

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

QUINCY BOOTH, *et al.*,

Defendants-Respondents.

No. 1:20-cv-00849 (CKK)

AMENDED MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65 and Local Rule 65.1, Plaintiffs hereby move for the issuance of a preliminary injunction prohibiting Defendants (along with their respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them) from continuing to violate the Fifth and Eighth Amendment rights of Plaintiffs and all members of the class they seek to represent by failing to take necessary measures to protect them against infection with the COVID-19 virus and the likely resulting serious illness or death. Specifically, Plaintiffs request that the Court enter a preliminary injunction appointing an expert to make recommendations regarding how many and which class members to order released so as to ensure that the number of prisoners remaining at the CDF and CTF can be housed consistently with CDC guidance. Plaintiffs also request that the Court require Defendants to take certain steps regarding sanitation, access to legal counsel, facility-wide testing, and staff shortages, and to do so within five days of the Court's order.

This motion is based on the memorandum of points and authorities, declarations, and other evidence submitted herewith, and such oral arguments and evidence as may be presented at a hearing on the motion. The grounds for this motion are that Defendants' actions and inactions are

violating, and unless enjoined, will continue to violate, Plaintiffs' rights under the Fifth and Eighth Amendments to the Constitution of the United States; that Plaintiffs will suffer irreparable injury if the Defendants are not enjoined; that Defendants will not be injured if a preliminary injunction issues; and that the public interest favors the issuance of a preliminary injunction.

DATED: May 15, 2020
Washington, D.C.

Respectfully submitted,

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**PLAINTIFFS' MEMORANDUM IN SUPPORT
OF THEIR AMENDED MOTION FOR PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT

On March 30, 2020, when Plaintiffs filed for a preliminary injunction and a temporary restraining order, there were five positive COVID-19 cases among residents in Department of Corrections' ("DOC") care. Despite Defendants' assurances that "DOC has taken and continues to take extensive measures to ensure that the District's incarcerated population remains safe and secure amid this pandemic," Dkt. No. 25 at 2, the facts on the ground tell a different story. Today, there are 180 confirmed positive COVID-19 cases in DOC facilities — more than a twenty-five fold increase. The rate of infection in DOC facilities is over thirteen times greater than the rate of infection in the District of Columbia. One DOC resident died due to COVID-19, and another is on life support. Five DOC residents are in the hospital.

This dire situation need not have been the outcome. Just across the Potomac River, the Arlington County Detention Center (a high-traffic jail facility with around 500 residents) has recorded zero COVID-19 cases. In Arlington, the chief prosecutor, together with the county sheriff and the public defender, decreased the jail population by nearly a third, ensuring the space and

staffing levels to implement social distancing.¹ By contrast, the DOC resident population has been reduced by just one sixth (or half as much as Arlington’s) since this lawsuit was filed.

Rather than acting swiftly and decisively to prevent, and then to contain, a COVID-19 outbreak, Defendants moved slowly in responding to the global pandemic. As this Court concluded in issuing a temporary restraining order on April 19, 2020, DOC “fail[ed] to take comprehensive, timely, and proper steps to stem the spread of the virus.” Dkt. No. 51 (“TRO Op.”) at 22. In so concluding, the Court expressed significant doubts over whether DOC “policies are being fully implemented,” noting that “access to cleaning supplies varied,” that social distancing was not being enforced in part due to understaffing, and that “COVID-19 symptoms such as coughs and fevers” were not quickly attended to by medical staff. *Id.* at 17-20. The Court issued a temporary restraining order requiring Defendants immediately to remedy the unconstitutional conditions in their facilities. *See* Dkt. No. 50 (“TRO Order”).

Although nearly a month has passed since this Court’s order, many of the dangerous conditions that the Court ordered improved remain substantially unchanged. *Amici* Grace Lopes and Mark Jordan provided the Court with an oral report detailing just how little progress has been made. *See* Dkt. No. 69 (“*Amici* Oral Report”).

The Court’s April 19th TRO	<i>Amici</i> ’s May 11th Report
<u>Sick call responses:</u> “Correctional officers and other staff who are in contact with inmates should ensure that the medical staff are promptly informed about inmates who present with symptoms of COVID-19 and medical staff should respond to the housing unit on an expedited basis.” TRO Order at 1.	<i>Amici</i> reported a “lack of unimpeded access to [sick-call] forms,” that officers “were unable to consistently produce the [sick-call] forms readily,” and that due to “significant correctional officer staffing shortages,” residents have greatly reduced opportunities “to submit sick-call request forms to medical staff.” <i>Amici</i> Oral Report at 16-17.

¹ ARLNow.com, *Some Arlington Inmates Freed Amid Coronavirus Concerns*, May 7, 2020, 3:45 p.m., <https://www.arlnow.com/2020/05/07/some-arlington-inmates-freed-amid-continued-coronavirus-fears/>

The Court's April 19th TRO	<i>Amici's</i> May 11th Report
<u>Social distancing</u> : “Defendants shall ensure appropriate and consistent implementation of social distancing policies by addressing limitations in current staffing levels, supervisory oversight of line staff, and provide enhanced education related to the importance of social distancing.” TRO Order at 2.	<i>Amici</i> observed that social distancing “certainly is not prevalent, certainly not during our site visits,” and cited “staffing limitations,” which “undercut the ability to staff to enforce [social distancing].” <i>Amici</i> Oral Report at 43.
<u>Sanitation</u> : “[P]roper cleaning supplies that have been sanitized regularly shall be immediately provided to each unit, and a schedule for cleaning common areas and cells shall be established and enforced.” TRO Order at 2.	<i>Amici</i> reported that sanitation is “clearly especially deficient at the jail,” that residents are given “four or five paper towels,” that availability of cleaning supplies remains variable from housing unit to housing unit, and that residents “continue to rely upon the ripped towels and the ripped T-shirts” to clean their cells. <i>Amici</i> Oral Report at 41.
<u>Conditions on isolation units</u> : “[D]efendants shall take immediate steps to provide consistent and reliable access to legal calls, personal telephone calls, daily showers, and clean clothing and clean linens to all inmates on isolation status.” TRO Order at 2.	<i>Amici's</i> report noted that due in part to “staffing limitations,” some residents on isolation units “hadn’t been allowed to shower within the past couple of days,” that some jail residents on one corner of the isolation unit did not have reliable access to a phone, and that residents are locked in their cells for days on end. <i>Amici</i> Oral Report at 30, 34, 36.
<u>Access to legal calls</u> : “[D]efendants shall ensure that all inmates . . . have access to confidential, unmonitored legal calls of a duration sufficient to discuss legal matters.” TRO Order at 3.	<i>Amici</i> reported that “legal calls that are scheduled [by an attorney] are being conducted in the offices of case managers with the case manager present” and that other residents are only allowed to use the phone “at 1:00, 2:00, and 3:00 a.m.” <i>Amici</i> Oral Report at 33-34.

In sum, Defendants have responded to the Court’s Order in the same way they did to this global pandemic: slowly and insufficiently. The results of Defendants’ action and inaction are seen starkly in the data, which show that infections continue to climb in facilities that still house around 1,325 residents.²

² When the Court issued its TRO on April 19, 2020, there were around 1400 residents in DOC facilities.

In light of the imminent threat to the health of the proposed class of DOC residents and Defendants' lackluster performance both before and after the issuance of the TRO, greater relief is necessary to protect the health and safety of DOC residents. Accordingly, Plaintiffs urge the Court to join other federal courts around the country by implementing a process to safely transition a portion of DOC residents to community supervision. Faced with comparably less severe outbreaks in Ohio, California, Massachusetts, and Connecticut, federal judges have established procedures to ensure that vulnerable incarcerated people are carefully transferred out of unsafe correctional institutions and safely into supervised home confinement. *See Martinez-Brooks v. Easter*, No. 20-cv-569 (MPS), 2020 WL 2405350 (D. Conn. May 12, 2020); *Wilson v. Williams*, — F. Supp. 3d —, No. 20-cv-794 (JSG), 2020 WL 1940882 (N.D. Ohio Apr. 22, 2020), *aff'd*, *Wilson v. Williams*, No. 20-3447 (6th Cir. May 4, 2020); *Rivas v. Jennings*, — F. Supp. 3d —, No. 20-cv-2731 (VC), 2020 WL 2059848 (N.D. Cal. Apr. 29, 2020); *Savino v. Souza*, — F. Supp. 3d —, No. 20-cv-10617 (WGY), 2020 WL 1703844 (D. Mass. Apr. 8, 2020).

In accord with those other federal courts, this Court should adopt Plaintiffs' proposed preliminary injunction. Plaintiffs ask the Court not only to extend and expand its relief concerning conditions Plaintiffs face, but also to appoint an expert to assist the Court in carefully identifying and granting tailored petitions for *habeas corpus* that would permit a portion of DOC residents to be freed from their dangerous confinement and supervised instead in the community. This Court has the authority to improve the health and safety of proposed class members by using the writ of *habeas corpus* to transition supervision of some DOC residents to the community, or by using the legal tool known as "enlargement" to do so. Because COVID-19 presents a severe risk to the health and safety of the proposed class and because Defendants continue to act with deliberate

indifference to that risk in a manner that has led to a tragically high rate of infection, the Court should begin that process now.

FACTUAL BACKGROUND

As the Court knows, and as Defendants do not dispute, COVID-19 has caused a worldwide global pandemic and poses a serious risk of harm. At the time this case was filed, on March 30, 2020, the World Health Organization (“WHO”) estimated that there were 638,146 confirmed cases, 30,039 confirmed deaths, and 203 countries, areas, or territories affected. Dkt. No. 1 (“Compl.”), at ¶ 20. The Centers for Disease Control and Prevention (“CDC”) estimated that as of March 30, 2020, there were 122,653 confirmed cases and 2,112 confirmed deaths in the United States. *Id.* ¶ 21. Plaintiffs predicted in their initial filing that, due to the highly contagious nature of COVID-19, data and statistical modeling show that absent intervention, cases of COVID-19 will continue to grow exponentially. *Id.* ¶ 23

That prediction was unfortunately correct. As of May 15, 2020, the WHO estimates that there are 4,347,935 confirmed cases, 297,241 confirmed deaths, and 216 countries, areas, or territories affected.³ The CDC estimates that as of May 15, 2020, there are 1,384,930 confirmed cases and 83,947 confirmed deaths in the United States, with cases and deaths in all 50 states and the District of Columbia.⁴

People in all age brackets are at risk of serious illness and death from COVID-19. Reviewing data collected by the CDC, Dr. Marc Stern — an expert on correctional health care and a board-certified internist — explains:

³ See WORLD HEALTH ORG., *Coronavirus disease (COVID-19) Pandemic* (last visited May 15, 2020, 5:00 PM), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>.

⁴ See CTRS. DISEASE CONTROL & PREVENTION, *Cases in U.S.* (last visited May 15, 2020, 5:00 PM), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

Early reporting on the impacts of COVID-19, based in part on preliminary data emerging from China, seemed to indicate that the virus' impact would remain relatively mild for younger people. Recent data released by the CDC suggests that this initial narrative is incorrect, and that adults aged 20-44 also face a risk of experiencing severe health outcomes as a result of contracting the disease.

See Dkt. No. 1-1 (“Stern Decl.”) at ¶ 14. Nearly 40 percent of people requiring hospitalization due to COVID-19 were between the ages of 20 and 54. *Id.*

For people who contract COVID-19, the symptoms can be extremely severe. Dr. Meyer writes that “[s]erious illness occurs in up to 16% of cases, including death.” Dkt. No. 5-2, Ex. 1 (“First Meyer Decl.”), at ¶ 23. COVID-19 can cause intense pain, and recent research suggests that, in addition to the short-term risk of death posed by COVID-19, contracting the virus can lead to other serious long-term medical conditions, including cardiovascular disease. Compl. ¶ 27. One respiratory physician explained that the lungs “become filled with inflammatory material” and “are unable to get enough oxygen to the bloodstream.” *Id.* ¶ 25.

The available data from the CDC to date shows that, in total, 20.7 to 31.4 percent of people who tested positive for COVID-19 require hospitalization; 4.9 to 11.5 percent require admission to the ICU; and 1.8 to 3.4 percent die. Compl. ¶ 29. By way of comparison, the WHO estimates that the COVID-19 mortality rate is between three and four percent, while the mortality rate of seasonal influenza is well below 0.1 percent. *Id.* ¶ 30. Unlike the flu, however, there is no vaccine or cure for COVID-19. *Id.* ¶ 32.

ARGUMENT

A. Plaintiffs are likely to succeed on the merits.

The Court already found, in granting a temporary restraining order, that Plaintiffs are likely to prevail on the merits of their constitutional claims. Developments since the TRO was entered confirm that conclusion. As the number of DOC residents and staff who have tested positive for

COVID-19 continues to rise, and additional evidence sheds light on the unsanitary and unsafe conditions in Defendants' facilities, it is all the more clear that Plaintiffs are likely to succeed on the merits of their Fifth and Eighth Amendment claims.

1. Plaintiffs and proposed class members are likely to prevail on the merits of their constitutional claims.

Plaintiffs raise Fifth Amendment due process claims regarding pretrial detainees and Eighth Amendment claims regarding post-conviction detainees. To prevail under the Eighth Amendment, Plaintiffs must show that (1) prison conditions pose "an unreasonable risk of serious damage" to a prisoner's health (an objective test) and (2) prison officials acted with deliberate indifference to the risk posed (a subjective test). *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993). As this Court explained, a post-conviction Plaintiff "must show that the jail conditions exposed him to an unreasonable risk of serious damage to his health and that Defendants acted with deliberate indifference in posing such a risk." TRO Op. at 12.

To prevail under the Fifth Amendment, this Court has recognized, pretrial Plaintiffs "do not need to show deliberate indifference in order to state a due process claim for inadequate conditions of confinement." *Id.* at 11 (applying *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015)). A pretrial Plaintiff need only show that "Defendants knew or should have known that the jail conditions posed an excessive risk to their health." *Id.* at 12.

a. The Court correctly found that Plaintiffs were likely to prevail on the merits.

In granting the TRO, the Court found that Plaintiffs were likely to prevail on the merits of their constitutional claims. First, the Court found that Plaintiffs were likely to show that "they have been exposed to an unreasonable risk of damage to their health." *Id.* at 12. COVID-19 infection rates in DOC custody and the expert declaration of Dr. Jaimie Meyer both supported the

conclusion that Plaintiffs face an elevated risk of contracting COVID-19. *Id.* at 13. The Court also found that Plaintiffs cannot practice social distancing — “one of the most important risk-reduction policies” — in DOC facilities. *Id.* at 14. Citing *amici*’s first inspection report, the Court recognized that the failure to enforce social distancing was due, “at least in part, to an understaffing of correctional officers and their supervisors.” *Id.* at 14-15. In light of the statistical evidence, Plaintiffs’ expert evidence, the declarations of DOC inmates and staff, and the *amici* report, the Court concluded that Plaintiffs likely “will be able to show that they have been exposed to an unreasonable risk of damage to their health.” *Id.* at 15. That finding alone was sufficient to establish likelihood of success on the Fifth Amendment claim. *Id.*

The Court also found a likelihood of success on Plaintiffs’ Eighth Amendment claim. As Defendants were aware of the health threat posed by COVID-19, the central question before the Court was whether “Defendants have recklessly disregarded the risk to Plaintiffs’ health.” *Id.* at 16. The Court found that they had, citing a wealth of evidence casting doubt on whether precautionary measures contained in DOC policies were being implemented. *See id.* at 17-22. The Court relied on *amici*’s findings that “access to cleaning supplies varied from unit to unit,” that many residents relied on “rags that they made by tearing facility issued towels or t-shirts,” and that “cleanliness of common spaces [was] inconsistent among housing units.” *Id.* at 17-18. The Court took note of DOC’s failures to implement contact tracing and poor conditions on isolation units that discouraged residents from voluntarily self-reporting COVID-19 symptoms. *Id.* at 19-20. Finally, the Court’s conclusion regarding Defendants’ deliberate indifference was also supported by uncontested allegations (supported by independent audits) of the poor ventilation of DOC facilities, the lack of prompt access to medical attention, and the lack of access to confidential legal calls. *Id.* at 20-22. In sum, the Court concluded that “Defendants are aware of the risk that

COVID-19 poses to Plaintiffs' health and have disregarded those risks by failing to take comprehensive, timely, and proper steps to stem the spread of the virus." *Id.* at 22.

b. Even after this Court's Order, Defendants continue to violate Plaintiffs' constitutional rights.

The TRO, entered on April 19, directed the DOC to make several changes to the implementation of policy and procedure to rectify the unconstitutional conditions identified by the Court. Nearly a month later, however, it is clear from the statistical evidence, from *amici*'s follow-up report, from Plaintiffs' declarations, from evidence presented in Superior Court, and from information from DOC staff members, that conditions in DOC facilities do not satisfy constitutional standards or this Court's order. Many of the problems identified by the Court in its April 19, 2020 Order, including access to medical care, enforcement of social distancing, understaffing, and sanitation remain seriously deficient and are arguably worse than before the Court's Order.

Expert Jaimie Meyer agrees. Having reviewed *amici*'s oral report from May 11, 2020, as well as *amici*'s written report from April 18, 2020 and declarations from DOC residents, Dr. Meyer "reaffirm[s] that people living and working in DC DOC facilities remain at risk of serious harm due to COVID-19 infection." Ex. 1, Supp. Meyer Decl. ¶ 3. Dr. Meyer identifies "major and pervasive system-level deficits" that, as described below, put Plaintiffs' and proposed class members' lives at risk. *Id.*

i. Medical care

First, inconsistent access to medical care continues to pose a risk of serious harm to all DOC residents. The Court recognized in April that residents who "have requested medical aid for COVID-19 symptoms report long waits for medical care, testing, or separation from the general population." TRO Op. at 20. Accordingly, the Court required that the "process associated with

sick call requests on the non-quarantine units is expedited and reflects appropriate sensitivity to the wide variety of symptoms associated with COVID-19 disease.” TRO Order at 1.

In spite of the Court’s order, *amici* found in their follow-up investigation that medical access on non-quarantine units is plagued by a host of problems. To request medical care, residents must submit a sick-call request form, and those forms are maintained by housing unit correctional staff. *Amici* Oral Report at 16. Residents can get a form only by requesting one from a correctional officer. *Id.*

This system suffers from several systemic flaws that result in the ineffective provision of medical care. To begin, while the system relies on residents being let out of their cell to obtain a sick call request slip from a housing staff member, *amici* have reported that “two to three days can elapse between an inmate’s release for their hour out-of-cell time.” *Id.* at 17. Further, staff training on this system is minimal: When *amici* inspectors themselves asked correctional officers for a form, “officers were unable to consistently produce the forms” and “[i]n one case, an officer upon request gave us the wrong form.” *Id.*

Even when a resident is able to obtain and submit a sick call slip, additional days can elapse before a medical staff person follows up on the request for help. In a third of slips analyzed by *amici*, it took three or more days after a resident requested help for medical staff to respond. *Id.* at 19. One resident was made to wait over a week after submitting a request for medical help before he was seen. *Id.* Of particular concern, *amici* documented this pattern of delay for COVID-19-related symptoms, including coughing, shortness of breath, loss of taste, and fever; two-thirds of those requests were not responded to until over two days after they were submitted. *Id.* at 20. Two residents who requested care for COVID-19 related symptoms were not seen until “four [and five] days after the request was submitted,” and one subsequently tested positive. *Id.* There is no

way to know how many residents were infected with COVID-19 in the four days while that resident awaited constitutionally-mandated care.

Each of *amici*'s concerns about the sick call process are echoed in the declarations of DOC residents. Brian Thomas was admitted to the Central Detention Facility ("CDF") on April 27th, and since that date, "there have been 4-5 days that [he is] not allowed out of [his] cell." Ex. 2, Thomas Decl. ¶ 16; *see also* Ex. 3, Jenkins Decl. ¶ 10 ("I would go several days [between April 13 and May 1] without being allowed out of my cell for my one hour of recreation time."). Even when residents are allowed out of their cell, obtaining a sick call form can be impossible. "Last week they ran out of sick slips on Northwest-2," so no residents of that entire housing unit were able to use the sick call system. Ex. 4, Perry Decl. ¶ 8; *see also* Ex. 30, Knight Decl. ¶ 5 ("Sick call slips and Inmate Grievance Procedure forms were not . . . available on my unit between the dates of April 23, 2020 and May 12, 2020."). The problem is not limited to the CDF; the C2B block at the Correctional Treatment Facility ("CTF"), which houses residents over 50 years old, "had no sick call slips or inmate request slips available" for "the entire week of May 4, 2020." Ex. 5, Stankavage Decl. ¶ 15. Even when residents are let out of their cells, and even when there are sick call slips available, residents face another hurdle to accessing medical care, because staff do not reliably collect the sick call slips that are submitted. On one unit at CTF, "nobody picked up sick call slips that inmates submitted" between March 26 and April 24. *See* Ex. 6, Jagers Decl. ¶ 13. In sum, residents face obstacles both in obtaining sick call slips and in submitting them, and even when residents overcome those systemic obstacles, they face significant delays in actually obtaining care.

This broken system has surely led to, and will continue to lead to, increased spread of the virus within DOC facilities. LeDauntae Perry's experience is representative. Mr. Perry began

exhibiting symptoms of COVID-19 in early April 2020; he put in a sick call request and was given an inhaler and antibiotics for what a doctor described as a “sinus infection.” Ex. 4, Perry Decl. ¶ 4. His symptoms did not improve, and he requested “to see a doctor three times by submitting a sick slip.” *Id.* ¶ 7. Although he put the slips in the right box, he “didn’t see correctional officers or anyone else empty the sick slip boxes,” and no medical staff responded to his requests. *Id.* When another resident on his housing unit tested positive, his unit became a “quarantine unit,” and nurses came to check residents’ temperatures. *Id.* ¶ 9. For weeks, Mr. Perry “repeatedly tried to get medical attention by asking corrections officers and the nurses who took [his] temperature for help.” *Id.* ¶ 13. “I was asking every day for help. There were no sick slips for me to put in a request for medical attention.” *Id.* Finally, on May 4 —after weeks of symptoms — Mr. Perry was tested for COVID-19 and his results came back positive on May 7. *Id.* ¶¶ 14, 17. During the weeks Mr. Perry begged daily for help, he shared a cell with another resident. *Id.* ¶ 16.

Mr. Perry’s experience closely parallels that of Romiel Hightower, who was housed on a different housing unit than Mr. Perry. Mr. Hightower’s cellmate tested positive on April 10, and Mr. Hightower requested a test that day but was denied. Ex. 7, Hightower Decl. ¶ 4. Shortly after his cellmate tested positive, Mr. Hightower began exhibiting symptoms of COVID-19 and put in “three medical requests and a grievance but was never taken for a test.” *Id.* ¶ 5. He asked “every medical staff who came by and all the guards for a COVID test, [but] no one gave me one.” *Id.* Remarkably, and in violation of CDC guidelines and DOC policy, Defendants returned Mr. Hightower’s cellmate to his cell. It was only after a Superior Court judge ordered DOC to test Mr. Hightower (remarking that returning Mr. Hightower’s positive cellmate to his cell is “not compliant with the CDC” guidelines) that Mr. Hightower was tested. *See* Ex. 8, Hightower Transcript at 26. His test came back positive. Ex. 7, Hightower Decl. ¶ 7.

Residents who are on quarantine units — that is, residents who are presumed to have been exposed to COVID-19 — fare little better. Residents on those units have their temperatures checked daily, but otherwise must rely on the sick call system to report medical issues; residents are *not* tested or offered treatment during the temperature check. For instance, Eric Cooper was having “trouble breathing” and was “coughing a lot,” but despite putting in “multiple sick call requests,” the only medical staff he saw was for his temperature check. Ex. 10, Cooper Decl. ¶ 8. “That person only checked my temperature but did not do anything else to help me.” *Id.*; *see also* Ex. 4, Perry Decl. ¶ 9 (“Nurses come around our unit twice a day to check every inmate’s temperature. I would tell the nurses that I feel sick. The nurses would say my temperature is fine and they didn’t help me get seen by a doctor.”). Another resident “was complaining for days” that he was feeling ill before he was given a test. Ex. 31, Rezeine Transcript at 21. That resident was later found sweating profusely in his cell and required emergency transportation to the hospital. *Id.* at 20.

Dr. Meyer explains the critical, and potentially fatal, flaw in this system. It is “highly problematic” to use “fever [as] the sole trigger for testing,” because “people infected with COVID-19 may exhibit a wide range of symptoms which, according to the CDC include: cough, shortness of breath,” and other symptoms. Ex. 1, Supp. Meyer Decl. ¶ 5; *see also* Ex. 9, K. Johnson Decl. ¶ 5 (reporting that medical staff refused to “test anyone for COVID-19 who didn’t have a temperature over 100 degrees”). In other words, as Dr. Meyer explains, by not testing residents who present with symptoms other than fever, the DOC is keeping many infected residents on housing units where they can easily spread the virus to others.

ii. *Enforcement of social distancing*

Second, the DOC's failure to enforce social distancing continues to contribute to the rapid spread of the virus in Defendants' facilities. The Court explained in granting the TRO that "one of the most important risk-reduction policies which has not been adequately addressed by Defendants is social distancing." TRO Op. at 13. Social distancing is a "crucial part of containing the spread of COVID-19," as evinced by both expert reports and the dramatic transformation of our society. *Id.*

Since the Court's April 19th Order, the DOC has made little progress towards fully implementing social distancing. Although *amici* recognized that there is "increased evidence of social distancing," *amici* concluded that social distancing "is not prevalent" and "certainly [was] not during [their] site visits." *Amici* Oral Report at 42. As they observed with their initial inspection report, *amici* noted that "staffing limitations . . . undercut the ability of staff to enforce [social distancing] when there are an insufficient number of staff on the housing units." *Id.* at 43.

Reports from DOC residents confirm *amici*'s evaluation. Brian Thomas entered the DOC on April 27, and since he has been at the CDF, "nobody told [him] to social distance [him]self from other people. Nobody has told [him] to stay six feet away from other people." Ex. 2, Thomas Decl. ¶ 17. Tony Horne, who is housed on a different unit, explains that on his unit, "more than 5 people are being let out of their cells at a time. Sometimes more than 10 people are let out of their cells at one time." Ex. 11, Horne Decl. ¶ 9. Officers do not enforce "when people are supposed to be allowed out of their cells," resulting in residents who "are out for multiple hours at a time." *Id.* ¶ 10.

