okay. No. 5.

MS. LOPES: Is the DOC enforcing social distancing?

There is -- there are increased -- an increased volume of health educational materials on social distancing that are posted throughout both facilities. Both management and staff, supervisory staff and line staff, report that staff are being disciplined for the failure to enforce social distancing. There is some evidence of this on site. The increased -- the increased evidence of social distancing. But it certainly is not prevalent, certainly not during our site visits.

And I would say even in the video excerpts of activity on the housing units that the Defendants provided, there were -- and that was just limited to the CTF -- there were examples of failure to enforce social distancing, which is -- you know, there are fewer inmates who are allowed out of their cells at any one time relative to what the

Case 1:20-cv-00849-CKK Document 82-4 Filed 05/26/20 Page 44 of 69 situation was when we were there in April. So as a result, at least some housing units are less chaotic. Again, this has created -- by allowing fewer inmates out at a time, you know, this has given rise to this other problem of the 24-hour recreation schedule because of the difficulty letting -- when you let fewer numbers of inmates out at one time, they can't all during the day get out of their cells to shower and use the phone, et cetera. So the Defendants have expanded to this 24-hour recreation cycle. 

But there's evidence of some progress and attempts to enforce social distancing, certainly the effort of an attempt to enforce social distancing.

But I would say there still isn't a prevalence of social distancing. And staffing limitations to some degree, you know, undercut the ability of staff to enforce it when there are an insufficient number of staff on the housing units.

So that's where that stands, your Honor.

THE COURT: Okay. On this particular issue, Plaintiffs' counsel, any questions?

MR. MARCUS: I just had one question, Ms. Lopes, about paper towels and rags.

 $$\operatorname{\textsc{Did}}$  you see on this round where residents still were using makeshift rags -- was that less prevalent than

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       your first visit or about the same?
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                MS. LOPES: About the same. About the same.
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                MR. MARCUS: Okay. And that was my only question.
       I didn't have any questions aside from that.
 4
 5
                 THE COURT: DC?
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                MR. SAINDON: Yes, your Honor.
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                 I don't recall, Ms. Lopes. Did you say when the
      video excerpts -- from what days those were from?
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 9
                MS. LOPES: I can tell you. Here we go. 4-27,
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       11:00 a.m. to 11:15 at the CTF. 4-27, 10:00 to 11:00 a.m.
      at the CTF. 4-27, 8:00 to 9:00 a.m. at the CTF. And 4-27,
11
12
       7:00 to 8:00 a.m. at the CTF.
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                MR. SAINDON: Okay. Thank you.
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                 THE COURT: Anybody else from DC? Mr. Glover or
15
       anybody?
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                MR. GLOVER: I don't have anything, Judge. Thank
17
      you.
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                 THE COURT: US, any questions?
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                MR. WALKER: No. Thank you, your Honor.
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                And my thanks to Ms. Lopes and Mr. Jordan as well.
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                 THE COURT: Yes. Definitely.
                 I have a couple of overall questions that I'd like
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                I'm going to direct them to DC first; and then if
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      Ms. Lopes or Mr. Jordan have something to add additionally,
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       that would be helpful. And they're not exactly connected to
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1 these four points. 2 From DC's perspective, in terms of the legal 3 calls, we're still having a problem, obviously, here. The 4 rolling carts obviously help to some degree. But I don't 5 see how you're doing -- if they're in the presence of their 6 case managers, that's not an unmonitored call. I mean, what 7 they're discussing is what they want to do with their cases, 8 pleas, sentences, other kind of things. Obviously, 9 that's -- nobody should be there. 10 Are you going to do anything else? If you don't 11 have the complete answer, that's fine. I'm just raising the issue. 12 13 MR. GLOVER: Your Honor, this is Eric Glover. 14 THE COURT: Go ahead. 15 MR. GLOVER: This is Eric Glover. I don't know if 16 someone was speaking before me. 17 THE COURT: It doesn't sound like it. Go ahead, Mr. Glover. 18 19 MR. GLOVER: Yes, your Honor. 20 We are looking at adding additional equipment to 21 the facilities to assist with -- or to assist with providing 22 legal calls to the residents. 23 However, your Honor, it is still a correctional

facility. And notwithstanding -- and understanding the

Court's concern about case managers or staff being present,

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there has to be eyes on the residents at the facility, just for the safety and security of staff and residents.

But we are looking at other alternatives or expanding our equipment to allow for legal calls, that being additional cell phones.

And we have recently implemented -- we've recently worked with the Public Defender Service and the Federal Public Defender Services to implement an email program where residents in isolation who have been provided with tablets have the ability to email their attorneys to further be able to -- allow them to communicate with them.

But we can't have at a correctional facility a situation where there are absolutely no eyes on a resident. There are security issues attached to that.