Video footage from DOC facilities also confirm *amici*'s evaluation. Footage from CDF shows around ten residents are seen out of their cells at a given times; residents are seen clustering

closely together near telephones (which are not spaced six feet apart); and residents are seen interacting with DOC staff members in close groups. *See* Ex. 32, Photos.

Conditions in DOC facilities also force residents into violating basic social distancing rules. On May 12, 2020, DOC staff crammed a dozen “residents from various units” into an elevator at CTF to take the residents to the medical unit. Ex. 5, Stankavage Decl. ¶ 3. When they arrived at the medical unit, approximately 15 to 20 residents were waiting in a small room to be seen by medical staff. *Id.* ¶ 6. The next day, on May 13, 2020, at least 10 residents were waiting in that same room. *Id.* ¶ 9. Whether by dint of facility design or lack of enforcement, DOC residents are forced to violate social distancing rules that are fundamental to curbing the spread of the virus.

Compounding the risk associated with DOC’s failures regarding social distancing is DOC’s evident difficulty complying with CDC guidelines regarding quarantining and isolating residents who have tested positive. In addition to erroneously returning a resident who tested positive to Mr. Hightower’s cell, as discussed above, DOC has also failed to ensure that residents who could be positive are isolated from other residents. For instance, people who are tested for COVID-19 (who, per DOC policy, have exhibited symptoms of COVID-19) are supposed to be isolated until their test results are available. However, on the Northeast 1 unit at CDF, correctional officers have on multiple occasions let those residents awaiting test results out of their cells at the same time as residents who were not symptomatic. Ex. 12, D. Johnson Decl. ¶ 14. In fact, one resident of the Northeast 2 unit himself explains that he was tested for COVID-19 on April 16, and while awaiting the result of the test, the next day (in violation of DOC policy) was “allowed out of [his] cell even though [he] was supposed to be on quarantine.” Ex. 33, Swint Decl. ¶ 11; *see also* Ex. 34, Banks Decl. ¶¶ 11-12 (recounting that around May 5, “[w]hile awaiting the results of his COVID-19, [an] individual remained on the unit like everyone else and I saw this individual

participate in recreation.”). Other times, correctional officers let residents awaiting test results out of their cells and then failed to clean any of the common areas or showers after those residents used them. Ex. 12, D. Johnson Decl. ¶ 15.

This problem is not isolated to Northeast 1. Anthony Robertson, housed on Northwest 2, was tested for COVID-19 on April 20 and was moved to a single cell, but he was let out for recreation “with everyone else” while awaiting the results of his (positive) COVID-19 test. Ex. 13, Robertson Decl. ¶ 6. Nor is the problem limited to CDF; on the C2B block at the CTF — the block for people age 50 and older — eight to ten people have been let out at a time, and residents sit next to each other or stand together near the microwave, and staff members do not attempt to enforce or inform residents about social distancing. *Id.* ¶ 6. On the D2B block at CTF, “five or six people” crowd into the TV room, but staff do “not say anything or attempt to enforce social distancing.” Ex. 14, Ingraham Decl. ¶ 43.

In a particularly concerning case, DOC staff reported encountering a resident on Northwest 1 who had tested positive for COVID-19 the previous day, and through some administrative error, had not been moved to the isolation unit until the next day, when correctional officers encountered that resident “laying on his bunk sweating profusely.” *See* Ex. 15 (“DOC Docs.”), at 1. The resident was immediately transported to the hospital by ambulance. *See id.* In other words, this symptomatic and positive resident remained on his general population housing unit for nearly an entire day because he was not taken to the isolation unit. This problem is not an isolated occurrence, as another DOC resident reported that he tested positive for COVID-19 but was not moved to the isolation unit until the following day. Ex. 13, Robertson Decl. ¶ 7. When he told a doctor that he had tested positive and needed to be transferred to the isolation unit, the doctor responded that he “couldn’t be positive because [he] would have been moved already.” *Id.*

Further, despite DOC's assurances that residents in isolation are returned to the general population if their COVID-19 symptoms are decreasing, the DOC has released residents from isolation who are clearly still symptomatic. For instance, Anthony Robertson was told his "time [was] up" on the isolation unit and that he would be moved back to the general population, even though he had "coughed up blood that morning." Ex. 13, Robertson Decl. ¶ 18. Another resident on the isolation unit "was still experiencing symptoms of COVID-19" when he was told that the DOC was "going to send [him] back to the general population because they needed the cell for other inmates who had tested positive." Ex. 11, Horne Decl. ¶ 4.

The dangerous combination of DOC's failure to enforce social distancing and its errors regarding quarantine and isolation — specifically, failing to isolate residents who have tested positive and should not be returned to the general population, and failing to separate residents who are symptomatic and/or awaiting test results from non-symptomatic residents — has resulted in, and will continue to result in, the rapid spread of the virus throughout DOC's facilities. "Given that COVID-19 is a highly contagious virus spread by droplets within close contact, the disease will continue to spread in facilities where social distancing is not enabled." Ex. 1, Supp. Meyer Decl. ¶ 8.

iii. Sanitation

Amici and the Court agreed that there "is a critical need for the defendants to strengthen the environmental health and safety program at both the CDF and the CTF." TRO Order at 2. The need to improve sanitation in DOC facilities was so great that *amici* and the Court recommended that DOC "immediately retain a registered sanitarian to oversee the environmental health and safety programs at both facilities and provide training so that cleaning tools and products are used properly." *Id.* at 2.

No sanitation has been retained, and the sanitation program has not improved. In April, residents used “tattered and soiled rags that they made by tearing facility issued towels or t-shirts.” *Id.* at 18 (quotation marks omitted). Today, residents “continue to rely upon the ripped towels and the ripped T-shirts” for cleaning. *Amici* Oral Report at 41. *Amici* emphasized that this problem was “[a]bout the same” as previously reported. *Id.* at 44. In April, *amici* reported that “access to cleaning supplies varied from unit to unit.” TRO Op. at 17. Today, *amici* report that the availability of cleaning supplies is “not uniform from housing unit to housing unit.” *Amici* Oral Report at 41. *Amici* concluded that appropriate sanitation is a “continuing issue at both facilities” and “clearly especially deficient at the [CDF].” *Id.*

Residents’ reports confirm that sanitation is clearly deficient. The DOC opened the North 2 housing unit at CDF as an isolation unit for the increasing number of CDF residents who test positive for COVID-19. That unit “had not been used to house inmates for years,” and when COVID-19-positive residents were moved to the unit, it was “noticeably filthy,” with “feces stains on the walls.” Ex. 16, Burl Decl. ¶ 6; *see also* Ex. 17, Ex. 17, Quarles Decl. ¶ 6 (“The floor is extremely dirty. There is trash on the floor that inmates toss onto the tier through the food slot in their doors.”). The showers on multiple housing units are dirty. *See, e.g.*, Ex. 35, A. Jackson Decl. ¶ 4 (“I saw there was blood and mold throughout the shower area.”); Ex. 13, Robertson Decl. ¶ 15; Ex. 2, Thomas Decl. ¶ 15. Multiple housing units lack cleaning supplies. *See, e.g.*, Ex. 14, Ingraham Decl. ¶ 47 (“On April 27, our unit [D2B] ran out of cleaning supplies.”); Ex. 16, Burl Decl. ¶ 8 (“I have not been provided any cleaning supplies to clean myx cell on N2.”); Ex. 12, D. Johnson ¶ 5 (“During the period from April 22, 2020 to May 8, 2020 I did not have access to any chemicals to clean my cell.”); Ex. 18, Toran Decl. ¶ 9 (“I am not provided supplies to clean sinks

or toilets.”); Ex. 17, Quarles Decl. ¶ 17 (“I have received no cleaning solution since my transfer to the medical unit on March 11, 2020.”).

The conditions for residents who are confined to safe cells⁵ are even more concerning. Those residents are supplied with no running water whatsoever: “Feces and other bodily waste remain in the toilet until the Correctional Officers come in to flush it manually,” which can take several hours. Ex. 20, Doe Decl. ¶ 6.⁶ Residents in a safe cell are “not allowed out of [their] cell,” are left in their cells with lights on full brightness for 24 hours a day, are allowed to shower roughly once a week, and lack any access to any supplies to clean their cell with. *Id.* ¶¶ 3, 4, 16.

Residents lack access to effective cleaning supplies. Residents are cleaning with “Oasis Pro Laundry Fresh Room Refresher,” *see* Ex. 20, Warren Decl. ¶ 7, a product that Dr. Meyer explains does “not have activity against and is not approved for disinfection for COVID-19. Ex. 1, Supp. Meyer Decl. ¶ 11. Incredibly, residents are using that product — which is more akin to a scented room spray than a hygienic product — to clean and decontaminate cells of residents who tested positive for COVID-19. *See* Ex. 20, Warren Decl. ¶ 21 (“When I cleaned the contaminated cells, I was only provided with the cleaner I always use (“Oasis Pro Laundry Fresh Room Refresher”)).

When residents do have access to cleaning supplies, they still are not informed about what kind of cleaning agents should be used and how to use them. Dkt. No. 49-1, (“*Amici* Initial Report”), at 30 (“It was evident that knowledge regarding the appropriate use of the different cleaning and sanitizing agents was generally at a very low level.”); *accord* Ex. 14, Ingraham Decl. ¶ 44 (“Since April 19, my unit has not received any instructions on which cleaning chemicals to

⁵ Safe cells house residents who are placed on suicide watch.

⁶ For fear of retaliation, this declarant did not want to supply his real name or cell number, but would consider doing so upon request.

use on which surfaces.”); K. Johnson Decl. ¶ 18 (“Since April 19, no verbal presentations or town hall meetings have occurred addressing COVID-19.”). Nor are officers — whether due to understaffing or other reasons — supervising cleaning. While detail residents are supposed to clean common areas twice daily, “detail inmates would actually clean the common areas between 2-3 times a week, as opposed to twice a day.” Ex. 35, A. Jackson Decl. ¶ 8.

The poor sanitation at the jail contributes in myriad ways to the spread of the virus. Without proper cleaning products, the virus lingers on surfaces, allowing it to spread rapidly in confined environments like the D.C. jail. Ex. 1, Supp. Meyer Decl. ¶ 11. “Cleaning and disinfecting practices can mitigate this risk of disease transmission but remains inadequate in the DC DOC.” *Id.* By failing to retain a sanitarian immediately or hire professional cleaners to clean the secure side of the jail, and by failing to provide adequate and appropriate cleaning supplies and instruction, Defendants have increased the risk that residents will contract COVID-19.

iv. Punitive conditions on isolation units

This Court recognized that “punitive conditions for [residents] in isolation are not acceptable,” not just because they are unconstitutional themselves, but also because they “make it more likely that inmates will hide their symptoms to avoid the potential for isolation and continue to infect others in the general population.” TRO Op. at 21-22. The Court, therefore, ordered Defendants to “provide consistent and reliable access to legal calls, personal telephone calls, daily showers, and clean clothing and clean linens to all inmates on isolation status.” TRO Order at 2.

But conditions on the isolation unit at CDF are still punitive, discouraging residents from self-disclosing COVID-19 symptoms for fear of being sent to the unit. Reports from that unit are disturbing, to say the least. The unit features “feces stains on the walls” of the common areas and in cells. Ex. 16, Burl Decl. ¶ 6; *see also* Ex. 13, Robertson Decl. ¶ 9 (“[W]hen I got to my isolation

cell on N2, it had not been cleaned and was still dirty from the previous person.”). There is no hot water in the sinks, *see* Ex. 7, Hightower Decl. ¶ 9, and food on the unit is “often served hours after regular mealtimes,” Ex. 16, Burl Decl. ¶ 7, or not at all, *see* Ex. 13, Robertson Decl. ¶ 12 (reporting that residents on the isolation unit sometimes missed meals altogether). As the *amici* report, residents in isolation do not have consistent access to showers, with some going days without access. *Amici* Oral Report at 34; *accord* Ex. 9, K. Johnson Decl. ¶ 10 (“I went six days [on the isolation unit at CTF] without being permitted to shower.”); Ex. 7, Hightower Decl. ¶ 9 (“I had many fewer opportunities to shower [on the isolation unit at the jail], only once every three or four days after lots of complaining.”); Ex. 13, Robertson Decl. ¶ 10 (“Between April 23rd and April 28th [on the isolation unit at CDF], I was not able to shower.”). Access to the phone on the isolation units is also sporadic. *See* Ex. 7, Hightower Decl. ¶ 9 (“I . . . couldn’t use the phones every other day or third day [on the isolation unit at the jail].”); *Amici* Oral Report at 30 (explaining that the rolling phone cart for residents on the isolation unit “were not available to inmates on one segment of the housing unit”).

Poor sanitation and lack of access to cleaning supplies also deters some residents from identifying symptoms for fear of being sent to the isolation unit. One resident who spent 14 days on an isolation unit reports that “[d]uring the 14 days in [isolation], [he] did not receive any soap” or “clean clothes.” Ex. 33, Swint Decl. ¶¶ 18-19. Nor are residents in isolation allowed to use the mail. *Id.* ¶ 22.

Defendants are also not disinfecting materials that pass between isolation units and general population units, fueling the spread of the virus in the facility. Kenard Johnson, a 54-year-old resident at CTF, tested positive for COVID-19 on April 12, 2020, and was instructed to take his “sheets, mattress, and clothes with [him]” from his housing unit into the isolation unit. Ex. 9, K.

Johnson Decl. ¶ 10. A week later, Mr. Johnson was returned to his same housing unit, and he “took [the] same sheets, mattress, and clothing with [him] from isolation to [his housing unit],” even though they “had still not been washed since [he] had tested positive for COVID-19.” *Id.* ¶ 12. Weeks later, he is still using the same sheets since he tested positive. *Id.*

These conditions not only spread the virus themselves, they also discourage residents from reporting symptoms for fear of transfer to a punitive housing unit. Without improved conditions in the housing units for residents who test positive, some residents will avoid seeking help when they need it, putting not only themselves but also their cellmates and their entire housing unit at risk. In spite of this Court’s April 19 Order, DOC has not taken the necessary steps to improve conditions on isolation units.

v. *Legal call access*

The Court ordered Defendants to “ensure that all inmates . . . have access to confidential, unmonitored legal calls of a duration sufficient to discuss legal matters.” TRO Order at 3. As *amici* and residents report, that has not happened.

Residents have two options to speak to their lawyer: they can call their attorney from a phone on their housing unit, or their attorney can prearrange a legal call that is provided from a housing correctional officer’s phone. Neither mechanism complies with the Court’s order.⁷

First, before residents can make a call from the housing unit phone, they have to be let out of their cells. But as *amici* observed, residents are frequently locked in their cells for days at a time without any ability to use the housing unit phone. *Amici* Oral Report at 17 (“[I]nmates do not receive an hour out of their cells daily.”); *see also, e.g.*, Ex. 3, Jenkins Decl. ¶ 10 (“While I was

⁷ *Amici* report that some residents on isolation status have access to a rolling cart that does permit those residents to make an unmonitored legal call from their cell. *See Amici* Oral Report at 29-30.

on South 2 [between April 13 and May 1], I would go several days without being allowed out of my cell.”); Ex. 34, Banks Decl. ¶ 5 (resident declaring on May 13 that “this week, I received one hour of recreation on May 10, 2020. I have not had another day of recreation this week yet.”). Even when residents are let out of their cells, as *amici* report, they are often let out in the middle of the night when a legal call (or any call at all) is not feasible. *See Amici Oral Report* at 33; *see, e.g.*, Ex. 10, Cooper Decl. ¶ 13 (“Sometimes I am not let out for my hour of recreation time. Sometimes when they do let me out it is done at 3:00 in the morning so I cannot call my family or attorney.”); Ex. 22, Phillip Decl. ¶ 5 (“When we are let out of our cells for an hour it is often in the middle of the night.”). On top of that, calls from the housing unit phone are not confidential and are overheard by other jail residents and staff on the housing unit. *See Ex. 10, Cooper Decl.* ¶ 20 (“If I am able to make a call from the unit phone, it is not a private, confidential call. Other inmates on the unit and the guards can all hear my half of the conversation.”).

The second mechanism — calls initiated by attorneys and placed in the case managers’ offices — also do not comply with the Court’s order, because they are not confidential. *Amici* confirm that calls “are being conducted in the offices of case managers with the case manager present.” *Amici Oral Report* at 33; *see also, e.g.*, Ex. 9, K. Johnson Decl. ¶ 16 (“On April 27, 2020, I had a legal call in the case manager’s office. The case manager was sitting right there during the legal call and could hear the conversation.”). Access to these calls is also spotty, because, as the Court noted in its order, “[t]elephone calls in confidential settings are generally organized by DOC case management staff; however, most of those staff are either on quarantine or working remotely.” TRO Op. at 22.

Simply put, Defendants are not complying with the Court’s Order of April 19 requiring Defendants to “ensure that all inmates . . . have access to confidential, unmonitored legal calls of a duration sufficient to discuss legal matters,” TRO Order at 3.

vi. *Understaffing*

Underlying nearly all of the above deficiencies — in enforcing social distancing, in providing medical care, in scheduling legal calls, in sanitation — is the chronic and severe understaffing of DOC facilities. *Amici*’s initial report revealed that understaffing across DOC posts was a significant hindrance to the effective implementation of policies and procedures to contain and treat COVID-19. *Amici* reported that “[t]he failure to enforce social distancing requirements is a supervision deficit . . . [that] appears at least in part to be attributable to significant understaffing of correctional officers and their supervisors at both facilities.” *Amici* Initial Report at 20. The implementation of the “urgent care system” also depends on “the availability of escort staff [and] willingness of correctional officers to facilitate calls to medical staff while they perform other duties on the unit.” *Amici* Initial Report at 10. The Court agreed, explaining that “[u]nderstaffing during a crisis situation such as the COVID-19 pandemic makes it difficult to enact and enforce the necessary precautionary measures,” TRO Op. at 15, and ordering Defendants to “address[] limitations in current staffing levels [and] supervisory oversight of line staff,” TRO Order at 2.

In spite of the Court’s Order, understaffing persists. *Amici* observed, consistent with staff and managers’ reports, “that [DOC is] currently staffing lower than the levels that they normally staff at because they do not have sufficient staff.” *Amici* Oral Report at 23. Housing units that “normally have five or even six correctional officers . . . have three or four correctional officers” staffing the entire housing unit. *Id.* As noted above, in addition to affecting the enforcement of

social distancing, these “significant correctional officer staffing shortages” also pose a barrier to accessing medical care, as residents rely on housing unit correctional officers to pass out and collect sick call slips. *See id.* at 17. Dr. Meyer explains how chronic understaffing can be deadly for DOC residents. “Even the most comprehensive protocols and policies that are informed by science are totally meaningless if not implemented, enforced, and continuously monitored. Implementation will be challenging if not impossible in DC DOC, which is strained by severe understaffing.” Ex. 1, Supp. Meyer Decl. ¶ 12.

Reports from DOC staff members themselves reveal just how dire the staffing situation is. On May 3, 2020, one housing unit at CDF had *just one officer* working on the housing unit. *See* Ex. 15, DOC Docs. at 10. Staff members report working unconscionably long shifts — over 24 hours — during which they cannot possibly complete all of their job responsibilities. *See id.* at 6 (reporting that two officers were on duty “for 25 hours” and requesting relief “as soon as possible because we are very tired and exhausted”); *id.* at 4-5 (listing six correctional officers who worked over 24-hour shifts on April 26); *see also id.* at 8 (officer reporting that he had worked over a 16-hour shift on a housing unit without a single break). On May 4, an officer worked a 22-hour shift without relief, collapsed on the floor of the housing unit, and was rushed to the hospital. *Id.* at 13.

The chronic understaffing in DOC facilities, which would be a crisis in any context, creates particularly dangerous conditions for DOC residents now. Residents who are positive for COVID-19 rely on frequent checks from correctional officers to ensure that their symptoms do not rapidly escalate — a crucial function, as the CDC advises that “some patients . . . rapidly deteriorate one week after illness onset.”⁸ Nevertheless, residents report a critical lack of staffing on units housing

⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)* (2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

positive residents: “On May 2, 2020 I was having difficulty breathing. I tried to get the attention of a correction officer for multiple hours. No one walked the unit and no one came to check on me.” Ex. 11, Horne Decl. ¶ 3(m).⁹

Residents who have medical conditions other than COVID-19 also face severe health risks because of understaffing. Residents are routinely told that medical issues that are not directly related to COVID-19 cannot be addressed during the pandemic. One resident’s “tonsils started hurting in April,” with the “pain as a 4 on a scale of 1-10.” Ex. 23, Randolph Decl. ¶ 8. Medical staff informed him that his tonsils needed to be removed, but they could not perform the operation “because of COVID-19.” *Id.* ¶ 8. Now, weeks later, the pain is a “10,” Mr. Randolph “cannot sleep because of the pain,” and it “hurts to speak.” *Id.* “I am almost in tears right now because of how much it hurts to speak.” *Id.* Other chronic conditions, such as kidney disease, have been ignored while medical resources are stretched too thin. *See* Ex. 24, Miller Decl. ¶¶ 3-4 (a resident with “sharp pains near [his] kidneys” was removed from the list of residents who needed to see medical staff because “there were too many people” on the list); *see also* Ex. 36, Howard Decl. ¶ 13 (“[M]edical told me I needed teeth pulled but that they would not be able to pull my teeth until after COVID-19 was over.”). One man who had an MRI related to a diabetic condition on March 20 was completely unable to see his physician for a month following the MRI. Ex. 6, Jagers Decl. ¶ 14.

Dr. Meyer explains that neglecting conditions other than COVID-19 actually increases the risk of death or serious illness when residents contract COVID-19. Not only does understaffing

⁹ This problem is compounded by correctional officers’ fear of contracting the virus: “Some correctional officers refuse to come near me and other inmates who have tested positive for COVID-19. A female correctional officer ordered me and other inmates to stay away from her and stated, ‘stay away, y’all got that shit’ in a dehumanizing fashion.” Ex. 16, Burl Decl. ¶ 10.

“result in undue negative health outcomes related to chronic health conditions, but also increased risk of complicated COVID-19 infections for people living with underlying health conditions like diabetes, chronic lung disease, heart disease, and kidney disease.” Ex. 1, Supp. Meyer Decl. ¶ 13.

Understaffing may also contribute to disciplinary issues between residents and staff. As *amici* report, and DOC officers confirm, officers are tired and forced to work overtime — factors that contribute to disturbances in the facility. *Amici* Oral Report at 37. Disturbances, in turn, can impede access to medical care. *See id.* at 25 (noting times when “an incident . . . precluded the [medical] provider from entering the unit”). These incidents also result in the use of mace against residents, which contributes to violent coughing. DOC officers used mace to resolve “an argument with a CO over toilet paper,” Ex. 13, Robertson Decl. ¶ 16; when they perceived a resident as talking on the phone too long, Ex. 25, Barksdale Decl. ¶ 7; and when they perceived a shower as taking too long, Ex. 26, Lucas Decl. ¶ 6. The use of mace on quarantine units, where some residents have been exposed to COVID-19, is commonplace. *See, e.g.*, Ex. 27, Moseley Decl. ¶ 9 (“On April 27, 2020, corrections officers used mace on an inmate in the quarantine unit who was also positive for COVID-19. On April 30, the day I was released, eight people got maced, including myself.”); Ex. 28, P. Johnson Decl. ¶ 8 (“On or about May 1, 2020, a person was maced on my unit. I could smell the mace for days. It had me coughing and makes my nose and throat scratchy.”). The use of mace on isolation units, where residents are positive for COVID-19 and already facing respiratory challenges, is also concerning. *See* Ex. 11, Horne Decl. ¶ 3(n) (“On April 30, 2020, correctional officers sprayed mace in the [isolation] Unit, which made it even harder to breathe.”); Ex. 33, Swint Decl. ¶ 27 (officers used mace on resident of isolation unit who “asked a correctional officer for tissues”).

The consistent use of mace as a disciplinary tool is contributing to the spread of COVID-19 among residents and staff. Dr. Meyer explains that mace “may actually facilitate disease transmission” because “inhaled irritants disrupt the mucous membranes of the nose, throat, and upper respiratory system that can increase risk of COVID-19 infection if exposure occurs. The irritants also cause people to cough, thereby increasing potential disease transmission.” Ex. 1, Supp. Meyer Decl. ¶ 10.

The continued understaffing in DOC puts residents at serious risk. Residents who may have COVID-19 cannot access medical care unless a housing unit officer is available to let them out of their cells, provide them a sick call form, collect that form, and transmit it to the medical staff. Residents who are confirmed positive rely on correctional officers to regularly observe them for the rapid onset of symptoms requiring emergency treatment. Without an appropriate number of officers in DOC facilities, residents continue to be at grave risk of serious injury or death.

vii. Structural problems in the facilities

Several problems identified by Plaintiffs were beyond *amici*’s charge to investigate but nevertheless persist. These structural features of DOC facilities were identified by Dr. Meyer, and cited by the Court, as contributing to the “rapid spread” of COVID-19 in Defendants’ facilities. Specifically, Dr. Meyer identified the lack of “negative pressure rooms” for the treatment of infected persons to ensure that the virus is not transmitted “through droplets to others” and the lack of sufficient ventilation, which “promotes highly efficient spread of diseases through droplets.” Dkt. No. 5-2 (“First Meyer Decl.”), at ¶ 28(c). In this Court’s opinion granting a temporary restraining order, the Court explained that “the quarantine unit is not properly sealed off from the general population,” and expressed particular concern that the “ventilation conditions described in the District of Columbia’s Auditor’s report . . . will increase the rate of the spread of the virus.”

TRO Op. at 21 (quoting First Meyer Decl. ¶ 28(c)). There is no indication that the DOC has addressed the significant ventilation challenges that promote the spread of the virus in the D.C. jail. Accordingly, Dr. Meyer “reaffirm[s] [that] the deficiencies identified in [her] earlier declaration regarding poor ventilation and insufficient medical facilities to control the spread of COVID-19” continue to pose risks of serious injury to DOC residents. Ex. 1, Supp. Meyer Decl. ¶ 3.

B. Plaintiffs and proposed class members face irreparable harm.

This Court has already held that “Plaintiffs’ risk of contracting COVID-19 and the resulting complications, including the possibility of death, is the prototypical irreparable harm.” TRO Op. at 23. The Court so concluded because Plaintiffs demonstrated that they are “at a significantly higher risk of infection with COVID-19 as compared to the population to the community” and “at a significantly higher risk of harm if they do become infected.” *Id.* at 24. “Given the gravity of Plaintiffs’ asserted injury, as well as the permanence of death, the Court finds that Plaintiffs have satisfied the requirement of facing irreparable harm unless injunctive relief is granted.” *Id.*

Plaintiffs and proposed class members continue to be at risk of irreparable harm. Weeks after the Court’s Order, DOC residents are nearly fourteen times more likely to contract COVID-19 than other District of Columbia residents.¹⁰ And as *amici*’s report and declarations from DOC residents make clear, access to medical care in DOC facilities remains troublingly inconsistent.

¹⁰ The government’s data of May 15, 2020, reported 6,871 positive COVID-19 tests in the District, and 180 positive COVID-19 tests among DOC residents. *See* District of Columbia, Coronavirus Data (last accessed May 15, 2020), <https://coronavirus.dc.gov/page/coronavirus-data>. As of May 15, 2020, there were around 1,325 people in DOC custody, and the most recent Census Bureau population estimate for the District of Columbia was 705,749, see U.S. Census Bureau, QuickFacts - District of Columbia (last accessed May 15, 2020), <https://www.census.gov/quickfacts/DC>. Therefore, the rate of infection in the District of Columbia was 0.97 percent, while the rate of infection in the DOC was 13.58 percent.

See, e.g., Amici Oral Report at 18-19 (reporting that 12 percent of sick call requests from the CTF were collected over two weeks after they were submitted); *Ex. 4, Perry Decl.* ¶ 8 (reporting that a housing unit “ran out of sick slips” for a week). This factor continues to support injunctive relief.

C. The balance of hardships and the public interest weigh in Plaintiffs’ favor.

This Court previously held that “the public interest weighs in favor of granting injunctive relief.” *TRO Op.* at 24. As the Court explained, there could be “no harm to the Government when a court prevents unlawful practices,” *id.* at 25, like those Plaintiffs were likely to succeed in showing. The Court also credited the public interest in safeguarding public health by reducing the risk of infection to DOC residents, and found that the requested relief “does not impose an undue burden on Defendants.” *Id.*

Here again, the balance of hardships and the public interest continue to favor Plaintiffs. Because Plaintiffs remain likely to prevail on the merits, the balance of hardships and the public interest in preventing unconstitutional harm weigh in favor of granting injunctive relief. Moreover, as Dr. Stern explains, downsizing the population of the jail will “help to ‘flatten the curve’ overall — both within the jail setting and without.” *Stern Decl.* ¶ 14. That is because, given the churn of people — residents, staff, visitors — through Defendants’ facilities, the outbreak of COVID-19 in the jail will be impossible to confine to DOC facilities. Compounding the problem, Dr. Stern explains, is that “vulnerable populations are at the highest risk of severe complications from COVID-19, and . . . when they develop severe complications they will be transported to community hospitals — thereby using scarce community resources (ER beds, general hospital beds, ICU beds).” *Id.* ¶ 13. Accordingly, these two factors remain in Plaintiffs’ favor.

D. The Court should join other federal courts and expand the requested relief to safely transition a portion of DOC residents into community supervision.

To avert the horrific consequences of the unmitigated spread of COVID-19, federal courts around the country have granted class-wide relief, through the use of the writ of *habeas corpus*, to ensure the health and safety of incarcerated people. That relief has taken the form of a court-established “process by which inmates would be evaluated promptly for transfer to home confinement,” *Martinez-Brooks*, 2020 WL 2405350, at *2 n.1; *see also Wilson*, 2020 WL 1940882, at *10-11 (same); or an outright order of release of vulnerable residents, *see Thakker v. Doll*, No. 20-cv-480 (JEJ), 2020 WL 2025384, at *12 (M.D. Pa. Apr. 27, 2020). A federal court in California directed a facility to provide it with the “names, ages, any health vulnerabilities, and any criminal information” regarding each confined person, so that the Court, “likely with the assistance of several Magistrate Judges,” could “implement a system for considering individual bail applications” over a two-week period, *Rivas*, 2020 WL 2059848, at *3; that court is currently considering those applications and granting, deferring, and denying release on an aggregate basis. *See, e.g.*, Bail Order No. 4, Dkt. No. 115, *Rivas*, 20-cv-2731 (JC) (N.D. Cal. May 7, 2020) (denying one bail request without prejudice, deferring three bail requests, and granting two bail requests with particular conditions). The *Rivas* court modeled its procedure on one adopted by the District of Massachusetts, which “relied on its inherent authority expeditiously to review bail applications for all of the detainees in the class, one by one, and released almost a third of them to house arrest under strict conditions.” *Savino v. Souza*, No. 20-cv-10617 (WGY), 2020 WL 2404923, at *1 (D. Mass. May 12, 2020).

These diverse federal courts have recognized that where plaintiffs are likely to succeed on the merits of their claim that they “face a grave risk of serious illness or death due to COVID-19,” and where they are likely to succeed in showing that “prison officials knew of and disregarded an

excessive risk to inmate health or safety,” urgent and decisive action is needed. *Martinez-Brooks*, 2020 WL 2405350, at *31 (cleaned up). Each court established processes for the transition of incarcerated people into safer community settings, doing so in even less dire circumstances than those here. For instance, in *Martinez-Brooks*, the Court used its *habeas* authority to establish a structured release mechanism after 69 out of around 1,000 residents tested positive, *see* 2020 WL 2405350, at *4 — about half the rate of positive tests in Defendants’ facilities. In *Wilson*, the Court relied on its *habeas* power to do the same after 59 out of around 2,500 residents tested positive. *See* 2020 WL 1940882, at *2. And in *Thakker*, where 40 residents, out of around 250, had confirmed cases (a rate closer to the rate of infection in DOC facilities), the Court granted outright release on a class-wide basis. *See* 2020 WL 2025384, at *8.

The spreading pandemic at the D.C. Jail calls urgently for the kind of relief that these courts have ordered. As described by *amici* and confirmed by DOC residents and staff, Defendants either will not, or cannot, comply with the Court’s temporary restraining order. Chronic understaffing undermines the implementation of the Court’s clear directives to “ensure appropriate and consistent implementation of social distancing policies,” to “ensure that the triage process associated with sick call requests on the non-quarantine units is expedited,” and to “ensure that all inmates . . . have access to confidential, unmonitored legal calls,” to name just a subset of areas described above where Defendants have fallen short. TRO Order at 2-3. Having demonstrated that DOC cannot implement Court-ordered reforms over a timespan of four weeks, while the number of positive cases in their facilities rises rapidly, Defendants cannot be entrusted with the health and safety of its residents. Greater action is necessary.

That greater action should include reducing the population of DOC residents. Plaintiffs’ experts and other federal courts agree that reducing the confined population is the most important

step to ensure the health and safety of DOC residents and the community. As Dr. Stern explained, downsizing the population of the jail will “help to ‘flatten the curve’ overall — both within the jail setting and without.” Stern Decl. ¶ 14. “Downsizing jail populations serves two critical public health aims: (1) targeting residents who are at elevated risk of suffering from severe symptoms of COVID-19; and (2) allowing those who remain incarcerated to better maintain social distancing and avoid other risks associated with forced communal living.” *Id.* ¶ 13. After specifically reviewing the particular outbreak in, and conditions at, DOC facilities, Dr. Stern was “even more firmly convinced that downsizing the inmate population *as much as possible* will reduce the risk of contraction and transmission of COVID-19 — and the attendant risks of serious harm and death — within DOC facilities and the communities around them.” *Id.* ¶ 11. Dr. Meyer agrees that “[r]educing the size of the population in jails and prisons is crucially important to reducing the level of risk both for those within those facilities and for the community at large.” Meyer Decl. ¶ 34. From a “public health perspective,” Dr. Meyer is “strongly of the opinion that individuals who are already in those facilities should be evaluated for release.” *Id.* at ¶ 35; *see also Basank v. Decker*, No. 20-cv-2518 (AT), 2020 WL 1481503, at *6 (S.D.N.Y. March 26, 2020) (“[P]ublic health and safety are served best by rapidly decreasing the number of individuals detained in confined, unsafe conditions.”).

Having reviewed *amici*’s findings, the Court’s Order, and the record, Dr. Meyer is even more firmly convinced that release is necessary to improve the conditions in DOC facilities:

Reduction in the size of the prison population is a public health strategy that supports all of the above infection prevention and control efforts. When people inside the facility have the physical space to socially distance and the inmate population is small enough for the staff to enforce social distancing and proper sanitation, there is reduced disease transmission. A reduced inmate population also results in the greater availability of adequate medical attention. Finally, it improves safety because appropriate supervision is assured.

Ex. 1, Supp. Meyer Decl. ¶ 14. Through the writ of *habeas corpus*, the Court has the authority to ensure residents' safety and to implement the clear recommendations of public health officials.

i. The Court can, and should, grant release as a remedy for unconstitutional conditions of confinement.

This Court's power to order relief for constitutional violations using the writ of *habeas corpus* is both substantial and flexible. "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). It exists to allow prisoners to challenge "the fact or duration of [their] confinement," and, as provided in both the U.S. Constitution and federal law, empowers federal courts to rectify wrongful confinement. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005); *see* 28 U.S.C. §§ 2241, 2243. The Supreme Court has made clear that *habeas corpus* is "above all, an adaptable remedy." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). The writ "is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose — the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

Consistent with the Supreme Court's pronouncements on the flexibility and breadth of the *habeas* remedy, the D.C. Circuit has explicitly held that release is a proper remedy for conditions of confinement claims. In *Aamer v. Obama*, 742 F.3d 1023 (D.C. Cir. 2014), the Court held that Circuit "precedent establishes that one in custody may challenge the conditions of his confinement in a petition for *habeas corpus*." *Id.* at 1032. The *Aamer* Court went on to explain that as a remedy for a *habeas* petition challenging conditions of confinement, "a court may simply order the prisoner released unless the unlawful conditions are rectified, leaving it up to the government whether to respond by transferring the petitioner to a place where the unlawful conditions are absent or by eliminating the unlawful conditions in the petitioner's current place of confinement." *Id.* at 1035; *see also id.* at 1036 ("Where the specific detention abridges federally protected

interests — by placing petitioner in the wrong prison, denying him treatment, imposing cruel and unusual punishment, impeding his access to the courts, and so on — it is an unlawful detention *and habeas lies to release the petitioner therefrom.*”).

Applying *Aamer* and other circuit cases holding the same, “many courts have found that insufficient jail action in light of the virus can serve as a basis for release.” *Cristian R. v. Decker*, No. 19-cv-20861 (SDW), 2020 WL 2029336, at *2 (D.N.J. Apr. 28, 2020) (collecting cases). Thus, the Court can — and should — exercise its *habeas* authority to release DOC residents who can be safely supervised outside of the dangerous D.C. jail.

ii. *The Court can also order release without granting habeas petitions at this juncture by temporarily enlarging Plaintiffs-Petitioners’ custody.*

Even if the Court is not prepared to grant writs of *habeas corpus* at this stage, the Court can still effectuate release by temporarily “enlarging” Plaintiffs’ custody. District courts have authority, when *habeas* petitions are pending, to “enlarge” the custody of petitioners. Enlargement is a provisional remedy that modifies custody by expanding the site in which it takes place. Enlargement is not release; the person remains in custody, even as the place of custody is changed, or enlarged, from a particular prison to a hospital, halfway house, a person’s home, or another setting.

The D.C. Circuit (and others) have recognized the inherent authority of district courts to enlarge the custody of *habeas* petitioners during the pendency of a *habeas* proceeding. *Baker v. Sard*, 420 F.2d 1342 (D.C. Cir. 1969), held that “[w]hen an action pending in a United States court seeks release from what is claimed to be illegal detention, the court’s jurisdiction to order release as a final disposition of the action includes an inherent power to grant relief pendente lite, to grant bail or release, pending determination of the merits.” *Id.* at 1343; *see also United States v. Kelly*, 790 F.2d 130, 139 (D.C. Cir. 1986) (recognizing in a *habeas* proceeding that a district court can

order interim bail or release before a final ruling on the merits); accord *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam).

This Court has applied a two-prong test in determining whether to grant enlargement while a *habeas* petition is pending. Plaintiffs must show “that (1) the [*habeas*] petition is based on a substantial claim of law, and (2) the motion for bail is based on exceptional circumstances deserving of special treatment.” *Meskel v. United States*, No. 04-cr-53 (RMU), 2005 WL 1903375, at *2 (D.D.C. July 13, 2005). Plaintiffs meet both requirements.

First, the petitions here are based on substantial claims of law. As this Court has already held, Plaintiffs are likely to succeed in showing Fifth and Eighth Amendment violations. TRO Op. at 9. And these violations are of the most serious kind: that Defendants are deliberately indifferent to the substantial risk of death or serious harm that Plaintiffs face in light of a global pandemic. It is not surprising, then, that other courts that have granted enlargement have recognized that deliberate indifference to COVID-19 is a substantial claim of law. *Hernandez v. Decker*, No. 20-cv-1589 (JPO), 2020 WL 1547459, at *3 (S.D.N.Y. Mar. 31, 2020); see also *Coronel v. Decker*, — F. Supp. 3d —, No. 20-cv-2472 (AJN), 2020 WL 1487274, at *9 (S.D.N.Y. Mar. 27, 2020) (same); *Savino*, 2020 WL 1703844, at *8 (same); *Wilson*, 2020 WL 1940882, at *4 (same); *Clark v. Hoffner*, No. 16-cv-11959 (VAR), 2020 WL 1703870, at *4 (E.D. Mich. Apr. 8, 2020) (same).

As to the second prong of the enlargement inquiry, there can be no doubt that COVID-19 presents exceptional circumstances warranting special treatment. Serious threats to health are the quintessential exceptional circumstances justifying enlargement. See, e.g., *Lucas v. Hadden*, 790 F.2d 365, 367 (3d Cir. 1986) (explaining that risk to a habeas petitioner’s health is an “extraordinary circumstance that may justify a grant of bail prior to the disposition of the habeas

petition”). Even the United States has conceded, in other cases, that “health complications” are the type of extraordinary circumstances warranting bail prior to a final determination in a *habeas* proceeding. *Kiadii v. Decker*, 423 F. Supp. 3d 18, 21 (S.D.N.Y. 2018).

The myriad federal courts that have implemented procedures to effectuate release have relied on enlargement to do so. The Court in *Wilson* explained that it had “inherent authority to grant enlargement to a defendant pending a ruling on the merits of that defendant's habeas petition.” 2020 WL 1940882, at *4. Because of the “exceptional circumstances at [FCI] Elkton”—a rate of infection that is less severe than that at the D.C. Jail — “and the Petitioners’ substantial claims, that are likely to succeed at the merits stage,” the Court held that enlargement was the necessary and proper remedy. *Id.* So too in *Rivas* did the Court rely on the “extraordinary” nature of the COVID-19 pandemic to exercise its “authority to release detainees on bail while their *habeas* cases are pending.” 2020 WL 2059848, at *3.

Plaintiffs here face even more dire circumstances than the facilities in which courts have exercised inherent authority to enlarge plaintiffs’ custody. *See supra* at 29. Without swift relief from this Court, Plaintiffs will continue to face unconstitutional risk to their health and well-being.

iii. The PLRA does not bar release as a remedy.

The Prison Litigation Reform Act (“PLRA”) does not preclude the relief requested here. By its terms, the PLRA excludes from its requirements all “*habeas corpus* proceedings challenging the fact or duration of confinement in prison.” 18 U.S.C. § 3826(g)(2). Plaintiffs’ suit here challenges the fact of Plaintiffs’ confinement in the D.C. Jail; it is that fact of confinement in a facility where a pandemic is spreading that poses a significant risk of death or serious injury for Plaintiffs and proposed class members. As the Sixth Circuit explained, in holding that the PLRA did not bar *habeas* relief in analogous circumstances, “Petitioners’ proper invocation of § 2241

also forecloses any argument that the PLRA applies given its express exclusion of ‘*habeas corpus* proceedings challenging the fact or duration of confinement in prison’ from its ambit.” Order at 3, *Wilson v. Williams*, No. 20-3447 (6th Cir. May 4, 2020) (quoting 18 U.S.C. § 3626(g)(2)); *see also Martinez-Brooks*, 2020 WL 2405350, at *16 -17 (rejecting the application of the PLRA to a class action seeking *habeas* relief under § 2241).

Nor does the PLRA regulate enlargement at all. As relevant here, the PLRA regulates only “prisoner release order[s].” 18 U.S.C. § 3626(a)(3). Enlarging Plaintiffs’ custody is plainly not a “release order,” because Plaintiffs would still remain in custody, albeit custody of a different form. *See Wilson*, 2020 WL 1940882, at *10 (holding PLRA does not prevent enlargement because it is not release). This comports with the general rule that a transfer from one form of custody to another does not comprise a “prisoner release order” as defined by the PLRA. *See, e.g., Reaves v. Dep’t of Correction*, 404 F. Supp. 3d 520, 522 (D. Mass. 2019).

iv. Appointing an expert is the best way to release residents consistent with public health and public safety.

This Court need not embark on a process of assessing individuals’ fitness for release or enlargement alone. In *Wilson* and *Martinez-Brooks*, courts established a process to assess fitness for release that involved input from corrections professionals to “evaluate inmates with COVID-19 risk factors for home confinement and other forms of release that is . . . clearly focused on the critical issues of inmate and public safety.” *Martinez-Brooks*, 2020 WL 2405350, at *1. Plaintiffs ask the Court to appoint an expert under Federal Rule of Evidence 706 or as an *amicus curiae* who can assist the Court in creating such a process.

Plaintiffs have asked one potential expert — Vincent Schiraldi — to provide the Court with a more detailed understanding of the role that this expert could play. Mr. Schiraldi is the former Director of the District of Columbia’s Department of Youth Rehabilitation Services and the former

Commissioner of New York City’s Department of Probation. Ex. 29, Schiraldi Decl. ¶¶ 1-2. He explains that the Court’s expert would

work with relevant agencies to create and implement release policies . . . in order to reduce the population so that there is (a) more room to allow for greater separation of inmates in the jail and, when necessary, medical separation and (b) fewer inmates to allow the thinning complement of correctional officers and other staff to adequately implement COVID-19 related policies, as well as secure and provide health care and programming for the reduced population.

Id. ¶ 14. Mr. Schiraldi proposes “[u]tilizing the [Pretrial Services Agency]’s risk assessments” to determine the level of supervision appropriate for released residents. *Id.* ¶ 18. The expert would also, in partnership with the relevant agencies, “oversee the implementation of these release mechanisms, monitor outcomes, [and] report results to the Court on a regular basis.” *Id.* ¶ 25.

iv. At a minimum, the Court should maintain the requirements of the TRO and make some of its recommended measures from the prior order mandatory.

Whatever the Court orders regarding reducing the population confined in DOC facilities, it should require that Defendants improve conditions at its facilities — and do so immediately. To achieve this result, Plaintiffs ask that the Court to convert the TRO into a preliminary injunction after modifying it to require that Defendants take concrete steps to address the ongoing deficiencies that *amici* identified in the May 11 hearing.

Converting the TRO into a preliminary injunction is necessary because the risks that the TRO sought to address remain and have even worsened in the weeks since the TRO issued. It is still the case that “individuals placed in [CDF and CTF] are at a significantly higher risk of infection with COVID-19 as compared to the population in the community and that they are at significantly higher risk of harm if they do become infected.” TRO Op. at 13 (quoting First Meyer Decl. ¶ 33; alteration in original); *see* Ex. 1, Supp. Meyer Decl. ¶ 3. It also remains the case that Plaintiffs “cannot take the same precautions as those who are not detained,” TRO Op. at 13; *see*

also *Amici* Oral Report at 43 (“[T]here still isn’t a prevalence of social distancing” at the CTF and CDF). These facts led the Court to issue the TRO and their persistence justifies extending it.¹¹

Other conditions motivating the TRO remain unaddressed as well. For example, while the Court ordered Defendants to ensure that “medical staff are promptly informed about inmates who present with symptoms of COVID-19,” TRO Order at 1, inmates who complain of those symptoms still wait days for medical attention — if they receive any at all. *See Amici* Oral Report at 20 (in two-thirds of randomly sampled sick calls involving COVID-19 conditions at the CDF, inmates were seen a minimum “of two days after the request was submitted”); Ex. 3, Jenkins Decl. ¶ 7 (stating that, despite concerns of having COVID-19 symptoms, resident placed three sick calls and did not receive treatment). The Court also ordered Defendants to allow inmates to “have access to confidential, unmonitored calls,” “immediately” provide inmates “proper cleaning supplies,” and “take immediate steps to provide . . . daily showers . . . to all inmates on isolation status.” TRO Order at 2-3. However, nearly a month after the order, many inmates still cannot call their lawyers in private, *Amici* Oral Report at 32, do not have sufficient cleaning supplies to clean their cells, *id.* at 41, and go days without showering, *id.* at 34; Ex. 2, Thomas Decl. ¶ 16. The need for these reforms has only increased with time, *see* Ex. 1, Supp. Meyer Decl. ¶ 3, and the Court should demand that Defendants make them.

The Court also should go further. Defendants’ track record justifies a “more comprehensive order to insure against the risk of inadequate compliance.” *Hutto v. Finney*, 437 U.S. 678, 687

¹¹ Even if Defendants had successfully eliminated these risks—which they have not—the court would retain power to grant injunctive relief. Its authority to do so “survives discontinuance of illegal conduct, and because the purpose is to prevent further violations, injunctive relief is appropriate when there is a cognizable danger of recurrent violation.” *U.S. Dep’t of Justice v. Daniel Chapter One*, 89 F. Supp. 3d 132 (D.D.C. 2015) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953)), *aff’d*, 650 F. App’x 20 (D.C. Cir. 2016).

(1978). So too do the observations of *amici* and the professional opinion of Dr. Meyer, which demonstrate that crucial safeguards remain unimplemented. *See, e.g., Amici Oral Report* at 16-21 (discussing delays in obtaining medical attention); Ex. 1, Supp. Meyer Decl. ¶ 3. For example, whereas the TRO recommended that Defendants “retain a registered sanitarian to oversee the[ir] environmental health and safety programs,” TRO Order at 2, the preliminary injunction should *require* Defendants to do so. To Plaintiffs’ knowledge, Defendants have not hired such an expert; perhaps as a result, inmates continue to lack cleaning supplies and fresh linens. Ex. 2, Thomas Decl. ¶ 16; Ex. 3, Jenkins Decl. ¶ 16. Accordingly, the preliminary injunction should require Defendants to take the step that the TRO suggested and retain a sanitarian.

The Order should also add specificity to the TRO’s mandates. For instance, in order to ensure access to confidential legal calls, the Court should require that Defendants provide every inmate with a cell phone. The Court has asked Defendants to address the confidential legal call issue since the very first hearing in this matter more than six weeks ago. Dkt. No. 18 at 35. Ordering cell phones for inmates — an idea the Court proposed, Dkt. No. 33 at 54 — would address the legal-call issue by allowing inmates to contact their attorneys from their cells. Defendants expressed openness to this idea at the most recent hearing, stating that they had begun “looking at” cell phones. *Amici Oral Report* at 46. The preliminary injunction should require they provide them.

Regarding medical care, the Court should mandate that Defendants create a 24-hour medical hotline that inmates can contact using the tablets that Defendants currently possess or cell phones to be provided. The existing system for requesting medical attention simply does not work. And the delays it causes not only prolong the time inmates suffer without medical attention but

also increase the risk that individuals who have contracted the virus will spread it. A direct line between inmates and the medical unit would mark a significant advance in addressing these issues.

Finally, the Order should include specific timelines and safeguards to ensure compliance. Specifically, within five days of the Court's order, Defendants should be required to purchase the cell phones, establish the medical hotline, and provide a status update on its plan for implementing the other actions covered in the order. The Court should further direct the parties to confer within 10 days of the order to develop an information-sharing arrangement that allows Plaintiffs to take discovery and confirm Defendants' ongoing adherence to the Court's commands.

"To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. . . . Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care." *Brown v. Plata*, 563 U.S. 493, 510-11 (2011). Since this crisis began, Defendants have had the responsibility to take appropriate precautions to protect the Plaintiffs in their care. For nearly a month, that constitutional duty has taken concrete form in this Court's TRO. Yet conditions at the D.C. Jail remain dire, and the number of residents and staff who have tested positive for COVID-19 cases continue to rise. In the face of Defendants' unwillingness or inability to meet their constitutional requirements, this Court should impose requirements commensurate with the seriousness of the crisis and the risks to Plaintiffs' lives.

CONCLUSION

The Court should grant Plaintiffs' Motion for a Preliminary Injunction.

DATED: May 15, 2020
Washington, D.C.