THE COURT: I understand that. But I still think that, you know, there still needs to be some way of -- I'm not sure -- I haven't been to the jail in eons. But I mean, in terms of a way they're being able to distance or some other way of doing it.

I understand they can't just be left in an office. But I do think that if people are close enough to listen to what they're talking about, it's obviously going to be -- it's going to hinder them from being frank in their discussions or complaints or anything else they may have with their lawyers.

I understand you were looking at tablets, which would be of some help in terms of doing it or some other way of doing cell phones where they could go to a place where you can't overhear them, but you could still see them.

MR. GLOVER: Yes, your Honor.

THE COURT: This is still a problem. This is still -- from my perspective, this is still a problem.

I know that at least the scheduling has gotten slightly better based on both FPD and PDS and the Department of Corrections working around setting specific times, so it's not sort of guesswork anymore about when they get to have the calls, et cetera. So there's been some improvement at least in that. And obviously, having 30 minutes instead of ten makes a big difference.

But I am concerned about the fact that if somebody is around that can hear what they say, they're obviously going to temper what's said. So we need to come up with something else. I'm not sure what, but I still thought that the idea of cell phones, where they could move to a place where they could be seen but nobody could hear what they're actually saying, to my mind makes sense.

But I'll leave it to you to come up with a way of doing it. But if they're overheard, if there is such a situation that you can hear the conversation, that's not really an unmonitored call. So I'm just throwing that out.

I'm just indicating to you, having listened to this, there are some are concerns here.

MR. GLOVER: Yes, your Honor. I will address that with the executive staff, this issue.

THE COURT: Okay. I mean, I'm not ordering something at this point. I'm just asking you to come up with a better way.

The rolling carts seem to work to some degree as long as it's consistent. But the issue of there being -- where you can overhear the conversation is clearly not from my perspective an unmonitored call, even if they're not trying to hear it.

And I'm not indicating that the case managers are doing something wrong. But if you can't have a private conversation, then people are just simply not going to be honest and frank in their discussions. But I'm just throwing out my concerns about it.

The other issue is, I'm curious to know in terms of the lower population, is it due to releases by individual judges? BOP doesn't seem to have had much success in moving their group out. Is there a particular category of people that has lowered it? Or what's happening? Or are fewer people coming in or what? Do you know? If you don't, that's fine.

MR. GLOVER: Your Honor, just briefly, it's a

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combination of both. I know that MPD and the US Attorney's Office have started making a more diligent effort to have more offenses be classified with citations. And there has been -- as the Court is well aware, there were multiple bond hearings occurring at the Superior Court where residents have been released as well. THE COURT: Right. Okay. What about the Parole Commission? Are they doing anything? MR. GLOVER: Your Honor, I'd have to -- I'd have to follow up on that. THE COURT: Mr. Walker, do you know? If you don't know, that's fine. These are questions you weren't expected to know the answer to. But I'm just curious. MR. WALKER: I don't know that today, your Honor. THE COURT: Okay. It would be helpful at some point to find out what's happening with the Parole Commission as to whether they have some system in place for going through these, at least the ones where they're being held for technical reasons as opposed to new charges. And I know there have been some issues with the Bureau of Prisons in terms of the receiving group having some concerns, which leads me to my next question. The last time I asked this question of DC about doing tests prior to people being released or being

transferred, the answer I got was that the CDC did not require it.

Is that still the same answer or are people being tested before they're released or transferred?

MR. GLOVER: Your Honor, presently, residents are not being released. However, we are reassessing our policy. The director and I had a meeting with Chief Judge Howell this morning, and we'll be getting back to her with any changes regarding our policy regarding testing residents — testing or screening of residents prior to their release from the facilities.

THE COURT: I think quarantining them at the other end is not perfection. I mean, it might be better than nothing. But perhaps -- I'm just throwing this out, not ordering it or anything else. We're not there yet.

But certainly in terms of releasing or frankly sending people -- with the Bureau of Prisons with people that are ready to be moved, that there were some assurances that they were getting people that were not sick that would probably move these people out a little faster.

But I know you've had discussions with the Chief
Judge about this, because there are some concerns,
obviously, in terms of our trying to from the federal court
and I'm sure from Superior Court in their own way, too, in
terms of trying to move people.