Respectfully submitted,

/s/ Steven Marcus

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EXHIBIT 1

Supplemental Declaration of Dr. Jaimie Meyer

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am Dr. Jaimie Meyer, an Assistant Professor of Medicine at Yale School of Medicine and Assistant Clinical Professor of Nursing at Yale School of Nursing in New Haven, Connecticut. I am a physician who is board certified in Infectious Disease, Addiction Medicine, and Internal Medicine, with expertise in infectious diseases in prisons and jails. I previously submitted a Declaration in this case dated March 29, 2020 along with a copy of my CV.
2. To prepare this Supplemental Declaration, I reviewed the following reports and declarations:
 - Report submitted by *amicus curiae* pursuant to April 9, 2020 consent order, dated April 18, 2020, including Exhibits 1-11;
 - Transcript of proceedings in US v. Brown (Docket number 2019 CF3 012779), dated April 29, 2020;
 - Declaration of Brian Thomas, dated May 7, 2020;
 - Declaration of Anthony Jenkins, dated May 6, 2020;
 - Declaration of Craig Barksdale, dated May 6, 2020;
 - Declaration of Delonte Johnson, dated May 12, 2020;
 - Declaration of Jarvis Burl, dated May 11, 2020;
 - Declaration of Ladaunte Perry, dated May 7, 2020;
 - Declaration of Romiel Hightower, dated May 11, 2020;
 - Declaration of Tony Horne, dated May 11, 2020;
 - Declaration of Elijah Warren, dated May 14, 2020;
 - Transcript of telephone conference in Banks v. Booth (Civil Action No. 20-CV-00849), dated May 11, 2020; I also listened to portions of this telephone conference on May 11, 2020;
 - Redacted emails provided from the FOP/DOC Labor Union.
3. Based on my review of these materials and my knowledge and expertise in infectious diseases and public health, I reaffirm that people living and working in DC DOC facilities remain at risk of serious harm due to COVID-19 infection. Despite clear efforts made by DC DOC to be responsive to concerns by generating updated policies, a number of key problem areas persist as detailed further below. I also reaffirm the deficiencies identified in my earlier declaration regarding poor ventilation and insufficient medical facilities to control the spread of COVID-19. The rapid increase in the number of identified cases over the past several weeks reflects major and pervasive system-level deficits.
4. The biggest threat to DC DOC's ability to contain the ongoing COVID-19 outbreak is under-recognition of and limited testing for COVID-19 disease. Residents in non-quarantine units who experience symptoms consistent with COVID-19 must rely on a sick call request system to access medical care. Although most sick call requests are

processed within 1-2 days, site evaluations and resident declarations describe that some requests take over 1 week to process. These delays in medical attention may result in worsening of the disease and ongoing spread of COVID-19, when those who are infected but not isolated remain on the general housing unit. Many requests for medical care appear to have come through an ad hoc urgent care mechanism, rather than the sick call request system. Urgent care should not serve as an alternate channel for accessing medical care because it does not allow clinical care providers to triage the urgency of the issue or appropriately plan for staffing and space. Increased reliance on urgent care mechanisms suggest challenges to accessing medical care and that the sick call request system is failing to address the medical needs of people in the DC DOC.

5. According to declarants, people who are afebrile but exhibiting other symptoms of COVID-19 (including shortness of breath, cough, and difficulty breathing) are not tested. This suggests fever is the sole trigger for testing. This is highly problematic because people infected with COVID-19 may exhibit a wide range of symptoms which, according to the CDC include: cough, shortness of breath or difficulty breathing, fever, chills, muscle pain, sore throat, new loss of taste or smell, or gastrointestinal symptoms like nausea, vomiting, or diarrhea. Moreover, many people with COVID-19 do not have symptoms at all. Limited testing will result in people who are infected with COVID-19 remaining on housing units and likely transmitting the disease to others.
6. DC DOC policy appropriately dictates that “people under investigation” (PUI) for COVID-19 who have tests pending are placed on cell restriction until they either: a) are confirmed positive and moved to medical isolation; or b) are confirmed negative and can return to the general population. Yet declarations confirm that cell restriction for PUI is inconsistent and people who are later confirmed to be COVID+ are interacting with others, including cellmates, while tests are pending. In this way, disease transmission will continue unabated.
7. Testing is critical for disease containment because it allows people who are diagnosed with COVID-19 to be medically isolated. This is beneficial for the individual who is infected in terms of receiving increased medical attention and for the population writ large in terms of reducing transmission. One solution to the problem of limited testing is to conduct facility-wide surveillance and test all residents and staff at least once. Surveillance testing (and, ideally retesting), enables a clinical and public health response that is informed by real data.
8. Social distancing policies are meaningless if not enforced. While protocols call for fewer than 10 individuals out of cell at a time for recreation, showers, and phone calls, and kept six feet apart during that time, declarants and surveillance video depict otherwise. In DC DOC facilities that are experiencing severe staffing shortages, it will be difficult if not impossible to ensure adequate custodial supervision to allow for social distancing. Given that COVID-19 is a highly contagious virus spread by droplets within close contact, the disease will continue to spread in facilities where

social distancing is not enabled.

9. When social distancing is not possible, personal protective equipment (PPE) can help provide a barrier to reduce person-to-person disease transmission. Again, PPE protocols are essentially meaningless if not implemented and enforced. Site visits describe inconsistent use of PPE observed among staff and residents in quarantine units, limited availability of PPE, and few receptacles available for safe PPE disposal.
10. In the setting of understaffing and growing anxiety, there have been disruptions to safety and security described inside DC DOC facilities. In usual circumstances, mace or capsaicin spray may be used to facilitate extractions by dedicated teams and mitigate unrest. When these techniques are used in the context of a COVID outbreak, however, they may actually facilitate disease transmission. These inhaled irritants disrupt the mucous membranes of the nose, throat, and upper respiratory system that can increase risk of COVID-19 infection if exposure occurs. The irritants also cause people to cough, thereby increasing potential disease transmission within the unit.
11. COVID-19 is primarily transmitted from person to person via respiratory droplets, but transmission also occurs through contaminated surfaces. Cleaning and disinfecting practices can mitigate this risk of disease transmission but remains inadequate in the DC DOC. The cleaning materials shown in *amici* Exhibits are among those approved by the EPA as having activity against COVID-19, but only at specific concentrations (Please see EPA website: <https://cfpub.epa.gov/giwiz/disinfectants/index.cfm>). Activity against COVID-19 is reduced when cleaning supplies are repeatedly diluted, as is described in the DC DOC. Education, training, and supervision are necessary to ensure that supplies are being used properly (for instance, if a chemical agent needs to sit for an hour before it is wiped away), or in proper concentrations. Moreover, some declarants describe other cleaning products that are being used, including Ecolab Laundry Fresh Room Refresher, that do not have activity against and is not approved for disinfection for COVID-19.
12. COVID-19 is a serious problem for detention settings everywhere and this is no less true in the DC DOC. But this is not a problem that can be protocolled away. Even the most comprehensive protocols and policies that are informed by science are totally meaningless if not implemented, enforced, and continuously monitored. Implementation will be challenging if not impossible in DC DOC, which is strained by severe understaffing. When staff are not adequately equipped, trained, or supported, health and safety of everyone inside the facility will suffer.
13. In the DC DOC, as in health systems everywhere, COVID-19 has become the top priority for healthcare providers. Yet when attention is devoted exclusively to COVID-19 and medical staff are stretched thin during an outbreak, limited resources remain for the management of chronic diseases. As declarants note, care for non-COVID conditions has suffered in the DC DOC since the start of the outbreak. This may result in undue negative health outcomes related to chronic health conditions, but also increased risk of complicated COVID-19 infections for people living with

underlying health conditions like diabetes, chronic lung disease, heart disease, and kidney disease. Inadequate responses to medical issues within DC DOC place inmates at an increased risk of death or serious harm from COVID-19 and other diseases.

14. Reduction in the size of the prison population is a public health strategy that supports all of the above infection prevention and control efforts. When people inside the facility have the physical space to socially distance and the inmate population is small enough for the staff to enforce social distancing and proper sanitation, there is reduced disease transmission. A reduced inmate population also results in the greater availability of adequate medical attention. Finally, it improves safety because appropriate supervision is assured.

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



Dr. Jaimie Meyer

May 14, 2020
Wilton, Connecticut

EXHIBIT 2

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF BRIAN THOMAS

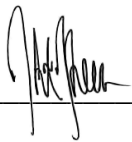
1. My name is Brian Thomas. I am 31 years old. I am currently incarcerated at the CDF on the unit S2 in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I was admitted to CDF on April 27th, 2020.
3. Between April 27th and May 1st, nobody did my laundry.
4. Between April 27th and May 1st, I was only given one mask.
5. Between April 27th and May 1st, I was not given any cleaning liquid, towels, sponges, extra soap, or other cleaning materials with which to clean my cell.
 - a. Between April 27th and May 7th, I have been given cleaning materials with which to clean my cell 2-3 times.
6. Between April 27th and May 1st, I saw up to twelve people let out of their cells at a time on my unit.
7. There is no set time of day when I am allowed out of my cell. Sometimes I am only let out of my cell at 3:00 am.
8. On May 1st, I could see four other CDF residents outside their cells without masks on.
9. On May 1st, I saw a CO passing out soap without wearing gloves.
10. Between April 27th and May 7th, I did not get any toilet paper.

11. Between April 27th and May 7th, I was only given one bar of soap.
12. Between April 27th and May 7th, there was no hand sanitizer on my unit.
13. Between April 27th and May 7th, I did not see anybody clean my unit's common areas.
14. Between April 27th and May 7th, I did not see anybody clean the showers in my unit.
15. Between April 27th and May 7th, the showers on my unit looked very dirty. There is scum and hair in the showers.
16. I do not get to shower every day. I get to shower whenever I am let out of my cell for rec time. Since April 27th, there have been 4-5 days that I am not allowed out of my cell for rec time and therefore cannot shower.
17. Between April 27th and May 7th, nobody told me to social distance myself from other people. Nobody has told me to stay six feet away from other people.
18. When making phone calls from my unit, I am within six feet of the other residents making phone calls.
19. When making phone calls, I am too close to other people to discuss confidential legal matters with my attorney.

I, Katherine Rees, certify that I have read the foregoing to Brian Thomas and that he affirmed the foregoing is true and correct on May 7th, 2020.

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

Executed on May 7th 2020.



Katherine Rees
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 3

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

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

Defendants-Respondents.

No. 1:20-cv-00849

DECLARARION OF ANTHONY JENKINS

1. My name is Anthony Jenkins. I am forty-one years old, I am currently incarcerated at the Correctional Treatment Facility (“CTF”) on the C-3B unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I was detained at the Central Detention Facility (“CDF”) on April 13th, 2020.
3. I have been in the unit C-3B since Friday May 1st, 2020. Prior to that I was on the unit South 2 at CDF from April 13th until May 1st.
4. While on South 2, I had a cellmate that had a strange cough. I asked every day I was on South 2 to have the officers test me for COVID-19. I was told by the officers they would not test me until I started to show symptoms of COVID-19. To my knowledge, my cellmate with the cough was not tested either.
5. While I was on South 2, all the officers would do for me was have the nurse come around to take my temperature each day.
6. I have asked the officers three times if I could get a multi vitamin but I was told that CDF does not offer those.
7. I put in a sick call request three times when I was at CDF. One time a nurse or doctor came to the unit to tell me that they would not give me a COVID-19 test. I was never seen by another doctor or nurse.

8. I was scared for my health the whole time I was on the South 2 with the cellmate with the cough.
9. I was not sleeping because I was so scared for my health while on South 2.
10. While I was on South 2, I would go several days without being allowed out of my cell for my one hour of recreation time.
11. On the days that I was allowed out, I would only have enough time for a shower and would not always be able to use the phone.
12. Since my arrival on April 13th, my outer clothes have not been washed.
13. Since my arrival on April 13th, my outer clothes have not been changed.
14. Since my arrival on April 13th, my underwear has not been washed.
15. Since my arrival on April 13th, my underwear has not been changed.
16. Since my arrival on April 13th, my bed sheets have not been washed.
17. Since my arrival on April 13th, my bed sheets have not been changed.
18. Since my arrival on April 13th, I have not had a hot meal. Any time the officers bring me a hot meal it is ice cold.

I, Edward McDermitt, certify that I have read the foregoing to Anthony Jenkins and that he affirmed the foregoing is true and correct on May 6, 2020.

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

Executed on May 6, 2020.

Edward McDermitt
Edward McDermitt
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 4

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF LEDAUNTAE PERRY

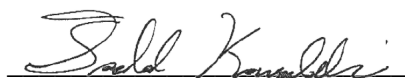
1. My name is LeDauntae Perry. I am 36 years old. I am currently incarcerated at the CDF on the North-1 in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I was moved to North-1 today May 7, 2020. Before that I was on Northwest-2.
3. In early April, 2020, while on Northwest-2, I started to feel very unwell. I had shortness of breath and headaches.
4. I put in a sick call and saw a doctor on or about April 12. The doctor told me I had a sinus infection. I was given an inhaler and antibiotics.
5. The doctor ordered me to be seen by a doctor again in 48 hours. That didn't happen.
6. Shortly after April 12 our unit was put on "quarantine." We were only let out of our cells for one hour a day. During that time we had to shower, clean our cells, and call our families.
7. After April 12, I requested to see a doctor three times by submitting a sick slip. I wasn't seen by a doctor. The sick slips are submitted into a box. I didn't see correctional officers or anyone else empty the sick slip boxes so I don't know if the medical requests are being acted on.
8. Last week they ran out of sick slips on Northwest-2 so I wasn't able to submit any more sick requests.

9. Nurses come around our unit twice a day to check every inmate's temperature. I would tell the nurses that I feel sick. The nurses would say my temperature is fine and they didn't help me get seen by a doctor.
10. We have not been given any chemicals to clean our cells. The only thing we can use to clean our cells is the bar of soap we are given once a week.
11. About two weeks ago the water fountain on Northwest-2 broke. The corrections staff did not provide us with water. The only thing we had to drink was the milk we got with our meals. Sometimes the inmates on the cleaning detail passed out small pouches of water. This water must last us all day. The corrections staff did nothing to help us get drinking water.
12. Since I saw the doctor on or about April 12 I continued to feel worse and worse. In addition to shortness of breath and headaches, my entire body was aching and I lost my senses of taste and smell. It felt like someone was sitting on my chest. I have no appetite and have been going to the bathroom much more than usual.
13. I repeatedly tried to get medical attention by asking corrections officers and the nurses who took my temperature for help. I was asking every day for help. There were no sick slips for me to put in a request for medical attention. Since I have been moved, I believe there are now sick slips on Northwest-2.
14. On or about Monday May 4 I was tested for Covid-19. I again told a corrections officer about my symptoms and that I couldn't smell or taste anything. This corrections officer told a nurse about my symptoms and the nurse tested me for Covid-19.
15. After I was tested on or about Monday May 4, they moved my cellmate out of my cell on Northwest-2.
16. The whole time I was having symptoms, I had a cell mate.
17. On Thursday May 7, I was told I had tested positive for Covid-19. I was moved to North-1.
18. I am afraid I will die at CDF. I am afraid I will not get the medical attention I need because of my experiences over the last month.

I, Todd Kowalski, certify that I have read the foregoing to LeDauntae Perry and that he affirmed the foregoing is true and correct on May 7, 2020.

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

Executed on May 7, 2020

A handwritten signature in cursive script, appearing to read "Todd Kowalski", written in black ink.

Todd Kowalski
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 5

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF JOSEPH STANKAVAGE

1. My name is Joseph Stankavage. I am 57 years old. I am currently incarcerated at the Correctional Treatment Facility (CTF) on unit C2-B (the 50 and over block) in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I suffer from multiple underlying chronic medical issues, including a form of cancer.
3. On May 12, 2020, I was taken to the medical unit at CTF with approximately 10 to 11 other residents from various units. All of us—myself, the 10 to 11 residents, and the correctional officer escorting us—were all made to ride the same elevator at one time to the medical unit. It was not possible for us to stand six feet apart in the elevator. Staff did not indicate we needed to stand six feet apart.
4. While we were in the elevator on May 12, one of the residents took off his mask to show his beard. I was one of only two people wearing gloves in the elevator.
5. At the medical unit on May 12, the 10 to 11 residents from the elevator were put into a single bullpen-style waiting room. When the 10 to 11 residents entered that room, there were already at least five residents waiting in the room.
6. After my medical appointment on May 12, I went into the bullpen to wait to be taken back to my unit. When I entered the bullpen, there were approximately 15 to 20 men already in the room. The bullpen is one room approximately the size of about three cells. There are 14 non-detachable chairs attached to the floor and a few stackable plastic chairs in the room. The non-detachable chairs are about one foot apart from one another. With 15 to 20 residents in that room, people could not be six feet apart. Groups were clustered

near the door and close to the TV. The door was closed and locked. Staff did not indicate that people had to stand six feet apart.

7. Of the 15 to 20 men in the bullpen on May 12, I was one of only two or three people wearing gloves.
8. After my visit on May 12, I was escorted back to my unit with about four other residents and a correctional officer. We were all taken in the elevator together. We dropped different residents off at different units before going back to my unit.
9. On May 13, 2020, I went to the medical unit and waited in line for my medical visit. While I was waiting, I witnessed men from different units enter the bullpen. There were at least 10 people in the bullpen at one time on May 13. Staff did not direct or require the men in the bullpen to be socially distanced from one another.
10. On May 13, the staff member in the medical unit directing residents to different treatment rooms was only wearing a surgical mask, but no gloves, face shield, or other PPE.
11. The officer who escorted me back to my unit on May 13 had a plastic facial shield in his hand, but was not wearing it. The officer stated it was too warm to wear it.
12. I have noticed a lack of consistency with staff members wearing facial shields. It seems that some choose to wear the shields and others do not. For example, on May 13, the correctional officer on my unit whose shift began at 8:00 am wore a facial shield on and off throughout the day. However, the correctional officer on my unit whose shift began at 8:00 pm did not wear a facial mask.
13. Since March 2020, our personal hygiene has suffered. We have not been given an opportunity to shave or have our haircut. I had to put in a sick call request to use nail clippers about one to two weeks ago. It had been six weeks since I had been given the opportunity to clip my nails. Yesterday, when I went to the medical unit, medical staff had a group of individuals sitting at the end of the hallway on the medical unit clipping their nails onto the floor. The area was not sanitized or sterilized.
14. About one month ago, I was asked by a nurse to clean the medical room on my unit. The room was filthy and appeared to not have been cleaned in years. There were hand sanitizer containers in the room, but they were all empty. There was a paper towel holder in the medical room, but no paper towel. To date, there is still no hand sanitizer and no paper towel in the medical room.
15. For the entire week of May 4, 2020, our unit had no sick call slips or inmate request slips available. The week of May 4 was not the only week in the past month that our unit has been out of sick call slips and inmate requests slips. I have put in multiple requests for these slips, but case manager availability to refill these slips has been very sporadic.

I, **Rachel Cicurel**, certify that I have read the foregoing to **Joseph Stankavage** and that he affirmed the foregoing is true and correct on **May 14th, 2020**.

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

Executed on **May 14th, 2020**.

A handwritten signature in black ink, appearing to read "Rachel Cicurel". The signature is written in a cursive, flowing style.

Rachel Cicurel
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 6

DECLARATION OF GARY JAGGERS

I, Gary Jagers, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746.

1. My name is Gary Jagers. I am fifty-six years old. I was incarcerated at the Correctional Treatment Facility in Washington, D.C. on the C2A unit from March 26, 2020 to April 28, 2020.
2. On March 26, 2020, I was moved within CTF, from unit C2B to unit C2A. Starting on March 26, 2020, unit C2A became a quarantine block. Inmates on C2A could not leave the unit until April 24, 2020, when every inmate on C2A demonstrated a consistent body temperature reading. There were approximately fifty-four inmates on unit C2A, with approximately six two-cell cells occupied by two inmates. The rest of the inmates on C2A were housed in single cells.
3. For approximately one week beginning on March 26, 2020, inmates on unit C2A were confined to their cells for twenty-four hours a day. I was not allowed out of my cell for recreation, to shower, or to place personal or legal phone calls for the first week that C2A was placed on quarantine status. Correctional officers did not deliver mail to me or any other inmates on C2A and did not provide clean laundry to me or any other inmates for roughly one week starting on March 26, 2020. There were not case managers present on C2A for approximately one week starting on March 26, 2020.
4. Approximately one week after unit C2A first went into quarantine on March 26, 2020, inmates on C2A were locked in their cells for twenty-three hours per day with one hour allotted for recreation time. In that one hour, I had to choose whether I wanted to shower, make personal and legal phone calls, or gather cleaning supplies. One hour was not sufficient time to do all three of these things—all of which I needed to do on a daily basis.
5. On or around April 2, 2020, several inmates on C2A tested positive for COVID-19. I feared that more inmates on our unit would test positive for the virus as well.
6. Cleaning supplies were first brought to unit C2A on April 16, 2020. Inmates could gather the cleaning supplies they needed to bring to their cells during our one hour of recreation time. Inmates were never provided paper towels or clothes to wipe down their cells, so I would use my bath towel or clothes to wipe down my cell with cleaning solution. Cleaning supplies were provided once per week. The cleaning supplies generally ran out after three days, so for the next four days, no inmates on unit C2A were able to clean their cells until more supplies were delivered.
7. The showers on unit C2A are shared by all of the inmates. No one was cleaning the showers, so I would have to personally clean the shower with cleaning solution and wipe it down with my bath towel if I wanted to take a shower.

8. The number of inmates let out for recreation at one time was subjective and dependent on which correctional officers were on duty. Some correctional officers would let out as many as fifteen or twenty people at a time, which made social distancing impossible to practice. If correctional officers let out too many people with me on my recreation hour, I would stay in my cell and forego making calls or showering because I was scared to get infected.
9. From my cell, I could see how many inmates were out for recreation on the unit. After April 19, 2020, there were at least six occasions on which I saw supervising correctional officers come to our unit and not enforce social distancing.
10. I never once observed correctional officers enforce social distancing by encouraging inmates to keep away from each other during recreation time.
11. Face masks were first passed out on unit C2A on April 15th. From April 15th to April 28th, the day of my release, I used and reused one face mask.
12. Medical staff would come to unit C2A twice per day to hand out medications. While medical staff were present on the unit, I tried to ask questions about non-COVID medical issues I was dealing with. I am diabetic and suffer from hypertension. The medical staff would pass out medical and insulin but ignored my questions.
13. Prior to March 26, 2020, inmates followed the normal procedure for submitting sick call slips by submitting their slips in a box, which medical staff would pick up and respond to within twenty-four hours. Between March 26, when C2A was placed on quarantine status, and April 24, when C2A was placed on isolation status, nobody picked up sick call slips that inmates submitted.
14. On March 20th, 2020, I underwent an MRI. Following the MRI procedure, I made numerous requests to see my primary care physician, Dr. Mitchell. I never once saw Dr. Mitchell after March 20th. I submitted several Inmate Grievance Procedure forms (IGPs), the last of which I submitted on April 21st. I never received a response to any of these IGPs. In the time that I was on unit C2A, the IGP coordinator never came to the unit.
15. For the last three weeks I was incarcerated at CTF, I lived in tremendous fear. I was scared to death that even if I was not infected with COVID-19, my underlying medical conditions would deteriorate and there was nobody at CTF who would see or help me.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on the **14th** day of May 2020, in Washington, D.C.

____/s/_____
Gary Jagers

A handwritten signature in black ink, appearing to read 'Kiran Bhatt', written over a horizontal line.

Kiran Bhatt
Investigator for Mr. Jagers
Public Defender Service for the District of Columbia

EXHIBIT 7

DECLARATION OF ROMIEL HIGHTOWER

I, Romiel Hightower, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746.

1. My name is Romiel Hightower. I am twenty-nine years old. I am currently incarcerated at the Central Detention Facility in Washington, D.C. I have been at the jail since January, 2020. I have a history of asthma.
2. My first placement at CDF was on unit Southwest 2. I was placed in Northeast 1 in late January, 2020. In March I was placed in quarantine for five days because I had been to Court when a Marshal who tested positive was there, but I was not tested for COVID before, during or after the quarantine.
3. On NE1, I was housed in a two-man cell, occupied by myself and another inmate.
4. On April 10, 2020 the guards came and told me my cellmate had tested positive for COVID. The guards made me clear out his stuff from the cell over my protest without giving me any protective gear or cleaning supplies. I also asked for a new cell or at least to have my cell cleaned. Both requests were denied.
5. After that day, I started feeling some symptoms of COVID, headaches and a dry scratchy throat at night. I put in three medical requests and a grievance but was never taken to for a test. I also asked every medical staff who came by and all the guards for a COVID test, no one gave me one. A female deputy warden promised she would come and deal with the situation but never did.
6. They also never provided me any cleaning materials for my cell. I was given an occasional bar of soap, but because I had to use it for everything, it would quickly be used up.
7. On April 22, 2020 they returned my cell mate even though he still had symptoms of COVID.
8. At a hearing on April 23, 2020 the judge ordered the jail to provide a COVID test for me which came back positive.
9. I was then placed in quarantine where it was nasty and dirty and nothing was cleaned and it was very rare anyone came by to check on me. I didn't have hot water. I had many fewer opportunities to shower, only once every three or four days after lots of complaining, and couldn't use the phones every other day or third day.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on the __11th__ day of May 2020, in Washington, D.C.

_____/s/_____
Romiel Hightower
Correctional Detention Facility
1901 D Street SE
Washington, DC 20003

I, Jason Tulley, certify that the following was read to Romiel Hightower and that he affirmed the foregoing is true and correct on May 11, 2020

_____/s/_____
Jason Tulley
Attorney for Mr. Hightower

EXHIBIT 8

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

SEALED TRANSCRIPT

- - - - - x
:
UNITED STATES OF AMERICA : Docket Number: 2019 CF1 016426
:
vs. :
:
ROMIEL TYRONE HIGHTOWER, :
:
Defendant. :
: Thursday, April 23, 2020
- - - - - x Washington, D.C.

The above-entitled action came on for a hearing
before the Honorable DANYA A. DAYSON, Associate Judge, in
Courtroom Number 115.

APPEARANCES:

On Behalf of the Government:

SHEHZAD AKHTAR, Esquire
Assistant United States Attorney

On Behalf of the Defendant:

JASON D. TULLEY, Esquire
Washington, D.C.

20-01987

Deposition Services, Inc.

12321 Middlebrook Road, Suite 210
Germantown, MD 20874

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info@DepositionServices.com www.DepositionServices.com

SEALED TRANSCRIPT

P R O C E E D I N G S

THE DEPUTY CLERK: Romiel Hightower, Mr.

Hightower's wife is on the line.

THE COURT: Okay. Good morning everyone. Mr.

Hightower are you there, sir?

MR. HIGHTOWER: Yes, Your Honor.

THE COURT: Okay. So, we're here today on the

motions that have been filed. And that is emergency

motions that were filed for release that were filed on

March 16th and on the 24th, the Government's opposition

there to. The petition for habeas and supplement on

April 7th, the opposition filed thereto. An update on

the emergency motion, a notice of filing on April 20th,

which include the TRO for, for the District Court in the

Banks case, as well as the transcripts of the report of

the monitor. Was there anything else I have missed with

respect to this case, Mr. Tulley?

MR. TULLEY: No, Your Honor, that's all.

THE COURT: Okay.

MR. AKHTAR: Your Honor, there was a ruling

that Judge Edelman made this matter, which was filed

denying the defense motions. The ruling was, it was a

written order which was filed on April 17th. There's, I

believe, I did email that to your clerk. I believe, you

should have that.

BS

SEALED TRANSCRIPT

1 THE COURT: Hold on just one moment. I
2 believe, hold on just a second. I have the note that it
3 was denied. I don't think I have the written order.
4 Well, let me just go up and see.

5 THE DEPUTY CLERK: Your Honor, I apologize.
6 This is one of the courtroom clerks. Could we get the
7 webex time stamp?

8 THE COURT: Oh sorry. Chris, can you send me
9 the webex time stamp? 1:32:30. All right, give me just
10 a moment.

11 MR. AKHTAR: Your Honor, would you like me to
12 email it to your Clerk? Or no.

13 THE COURT: Give me just one moment please.

14 MR. AKHTAR: Yes, Your Honor.

15 THE COURT: Yeah, you can just go ahead and
16 email it again so I can take a look at it.

17 MR. AKHTAR: All right, Your Honor, I just sent
18 it.

19 THE COURT: Has not come in yet, counsel.

20 MR. AKHTAR: Just one moment. Your Honor, it
21 is an 11-page order which Judge Edelman wrote for you
22 information. It has been sent out of my out box.

23 THE COURT: Okay, can you just reply to the
24 email that he sent you?

25 MR. AKHTAR: Your Honor, I did.

BS

SEALED TRANSCRIPT

1 THE COURT: Oh.

2 THE DEPUTY CLERK: Can you sent it again? Can
3 you do it again?

4 MR. AKHTAR: You want me to do it again?

5 THE COURT: Yeah.

6 MR. AKHTAR: Okay.

7 THE DEPUTY CLERK: Okay, never mind, we got it.

8 MR. AKHTAR: Okay.

9 THE COURT: And now, I'm waiting on it.

10 MR. AKHTAR: Okay.

11 THE COURT: There we go, I got it. All right
12 give me just a moment please. Oh, I have received this
13 and, and I'm looking, specifically, at the ruling, the
14 factual basis for the ruling on, contained on page 2 of
15 the, of the order. And the remaining order is addressing
16 the Constitutional issues. And so, I do see that there
17 was this denial that was issued. I believe it was
18 actually issued by Judge, in Judge Edelman's case.

19 All right, so, in light of that to the extent
20 that you are asking to renew that, Mr. Tulley, that, to
21 renew that order. Or renew the motion is what I'm, I'm
22 assuming that you're asking by the supplemental filings.
23 Is that correct?

24 MR. TULLEY: Yes, Your Honor.

25 THE COURT: Okay.

BS

SEALED TRANSCRIPT

1 MR. AKHTAR: Your Honor, if I may. That order
2 was filed after all of, with the exception of the motions
3 filed on Sunday by defense counsel and the motion filed
4 on April 19th was related to the class action transcript
5 and the result of the class action. Locked up so the
6 motion filed before that was on April 15th by defense
7 counsel. And the order came down April 17th, which,
8 meaning that the Court was aware of the lack of findings
9 that defense counsel made on April 15th. Where he was
10 stating the defendant had potential symptoms of Covid, as
11 well as sharing a cell with cell mate who was
12 subsequently.

13 MR. TULLEY: That's actually, that's actually
14 in, that's actually incorrect, Your Honor. Because Judge
15 Edelman's order lists what motions had been filed and the
16 Government's order in the sentence says March 18th, March
17 23rd and April 7th motions.

18 MR. AKHTAR: Well.

19 MR. TULLEY: And so, he doesn't list April 15th
20 because I don't think he had seen the April 15th by the
21 time he wrote this two days later on April 17th. So,
22 that's, that's not true.

23 THE COURT: So, with respect to that, to that
24 filing, however, it does seem to me, Mr. Tulley, that,
25 again, that really goes to the conditions issue, not to a

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SEALED TRANSCRIPT

1 statutory basis or relief in this case. I mean, to the
2 extent that there are issues that are related,
3 specifically, to Mr. Hightower's medical issues, which
4 I'm, I think we do need to address, and we can do that in
5 just a moment. I will ask Mr. Bryant to be ready to
6 address those issues. The underlying statutory basis for
7 the hold, still remains.

8 MR. TULLEY: I understand that, Your Honor.
9 Our position is that, given the information about the way
10 Mr. Hightower has been treated by the jail and by the
11 monitor's report and the Judge's order, the written
12 report that came out over the weekend after Judge
13 Edelman's order. And the several District Court Judges'
14 TRO, Your Honor should revisit the hold decision. I
15 understand it if Your Honor decides to maintain the hold
16 decision. Then, there are other conditions that we will
17 discuss.

18 THE COURT: Okay. And I am going to maintain
19 the hold decision. I think that, with respect to the
20 Constitutional, the conditions of release, the order lays
21 out the analysis of the challenge regarding the
22 conditions of release. And I believe there's still,
23 there's the cell mate issues that are raised are still
24 addressed properly in the bench decision, as frankly,
25 have been noted in the TRO that was filed as a

BS

SEALED TRANSCRIPT

1 supplement.

2 With respect to Mr. Hightower's specific
3 issues, while I do not see this as a basis of release, I
4 am prepared to address concerns that were raised with
5 regard to remediation of, of his specific allegations
6 regarding --

7 MR. TULLEY: Okay, Your Honor, if I may then.

8 THE COURT: Yeah.

9 MR. TULLEY: Okay, so just to set the, the
10 stage for Your Honor. On, on April the 10th, which was a
11 Friday, Mr. Hightower's cell mate was remove Northeast 1
12 and placed in, what I think was quarantine. Mr.
13 Hightower was told that his cell mate had tested positive
14 for Covid. And then, Mr. Hightower was required himself
15 to go back into the cell where he had spent the last
16 several days, and I think even more than that, with a man
17 who was just tested positive for Covid and clean out that
18 person's stuff. Which is, frankly, outrageous.

19 After he did that over his protest and asked
20 for himself not to have to stay in that cell, the jail
21 personnel put him back in that cell. Where he stayed in
22 that cell, which is where a person had just had Covid.
23 He started developing symptoms himself. He started
24 getting headaches. He started getting issues with his
25 throat and during this, and the evenings and at night.

BS

SEALED TRANSCRIPT

1 He's put in three medical requests that have
2 gone unheard. He's put in a grievance form. And the
3 behavior of the jail, even in the last several days since
4 the order, has maintained a dangerous, deadly and
5 insufficient situation for him. That his present needs
6 are going to the Judge and Federal Court found that the
7 jail is disregarding the risks to Mr. Hightower's health
8 and safety, his death. They're disregarding those risks
9 by failing to take apprehensive time and the proper
10 steps.

11 So, in the last several days, a few other
12 things have happened. His cell mate had returned
13 yesterday. They put the cell mate right back in with Mr.
14 Hightower, saying the cell mate had, his symptoms had
15 abated. And so, they were returning him to the
16 population. The cell mate's concern that they had taken
17 the long Q-tip, stuck it very far up his nose and he
18 tested positive for Covid. It is insane that the jail
19 would put this man right back in a cell, having still had
20 Covid, when he's, rightly a carrier. And certainly, the
21 medical personnel have no studies to think that he's
22 going to be fine and not pass along the virus.

23 The jail continues, despite the TRO on Sunday,
24 that was issued to provide insufficient cleaning
25 materials. Mr. Hightower, I requested in emails after

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1 this came up on the 10th and have got no response. Mr.
2 Hightower, himself, has also requested that they do more
3 in terms of cleaning his cell, which is likely infected.
4 Use the proper cleaning materials, bring in a
5 professional, even some cleaner to you, to use the
6 cleaning materials so they're, so they properly disinfect
7 that cell. They're not giving them new rags or towels.
8 They're not giving him even sufficient soap. He hasn't
9 had a new bar of soap in a week and a half. And that is
10 not sufficient, given the amount of cleaning that needs
11 to go on.

12 So, given all of these barriers by the jail,
13 and especially in light of the fact that the jail for
14 weeks before that was saying. We have been social
15 distancing. It's fine. We've been providing cleaning
16 materials. We have been providing the proper medical
17 care. And now, we know from the monitor's report that
18 all those statements that this Court has relied on for
19 weeks and different judges, your colleagues, Your Honor,
20 has relied on in making decisions denying release, were
21 not true. Mr. Hightower reports that they're still
22 letting people out for rec, up to 10 or 12 people at a
23 time. Contrary to the TRO's orders and the monitor's
24 recommendations.

25 We're asking for a few things. First of all,

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1 an immediate test for Mr. Hightower, which he's been
2 begging for, not just in the medical forms. So, when COs
3 come by, the Deputy Warden has ignored request. They are
4 just taking his temperature. That's all they do. They
5 come by and take his temperature. They do not check his
6 heart rate. They, when, when, I know, Your Honor, other
7 claims have talked about the vitals. They're not taking
8 his vitals, other than his temperature. They're not
9 checking his symptoms when the, when the PA has come by,
10 and he said I've got these symptoms, I want the test.
11 They have not further asked questions. They've ignored
12 those requests.

13 So, we ask, Your Honor, and I, I, to order them
14 to test him within 24 hours and give him a test. We ask,
15 Your Honor, secondly, to order a new, clean cell, to have
16 him put in a different cell. It could be a single cell.
17 It could be a double cell. But a cell that is cleaned
18 and disinfected. And frankly, because he's been in
19 contact with some infested positive, I think it should be
20 a single cell. So that the virus doesn't spread further
21 through the jail. That's our second request.

22 And the third request is, we ask that the Court
23 order the jail to provide him sufficient soap. And it's,
24 it's a little ridiculous that I have to go such minutia
25 to ask for soap, but they are just not doing it. And I

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1 know some of that, the how to house people and the soap
2 issues, in particular, Your Honor, has, I've heard
3 arguments on, calling for 115 earlier in the week about
4 how well that's going to duplicate the Federal Court's
5 order.

6 And to some degree maybe, although this is
7 something that's more specific. But also, the jail is
8 not responding the Federal Court's order. So, to say,
9 well, we're going to leave it to the Federal Court,
10 maybe, another Judge is ordering it in more specific
11 ways, will actually help get things done. And I don't, I
12 think there can be overlap. I don't think the jail is so
13 paralyzed that it's going to cause confusion if Your
14 Honor orders a few remedial things in a situation where
15 the jail has completely fallen down in their obligations
16 to care for someone in their custody.

17 But, I think, Your Honor should be disturbed by
18 the way the jail has acted in this and other cases. And
19 I'd ask that those three specific orders, test within 24
20 hours, a new cell, clean, single cell within 24 hours,
21 sufficient soap.

22 THE COURT: Okay. Thank you. Mr. Bryant can
23 we hear from you with respect to, the first issue, I
24 guess, I would like to address. And, I mean, it does
25 seem, frankly, to be something that I am prepared to

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1 address is this request for a test within 24 hours.
2 Given the fact that Mr. Hightower is complaining of
3 symptoms himself, given the fact that his cell mate
4 tested positive and given the fact that he has asthma.
5 Is there some reason in light of the fact that, frankly,
6 the Covid, the Covid-19 symptoms are, in large part,
7 self-reported symptoms?

8 I mean, yes, there are objective things, like
9 temperature that you can see, but other symptoms are,
10 they, they all are based on self-reported symptoms. So,
11 to the extent that he's self-reporting symptoms that are
12 consistent, he has been with, he has been housed with
13 somebody who tested positive, and he has this underlying
14 issue, I'm trying to understand the basis for refusing to
15 give him a test.

16 MR. BRYANT: Your Honor, this is the first I've
17 heard that he has symptoms. Our records indicate that
18 he's receiving the daily temperature checks and visit
19 from the Covid medical team. As far as him having
20 symptoms, that's not something that I have in the
21 records, but I don't have records that are through today.

22 MR. TULLEY: There's part of the problem.
23 Sorry, that's part of the problem, Your Honor, is that
24 there is insufficient records been by the personnel at
25 the jail, in terms of the notes that people --

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1 MR. BRYANT: No, that's not what I said.

2 MR. TULLEY: I have emailed Mr. Glover.

3 THE COURT: Do not talk over each other. In
4 this, I don't like it when we're in Court and in this
5 atmosphere, it is completely, you might as well be
6 whistling. I can't hear anything. So, if anybody's
7 been, so, please don't do that.

8 MR. BRYANT: Your Honor, the record I have ends
9 on April 20th. The DOC is still taking medical records.
10 My records end on April 20th.

11 MR. TULLEY: May I, Your Honor?

12 THE COURT: Yes.

13 MR. TULLEY: This is part of the problem.
14 There's insufficient record keeping about what's going on
15 in the jail. I have emailed Eric Glover about this on
16 April 16th and got no response. I filed it in a motion.
17 This had been that same day or the next day. I served
18 the OAG and still nobody knows anything that he's had
19 these symptoms. When I put it in paper work and he has
20 told people and written it on medical slips.

21 That's part of the systemic problem and why
22 Your Honor needs to step in and order relief.

23 THE COURT: Well, which is why, I guess, my
24 next question, Mr. Bryant, is. Whether or not it's
25 reflected in the records that you have, given the fact

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1 that there are, that there is a record being made of that
2 he is self-reporting these symptoms and all of the other
3 things that I laid out. Is there any reason I should not
4 be ordering a test within 24 hours?

5 MR. BRYANT: Your Honor, DOC's position is that
6 the daily temperature checks meeting with the Covid
7 medical team is adequate.

8 THE COURT: Well, okay, well, I, I don't --

9 MR. BRYANT: I don't have records.

10 THE COURT: Right. Well, given, given the fact
11 that there are a myriad of symptoms Covid-18 of which a
12 fever is one and that many of the other symptoms rely on
13 self-reporting. Symptoms like headaches, nausea,
14 shortness of breath. These are not things that can
15 always be objectively measured or viewed. I mean, yes,
16 if someone's throwing up, you know they're nauseous. But
17 that doesn't mean if they're not throwing up, they're not
18 nauseous. If something is wheezing and clutching their
19 chest, they have shortness of breath. If they are not
20 wheezing and clutching their chest, that does not mean
21 that they do not have shortness of breath.

22 So, to the extent that these are things that
23 are being self-reported, that are consistent with
24 symptoms and to the extent that Mr. Hightower has been
25 housed with someone who has tested positive, I'm going to

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1 order that he be tested for Covid within 24 hours.

2 MR. TULLEY: Thank you, Your Honor.

3 THE COURT: So, the other issue with regard to
4 the housing and cleaning, so, let me just say that the
5 issue with regard, the systemic issue that you're
6 discussing, is included in the TRO. I think all of those
7 things have to be addressed. Those are part of the
8 systemic issues that are being addressed with regard to
9 that.

10 In this case, specifically, I think it's
11 different in different cases, whether or not we're
12 addressing how folks are, are being housed. But Mr.
13 Bryant in this case, can you address the housing
14 situation?

15 MR. BRYANT: Your Honor, this position, you
16 would not have a cell mate returning if a bunch of his
17 cell mate have gone through the 14-day quarantine and was
18 no longer symptomatic.

19 THE COURT: Could, is that what, I'm sorry.
20 When did he test, when did the cell mate test positive?

21 MR. TULLEY: Well, he, he, he was removed on
22 Friday, the 10th and he was brought back on the 22nd.
23 So, that's 12 days.

24 THE COURT: Okay. So, Mr. Bryant.

25 MR. BRYANT: I'm going to have to get more

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1 information about that.

2 MR. TULLEY: Well, I'd ask him to just order
3 him to move to a new cell. I mean, I have facts. I have
4 proffered facts. Your Honor, can ask Mr. Hightower about
5 it if she wants, if you want. But these are the facts
6 about the, the, where the folks are. And, and, I mean,
7 the idea that they are, they're delaying and keeping him
8 in a cell with someone who can potentially infect him
9 while they take the time to figure out, as opposed to
10 just ordering him to do something about it, object to
11 that.

12 THE COURT: Mr. Bryant.

13 MR. BRYANT: Your Honor, I would just like to
14 gather more information about his cell mate status before
15 I respond.

16 THE COURT: That's fine. You couldn't, I'll
17 have, you can look at that over lunch and we'll recall
18 this at 2:00. I mean, I'll give you time to look at it,
19 but I don't, I don't want to have this keep going. So,
20 we'll recall this matter at 2 o'clock.

21 MR. TULLEY: Thank you, Your Honor.

22 THE COURT: In the meantime, I'm, I'm denying
23 the issue with regard to the soap. Not because I don't
24 think it's something that should be happening. But
25 because it does seem duplicative of, of the TRO order.

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1 But I am ordering the, the 24-hour test. Okay, we'll
2 recall this at 2 o'clock to deal with the issue of where
3 Mr. Hightower is going to be.

4 MR. TULLEY: Thank you, Your Honor.

5 THE COURT: Okay, thank you.

6 MR. AKHTAR: Thank you, Your Honor.

7 (Thereupon, a luncheon recess was taken.)

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A F T E R N O O N S E S S I O N

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1 MR. HIGHTOWER: Hello.

2 THE COURT: Yes. Is this Mr. Hightower?

3 MR. HIGHTOWER: Yes, this is him.

4 THE COURT: Okay, thank you.

5 THE DEPUTY CLERK: Recalling United States v.
6 Romiel Tyrone Hightower, 2019 CF1 16426. Government for
7 the record.

8 MR. AKHTAR: Shehzad Akhtar, good afternoon.

9 THE COURT: Mr. Tulley.

10 MR. TULLEY: Jason Tulley from the Public
11 Defender's Service for Mr. Hightower. Good afternoon.

12 THE COURT: Good afternoon. Okay, folks.
13 We're here again on this motion. And Mr. Copeland, Mr.
14 Bryant, I've asked this morning for Mr. Bryant to look
15 into this issue, there -- I don't know to what extent,
16 that he let you know what was going on.

17 MR. COPELAND: I'm, I'm up to date. Yes, I'm
18 aware of what happened this morning and I'm prepared to
19 address the question.

20 THE COURT: Okay, thank you.

21 MR. COPELAND: So, Mr. Hightower was seen by
22 Dr. O'Donovan on the lunch break. And whenever he,
23 whenever he's been seen twice daily. So, Dr. O'Donovan
24 said Mr. Hightower reported that he had a sore throat.
25 And they took him for strep. He does not have strep.

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1 And based on the existence of, not that there was a
2 clinical symptom that could be associated with Covid, he
3 is going to be tested now.

4 THE COURT: Okay.

5 MR. COPELAND: So, Dr. O'Donovan and Dr. Jordan
6 were very adamant that we, that No. 1 that he that we're
7 not facing a Covid infectious person. And so, first was
8 not. And that the, that the testing, that the all points
9 are test, they approximately he got it on. Instead, is
10 based upon whether or not the person is symptomatic.
11 And, you know, to the extent that Court, that Your Honor,
12 or any of her colleagues on the bench want medical
13 information as to how these decisions area made. Dr.
14 Jordan is happy to facilitate a question and answer
15 session for that, the sort of clinical decisions can be
16 fully appreciated.

17 THE COURT: Okay. So, this not making this
18 morning the representation that was made, I don't want to
19 spend a whole lot of time on this. But I had already
20 ordered that he be tested for Covid so -- appropriate.
21 The issue, the representation that had been made this
22 morning was as follows.

23 Mr. Hightower indicated that he was self-
24 reporting symptoms that were, were consistent with Covid.
25 He indicated, I'm not, I'm not making finding with regard

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1 to whether he did or not in the past, but he was now. He
2 was housed with someone who was in a cell with someone
3 who had tested positive for Covid and he has asthma. The
4 representations that were made this morning was. Well,
5 they are taking the temperature twice a day and that is
6 sufficient.

7 And what I was saying was that seems
8 insufficient if someone is self-reporting that symptoms
9 are consistent with Covid and they have been in direct
10 contact with someone who has tested positive for Covid.
11 It sounds like, common sense, relying on common sense and
12 here's these medical folks have come into alignment. So,
13 I don't think there's much more to talk about.

14 MR. TULLEY: Your Honor, while I appreciate you
15 ordering the test, I think we can move on to the issue of
16 housing.

17 THE COURT: Thank you. So, with regard to the
18 housing issue, can I hear that? Mr. Copeland.

19 MR. COPELAND: Yes. Mr. Hightower is in a
20 housing unit and he, and the question is about the, he
21 has a cell mate. And who had been tested who tested
22 positive, but who has recovered. And according to CDC
23 guidelines, he, that person has recovered. And he has
24 been more concerned with the CDC guidelines, so, had an
25 extra day for recovery. But the recovered person is

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1 capable of being, has appropriately been moved back into
2 general population.

3 THE COURT: I think that the question.

4 MR. COPELAND: So, that's what happened.

5 THE COURT: Right, so, this is the, I'm sorry.
6 I don't mean to cut you off. But I just want to make
7 sure that while, okay. I understand that he tested
8 positive. I understand that he was isolated or taken out
9 of a cell at that time. My question is, when you say
10 recovered, you mean a, asymptomatic, plus X number of
11 days? Do you mean quarantined after some period of time?
12 What does that mean?

13 MR. COPELAND: He is asymptomatic, plus I can't
14 remember if it was four or five days. But it was one day
15 more that the CDC guideline. There is no symptom, plus
16 the time. And you don't leave isolation to go back to
17 the quarantine, you leave isolation to go back to the,
18 the population.

19 THE COURT: Okay, and so, that's what I, that's
20 what I was trying to get at. So, when you, what you're
21 saying is that when he was placed back into the cell, he
22 had been yet with, without symptoms for four days.
23 Because the CDC says, the CDC says without symptoms for
24 three days, preliminarily seven days after symptoms
25 appear, whichever one is longer. And so, my question is

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1 can you tell me what the dates are that you can. So, so,
2 that there can be a record that is either, that is in
3 compliance. And I'm sorry, Mr., Mr. Tulley, if you have
4 different information about what the CDC recs are, you
5 can let me know. But that's my little bit of
6 information.

7 MR. TULLEY: So, I, I will if I do, Your Honor.

8 THE COURT: So, Mr. Copeland, can you just make
9 representations please about the, the date that he tested
10 positive and then the date on which he became
11 asymptomatic?

12 MR. COPELAND: Yes, Your Honor. I'm pulling
13 those records up.

14 THE COURT: Thank you.

15 MR. COPELAND:

16 MR. TULLEY: While he's doing that, Your Honor,
17 can I talk to my client for a moment?

18 THE COURT: You mean hang up and then call back
19 in?

20 MR. TULLEY: I don't need to hang up. I can
21 use a separate phone and this time I'm. I still have a
22 quick question for him about this issue.

23 THE COURT: Okay. All right. Can I ask the
24 jail PSE if he could have Mr. Hightower quickly call Mr.
25 Tulley please?

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1 MR. TULLEY: It'll be short Judge.

2 THE COURT: All right. Mr. Tulley, don't
3 forget to put this one on mute. Last time.

4 MR. TULLEY: I won't, yes, I won't forget.

5 THE COURT: Okay.

6 MR. HIGHTOWER: So, you want me to hang up and
7 call back?

8 THE COURT: Yes, call Mr. Tulley and then call
9 us back, please.

10 MR. HIGHTOWER: Okay.

11 MR. TULLEY: Your Honor.

12 THE COURT: Yes, Mr. Tulley.

13 MR. TULLEY: I'm waiting for the call. But Mr.
14 Copeland could email the, email me the records so I could
15 take a look at them, that'd be helpful.

16 THE COURT: He's not going to email you
17 somebody else's record. I've asked him to, I've asked
18 him to --

19 MR. TULLEY: Well.

20 THE COURT: I mean, that's.

21 MR. TULLEY: Well, if there's some, if there's
22 a document that's being used in Court for
23 representations, usually, all sides involved get a chance
24 to look at it. I can be under a protective order, oral
25 protective order not to disclose it.

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1 THE COURT: I mean, I can have him send you a
2 redacted one thereafter if you want. But I'm not going
3 to, or we're actually going to have to look. I'll, I'll
4 reach out to whoever his cell mate's attorney is to have
5 representations. It's one thing for me to order them to
6 turn over your own client's record, medical records.
7 With respect to, I'm fine to ask on the record about the
8 days. Especially because they are not being, the
9 person's not being identified in the record. But I'm not
10 going to order any without his attorney being able to
11 weigh in on it, his medical records to be turned over to
12 a third party.

13 MR. TULLEY: All right, so, we'll try to figure
14 out who is, you know, we'll ask for a redacted copy after
15 the hearing or we'll figure out who is attorney is then.

16 THE COURT: That's fine.

17 MR. TULLEY: Okay.

18 THE DEPUTY CLERK: Your Honor, while we wait, I
19 had a question. Earlier, the hearing earlier this
20 morning was sealed. Will be sealing this person's
21 hearing as well?

22 THE COURT: Mr. Tulley, are you asking for this
23 portion to be sealed as well? Mr. Tulley is not with us.
24 Yes, I am actually going to order it to be sealed.

25 THE DEPUTY CLERK: Okay.

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1 MR. COPELAND: Your Honor, we come prepare when
2 Mr. Tulley returns.

3 THE COURT: Thank you.

4 MR. TULLEY: And I'm back, Your Honor.

5 THE COURT: Okay, thank you. Do we have Mr.
6 Hightower back?

7 MR. TULLEY: I don't think he's back yet, but I
8 just got off the phone with him a moment ago.

9 THE COURT: While I'm waiting for Mr.
10 Hightower, I've received -- in James Cooper, 2019 CMD
11 7702 the order. I approved that. Do we have Mr.
12 Hightower back?

13 MR. HIGHTOWER: Yes, I'm here.

14 THE COURT: Oh, thank you. All right, yes, I'm
15 sorry, Mr. Copeland, could you proceed please?

16 MR. COPELAND: Sure, the other, the other
17 resident which tested, tested positive on April 10th.
18 And so, and there are no separate -- but there is and it
19 seems to be April 17th. But he was not discharged from
20 the installation until the 23rd. The last recorded
21 symptom on the record is on is a misdemeanor.

22 MR. TULLEY: Your Honor, may I?

23 THE COURT: Yes.

24 MR. TULLEY: Well, now, that we've actually
25 looked at the records, it apparently, they've not

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1 conformed with what Mr. Copeland had said earlier. Which
2 I guess I shouldn't be surprised then. When he said it
3 was always four to five days, but the last symptom was on
4 the 20th and he actually was, according to Mr. Hightower,
5 brought back to the cell yesterday, which is the 22nd.
6 That's only two days in between, not four days, not five
7 days, not an extra day more than the CDC recommends.