1 The other question that I had for DC is, what's 2 happening with the staffing issues? And I realize that is 3 not a quickie, but as I recall there was some efforts to 4 getting additional staff through some mechanism which --5 unfortunately, I don't have it in front of me. 6 Does anybody want to answer that from DC? 7 MR. SAINDON: Yes, your Honor. MR. GLOVER: Go ahead. 8 9 MR. SAINDON: Go ahead, Eric. 10 MR. GLOVER: Mr. Saindon, please proceed. 11 MR. SAINDON: I want I was going to say, you 12 probably have more recent detail. 13 We had asked for assistance from Public Health, 14 and they provided some volunteer staffers to assist in 15 the -- doing the screening. And maybe Mr. Glover has 16 details there. But, again, it remains difficult to hire 17 full-time correctional officers because of the time required 18 to train them. 19 THE COURT: Right. 20 MR. GLOVER: In addition to that, your Honor, Mr. Saindon is correct. We have reached out to the Medical 21 22 Reserve Corps, and we received staff from the Corps who have 23 been assisting with screening of residents. 24 We've also, as regards our staff who took leave 25 pursuant to the COVID pandemic -- we began sending out

return-of-work notices to staff for those staff who are going to be able to return to work.

We are doing rolling hires. We're currently reviewing applications for new staff to assist with the facility.

And there's been a request for armed security to assist with taking over of hospital details. So we've made several different types of efforts to add more staff to the facility and develop policies or enforce policies, getting staff that was previously out on leave to return to the facility.

THE COURT: I was just interested, since obviously some of these problems that Ms. Lopes and Mr. Jordan have identified seem to be staffing issues, which I understand is harder to fill in the hole. But you had indicated, I thought, after the last report that the efforts were being made. And I guess it's the Public Health Service I was thinking of there in terms of getting some additional assistance.

Those are the only questions that I had that were additional.

Mr. Marcus, are there any questions from you or anything else you wish to bring up?

MR. MARCUS: Just a clarifying question for Mr. Glover.

1 The armed security you mentioned: Can you just 2 say a little bit more about that? Are those private 3 contractors? Where in the facility would those people be 4 working? 5 MR. GLOVER: I have yet to follow up with our 6 deputy director with the administration to get more details 7 about that. So I don't have that exact information right 8 now. 9 MR. MARCUS: Okay. 10 MR. GLOVER: But it's my understanding they will not be at the facility. They would just be part of doing --11 12 they will not be operating in the facility. Just hospital 13 details. 14 MR. MARCUS: Okay. And I'm not sure, Mr. Glover, 15 if you or Mr. Saindon would know the answer to this. But do 16 you know if there's capability in the District to test 17 everyone at the jail, the 1300 or so people who remain? 18 that conversation happened or have any inquiries been made? 19 MR. GLOVER: I am not familiar with any facility 20 that has the capability to test all the residents at the DOC 21 facilities. However, we are looking at every opportunity to 22 test as many residents as possible. 23 MR. MARCUS: Okay. 24 THE COURT: And my understanding is at least there 25 was some discussion of testing people that were being

1 released not only into the community, but potentially if 2 they were being transferred someplace else, which might 3 bring the population -- well, testing into the community, so 4 we didn't send somebody out that turns out to be sick going 5 home, who doesn't show -- who is asymptomatic and then goes 6 home. 7 But also, it might make it easier to move some people out that should be moved out of the facility if the 8 9 receiving facilities were satisfied that they weren't 10 getting people that potentially were sick. But I'll leave 11 you to have that discussion with the Chief Judge at this 12 point. 13 Anything else from DC? Anything else you wish to 14 bring up or raise? 15 MR. SAINDON: This is Andrew Saindon. 16 No, your Honor. Thank you. 17 THE COURT: Mr. Walker, is there anything you want 18 to say? 19 MR. WALKER: No, your Honor. Thank you. 20 THE COURT: Thank you very much, Ms. Lopes and 21 Mr. Jordan, in terms of going in and going over and checking 22 back with what we had talked about. 23 And we certainly -- and I appreciate the 24 Department of Corrections being cooperative. The system 25 won't work unless they get the information. And so I

1 appreciate that. 2 And I certainly appreciate the help from Ms. Lopes 3 and Mr. Jordan. This has made this case certainly a better 4 case in terms of getting information that everybody can 5 accept that's neutral and that we can work with. So I thank 6 you very much for your time and energy and how careful you 7 are in terms of going through all of this. So I await with 8 interest the written findings. 9 Do you have any questions of the director or 10 anybody else, Ms. Lopes or Mr. Jordan? 11 MS. LOPES: No, your Honor. 12 We will reach back out to counsel for both sides 13 after this and determine whether there are any other areas 14 that they think would be helpful for us to clarify in the 15 final report based on what we've said today. And we 16 anticipate that the final report will supplement today's 17 presentation as well as address the remaining questions. 18 THE COURT: All right. Thank you very much. 19 MS. LOPES: Thank you. 20 THE COURT: Everybody is excused. As I said 21 before, take care of yourselves. Thank you. 22 MS. LOPES: Thank you, your Honor. 23 MR. MARCUS: Thank you, Judge. 24 MR. SAINDON: Thank you, your Honor.