8 And while Mr. Hightower, when he called me, we
9 had a chance to talk to his cell mate, who has not been
10 tested a second time. And who says he still has the
11 following symptoms, headaches, sore throat and loss his
12 sense of smell. Given those facts and not just
13 representations that turn out to be incorrect when we
14 look at the records, I reiterate my request to have Mr.
15 Hightower moved from out of that cell to a single cell
16 that is professionally or properly cleaned.

17 THE COURT: Mr. Copeland. I mean, Mr.
18 Copeland, based on, based on your representation then,
19 it's three days after, not on the third day after. So,
20 even I, putting aside what Mr. Tulley just said. If that
21 is the case, that's not compliant with the CDC recs.
22 Right? And so, in light of that what is your position
23 with respect to the request being made to, I would say a
24 different cell? It doesn't necessarily need to be a
25 single cell, but a different cell.

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1 MR. COPELAND: Well, Your Honor, I think that
2 the, it sounds what the Court is ordering then, of
3 course, we would see were unsolvable. I think if the
4 Court, if you think there's an issue herein terms of, in
5 terms of the Department, there's, on the one hand we have
6 given the process of leave related to when people are
7 seen, when people are answering specific calls, brings us
8 back to the back side, in terms of who and what we can
9 see. And yet, in this context, if the Court is then
10 asked to, you know, issue findings that more may not.
11 And so, I, I, if the Court is ordering us to place him in
12 a cell alone, then, yes, we would do that.

13 THE COURT: I'm ordering not, I'm ordering you
14 not to place him with a person who was returned on the
15 23rd, when his last symptoms were on the 20th. That's
16 what I want.

17 MR. COPELAND: Okay.

18 THE COURT: And I'm ordering that --

19 MR. COPELAND: Well, Your Honor, he's going to
20 be tested. But I, I, I, in fact, I don't know whether
21 it's more aggressive, but it seems to me that the medical
22 decision in the absence of clinical information is not.

23 THE COURT: Mr. Copeland, did you hear what,
24 did you hear what I said? So, at the beginning of this
25 hearing, this is why I went back and revisited this.

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1 What I said was I want to make a finding about whether or
2 not in the past there have been self-reported symptoms.
3 There are, the CDC has given guidance with respect to
4 when testing should take place. I mean, that's the CDC
5 guidance. I'm not making medical decisions.

6 So, for instance, yesterday, when there was a,
7 a decision about, you know, using certain medical
8 interventions and whether or not that was appropriate in
9 a specific case, but in a specific diagnosis. I'm not
10 second guessing that. I don't have any problem with
11 that. But what I'm saying is when someone has met the
12 guidelines for CDC testing and has an underlying medical
13 issue, I don't know why DOC is taking the position that
14 the only, I mean, and I understand that you're not taking
15 this position this morning.

16 What I was trying to tell you was that this
17 morning the position that was being taken by the OAG is
18 that the only thing that matters is the twice a day
19 testing. We do twice a day testing and that's
20 sufficient. And what I am saying is that when somebody
21 is self-reporting symptoms of CDC, that the CDC says are
22 symptoms consistent with Covid and that person has been
23 in a cell with someone who has tested positive. That
24 under the CDC guidelines, that seems to suggest testing
25 is appropriate. I'm not, I'm not trying to make up the

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1 medical, I'm not trying to be a doctor. I'm just trying
2 to read. And when I read something and it can't tell me
3 why the word shouldn't be efficient that way, I, I have
4 to confess being confused.

5 I'm not trying to start to second guess medical
6 issues. If you want to tell me that the CDC doesn't
7 recommend that, then, then, point me to the point, part
8 of the CDC's guidelines, specifically, for folks in
9 detention. That says that that's not an appropriate time
10 for testing.

11 MR. COPELAND: I'm not trying to confuse, Your
12 Honor.

13 THE COURT: Right, I'm sorry.

14 MR. COPELAND: I was saying I'm not trying to
15 confuse Your Honor, and I apologize if I'm doing so.
16 What I am told by D.C. medical is that the custody comes
17 by the symptom. That is why people are checked twice
18 daily.

19 THE COURT: So, Mr. Copeland, let me stop you.
20 Because I can hear you talking very slowly. I, I, I
21 don't need you to slow down because I understand the
22 words that you are saying. What I am saying is that
23 symptom does not only mean fever. So, when somebody is
24 saying to me in Court that they are reporting I have
25 symptoms. I have a sore throat, which is one of the

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1 symptoms that is listed in the CDC. That is why, that is
2 why it is appropriate, since they were with somebody in a
3 cell that was tested for Covid, to test for Covid. You
4 don't have to slow down for me. Because what I was
5 trying to say to you was that you were saying was
6 different from what was being this morning.

7 This morning the question I asked is. If
8 someone is self-reporting symptoms and they have been
9 housed with someone who tested positive, why shouldn't I
10 be testing? Why shouldn't I be ordering a test? Why
11 shouldn't they be testing? And the answer was because we
12 are taking twice a day, temperatures and that's
13 sufficient. A fever is a symptom. It is the dispositive
14 symptom. It's the only symptom.

15 So, I, I just don't believe, you're not saying
16 to me the same thing over and over. That does not seem
17 to address my issue. Especially, when I know doctors are
18 saying he has said he had a symptom and he was with
19 someone who tested positive. Therefore, we should be
20 testing. So, I'm not, I, I don't understand exactly what
21 you're arguing with because they said exactly what I
22 ordered this from.

23 MR. COPELAND: I'm not arguing with Your Honor,
24 and I will make sure that the lawyers who are on this
25 call that I present correct information. And I apologize

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1 this morning that the representation was made that we be
2 on see a fever. We check for symptoms and ask people
3 what their symptoms are.

4 THE COURT: Okay, that's all I, that was the
5 reason that I said that. Because I wanted you to be
6 aware that that representation was made this morning.
7 So, to the extent that is not accurate, you should know
8 that that was the representation that was made.

9 MR. COPELAND: Thank you, Your Honor. I will
10 make sure that does not --

11 THE COURT: Thank you. All right, so.

12 THE DEPUTY CLERK: Your Honor, if I could
13 please.

14 THE COURT: Yes.

15 THE DEPUTY CLERK: If I briefly remind people
16 to mute their lines. I'm hearing a separate conversation
17 at the end.

18 THE COURT: Thank you. Everyone mute your
19 lines. All right, is there anything else then at this
20 point, Mr. Tulley?

21 MR. TULLEY: No, Your Honor, thank you.

22 THE COURT: Anything else Mr. Copeland?

23 MR. COPELAND: No, Your Honor.

24 THE COURT: Anything else on behalf of the
25 Government?

BS

SEALED TRANSCRIPT

1 MR. AKHTAR: No, Your Honor, thank you.

2 THE COURT: All right, thank you.

√ Digitally signed by Bernadette Smith

ELECTRONIC CERTIFICATE

I, Bernadette Smith, transcriber, do hereby certify that I have transcribed the proceedings had and the testimony adduced in the case of UNITED STATES V. ROMIEL TYRONE HIGHTOWER, Case No. 2019 CF1 016426 in said Court, on the 23rd day of April 2020.

I further certify that the foregoing 31 pages constitute the official transcript of said proceedings as transcribed from audio recording to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 1st day of May 2020.

A handwritten signature in black ink that reads "Bernadette Smith". The signature is written in a cursive, flowing style.

Transcriber

EXHIBIT 9

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF KENARD JOHNSON

1. My name is Kenard Johnson. I am 54 years old. I am currently incarcerated at the Correctional Treatment Facility (CTF) on unit C2-B (the 50+ block) in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I have hypertension and take medication for hypertension.
3. I began experiencing COVID-19 symptoms around March 24 or 25, 2020.
4. When my symptoms first started, I felt dizzy and weak. I could not eat and tried to lay down and rest to get better. I put in a sick call request, but was not called to medical.
5. A day or two later, before I went to sleep on the evening of March 25, 2020, I was still feeling weak, I had not eaten, and I felt dizzy. I woke up at 2:00 am on what I believe was March 26, 2020, because the stomach pain was unbearable. I was throwing up, had diarrhea, had a headache, and was having cold sweats. My body temperature kept getting warm. I went to medical around 2:00 am when I woke up. When I went to medical, I saw either a PA or a doctor, and she gave me a shot called Phenergan that is used for nausea. I had a temperature of 99.6 degrees. However, at that time, medical told me they would not test anyone for COVID-19 who didn't have a temperature over 100 degrees. The medical staff sent me back to the unit with Maalox. They did not put me on cell restriction or quarantine.
6. I went back to the medical unit a few hours later on March 26 when the nausea shot was not working. I was still dizzy and too weak to walk on my own, so a correctional officer held me up by my arms while we walked to medical. During this second visit on March 26, medical staff gave me Tylenol, Benadryl, and nausea medication in pill form. I told them I thought I might have COVID, but they did not test for me COVID-19 at that time.

The nurse that typically hands out the Suboxone in the evening was in the medical unit during this visit, and told the medical provider treating me that I was probably just going through withdrawal from the Suboxone. I told them I had stopped taking Suboxone on my own about 10 days prior so I did not think my symptoms were from withdrawal. However, they sent me back to the unit without any further treating or testing me for COVID-19. I was not put on cell restriction or quarantine. I was too weak to walk back to the unit, so a correctional officer took me back to the unit in a wheelchair.

7. I remained sick for at least a week after my symptoms started. The weekend after I first saw the doctor, I continued to throw up and have diarrhea, and I was still weak and not eating. However, I did not receive any medications over the weekend of March 27-29, 2020. Each time the nurse came to my unit over the weekend, the nurse indicated that she did not have a prescription for my medications. I submitted a very detailed sick call request over that weekend because, as my symptoms progressed, I was very scared that I had COVID.
8. I saw Dr. Nguyen either Monday or Tuesday the following week. Dr. Nguyen gave me more of the same prescriptions. At that time, I still had no appetite. I was weak and in pain. During this visit, Nurse Shelton told me I was weak from not eating and indicated to Dr. Nguyen that my symptoms were from Suboxone withdrawal. Again, I told the medical staff that I did not think my symptoms were from Suboxone withdrawal because I had stopped taking it on my own about 10 days prior to getting sick. However, I was not tested for COVID-19. I was sent back to my unit. I was not on cell restriction or quarantine.
9. I remained sick until the following Thursday or Friday. During that time, I remained dizzy and weak. If I walked 10 yards outside of my cell, I would get dizzy and just go back to my cell. I also had pain in my legs. When I tried to eat, I would throw it back up. The following Thursday was the first time I was able to hold something in my stomach.
10. I was tested for COVID-19 on April 12, 2020. On April 15, 2020, I was told I had tested positive and was taken to C4-A for isolation. I was not given a shower before going into isolation and I took my sheets, mattress, and clothes with me. These were the same sheets and clothing I had been using when I took the COVID test on April 12. While in isolation, I was not given clean clothing or sheets. I went six days without being permitted to shower.
11. On, April 19, 2020, staff took me back to C2-B with no cell restriction. I have underlying health conditions and am older and was therefore concerned about going back to my unit so quickly. They told me they had monitored my blood pressure and I did not have shortness of breath so I was going back to the unit.
12. I went back to C2-B on Sunday, April 19. I took my same sheets, mattress, and clothing with me from isolation to C2-B. My sheets and clothes had still not been washed since I had tested positive for COVID-19. I was not given clean clothes or linens until the following Thursday, April 23, 2020. I had been using the same sheets since April 9, 2020.

13. Since April 19, the conditions at CTF have not changed.
14. On April 20, 2020, I tried to call my attorney, David Richter. He is a CJA lawyer. Although we were told that the phones on the unit allowed for free legal calls, the phones only went through to PDS and the federal defender. I could not make a call to Mr. Richter, even though he was on my call list.
15. On April 24, 2020, I was called to the case manager's office. The case manager told me that my attorney had requested a legal call. The case manager remained in the room during the entire legal call.
16. On April 27, 2020, I had a legal call in the case manager's office. The case manager was sitting right there during the legal call and could hear the conversation. I thought it seemed like an indirect way to make residents not be forthcoming with their attorneys. Mr. Richter was asking about conditions at CTF, and while I do not fear the case managers and was being honest with Mr. Richter, some residents do fear the case managers and would not likely tell their lawyers what conditions are really like in here in front of the case managers.
17. I also had legal calls in the case manager's office on May 11, 2020, and May 12, 2020. The case manager remained in the room during both of those legal calls, as well. On May 12, the case manager in the room during my legal call was not wearing gloves. The case manager was not wearing eye protection on either May 11 or May 12.
18. Since April 19, no verbal presentations or town hall meetings have occurred addressing COVID-19. While there are posters up about how to wash your hands that have been up throughout the pandemic, there are still guys on the unit who cannot read and the written instructions are not helpful to them. There are no posters up about how to properly clean or how to properly wear or dispose of masks. No new procedures seem to have been put in place since April 19.
19. Since April 19, we have not received any verbal instruction on how to properly clean the unit or our cells. We have not received any instruction or additional information about which chemicals to use for which purpose. We have not received any rags or other materials to clean the unit. The detail unit is still using their own rags made of ripped t-shirts and towels to clean the unit.
20. On April 28, 2020, a member of the detail unit on C2-B was cleaning the pull-up bar with a rag that should have been white but was brown. It looked like the rag had been dipped in coffee. The detail member using this rag told me that he washes the rag out himself in his cell using soap in his cell.
21. Two or three weeks ago, officers were occasionally spraying our cells with a yellow chemical that residents are not allowed to use on their own. I believe that the yellow

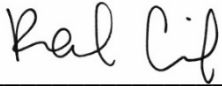
chemical has bleach in it. However, it has been two to three weeks since officers sprayed the yellow chemical in our cells.

22. Since April 19, I have not seen any professional cleaning services at CTF and I have only seen staff cleaning on one occasion, which was limited to staff wiping down surfaces. Staff do not require residents to wipe down the unit phones between uses.
23. At some point in April, residents began receiving a bar of soap per week. Residents in my unit were not receiving a bar of soap per week until April. Ms. Williams, the Health Care Administrator, told me that inmates without soap could wash their hands with just water. Ms. Williams later told me that it did not matter if the soap provided to inmates was antibacterial.
24. Prior to April 19, we were not given any instructions on how to properly wear masks or how to properly dispose of them, and this has not occurred since April 19, either. There is no designated trash or area to throw away used masks on the unit. There does not seem to be concern about how or if residents dispose of used masks. Residents are not required or encouraged to obtain clean masks every day or even every week. It is up to residents if they want to get a clean mask.
25. Residents are not required to clean their cells or shower regularly.
26. Since April 19, staff are not consistently enforcing social distancing.
27. On April 23, 2020, eight to ten people on my unit were out at once. Residents were sitting next to each other in the chairs by the TV. People were standing together near the microwave and in line for linen exchange. Staff did not say anything to residents or attempt to make them spread apart that day or any other day that week.
28. On April 27, multiple people were on the phone and at the microwave at once. Staff did not say anything to the residents on that day or any other day that week about separating.
29. To date, the staff are continuing not to enforce social distancing. Residents are still near one another during rec and staff are still failing to make the residents spread apart.
30. About a week ago, on two different days, residents were asking correctional officers in my unit for more time on rec because they were not able to shower, make calls, and do what they needed in the one-hour time allotted. Two different correctional officers on two different days replied that we are locked in because we, the inmates, had filed a lawsuit whining and crying about the fact that they do not give us cleaning supplies.

I, **Rachel Cicurel**, certify that I have read the foregoing to **Kenard Johnson** and that he affirmed the foregoing is true and correct on **May 12th, 2020**.

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

Executed on **May 12th, 2020.**

A handwritten signature in cursive script, appearing to read "Rachel Cicurel".

Rachel Cicurel
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 10

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF ERIC COOPER

1. My name is Eric Cooper. I am 26 years old. I am currently incarcerated at the D.C. Jail's Central Detention Facility on the Northwest 2 unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I have been diagnosed with asthma for many years and am currently prescribed Albuterol and Advair. I also have a mental health condition for which I receive medication.
3. In the middle of March I began feeling sick. I was coughing frequently and sneezing often. I was also having chest pains and difficulty breathing.
4. On March 15th, 2020, I was diagnosed with an "Upper Respiratory Tract Infection, Viral Syndrome." I was concerned about coronavirus and asked DOC staff whether I could be tested and was told "no."
5. Over the next two weeks I continued to feel the same symptoms. I put in sick call requests but was not seen by medical again until March 20th, 2020. I was given no new medication besides my asthma prescriptions and over the counter Nasonex. I was getting extremely worried about coronavirus and again asked to be tested but was told "no."
6. On March 28th, 2020 I was moved into a segregated housing unit, South One. I was placed in a cell by myself. I was in the cell for twenty-three hours a day, and only allowed out for one hour each day. On some days I did not get let out of my cell at all.
7. On March 30th, 2020 I was tested for COVID-19. I was seen by medical for follow up visits on March 31st, 2020 and April 2, 2020. I was told that sick call came for me on April 1, 2020, but I was not there because of court. They did not come back to see me later that day.


8. On April 4, 2020 I found out that my COVID-19 test was negative. However, I continued to feel sick. I had trouble breathing and was still coughing a lot. I put in multiple sick call requests but nobody came to see me. I did not see any medical personnel again for a couple of weeks. I only got to see someone after I filed a grievance on April 17, 2020 and was not seen for an office visit until April 19, 2020. The only medical staff I saw over those two weeks was for a temperature check on April 18, 2020. That person only checked my temperature but did not do anything else to help me.
9. I do not recall any disturbances on my unit that would have prevented medical staff from seeing patients. I also have never refused a medical visit or a temperature check.
10. I also have a problem with my shoulder, but I am not able to get help or treatment with this problem. I put in about three medical requests for help with my shoulder pain. It took about a week for them to respond. They did not take me to medical but a nurse came to my cell to talk about it. She came back a week later with some Tylenol. I asked for an x-ray because I thought the shoulder might be dislocated, and they told me I could not have an x-ray because of the coronavirus. They said I would have to wait until it is over.
11. Starting in April, I began experiencing severe pain from dental problems. A few days ago the doctor told me that I needed a tooth extracted, but that they cannot do it until the coronavirus problems are over.
12. Before coronavirus, the medical staff would regularly evaluate my asthma to make sure it was not getting worse. They would have me do tests to make sure things were okay. That was done once a month. I think the last time they did this was back in January. I am concerned that my asthma is getting worse and it is not being treated.
13. I am currently housed on NW2. The jail tells me that this is a quarantine unit, but I am not able to self-isolate in my cell. I am not able to there is a second person in my cell. The last person I shared a cell with tested positive of coronavirus. I have to stay in my cell for 23 hours each day. Sometimes I am not let out for my hour of recreation time. Sometimes when they do let me out it is done at 3:00 in the morning so I cannot call my family or attorney.
14. I am responsible for cleaning the inside of my cell. The guards are not passing out cleaning products to clean my cell. The only way to get cleaning products for my cell is to ask the guards when I am let out for rec time. I do not think the product I am given is a disinfectant. I am not given rags or cloths to clean with. I have to rip up old t-shirts or towels to wipe down my cell.
15. I have not been given hand sanitizer. The only way to get hand sanitizer is when I am let out of my cell for rec time. However the hand sanitizer dispenser in my unit is broken. The hand sanitizer dispenser has been broken since mid-April.
16. I am getting soap to wash with less often than before. I are not given soap every week. Last week I ran out of soap and did not get any more soap for about five days.

17. I have put in three or four requests for new boxers, t-shirts, thermals, and socks but have not been given any new ones. The only way for me to wash my clothes is to do it while in the shower. I have not gotten any new or freshly laundered clothing since February.
18. The water fountain on my unit does not work. The sink in my cell works but the water is disgusting and has a bad smell and flavor. It is often brown or has black spots in it. The guards are only bringing water in the morning or at lunch time. That water runs out quickly and then they do not bring more. I am thirsty all day long.
19. The food I am being given is terrible. I am being given cold food like sandwiches for dinner. This used to be done only at lunch but now it is done at dinner too. I have been given food that smells spoiled and have gone without food because the food I was given was not good enough to eat.
20. I received a letter from my attorney describing a process for making legal calls directly from my unit. However, I do not have access to the phone I need to make these calls. I am only out of my cell for one hour each day, and sometime I go several days without being let out of my cell. When I do get out it is often in the middle of the night or very early in the morning when I cannot reach my family or my attorney. If I am able to make a call from the unit phone, it is not a private, confidential call. Other inmates on the unit and the guards can all hear my half of the conversation.
21. Sometimes the case manager on my unit will come get me from my cell and tell me that I have a legal call. They take me to their office and call my lawyer for me. During these calls there are other people in the room. Both the case manager and the corrections officer on my unit can hear my half of the conversation.
22. I am worried about being able to speak with my lawyer because I have a trial coming up soon. I am unable to have any confidential conversations with my lawyer about my case. My lawyer has body worn camera video that I need to watch but there is no way for me to watch it. I do not feel like I am able to prepare for my trial because I cannot meet with or speak to my attorneys about my case.

I, Katherine Rees, certify that I have read the foregoing to Eric Cooper and that he affirmed the foregoing is true and correct on May 14, 2020.

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

Executed on May 14, 2020.



Katherine Rees
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 11

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF TONY HORNE

1. My name is Tony Horne. I am 38 years old. I am currently incarcerated at CDF on the SW-2 Unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I have been diagnosed with hypertension (high blood pressure). I take Norvasc and Hydrochlorothiazide for my hypertension. On April 22, 2020, I tested positive for COVID-19 and I was moved from the SW-2 Unit to the N-2 Unit, which is an isolation unit. I was moved back to SW-2 on the evening of May 5, 2020.
3. I was on N-2 from April 22, 2020 to May 5, 2020. During that time, there were a number of problems on the unit, including the following:
 - a. The tier had not been properly cleaned;
 - b. My cell had not been cleaned;
 - c. The DOC never provided me with a rag or cloth to clean my cell; instead, I was using a makeshift rag made out of sheets.
 - d. I was not provided with new sheets until May 2, 2020. My old sheets were never washed.
 - e. DOC provided a single bottle of disinfectant for everyone in the unit, which quickly ran out.
 - f. I was not allowed to shower for the first five days that I was on N-2, from approximately April 22 to April 27.

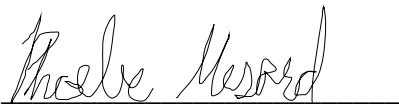
- g. There was not hot water in the showers until around April 29, 2020.
 - h. One day between, April 22, 2020 and April 27, 2020, I woke up and I could not breathe, I was yelling for assistance and waving my orange shirt through the cell, but no one came to help me;
 - i. I had not received any hot meals between April 22, 2020 and April 27, 2020.
 - j. The unit phone is pulled from cell to cell on a string and we were not provided with anything to clean the phone.
 - k. I was not provided a tablet, a book, or any reading material while in my cell on N-2.
 - l. Correctional officers have indicated that they do not want to enter the unit for fear of catching COVID-19.
 - m. On May 2, 2020 I was having difficulty breathing. I tried to get the attention of a correction officer for multiple hours. No one walked the unit and no one came to check on me. I submitted an Inmate Grievance Procedure form in reference to this incident.
 - n. On April 30, 2020, correctional officers sprayed mace in the N-2 Unit, which made it even harder to breathe. After spraying us with mace, the correctional officers did not bring us any dinner.
 - o. Between April 22, 2020 and May 5, 2020, I reported to the medical staff every day that I was experiencing difficulty breathing; however, it does not appear that my reports were always included in my medical records.
 - p. When DOC medical staff took my blood pressure reading, they would frequently check my blood pressure multiple times but only write down one reading. On May 4, 2020 and May 5, 2020, the DOC medical staff took my blood pressure reading approximately 5 times each time the DOC medical staff checked on me. I asked the DOC medical staff to record every reading in my medical records and they said the usually only record the lowest reading.
4. As of May 4, 2020, I was still experiencing symptoms of COVID-19 (shortness of breath, loss of smell, muscle pain, and fatigue). However, one of DOC's medical staff said that they were going to send me back to the general population because they needed the cell for other inmates who had tested positive.
5. On May 5, 2020 I was moved back to SW-2. I asked a nurse if I could be tested again before I was returned to general population. The nurse told me that they would not test me again because they knew the Coronavirus was still in my system for a least 2 more weeks.

6. I was taking acetaminophen the entire time that I was on N-2. I received a packet containing 12 pills every two days.
7. When I moved from N-2 back to SW-2, I was still experiencing weakness and fatigue and I needed assistance moving my belongings. The Emergency Response Team assisted me.
8. On SW-2 I have not been provided with a rag or other materials to clean my cell.
9. On SW-2, more than 5 people are being let out of their cells at a time. Sometimes more than 10 people are let out of their cells at one time.
10. Correction officers are not enforcing when people are supposed to be allowed out of their cells, so some people are not able to come out at all while others are out for multiple hours at a time.
11. When I moved back to SW-2, I was in a single cell for two days. I was told by Sargent Barlow and Lieutenant Beckley at the time I was moved back to SW-2 that I was supposed to be in a single cell for two weeks. I was moved to a two-person cell with another person on May 7, 2020.
12. I am scared and worried about my condition. I do not think DOC is taking actions to protect me.

I, Phoebe Mesard, certify that I have read the foregoing to Tony Horne and that he affirmed the foregoing is true and correct on May 11, 2020.

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

Executed on May 11, 2020

A handwritten signature in cursive script, reading "Phoebe Mesard", written over a horizontal line.

Phoebe Mesard
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 12

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF DELONTE JOHNSON

1. My name is Delonte Johnson. I am 27 years old. I am currently incarcerated at the CDF on the NE1 unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. Although a hand sanitizer dispenser was installed on mu unit on April 19th, there was no sanitizer in the dispenser for a week after its installation.
3. During the period from April 22, 2020 to May 8, 2020 I did not have access to any chemicals to clean my cell.
4. I have been using the same rags over and over to clean my cell. The rags turn brown from the dirt.
5. Every Sunday, before COVID-19 began, cleaning crews used to come around and bleach the cells. No crews have come around to bleach the cells since February or March 2020.
6. I have not been provided with gloves at any point.
7. There are people on my unit who have tested positive for coronavirus.
8. On April 22, 2020 there was one person who was moved to my unit after this person tested positive.
9. A relative of mine was one of the first people at the jail who tested positive for coronavirus. This person returned to my unit on April 22, 2020. This person told me that he was still feeling sick.