MR. GLOVER: Thank you, your Honor.

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                  MR. WALKER: Thank you, your Honor.
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                  MR. JORDAN: Thank you, your Honor.
                  (Proceedings concluded.)
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1	<u>CERTIFICATE</u>
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3	I, LISA EDWARDS, RDR, CRR, do hereby
4	certify that the foregoing constitutes a true and accurate
5	transcript of my stenographic notes, and is a full, true,
6	and complete transcript of the proceedings produced to the
7	best of my ability.
8	Please Note: This hearing occurred
9	during the COVID-19 pandemic and is therefore subject to the
10	technological limitations of reporting remotely.
11	
12	
13	Dated this 11th day of May, 2020.
14	
15	<u>/s/ Lisa Edwards, RDR, CRR</u> Official Court Reporter
16	United States District Court for the District of Columbia
17	333 Constitution Avenue, NW, Room 6706 Washington, DC 20001
18	(202) 354-3269
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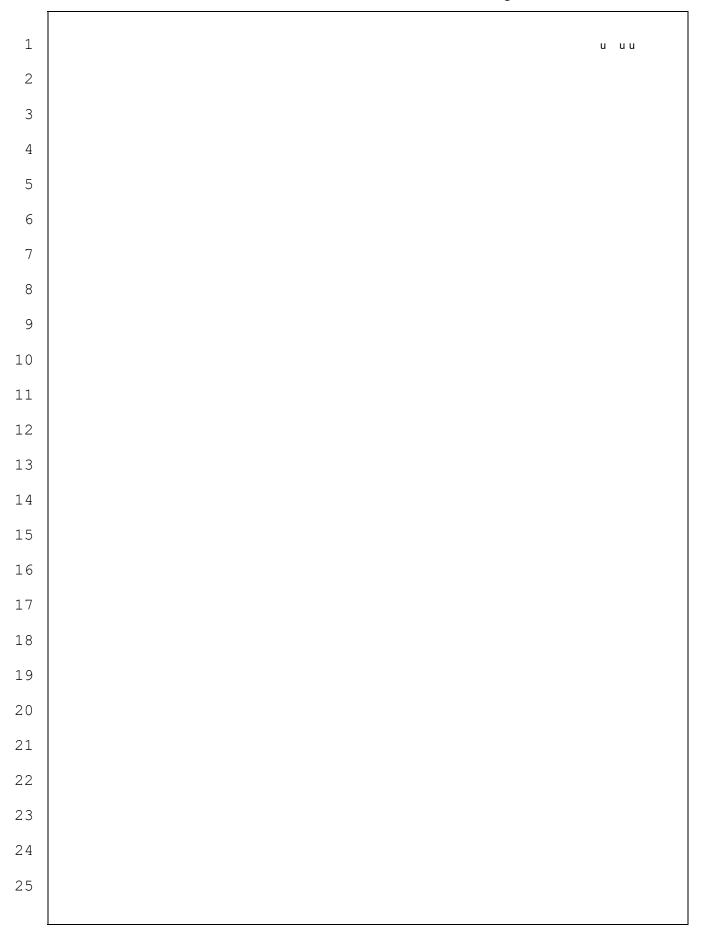
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# **EXHIBIT E**

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, et al.,

Plaintiffs,

**v.** 

Civil Action No. 20-00849 (CKK)

QUINCY BOOTH, et al.,

Defendants.

## **DECLARATION OF KATHLEEN JO LANDERKIN**

Pursuant to 28 U.S.C. § 1746, I, Kathleen Jo Landerkin, declare and state as follows:

- 1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration, and testify based on my personal knowledge acquired in the course of my official duties, including my daily observations of conditions and procedures at District of Columbia Department of Corrections (DOC) facilities. I previously submitted a declaration in this matter [21-2].
- 2. I am the Deputy Warden with DOC's Central Detention Facility (CDF). In this role, I am responsible for the care and well-being of all residents housed in DOC's CDF. I am also responsible for the supervision of all DOC uniformed staff at the CDF. I have worked for DOC since January 2018.
- 3. I provide this declaration to inform the Court of DOC's health and safety precautions related to COVID-19.
- 4. To ensure residents have the opportunity to exchange dirty linens and clothing for clean ones, correctional officers are required to track the laundry exchanges for linens, uniforms, and personal laundry.

- 5. On April 25, 2020, DOC began requiring correctional officers in CDF to verify that each cell is clean every day, and mark the time the cell was checked on the Housing Unit Cell Cleaning Verification Form. Attachment 1 is a sample of the form.
- 6. On April 24, 2020, DOC also began requiring correctional officers in CDF to note that common areas and high-touch surfaces are cleaned every two hours on a Housing Unit Sanitation Checklist. Attachment 2 is a sample of the form.
- 7. On April 25, 2020, DOC began requiring correctional officers at CDF to complete the COVID-19 Housing Unit Checklist after each shift. On the form, correctional officers are asked to note whether: (1) the housing unit has cleaning and hygiene supplies, (2) staff and residents wear masks, (3) all residents were allowed to shower and allowed one hour out of their cells, (4) residents were reminded to social distance, (5) COVID-19 information was discussed during roll call, and (6) any residents reported feeling ill. Attachment 3 is a sample of the form.
- 8. The shift supervisor verifies after each shift that the correctional officers have completed the Housing Unit Cell Cleaning Verification Form, the Housing Unit Sanitation Checklist, and the COVID-19 Housing Unit Checklist, and will discipline officers for failure to complete the forms. Though instances occur in which officers fail to properly complete the form, officers' overall compliance with using the form has improved in recent weeks.
- 9. On April 9, 2020, a specified program analyst calls correctional officers at all housing units in their assigned facility twice a day Monday through Friday (and on weekends beginning May 16, 2020). During the call, the program analyst asks if there are any cleaning supplies needed on the unit, confirms that the two-hour cleanings are being done, and confirms that documentation is being completed. The program analyst then informs CDF leadership and supervisors of the results of the check-ins, and additional supplies are provided to housing units as

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needed. Program analysts began documenting these calls on April 30, 2020, and Attachment 4 is

a sample of the form.

10. Since May 10, 2020, DOC began requiring supervisors to conduct two

unannounced walkthroughs on each unit twice a week to ensure that COVID-19 precautionary

measures are being adhered to. Supervisors track their observations on a COVID-19 Housing Unit

Supervisor Checklist. Supervisors will note any deficiencies and rectify any issues they note.

Attachment 5 is sample of the form.

11. For a short period of time, a small number of residents in isolation at CDF could

not access the rolling phone cart used for legal calls and instead were permitted to make legal calls

from a case manager's office or in the unit recreation room. Currently there are no residents who

cannot access the rolling phone cart. The rolling phone cart used in the isolation unit is cleaned by

inmate details.

I declare under the penalty of perjury that the foregoing is true and correct to the best of

my knowledge, information, and belief.

Executed on May 26.2020

Kathler Jo Landerkin

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# **ATTACHMENT 1**

**REVISED 5-12-2020** 



NE-1

# HOUSING UNIT CELL CLEANING VERIFICATION FORM

DATE: 5/15/20 All Cell Cleaning will occur on the dayshift UNIT: NEI

Inmates shall clean their cells daily. Once the Officer has verified cells as clean, inmates

may participate in out-of-cell activities.

may pai		out-of-cell activities.			
Cell	Time of	Officer's Signature	Cell	Time of	Officer's Signature
#	Cell	i i	#	Cell	_
	Cleaning		"	Cleaning	
1	1	Cilar	21	c ).	Codono
	re & Used	Julyeres		Emoky	gagni
2	refusal	wholen	22	rofival	College
3	TC OSEC	Acquiso 1	23		- CYDUJAV
3	refused	(Melys	23	mesused !	Cullos
4 .		DAKA	24	1000	2.2
1	estred	Way !	L	10:50 m	aprejers
5	e fred	Culeura	25	retered	Calena
	Torong	Joseph Vo	26		- Opingor
6	resused	Culling	20	18 FUSED	Maller
7	10	C12/21/201	27		
	():755am	Mugour	1	105 km	appear
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9	155am	chlams	29	retried	greens
10			30	Gil	10.01
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11	restal	Callering	31	recked	Carle ax
12		Miryer	32	- 1	7797
12	Comphy	OBUMY	32	recen	Gulgos
13	-611	Weldes	33		
	retign	yregers		Hersed	gypo
14	Emply	Calle an	34	Kersel	Culgas
15	,		35		
13	(empty)	William		yerre	alyn
16	Compta	6.010	36	1 - 1	Colera
	- A	- Jugger		revel	your
17	returel	Offer A A	37	reced	College
18	1 4		38	13	CIA
10	10.210m	collins		rocal	gelyps
19	10:00		39	resel	Call on
	0.5 m	cough	10	Yevren	yry s
20	Emper	in circle in	40	rever	aleres
Indicato		with a checkmark for each	cell Office		

Indicate compliand with a checkmank for each cell. Officer shall sign as Verification the inmates were provided with a broom and mop (if needed) and paper towels to achieve a clean cell. Unit Officer will apply disinfectant or peroxide to the paper towels and the inmates will wipe down their cells. Paper towels will immediately be out into a trash bag. If additional comments are necessary, please use page two; be clear and concise when writing notes. THIS FORM IS TURNED IN BY THE DAYSHIFT BY 2:00 pm DAILY



## HOUSING UNIT CELL CLEANING VERIFICATION FORM

DATE: 4 は 20 All Cell Cleaning will occur on the dayshift UNIT: イビ

Inmates shall clean their cells daily. Once the Officer has verified cells as clean, inmates

may participate in out-of-cell activities.