10. On April 22, 2020 there were multiple people on my unit displaying symptoms of Covid-19 including a lack of taste or smell.
11. There was one person who was removed from my unit and brought to an isolation unit because he had symptoms of COVID-19. This person said he tested positive for COVID-19. This person returned to my unit approximately 4 days after this person was removed from my unit.
12. When people on my unit display symptoms, those people are moved to individual cells but remain on my unit until they get their test results back.
13. The people who are in individual cells are not supposed to be let out at the same time as everybody else for recreation time.
14. Multiple times, prior to April 22, 2020, the COs have let everybody out for recreation time at once.
15. Multiple times, prior to April 22, 2020, the COs have let the people who are supposed to be isolated out for recreation time first and then let everybody else out afterward without cleaning the common areas in between.
16. Approximately 4 or 5 people were in individual cells on my unit on May 12, 2020 because of the virus.
17. On May 9, 2020 I was eating food from commissary, from a company called Fish Catch, and I found a bug in my food. The bug was at least an inch long and Lieutenant Goodwin took a photo of the bug. I had the bug in my mouth before realizing what it was. It did not appear that this bug was a bug that could have come from anywhere in the DC region. I had asked to see medical right away. I was not taken to medical until about 24 hours later.

I, Phoebe Mesard, certify that I have read the foregoing to Delonte Johnson and that he affirmed the foregoing is true and correct on May 12, 2020.

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

Executed on May 12, 2020



Phoebe Mesard
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 13

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF ANTHONY ROBERTSON

1. My name is Anthony Robertson. I am 41 years old. I am currently incarcerated at the Central Detention Facility in Washington, D.C., in the NW2 unit. I have been at the jail since February 26th.
2. On April 16th, 2020, a CDF resident that had tested positive for COVID was moved to NW2.
 - I filed an IGP when he was brought to my unit because I feared for my safety. I did not receive a response to my IGP until April 30th.
3. On April 17th, the CDF resident mentioned above went to the hospital and NW2 was quarantined.
4. On April 18th, COs took our temperatures using both touch and non-touch thermometers.
5. On April 18th, I started experiencing COVID symptoms and reported this to COs.
6. On April 20th, I was given a nasal COVID test.
 - I was moved to a cell by myself on NW2 after taking the test, but was let out for recreation with everyone else.
7. On April 22nd, I found out I had tested positive for COVID.
 - That evening, I expressed my concerns to a doctor that was passing by, and the doctor said that I couldn't be positive because I would have been moved already.

8. On the morning of April 23rd, I was moved to the isolation unit.
9. On April 23rd, when I got to my isolation cell on N2, it had not been cleaned and was still dirty from the previous person.
10. Between April 23rd and April 28th, I was not able to shower.
11. Between April 23rd and April 28th, sheets and towels were not changed.
12. Between April 23rd and April 28th, two meals were not served.
13. CDF residents have to catch a CO passing by in order to get soap or a new mask. They are not given out consistently.
14. From 8:00PM until the morning, COs do not walk around. During this time we are stuck in our cells without access to water.
15. After a standoff on April 27th, COs said that an inmate detail will be allowed to clean the showers.
 - I have not seen the showers being cleaned. They are still very dirty.
16. On April 27th, a CDF resident was sprayed with mace after getting into an argument with a CO over toilet paper.
 - So much mace was sprayed that it affected the whole unit.
17. When deciding to send guys back to their original unit after being in insolation, medical staff goes by the number of days guys have been in isolation, not by symptoms.
18. On May 5th, I was told by a nurse that I would be moved from N2 back to general population because my “time is up” even though I still had a headache and had coughed up blood that morning.
19. From May 11th to May 13th, I called out to every CO that passed by because my migraine symptoms have gotten much worse and I have coughed up blood multiple times within the past couple of weeks.
 - As of May 13th, those concerns have not been addressed.

I, Omari Lemmie, certify that I have read the foregoing to Anthony Robertson and that he affirmed the foregoing is true and correct on May 13th, 2020.

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

Executed on May 13th, 2020.

A handwritten signature in cursive script, reading "Omari Lemmie".

Omari Lemmie
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 14

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF DELONTE INGRAHAM

1. My name is Delonte Ingraham. I am 31 years old. I am currently incarcerated at the Correctional Treatment Facility (CTF) on the unit D2-B in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I have several heart conditions, including essential hypertension, pulmonary arteriovenous malformation, and left ventricular hypertrophy. I have also been diagnosed with obesity, schizoaffective disorder, and bipolar disorder.
3. To date, I have not been tested for COVID-19.
4. I began experiencing flu-like symptoms on March 20, 2020.
5. On March 20, I felt feverish and my body was aching. I had the chills, could not eat, and could not smell. I informed the officer who was working on my unit and she got me on the list to go up to medical. I told medical all of my symptoms and told them I was worried that I had coronavirus because someone on my unit had been quarantined and staff kept moving him on and off the unit. However, medical staff did not test me for COVID-19. Medical staff did not take my temperature either, but told me I did not have a fever. After the visit, they sent me back to my unit. I was not on cell restriction and my unit was not under quarantine.
6. My attorney informed me that my medical records claim that on March 20, I denied any symptoms other than feeling hot. My attorney informed me that March 20 medical records specifically claim that I denied having the chills or joint pain. This is not correct. On March 20, I reported to medical staff that I had the chills and that my body ached, in addition to reporting my other symptoms.

7. On March 22, 2020, I woke up sick. My head was hurting, I had a cough and shortness of breath, and my body was aching terribly. I could not eat anything, I did not have a sense of smell, and I could not move. I told a correctional officer in the morning, but nothing happened during the day. I was finally called up to medical at 7:00 or 8:00 pm. I told medical about my symptoms and that there were some guys on my unit that I thought had coronavirus. Everyone on my unit was sick. That night, medical took my temperature and told me I did not have a fever. They did a flu test, but they did not test me for COVID-19.
8. Although I was told by medical on March 22 that I did not have a fever, my attorney informed me that my records indicate that I had a fever of 99.8 degrees on March 22.
9. My attorney informed me that my medical records from March 22 state I was given a facemask and was advised on how to protect others from my cough. However, the facemask was only given to me during the visit and was taken away by medical before the visit ended. Medical staff told me that I did not need the mask anymore and said they would throw it away for me. At that time, no residents on the unit had masks, and I was under the impression that residents could not have masks. Additionally, medical staff did not tell me how to protect others from my cough. They said I was fine and that they would check up on me in a few days to see how I was doing. I told medical that I worked in the kitchen. At the end of the visit on March 22, they did not tell me not to work and did not put me on cell restriction or quarantine. My unit was not on quarantine at that time. Medical staff did not give me a mask to work in the kitchen or suggest I wear one.
10. My attorney informed me that my medical records from March 22 state that the medical staff were not concerned that I had COVID-19 because I allegedly lacked any COVID risk factors. This is not true. I have heart conditions including hypertension, pulmonary arteriovenous malformation, and left ventricle hypertrophy, and I have long dealt with obesity. It is my understanding that each of these conditions are risk factors for COVID-19. These conditions are all listed in my medical records and prior to the coronavirus pandemic, staff had taken me to Howard Hospital to be treated for my heart conditions.
11. My attorney informed me that my medical records claim I denied having chronic pulmonary disease on March 22. This is also not true. As previously stated, I have several chronic heart conditions.
12. Between March 22 and March 30, 2020, I made three or four written sick call requests.
13. On March 30, 2020, I was called to medical. I still had a cough and the chills. When I was called into medical on March 30, I was seated in a waiting room with David Stevens, another resident on my unit, at around 3:05 pm. While Mr. Stevens and I were waiting, two correctional officers brought a third resident into the same waiting room. That resident was wearing a mask. This was the first time I saw a resident wearing a mask so Mr. Stevens and I were asking the correctional officers about this resident's status, why he had a mask on, if he was sick, and why they had been saying we could not have masks but then brought a masked resident into the room with us. The correctional officers did not answer us. After a few minutes, the nurses saw this masked resident in the room with us and told the correctional officers to take him down the hall and put him in isolation.

14. Later that night, I put in a grievance about having been put in the room with someone who was sick. To date, I have not received any information in response to this grievance.
15. Although I was in the waiting room on March 30, I never actually got called in for my medical visit that day. My temperature was not taken, I was not asked about my symptoms, and I was not tested for COVID-19. I was sent back to my unit without meeting with a nurse or doctor.
16. My attorney informed me that my medical records claim that I was surprised to be seen by medical on March 30. I was not surprised to be called for a medical visit on March 30 because I had been putting in sick call requests for a week prior. However, since I was never called out of the waiting room for my medical visit, I never spoke to medical on March 30 to indicate whether I was or was not surprised.
17. My attorney informed me that my March 30 medical records claim I reported feeling well and that all of my prior symptoms had resolved completely. My attorney also informed me that my medical records claim that on March 30, I specifically denied having a fever, the chills, a cough, or any other symptom. None of this is true. As I already stated, I was never called out of the waiting room for a medical visit on March 30. I never spoke to a nurse or doctor about my symptoms on March 30 and never told them that all my symptoms had resolved. To the contrary, I still had a cough and the chills on March 30, which is why I wanted a medical visit.
18. My attorney told me that my medical records claim that I had a low blood pressure reading and a normal temperature on March 30. However, my vitals were not taken on March 30. My temperature was not taken and my blood pressure was not tested.
19. My attorney told me that my medical records from March 30 claim I was wearing a facemask. This is not true. I was not wearing a facemask on March 30; the only resident I saw wearing a facemask on March 30 was the person who the nurses sent to be isolated.
20. Even though I was not seen by a doctor on March 30, the visit was never rescheduled. I made several sick call requests the following week regarding my continuing chest pains.
21. On April 6, 2020, I was called to the medical unit after repeatedly complaining of chest pains. However, no correctional staff ever came to escort me to medical and I was therefore never permitted to go to this visit. The visit was not rescheduled.
22. On April 10, 2020, my unit was put on quarantine. My unit was told that being on quarantine just meant that residents had to wear masks and have their temperatures taken every two hours. Otherwise, we were told that no changes to our movement or schedule would occur as a result of being on quarantine.
23. On April 10, I was seen by a nurse on my unit. I had a cough and shortness of breath, and had been having chest pains for days. Medical staff said they would not test me for COVID-19, and they did not test me. They gave me muscle rub and Tylenol. They did not put me on cell restriction.

24. During my April 10 medical visit, medical staff said I would be called up to the medical unit to have my temperature taken and my blood pressure read. However, this did not happen. During this visit, medical staff also said I would be getting three days of blood pressure checks. None of these checks happened.
25. My attorney told me that my medical records indicate that I had a second, separate medical visit on April 10 during which I allegedly reported feeling well, seemed asymptomatic, and denied having a cough, fever, chills, or shortness of breath. However, this second visit never happened and none of the information reported from that second visit is accurate.
26. The only other interaction I had with medical staff on April 10 was when our entire unit's temperatures were taken. My temperature was 93.3 degrees. The nurse recorded this temperature and did not retake it.
27. On April 13, 2020, my temperature was taken as a part of being on a quarantine unit. My temperature was taken as 93.3 degrees. Medical staff did not take it again and moved on.
28. On April 14, 2020, my temperature was around 96 degrees. Medical did not retake it.
29. On April 20, 2020, I put in a second medical grievance regarding the incident in the waiting room on March 30. However, my medical grievance was not picked up that day or anytime that week. The April 20 grievance was not picked up until April 27, 2020. To date, I have not received a response to either my March 30 or April 20 grievances.
30. On April 24, 2020, my temperature was taken as a part of being on a quarantine unit. My temperature read 96.7 degrees. Medical staff wrote this down and did not retake it.
31. Around April 26, 2020, I was experiencing severe chest pains. I put in another sick call request.
32. On April 29, 2020, I was called to medical. I told medical staff that I was having chest pains and shortness of breath. I told them I was coughing and feeling lethargic. The medical staff person remarked that I had been sick the last time medical saw me. She told me that I might have had coronavirus but she did not know. She also told me that my symptoms could be aftermath from having COVID-19, or I could have pulled a muscle in my chest. The nurse said she would order me ibuprofen and call me back in a week. I was not tested for COVID-19. I was not put on cell restriction. Since my unit was no longer on quarantine on April 29, I was sent back into general population after my visit. I was never called back to be checked on.
33. My attorney informed me that my medical records are missing copies of all of my written sick call requests between March 20 and today.
34. On May 2, 2020, I verbally complained to correctional staff that I had the chills. The nurse came to my unit to check my temperature. I was not tested for COVID-19. I have not seen medical staff since this day.

35. Since April 19, 2020, conditions at CTF have not changed.
36. On April 20, 2020, I tried to get a legal call when Case Manager Stewart came by the unit. I went to Case Manager Stewart's office and asked for a confidential legal call. Case Manager Stewart told me that since I could call my attorney on the monitored unit phones, he was not allowed to give me a legal call. Case Manager Stewart was not wearing gloves or a mask while I was in his office on April 20.
37. On April 21, 2020, someone from my quarantine unit left the unit to work at the commissary during the day and came back later on. He was wearing a mask, but I am not sure whether or not he wore gloves while he was working outside our quarantined unit.
38. On April 23, 2020, a number of residents were not wearing masks outside their cells. Not all staff made residents wear their masks on rec. On April 23, I did not see any staff wearing eye protection.
39. Since April 19, my unit has not received trainings or information about properly wearing or disposing of masks. There is not a designated place on my unit to dispose of masks.
40. Since April 19, social distancing has not been enforced.
41. On April 20, people were on top of one another to use the phone. More than five people were out of their cells at a time, and no rules were announced regarding social distancing. Correctional staff did not try to separate people or keep residents six feet apart when they were out of their cells, especially when they were talking on the phones.
42. On April 23, while I used the phone, all three phones were being used at once in addition to other residents who were close by at the same time. The phones are only about two feet apart. That same day, a number of people were standing close to one another near the microwave on the unit. Staff did not make or attempt to make the group disperse or separate.
43. On April 27, 2020, five or six people were in the TV room at once and all of the phones were being used at the same time, but staff did not say anything or attempt to enforce social distancing.
44. Since April 19, my unit has not received any instructions on which cleaning chemicals to use on which surfaces. We have not received any rags or sponges. Detail workers still use makeshift rags from ripped t-shirts and towels to clean the unit. My unit has not received rags to clean our cells.
45. Since April 19, I have not seen any staff cleaning the facility. I have not seen any professional cleaning services in the facility. All cleaning has been done by residents. The cleaning since April 19 has continued to be unsupervised.
46. On April 24, 2020, specifically, staff did not supervise detail workers cleaning the unit.
47. On April 27, our unit ran out of cleaning supplies.

48. On April 28, 2020, one of the toilets on D2-B was fixed after having been broken for approximately two weeks. The broken toilet was on a tier with only two toilets; as such, the residents on that tier had all been sharing a single toilet for about two weeks.

49. On April 24, mail had not been picked up since April 19.

50. To date, mail in my unit has not been picked up since Friday, May 8, 2020.

I, **Rachel Cicurel**, certify that I have read the foregoing to **Delonte Ingraham** and that he affirmed the foregoing is true and correct on **May 12, 2020**.

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

Executed on **May 12, 2020**.



Rachel Cicurel
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 15



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: "Johnson, Laretta (DOC)" <laretta.johnson@dc.gov>
Date: April 23, 2020 at 12:07:32 PM EDT
To: "DOC Incident Notification Mailing List (DOC)" <DOCIncidentNotificationMailingList@dc.gov>
Subject: Incident Notification/911 Transport Inmate [REDACTED]

**The following email is being sent as a notification of 911 Medical Transport of Inmate [REDACTED]
[REDACTED] I, Captain Laretta Johnson , was assigned to provide Supervision over Housing Units NW1, NW2, SW2 and SW3.**

At approximately 9: 15am I entered Housing Unit NW1. While I was making rounds on Housing Unit NW1, I noticed that **Inmate [REDACTED]**, who was designated by Medical Staff to move to Isolation Unit NO2 on the previous evening, was still inside of cell#08 on NW1. I directed Inmate [REDACTED] to pack up his property and prepare to move. Inmate [REDACTED] was laying on his bunk sweating profusely. Inmate [REDACTED] stated that he could not move and requested to be seen by medical. At that point Medical Staff was entering the unit to do temperature checks, so I directed them to come to cell 8 to treat Inmate [REDACTED]. After checking Inmate [REDACTED] vital signs, the medical staff deemed it necessary for Inmate [REDACTED] to be transported to the Hospital by ambulance.

At approximately 10am Inmate [REDACTED] was transported to the Infirmary on a gurnery where he received medical treatment until the paramedics arrived. At 11:04 am Ambulance 19 entered the facility.

At 11:41am Inmate [REDACTED] was escorted to a local area hospital accompanied by armed Officers Private M. Ogungbemi and Cpl. N. ONeal.

Inmate [REDACTED] was conscious and responsive when he departed the facility.

No foul play is suspected in this incident.

Records Specialist Mrs. Ahmadu reported that Inmate [REDACTED] is **Not a Federal Inmate**.

At the time of this notification Inmate [REDACTED] was still at the Hospital receiving treatment.

Notification of this incident was made to Major A. Miles.

Incident Tracking#00572-2020-CDF was assigned to this incident.

Laretta Johnson

Administrative Captain

DC Department of Corrections

Central Detention Facility

Number Two Shift

1901 D. Street S.E. Washington, DC 20003

W: (202) 523-7007

C: (202) 549-6759

email: laretta.johnson@dc.gov

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Chase, Pam (DOC) <pam.chase@dc.gov>

Sent: Sunday, April 26, 2020 10:40 AM

To: Chase, Pam (DOC) <pam.chase@dc.gov>

Subject: Re: MHU Outpost - Critical Staffing Hours

The (6) below listed 24hr staff arrived back to the jail at 9:00am

Sgt. Pamela Chase
D.C. Department Of Corrections
(202) 523-7262

[REDACTED]

Received this information from #01 Shift for mandatory relief of staff on various outpost for 24hrs.

24hrs

Cpl. H. Okpara

Pvt. S. Dixon

Cpl. M. Olibrun

Pvt. V. Morman

Cpl. I. Kamara

Cpl. F. Eghan

19hrs

Cpl. R. Bynum

Cpl. S. Dixon

Sgt. Pamela Chase

D.C. Department Of Corrections

(202) 523-7262

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.



From: Olibrun, Mariane (DOC) <mariane.olibrun@dc.gov>

Sent: Sunday, April 26, 2020 5:19 AM

To: Ford, Lewis (DOC) <lewis.ford@dc.gov>; Chase, Pam (DOC) <pam.chase@dc.gov>; Talley, Nora (DOC) <nora.talley@dc.gov>; Craig, Delonda (DOC) <delonda.craig@dc.gov>; Landerkin, Kathleenjo (DOC) <Kathleenjo.Landerkin@dc.gov>; Johnson, Lennard (DOC) <lennard.johnson@dc.gov>; Miles, AntuINETTE M. (DOC) <AntuINETTE.Miles@dc.gov>; Dorsey, Rhonda (DOC) <Rhonda.Dorsey@dc.gov>

Subject: Attention It is illegal to work 24 with a gun/ weapon

Good morning Management,
Corporal Olibrun and Corporal Norman have been on Medical Holding Unit post at Washington Hospital Center/ ICU room 3H8 for 25 hours sitting on inmate [REDACTED] that is tested positive for COVID-19. We are still waiting for our reliefs. It is illegal for an officer to work 24 hours straight carrying a conceal weapon. We are tired and exhausted. It is a wrong method to apply for your employees because it puts our health at risk/ danger. Please please send two officers to relieve us as soon as possible because we are very tired and exhausted. I need som rest.

Sincerely,

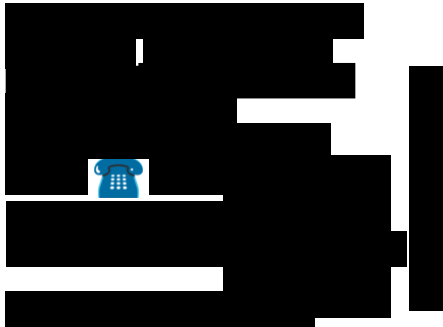
Mariane Olibrun
Corporal/Correctional Officer
DC Department of Corrections
Central Detention Facility
1901 D Street
Washington, DC 20003

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.



[REDACTED]

[REDACTED]



[REDACTED] <Ricky.Butler@dc.gov>

Date: May 3, 2020 at 2:09:26 PM EDT

To: "Johnson, Jannease (DOC)" <jannease.johnson@dc.gov>

Subject: Pass 16hr

Good afternoon Sergeant Johnson, I'm emailing you to inform you that im still on post from last night in north one due to a last mine draft. I was supposed to have been gone at 12pm but im still here and now its 2:05pm. I need to know what can be done about this and what will be done about it because they are not supposed to keep us pass 16hr. Not to mention I didn't get one single break from either shift at all. Also the sent relief for other units but not us in north one.

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.



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I was the only officer working in south east 2 from 8pm-11:30pm I then was relieved by Cpl Linder and another officer at 11:30pm. Cpl Mompoy from the command center had to leave the command center and come to my unit and count my unit for the 10pm count and then she left and went back to the command center.

On May 3, 2020, at 10:52 PM, Johnson, Jannease (DOC) <jannease.johnson@dc.gov> wrote:

Sergeant Jannease Johnson
Adjustment Board Chairman
Executive Secretary
FOP/DOC Labor Committee
DC Department of Corrections
Office: 202-523-7043

Cell: 202-436-1952


On May 3, 2020, at 10:41 PM, Pugh, Antoine (DOC) <antoine.pugh@dc.gov> wrote:

I was drafted today for 4hr on the 8pm-8am Shift and I am only one officer in the unit South East 2

Antoine Pugh, CCS
Correctional Officer
Number Two Shift
D.C. Department of Corrections
1901 D. Street SE, Washington, DC 20003
Office: (202) 523 7231
Cell: (240)217-2016
Antoine.Pugh@dc.gov
www.doc.dc.gov

From: Johnson, Jannease (DOC) <jannease.johnson@dc.gov>
Sent: Sunday, May 3, 2020 4:12 PM
To: Pugh, Antoine (DOC) <antoine.pugh@dc.gov>
Cc: Olubasusi, Benjamin R. (DOC) <benjamin.olubasusi@dc.gov>
Subject: Re: Working off days

Noted

Sergeant Jannease J. Johnson
Adjustment Board Chairman
DC Department of Corrections
Executive Secretary
FOP/DOC Labor Committee
Phone:  202-230-9635
Office: 202-523-7043
Email: Jannease.Johnson@dc.gov

On May 3, 2020, at 6:19 PM, Pugh, Antoine (DOC) <antoine.pugh@dc.gov> wrote:

Good Evening,

Just now Capt Wilson is calling all the units and telling us we have to come in on one of our off days and work per the warden. Not to mention they had 8pm-8am shift working pass 12pm today.

Antoine Pugh, CCS
Correctional Officer
Number Two Shift
D.C. Department of Corrections
1901 D. Street SE, Washington, DC 20003
Office: (202) 523 7231
Cell: (240)217-2016
Antoine.Pugh@dc.gov
www.doc.dc.gov

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Phone: 202-699-2198

From: Olubasusi, Benjamin R. (DOC)

Sent: Sunday, May 3, 2020 5:47 PM

To: Booth, Quincy (DOC) <quincy.booth@dc.gov>

Cc: Stewart-Ponder, Gitana (DOC) <gitana.stewart-ponder@dc.gov>; Johnson, Lennard (DOC) <lennard.johnson@dc.gov>

Subject: Issues at the Jail

Good Evening Director,

It seems that you are not paying attention to what is happening within your agency. Since introductions of the twelve hours (12) shift, Officers had been stuck at work for up to twenty-seven (27) hours on duty post before being relieved. Yesterday, CPL Salako was stuck on duty post in southwest two for about twenty-two (22) hours without relief before he collapses and passed-out on the floor of the Unit. He was later rushed out on 911 emergency. Today, officers that came to work at 7.30 pm yesterday were not relieved until 3.49 pm this evening. They are also expected to return to work this evening by 7.30 pm.

Deputy Director Pattern and Deputy Warden Landerkin instructed the shift commanders to call officers and mandated them to report to work on their off days. You know this will not be possible; Staff can come to work on their off days; it must be voluntary, not mandatory.

Can't you see that the twelve hours shift is not working? Don't you think maybe we should go back to our Eight hours shift before the jail is empty? At least, let's talk about it, say by Tuesday, May 6, 2020.

Against the CDC guideline, staff members that are sixty-five (65) years or older are being called to return to work against their wishes. Contrary to the CDC, Mayor and the City guideline on COVID-19, D.D Pattern and D.W Landerkin are forcing their opinions and desires on the agency; they care-less if it's working or not.

Sir, you need to come in now before it's too late, else our Union will be pushed to act again.

Sincerely

Benjamin Olubasusi
Chairman
Fraternal Order Of Police
DC Department Of Corrections Labor Committee
711 4th Street, NW
Washington DC 20001
Phone: 202-699-2198

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.

--

Ann-Kathryn So



HANNON LAW GROUP, LLP
333 8th Street, N.E.
Washington, DC 20002
(202) 745-6888, Direct
(202) 232-3704, Facsimile

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*The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and as such is **PRIVILEGED AND CONFIDENTIAL**. If the reader of this message is not the intended recipient, you are hereby notified that you have received this message in error, and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.*

EXHIBIT 16

DECLARATION OF JARVIS BURL

I, Jarvis Burl, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746.