Cell #	Time of Cell Cleaning	Officer's Signature	Cell #	Time of Cell Cleaning	Officer's Signature
41	10'25	Ann Ropuse	61	10:36	, Reguse
42	10.25	Am	62	10:36	Empty
43	10.26	Ana	63	10:37	Am
44	10.26	Am.	64	1036	Am
45	10.26	Am	65	1038	Am
46	10.27	Am	66	10:40	Am
47	10.27	Am Regula.	67	6:40	Am
48	10.28	Am Refuse	68	10.40	Am
49	10.29	Am Finde	69	10.41	Am
50	10.30	Ann,	70	10.42	Am
51	W. 20	Ampty	71	10:42	Am
52	10.30	Amply	72	10:42	Rofuse
53	10.30	Am	73	10:45	Empty
54	10-31	Am	74	10.55	Empty
55	10 31	Am	75	10:45	Empty
56	16,31	EMPH	76	10:45	Empty
57	10.32	Am	77	10:45	Am V
58	10.32	Recused	78	10:45	An
59	10 135	Keinsel	79	10.45	m
60	10.36	Am	80	10:45	Empty

Indicate compliance with a checkmark for each cell. Officer shall sign as verification the inmates were provided with a broom and mop (if needed) and paper towels to achieve a clean cell. Unit Officer will apply disinfectant or peroxide to the paper towels and the inmates will wipe down their cells. Paper towels will immediately be out into a trash bag. If additional comments are necessary, please use page two; be clear and concise when writing notes. THIS FORM IS TURNED IN BY THE DAYSHIFT BY 2:00 pm DAILY

Inmates shall not participate in out of cell activities if cells are not cleaned.



DATE: 5/15/2020 All Cell Cleaning will occur on the dayshift UNIT: NE(
7.9
NOTES ON REFUSALS TO CLEAN CELLS, AND OTHER INTERRUPTIONS
Finding all refused:
Froling all refused: 1,213,4,5,6,10,11,13,17,22,23,25,76,74,29,13933,
34,35,36,27,3439,61,47,58,48,58,59,61,72
7 (135,136,127,139) 34,170; (11,17,1) 13,13 0,3 4,61,14
A/B Card Officer's Signature wilders
Date 5-15- 2020
Zone Supervisor's review and comments
Zone Supervisor's Signature
Date 5/15/2020



# HOUSING UNIT CELL CLEANING VERIFICATION FORM

DATE: 5-15-20 All Cell Cleaning will occur on the dayshift UNIT: 100

Inmates shall clean their cells daily. Once the Officer has verified cells as clean, inmates

may participate in out-of-cell activities.

may pa		out-of-cell activities.			······	
Cell	Time of	Officer's Signature		Cell	Time of	Officer's Signature
#	Cell			#	Cell	
	Cleaning		Į		Cleaning	
1	11:30Am	arlgones		21	11:35m	Ollgan
2	113000	Oplones		22	1/35am	College
3	(30Am)	coleuns		23	11:352m	Gles
4	11:30Am	coleins		24	11:352m	Colyn
5	11:30Am	Collegns		25	11:30m	Culyene
6	11:20m	Cillepanes		26	11:30m	Cillas
7	112/1	Colgno		27	11352	cyllyns
8	1130m	Whams		28	1350m	cyllen
9	11.5 Ju	Orlean		29	1735m	Culyer
10	11/3090	Enlar		30	1752m	colyers
11	11:30m	CALLAN		31	1:35Zn	Eulyna
12	Emplu	yens		32	11:3520	odlans
13	11:30m	chlan		33	1136m	Ollers
14	11:30 Am	Ollen		34	11:30m	Mys
15	11:3000	alger		35	Empty	Colleger
16	11:37Am	colle		36	11:30m	Chiles
17	11:300	gille		37	11:357	aller
18	11:30Am	aller		38	11:38n	guyes
19	1 .ZAn	Oplin		39	11:3am	Collen
20	11:30Am	Corles		40	11:390	Colyan
ndicato	compliance	with a checkmark for each	<b>1</b>	ell Offic	er shall sign	as verification the inmates

Indicate compliance with a checkmark for each cell. Officer shall sign as verification the inmates were provided with a broom and mop (if needed) and paper towels to achieve a clean cell. Unit Officer will apply disinfectant or peroxide to the paper towels and the inmates will wipe down their cells. Paper towels will immediately be out into a trash bag. If additional comments are necessary, please use page two; be clear and concise when writing notes. THIS FORM IS TURNED IN BY THE DAYSHIFT BY 2:00 pm DAILY

Inmates shall not participate in out of cell activities if cells are not cleaned



## HOUSING UNIT CELL CLEANING VERIFICATION FORM

DATE:	5/15/20	All Cell Cleaning will occur on the dayshift UNIT: _	71
Inmates	shall clean th	eir cells daily. Once the Officer has verified cells as cle	ean, inmates

may participate in out-of-cell activities.

Time of Cell Cleaning  41 \\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\
41 1/190m Myas  42 1/190m Myas  62 1/190m Glegas  63 1/10m Glegas  64 1/10m Glegas  65 1/10m Glegas  66 1/10m Glegas  67 1/10m Glegas  68 1/10m Glegas  69 1/10m Glegas  60 1/10m Glegas  60 1/10m Glegas  60 1/10m Glegas  60 1/10m Glegas
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58 11. Am ally 10 78 11. Rm Colyne
59 14 Am olyper 79 11/80 Cylipse
Indicate compliance with a checkmark for each cell. Officer shall sign as verification the inmates

Indicate compliance with a check fark for each cell. Officer shall sign as verification the inmates were provided with a broom and mop (if needed) and paper towels to achieve a clean cell. Unit Officer will apply disinfectant or peroxide to the paper towels and the inmates will wipe down their cells. Paper towels will immediately be out into a trash bag. If additional comments are necessary, please use page two; be clear and concise when writing notes. THIS FORM IS TURNED IN BY THE DAYSHIFT BY 2:00 pm DAILY

Inmates shall not participate in out of cell activities if cells are not cleaned.



DATE: 5/15/2020 All Cell Cleaning will occur on the dayshift UNIT: NO
NOTES ON REFUSALS TO CLEAN CELLS, AND OTHER INTERRUPTIONS
A/B Card Officer's Signature <u>Allfred</u> Date <u>5-15-70</u>
Zone Supervisor's review and comments
Zone Supervisor's Signature 1+ Watur

# **ATTACHMENT 2**



# **Housing Unit Sanitation Checklist**

Print Name: _	Theenen	Signature:	1. freem
Unit:\$03		•	e: 5-15-20

Shift 8a.m. - 8p.m.

Areas to Be Sanitized	8:00am	10:00am	12:00pm	2:00pm	4:00pm	6:00pm
Inmate Telephones	Initial here to indicate you adhered to cleaning after each use					
(after each use)	(F	A·A	DD	A	- AA	DB .
Tables/Chairs/ Benches	N.	A-A	An	4	AA	DD.
All Door Knobs/Handles	午	A-A	AA	#	AA	DIE
T/V and Remote Controls	A	p-8	DA	A.	AR	DO
Video Visitation screen	Initial here	to indicate yo	ou adhered to	cleaning afte	er each use	^ <b>~</b>
and box (after each use)	F	AA	DA	#	AA	fo 1
All stair and tier railings	if	A-A	DA	A	AA	AD
Exercise Equipment/	Initial here	to indicate yo	ou adhered to	cleaning afte	er each use	
Pull-Up Bars (After each use)	TP	AM	<b>OA</b>	A :	AA	DP:
Unit Mail/Sick Call/IGP boxes	15	AB	DA	A'	AA	AB
Kiosk screen and box	Initial here	to indicate yo	u adhered to	cleaning after	er each use	
(After each use)	rs	ÀА	D17 -	#	##	HO

# **Cleaning Times:**

Initial each box under the time to indicate you completed the task.

Each shift shall turn this paperwork in with their shift packet. The Shift Captain will ensure the form is completed properly and a copy is scanned to The Deputy Warden and Ms. Amy Whitfield.

# **ATTACHMENT 3**

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# DC DEPARTMENT OF CORRECTIONS COVID-19 HOUSING UNIT CHECK LIST

Housing Unit	8W2	

COVID-19 Mandatory Questions	Responses (Yes/No)	Comments
Does the housing unit have cleaning agent	Yes X No □	
and equipment?	103/21/10	
Does the unit have hand sanitizer?	Yes No 🗆	
Are the unit's residents wearing masks?	Yes No □	
Are the unit's staff wearing masks and gloves?	Yes No □	
Any residents report feeling ill during your tour of duty? if so, were they referred to medical?	Yes 🗆 No 💢	
Was the housing unit cleaned inspected in accordance with DOC policies and guidelines?	Yes No □	
Was COVID-19 information shared and discussed during roll call?	Yes No 🗆	
Were all residents allowed to shower?	Yes X No □	
Did all residents have soap?	Yes No □	
Were all residents allowed 1 hour out of cell time (excluding isolation units)?	Yes No 🗆	•
Were residents reminded to social distance?	Yes No □	
Mandatory Form — This form should I	oe completed at th	e end of tour.
Officer in Charge/Senior Officer Print:	Officer i	n Charge/Senior Officer Sign Date: 5.14.20
Zone Lieutenant Print: VICM	Zone Lie	utenant Sign Date:Date

# **ATTACHMENT 4**

Housing Unit 5-18-20 PM	Time	Names	Notes
SO1	3:34	Cpl. Gause	Have all cleaning supplies, reported the housing units was sanitized.
SO2	3:35	Cpl. Gutierrez	Have all cleaning supplies, reported the housing units was sanitized.
SO3	3:36	Cpl. Freeman	Have all cleaning supplies, reported the housing units was sanitized.
SE2	3:38	Pv. Akanbi	Have all cleaning supplies, reported the housing units was sanitized.
SE3	3:39	Cpl. Clark	Have all cleaning supplies, reported the housing units was sanitized.
SW2	3:40	Officer Bembry	Have all cleaning supplies, reported the housing units was sanitized.
SW3	3:42	Officer Nwachukwu	Have all cleaning supplies, reported the housing units was sanitized.
N01	3:43	Melton	Have all cleaning supplies, reported the housing units was sanitized.
NO2	3:45	Cpl. Namato	Have all cleaning supplies, reported the housing units was sanitized.
NO3	3:46	Sgt. Jefferson	Have all cleaning supplies, reported the housing units was sanitized
NW1	3:49	Sgt. Wallace	Have all cleaning supplies, reported the housing units was sanitized.
NW2	3:50	Officer T. Jones	Have all cleaning supplies, reported the housing units was sanitized.
NE1	3:51	Officer Onikoro	Have all cleaning supplies, reported the housing units was sanitized.
NE2	3:51	Officer Adenuge	Have all cleaning supplies, reported the housing units was sanitized.
NE3	3:57	Cpl. Oyelami	Have all cleaning supplies, reported the housing units was sanitized

# **ATTACHMENT 5**

SHIFT A CORD

# DC DEPARTMENT OF CORRECTIONS COVID-19 HOUSING UNIT SUPERVISOR CHECK LIST

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JNIT		

COVID-19 Mandatory Questions	Responses (Yes/No)	Comments
Does the housing unit have cleaning agent and equipment?	Yes 🌣 No □	Chemical were picked up and are being used
Does the unit have hand sanitizer?	Yes ፟፟ No □	Container in control module and indayroom. Both Full.
Are the unit's residents wearing masks?	Yes 💆 No □	
Are the unit's staff wearing masks and gloves?	Yes ☒ No □	
Any residents report feeling ill during your round? if so, were they referred to medical?	Yes □ No 🄼	
Was the housing unit cleaned inspected in accordance with DOC policies and guidelines?	Yes X No □	Innates were allowed to clear inside their
Was COVID-19 information shared with the staff and residents on the unit?	Yes No □	Signs posted on unit giving CDC self protection
Were residents reminded to social distance?	Yes No 🗆	RH requires inmates to stay separated
Are recreation and shower activity taking place? (isolation units showers only)	Yes No □	Rec officers are conducting Rec.
Mandatory Form – This form shall be to your Deputy Warden.  Additional Comments:	e completed at the	end your unit rounding and will be emailed or delivered
	,	
Supervisor Print Name: LtM Watter	Superv	risor Sign H Water Date: 5/11/2020
Deputy Warden Review Landen-		Date 5/11/70 5/11/20

Case 1:20

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COVID-19 Mandatory Questions	Responses (Yes/No)	Comments		
Does the housing unit have cleaning agent and equipment?	Yes ☑ No □			
Does the unit have hand sanitizer?	Yes ☑ Nó □			
Are the unit's residents wearing masks?	Yes ☑ No □			
Are the unit's staff wearing masks and gloves?	Yes ☑ No ☐			
Any residents report feeling ill during your round? if so, were they referred to medical?	Yes ⊡ No ☑	NA.		
·				
Was the housing unit cleaned inspected in accordance with DOC policies and guidelines?	Yes ☑ No □			
Was COVID-19 information shared with the staff and residents on the unit?	Yes ☑ Nø □	·		
Were residents reminded to social distance?	Yes ₪/No □			
Are recreation and shower activity taking place? (isolation units showers only)	Yes √ No □	·		
Mandatory Form – This form shall be completed at the end your unit rounding and will be emailed or delivered to your Deputy Warden.  Additional Comments:				
Supervisor Print Name: H. H. Thwon of Supervisor Sign H. Ekwonnate: May 11, 2020				
Deputy Warden Review				