1. My name is Jarvis Burl. I am nineteen years old. I am currently incarcerated at the Central Detention Facility in Washington, D.C., in the North 2 unit. I have been at the jail since March 10, 2020. I am asthmatic.
2. My first placement at CDF was on unit Southwest 3 (SW3). On SW3, I was housed in a two-man cell, occupied by myself and another inmate. In the coming weeks, no fewer than ten inmates on SW3 tested positive for COVID-19.
3. From my cell on SW3, I could hear an inmate in the cell directly above my cell coughing constantly. The inmate in the cell above mine who was coughing ultimately tested positive for COVID-19.
4. The day after I first noticed the inmate above me coughing, I began experiencing chills and fever. A nurse took my temperature, which was recorded at approximately 98 degrees. On Sunday, April 19, I was tested for COVID-19. On Monday, April 20, I learned that the test came back positive for COVID-19.
5. On April 20, I was moved to another unit—North 2 (N2), an isolation unit for inmates who have tested positive for COVID-19.
6. I learned from correctional officers that N2 had not been used to house inmates for years, and the unit was noticeably filthy. There were feces stains on the walls of N2 and in the cell on N2 that I was made to occupy. Correctional officers ordered me to bring my mattress and bedlinens from SW3 to N2. This mattress and these bedlinens were not cleaned or laundered since I first began experiencing COVID-19 symptoms.
7. The slots of each cell on N2 are open. There is no hot water in the sink of my cell on N2. The food brought to N2 is cold and is often served hours after regular mealtimes. Clean laundry is not provided to inmates on N2. Inmates on N2 are not able to leave their cells to shower.
8. In the first four days that I spent on N2, I did not observe anyone—inmates assigned to detail or correctional officers—cleaning anything on N2. I have not been provided any cleaning supplies to clean my cell on N2. I was given one mask upon my arrival to N2, which was not replaced after my first four days on N2.
9. To make a legal call on N2, correctional officers move a rolling phone from cell to cell. This rolling phone is not cleaned in between uses by different inmates.

10. Some correctional officers refuse to come near me and other inmates who have tested positive for COVID-19. A female correctional officer ordered me and other inmates to stay away from her and stated, "stay away, y'all got that shit" in a dehumanizing fashion.
11. Multiple calls with my lawyers have been cut short after fifteen minutes when I have things about my case and my health that I need to talk with my attorneys about.
12. I have developed a bad tooth infection in the last three days, my face is swollen, and I have not been provided a sick call slip to request a sick call. I have asked the guards on the unit for a sick call and sick call slips, to just to bring me to medical, they have not done so.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on the **11th** day of May 2020, in Washington, D.C.

_____/s/_____
Jarvis Burl
Correctional Detention Facility
1901 D Street SE
Washington, DC 20003

I, Kiran Bhatt, certify that the following was read to Craig Barksdale and that he affirmed the foregoing is true and correct on May 11, 2020



Kiran Bhatt
Investigator for Mr. Burl
Public Defender Service for the District of Columbia

EXHIBIT 17

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

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

Defendants-Respondents.

No. 1:20-cv-00849 (CKK)

DECLARATION OF MANNIN QUARLES

1. My name is Mannin Quarles. I am over 18 years old and am competent to make this declaration.
2. Currently, I am a prisoner in the District of Columbia Central Treatment Facility (CTF). I reside on Medical Unit 82.
3. I have an Achilles injury that makes it extremely painful for me to walk. The only way I can do so is to use a walker or a wheelchair.
4. On March 24, 2020, a medical official with D.C Department of Corrections yanked my walker from my hands, causing me to fall to the ground. The medical provider took the walker away from me and I have not had access to a walker since.
5. As a result, the only way I have been able to move throughout the tier is by sliding on the floor on my bottom.
6. The floor is extremely dirty. There is trash on the floor that inmates toss onto the tier through the food slot in their doors.
7. My current floor is a medical isolation unit.

8. I was transferred to the unit on March 11, 2020.
9. I did not have any COVID-19 symptoms when I was first transferred to the unit.
10. Around the end of March, DOC began housing people who tested positive for COVID-19 on my tier.
11. After several weeks of living on the same tier as COVID-19 patients, and sliding on the floor on which they walked and threw their trash, I started to experience COVID-19 symptoms myself, including loss of taste, smell and fatigue.
12. On or around April 24, 2020, I received a COVID-19 test.
13. The test came back negative; however, because I have symptoms of COVID-19, DOC medical providers informed me that the test was a false negative and that I actually have the virus.
14. In late April 2020, I wanted to make a phone call. An officer rolled the cart to my door and I started to make the call. As I did so, a different officer, Officer Robinson, disconnected the phone. I tried to make the call two more times and she unplugged the phone both times. After doing so, Officer Robinson shouted that the inmates on the tier were “corona motherfuckers,” she called us niggers, and made clear that she blamed us for the risks of contracting the virus that she faced due to her work at DOC.
15. On April 24, 2020, a corrections officer slammed the food slot on my hand, injuring it. I saw a medical provider and requested an x-ray. However, I was not called for an x-ray until May 10 or May 11. When the nurse came to take me to the x-ray, she did not have a wheelchair for me, so I was unable to have my hand examined. I still have not received adequate treatment for my injury.
16. There have been three days when I have not had access to hot water during May 2020.

17. I have received no cleaning solution since my transfer to the medical unit on March 11, 2020.

18. I have received no rags since my transfer to the medical unit on March 11, 2020.

19. As a result, I do not have resources to adequately clean my cell. I have started using Irish

Spring soap and toothpaste to clean my walls and floor because I don't know what else to do.

I, Michael Perloff, certify that the following was read to Mannin Quarles and that he affirmed the foregoing is true and correct on May 14, 2020. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 14, 2020

/s/ Michael Perloff

Michael Perloff

American Civil Liberties Union Foundation

of the District of Columbia

915 15th Street NW, 2nd Floor

Washington, D.C. 20005

EXHIBIT 18

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF GREGORY TORAN

1. My name is Gregory Toran. I am 37 years old. I am currently incarcerated at the CDF on the unit NE1 in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I have previously been diagnosed with chronic aphasia. I also arrived at the jail with a broken arm. I should be on the medical unit because of these conditions.
3. I had a cast on my broken arm when I arrived at the jail. However, I had to remove it because it became fetid and was having a negative impact on my relationship with my cellmate.
4. Everyone on my unit uses the same phones to make calls. This includes inmates who have tested positive for COVID-19.
5. Everyone on my unit, including those who have tested positive, use the same dirty showers.
6. DOC staff started spraying phones with disinfectant around April 29, 2020, but are not wiping the phones down.
7. Yellow spray used as disinfectant has been irritating people's skin.
8. DOC staff will not permit me to clean the phone before I use it.
9. I am not provided supplies to clean sinks or toilets. I use soap that I purchased from the commissary as well as toilet paper or an old towel that I ripped up.

10. On April 22, 2020, I had a seizure in my cell. My cellmate was able to get the attention of DOC staff, who indicated that someone would come to my aid, but no one ever did.
11. I voided my bowels as a result of this seizure. I was not able to shower afterward.
12. I put in a sick call after this seizure but did not see anyone for a few weeks.
13. I also had a seizure on May 5, 2020, my cellmate again got the attention of a DOC staff member, who said that someone from medical would come to my cell, but no one ever did.
14. Yesterday, I went to the medical unit to see someone regarding the seizures. This was the first time I saw a medical professional about both of my seizures.
15. The medical provider told me the seizures were my fault since my levels were low. She indicated that I had not been taking my medication and that is why I had seizures.
16. I have questions regarding medication I am receiving and my general healthcare regimen, however, I am not able to see a doctor regarding this. The medical provider I saw yesterday was not willing to answer these questions.
17. I am unable to wipe and clean myself properly after I use the bathroom due to my broken arm.
18. I did not have cast on my broken arm for three weeks. I got one on May 5, 2020.
19. DOC staff refuse to provide me a plastic bag or other covering for my cast when I shower.
20. DOC staff tried to administer me Tylenol and Motrin, despite their knowledge that I am allergic to them. I would have had a serious allergic reaction had I taken those medications.
21. My cellmate was pepper-sprayed on March 30, 2020. His name is Wayne Jones.
22. Inmates' temperatures are taken every day, except on weekends. Sometimes DOC staff do not tell inmates what their temperature is.
23. On one occasion, after a nurse took my temperature, I asked her what my name is. She refused to respond. I believe that medical staff are not concerned about accurately recording temperatures but are simply going through the motions.
24. Nurses act as if they do not want to be near inmates.
25. DOC staff started handing out masks around April 28, 2020. Before that, inmates had to steal masks out of the trashcan if they wanted one.
26. Inmates now receive a new mask every couple of days.

27. Laundry of jumpsuits and personal clothes is supposed to happen every week but it has not been done in three weeks.
28. Informational posters regarding COVID-19 were put up when it first hit the jail. There was not any new information provided until yesterday, when they handed out informational packets about COVID-19.
29. There are no social distancing rules enforced during recreation time. Right now, there are two other inmates on the phone sitting on the bench next to me. Both of them are within six feet of me.
30. I am scared to be around people who may have the virus. I do not think DOC is taking actions to protect me.
31. I am also scared because of my limited ability to protect myself due to my broken arm. I fear that I may be targeted because of the aforementioned medical issues, my bowel issue and fetid cast.
32. I did not receive my seizure medication last night or this morning. I am supposed to get it twice a day.

I, Patrick Kirby, certify that I have read the foregoing to Gregory Toran and that he affirmed the foregoing is true and correct on May 14, 2020.

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

Executed on May 14, 2020

A handwritten signature in cursive script, appearing to read "Pat Kirby", is written over a horizontal line.

Patrick J. Kirby
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 19

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF BRANDON FIGURES-MORMON

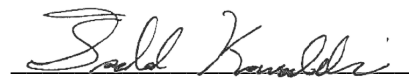
1. My name is Brandon Figures-Mormon. I am 25 years old. I am currently incarcerated at the Central Detention Facility on the South-1 unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. On or about April 29, 2020, the toilet in my cell flooded. Toilet water was all over the floor of my cell. I put in an IGP.
3. I was not given any cleaning products to clean my cell or the toilet water which was all over it. When the cell flooded I was not given a mop or wash rags to clean it up. I repeatedly asked for cleaning supplies but I didn't get any.
4. No one came to fix the toilet on April 29. The toilet was filled with urine and feces. I could not flush the toilet because it would overflow again.
5. On April 30, no one came to fix the toilet but the warden came to the unit to do rounds. I told the warden by toilet was broke and showed him the toilet was filled with feces. I left my cell and when I came back around 5:00 PM someone had unclogged the toilet. The water was still running constantly at a low pressure.
6. On the evening of April 30 and morning of May 1 the toilet was constantly running. As a result they cut off all water to my cell on May 1. Until the middle of the week of May 4 the only way I would have water in my cell is if a corrections officer turned the water on.
7. On or about May 1, 2020, an inmate stuck their hand through the slot of the door to the cell. The unit was placed on lockdown. Staff stopped taking people's temperatures and handing out medication. No one had their temperature taken until the next shift. Inmates missed out on their medication that morning.

8. People in their cells try to get the attention of correctional officers. The correctional officers stay in the bubble or in the front of the unit. The correctional officers ignore people in the cells and do not respond for requests for help.
9. We used to receive legal mail in the envelopes that the lawyer sent it to us in. Now, we only receive the contents of the legal mail and not the contents that it came in. The correctional officers now take the legal out of the envelopes, which means they can potentially read our legal documents.

I, Todd Kowalski, certify that I have read the foregoing to Brandon Figures-Mormon, and that he affirmed the foregoing is true and correct on May 14, 2020.

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

Executed on May 14, 2020.



Todd J. Kowalski
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 20

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF JOHN DOE

1. I am currently incarcerated at the Central Detention Facility in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I am currently incarcerated in a Safe Cell where I have been since around March 28, 2020.
3. I am not allowed out of my cell. I am locked inside of my cell 24-hours a day.
4. The lights in my cell are left on 24 hours a day, at full brightness.
5. I do not have access to running water.
6. The only water available in my cell is the water in the toilet. The toilet in my cell does not flush. Feces and other bodily waste remain in the toilet until the Correctional Officers come in to flush it manually. The COs often take several hours (often 2-3 hours) to come in and flush the toilet. There are no chemical agents provided to clean the toilet.
7. I do not have access to toilet paper. I have to ask the COs for toilet paper when I need it and they come and give me toilet paper off of a roll. I do not get the toilet paper as soon as I need it, I have to wait until the guards go retrieve it and bring it back.
8. I have only been allowed to shower twice in the 10 days that I have been in the Safe Cell.
9. The COs do not clean the shower.
10. I am not allowed to make any phone calls to my family.

11. I am not allowed to call my lawyer whenever I want. I have only spoken to my lawyer twice, including this call.
12. I do not have underwear, socks, or shoes.
13. I have only a dirty smock to wear, which I describe as dingy, smelly, with stains on it.
14. I do not have access to soap.
15. I do not have access to hand sanitizer.
16. I was not provided anything to clean my cell with.
17. The Correctional Officers do not do routine suicide checks on my cell.
18. The mattress in my cell is on a hard plastic block in the middle of the cell. The mattress itself is dingy, ripped open with foam hanging out, and covered in stains. The mattress is what is known as a Suicide Mattress.
19. I have not been getting my Sunni Muslim meals. I have instead been brought the regular trays from the dining hall which include preservatives and other items that my faith does not allow me to consume.
20. I do not have access to forks or knives so I have to eat with my hands.
21. I had to leave my religious items, including my Koran and prayer rug, in my cell in the North 1 Unit.
22. I do not have access to books or anything to read.
23. The COs do nothing to ensure that I, or any other inmate, wear a face mask.

I, Jeremy Gordon, certify that I have read the foregoing to Kavonte Richardson and that he affirmed the foregoing is true and correct on May 8, 2020.

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

Executed on May 11, 2020.

A handwritten signature in black ink, appearing to read "J. Gordon". The signature is written in a cursive, flowing style with a large initial "J" and a clear "Gordon".

Jeremy Gordon
Investigative Specialist
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 22

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF RYAN PHILLIP

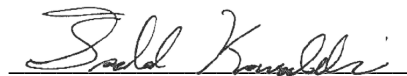
1. My name is Ryan Phillip. I am 27 years old. I am currently incarcerated at the Central Detention Facility on the Southwest-2 unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. We are supposed to be let out of our cells for only one hour a day. That one hour is the time that we have to exercise, call our families, call our lawyers, shower, and clean our cells.
3. We are not always let out of our cells for that one hour every day. When I'm not let out of my cell I can't call my family, can't call my lawyer, can't exercise, can't clean my cell and can't shower. A few weeks ago I was not let out of my cell for four days in a row.
4. Since I have not been released from my cell every day, I have been unable to shower every day. There are times when I have had to go three or four days without showering. I remember on April 20, 2020, I had not been able to shower for several days. When I am not able to shower I have to wash myself in my cell.
5. When we are let out of our cells for an hour it is often in the middle of the night. Sometime around the week of April 20 or April 27, 2020, I wanted to call my lawyer. However, I was only being let out of my cell in the early hours of the morning so I could not call my lawyer because of the time.
6. When I am let out of my cell for an hour during the day I cannot get everything done that I need to do and I do not have time to call my lawyer. I have to hope that my lawyer sets up a legal call to speak to me so I can ask my lawyer questions.

7. About three or four week ago, we found out that some people on our unit had tested positive for Covid-19. People were scared because they didn't know what was going on. They wanted to be able to call their families to tell them they were ok. They wanted to call their lawyers. People were saying they didn't feel well. They wanted to get to medical to be seen by a doctor. The corrections officers also seemed scared. The corrections officers didn't let anyone out of their cells. About ten people began to break out of their cells in desperation to get out.
8. The corrections officers don't seem able to control things. It seems like there are fewer corrections officers than normal. The corrections officers usually just stay in the bubble rather than coming out on the unit. I think the corrections officers are scared of getting the virus if they let people out of their cells.
9. We don't have enough cleaning supplies to clean our cells. We can use our bars of soap, but it is the same soap we have to use to shower. Sometimes we get a paper towel with some cleaning chemical on it, but this is only enough to clean the slot in our cells doors and not enough to clean the whole cell. The only people who get cleaning supplies are the people who work in the detail unit. If they do you a favor they will give you some cleaning supplies but sometimes I'm not able to clean my cell for weeks.
10. There have been problems with the water on my unit. One time I had to go two days without any water in my cell except the water in the toilet.
11. I have not been able to attend religious services. There has been no Chaplain in the facility since this started and I have not been able to practice my religion.

I, Todd Kowalski, certify that I have read the foregoing to Ryan Phillip and that he affirmed the foregoing is true and correct on May 14, 2020.

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

Executed on May 14, 2020



Todd Kowalski
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 23

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF DAVID RANDOLPH

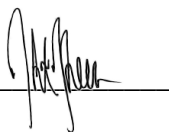
1. My name is David Randolph. I am 20 years old. I am currently incarcerated at CDF on the unit NE2 in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. Over the last two months, I have been able to shower about twice a week. The last time I took a shower was about two days ago. I shower whenever I am let out of my cell. The last time I was let out of my cell was two days ago. That was also the last time I was able to make a legal call. I am let out of my cell about two days a week. When I am let out of my cell, I am let out of my cell for about an hour.
3. I do not get toilet paper every week. I get toilet paper about once a month. The last time I got toilet paper was about two weeks ago. When I get toilet paper, I get one roll. I have toilet paper right now, but I am close to running out.
4. In March, I began having flu-like symptoms. My chest started feeling tight. I had a hard time breathing. I also started coughing.
5. I have asthma and diabetes. Both of these pre-existing conditions make COVID-19 dangerous for me.
6. I am supposed to get an inhaler for my asthma. Without an inhaler, my chest gets tight. I have trouble breathing. I sometimes cough without my inhaler. My inhaler ran out around April 17th. Between around April 17th and May 1st, I submitted about 10-15 sick slips. These sick slips were about my inhaler and how sick I was feeling. I did not get a response to my sick slips until May 13th, when I received my inhaler.

7. In the middle of April, I had a temperature recorded around 93 degrees. Medical staff did not retake my temperature that day.
8. Since around April 30th, my tonsils have been very swollen. I saw someone in medical about my tonsils on May 9th. They said that I would need to have my tonsils removed eventually, but they said they could not have my tonsils removed right now because of COVID-19. When my tonsils started hurting in April, I would rate that pain as a 4 on a scale of 1-10 with 10 being the most pain. Today, I would rate my tonsil pain as a 10. The ibuprofen they gave me is not helping. My tonsils hurt when I eat. I have been skipping meals because it hurts to swallow. I cannot sleep because of the pain. It also hurts to talk. I am almost in tears right now because of how much it hurts to speak. I put in another medical slip because of the pain, but I just received more ibuprofen today.
9. To date, I have still not been tested for COVID-19. Medical staff told me that I do not have COVID-19, but they did not tell me why they do not think I have COVID-19.

I, Katherine Rees, certify that I have read the foregoing to David Randolph and that he affirmed the foregoing is true and correct on May 14th 2020.

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

Executed on May 14th 2020.



Katherine Rees
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 25

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARARION OF CRAIG BARKSDALE

1. My name is Craig Barksdale. I am thirty four years old, I am currently incarcerated at the Central Detention Facility (“CDF”) on the SE3 unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I was detained at the Central Detention Facility (“CDF”) on February 19, 2019. I was initially detained at CDF but then transferred to CTF on July 17, 2019. I was transferred back to CDF on September 29, 2019 and remain detained at CDF to this day.
3. I have been in the SE3 unit since September 29, 2019.
4. The guards have stopped picking up our mail every day. In April, my attorney, Amanda Rogers, told me she mailed a release of information for me to sign and to mail the signed copy immediately to her. I received the release of information, signed it, and put it in the mailbox immediately. The guards did not come to pick up the mail for several days. In both March and April of 2020, my family told me that they mailed me a package. I did not receive the mail until 3 to 4 weeks later.
5. Since our units were locked down during the pandemic, it is very difficult to get time with our case manager. On or about Monday, May 4th, 2020, I finally saw the case manager in our unit and requested that she change my family call list. We are only allowed a certain number of phone numbers on the list and I needed to get in touch with other family members not included on the list. The case manager refused to make changes to my call list. I have been unable to call those family members because they are not on the call list.

6. I am only allowed 1 hour of recreation time a day. During that time, we need to shower and make phone calls to family members and lawyers. Every other day, they allow one side of the unit out for recreation in the morning around 8 or 9 am and the other side of the unit is released for recreation in the evening. Many times I am getting the evening recreation time at 10 or 11 p.m. I cannot call my lawyer or family members at those late times. I then requested a phone call during regular day hours, and the guards refused to allow me to make phone calls that I could not make in the middle of the night when they gave me my 1 hour of recreation time.
7. During the week of April 27th, 2020, I was sitting in my locked cell and I overheard two guards threatening another inmate to hang up the phone, go into his cell, or the guards would mace him. I overheard the inmate explain to the guards that he was on the phone with his grandmother. The guards continued to threaten him in a loud voice that the inmate would get maced. The inmates on my unit are very peaceful with no incidents. However, the guards continue to threaten inmates with mace for minor inconveniences like finishing up phone calls.
8. The clothes I am wearing on my body today have not been changed or washed in 11 days. I wash my own underwear when I take showers. I hang my underwear in my cell overnight to dry them by the morning. The timing varies greatly when my clothes will be washed.

I, Edward McDermitt, certify that the following was read to Craig Barksdale and that he affirmed the foregoing is true and correct on May 8, 2020.

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

Executed on May 6, 2020.

Edward McDermitt

Edward McDermitt
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 26

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF TAVON LUCAS

1. My name is Tavon Lucas. I am nineteen years old. I am currently incarcerated at the Central Detention Facility on the NW 2 unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I have been at the Central Detention Facility since October 3, 2019.
3. I was first in the SW2 unit and then transferred to the NW2 unit two months ago.
4. About 5 or 6 weeks ago before we were all put on lockdown for the pandemic, the inmates on NW2 were asking guards to be tested for COVID-19 because we learned that people on our unit were on quarantine. The guards told us that we could not be tested unless we showed symptoms. At no point did any inmate get physical with any guards. The inmates were merely asking to be tested for COVID-19. I went back into my cell, as did many other inmates. Twenty-five to thirty minutes later, I heard the guards come back and realized that guards were using paintball guns and pepper spray against the inmates.
5. On or about April 28, 2020, I was on NW2 and due to the pandemic, we were only allowed out of our cells for one hour to shower, call family, etc. There is one guard, Sgt. Ogu (badge 8489) that was very abusive during inmates' one hour recreation period. I have seen Sgt. Ogu threaten to mace and, in fact, mace inmates for extremely small issues. On or about April 28, 2020, during my one hour period, I was on the phone with my mother. I was wearing a mask but my mother could not hear me so I pulled down my mask to speak on the phone. Sgt. Ogu walked up to me and threatened to mace me for pulling down my mask.

6. I have also seen Sgt. Ogu bring out mace when inmates are still in the shower and Sgt. Ogu has decided that the inmates' one hour recreation period is over. It is very difficult to get a shower within the one hour period because while there are 8 showers, we are only allowed to use 4 of the showers due to social distancing and around 10 people are released at the same time for their recreation hour. At the time that we are released for our one hour period, the inmates on detail are also outside their cells.
7. Because we only get one hour of recreation for showering, calling family, and making sick call requests, it is very stressful to get everything done within that hour, especially when I am worried about getting maced by guards for not moving fast enough or for making mistakes like pulling down my mask so my mother can hear me.
8. After the incident with Sgt. Ogu, I put in two grievances on him. However, guards stopped picking up or signing off on grievances. After I told my attorney that the guards were not picking up grievances, the jail finally responded back to my grievance 10-11 days later.
9. On or about April 28, 2020, I put in a sick call request. I was light-headed in my room and suffering from cold-like symptoms. I was worried that I was coming down with COVID-19. I was never seen by a doctor after I filed my first and second sick call request. After I filed my third sick call request, I finally saw a doctor. The doctor took my vitals and told me I was all right.
10. On or about May 1, 2020, I was on NW2 and guards refused to let people out for their one hour recreation period. As is, guards were giving inmates recreation time around 3 and 4 am to call families. When inmates asked guards why they were not allowed for recreation, the CO's said they would not allow inmates out for recreation because their shift was over and the other shift had not come in yet. I asked the guards if the jail was on 24-hour lockdown. The CO's said NW2 was not on 24-hour lockdown but that they were short of staff. I told the CO's that it wasn't the residents' fault, people need to call their families and "we shouldn't have to sit in our cells while you sit in the bubble." The bubble is an office in the middle of the unit where CO's sit. The CO replied "I can't have that discussion."
11. Two to three weeks ago, the guards finally gave us a wash rag to clean our cells. The guards have stopped giving us wash rags to clean our cells. I share a cell with another inmate. We are using the same dirty washrag to clean our cells.

I, Edward McDermitt, certify that the foregoing was read to Tavon Lucas and that he affirmed the foregoing is true and correct on May 12, 2020.

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

Executed on May 12, 2020.

Edward McDermitt

Edward McDermitt
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 27

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF MARCO MOSELEY

1. My name is Marco Moseley. I am 35 years old. I was incarcerated at the CDF on the unit NW1 in Washington, D.C. I was released into the community on April 30, 2020. I am offering the information detailed herein based on my own personal knowledge.
2. On April 21, 2020, when I was at the CDF, I tested positive for COVID-19. I was subsequently moved to N2, which is a unit where they are quarantining prisoners.
3. I was not permitted to take a shower until April 24, 2020. When I did, the shower was dirty and I tried to clean it myself before using it. I was given a brush to clean the shower but no disinfectant.
4. The quarantine unit itself was dirty as well. Inmates housed on the unit tried to clean it themselves but did not have proper supplies. Instead, inmates used shampoo they purchased from commissary and rags from their cells.
5. Sometimes DOC staff would say they did not have masks when I asked for one.
6. I never had access to hand sanitizer while at CDF.
7. I did not have a change of sheets for 10 days while on the quarantine unit.
8. I was not provided any soap by the DOC. The only soap I was able to obtain was that which I bought in commissary.
9. On April 27, 2020, corrections officers used mace on an inmate in the quarantine unit who was also positive for COVID-19. On April 30, the day I was released, eight people got maced, including myself. The effect of mace is that it makes you unable to breathe, like you're trying to catch your breath but you cannot.

10. I was given cold food every day for both meals while on the quarantine unit. I was supposed to have kosher meals, which should be hot, because of my religion.

I, Patrick Kirby, certify that I have read the foregoing to Marco Moseley and that he affirmed the foregoing is true and correct on May 11, 2020.

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

Executed on May 14, 2020

A handwritten signature in cursive script, appearing to read "Pat Kirby", is written over a horizontal line.

Patrick J. Kirby
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 28

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

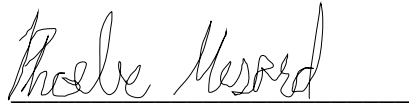
DECLARATION OF PHILLIP JOHNSON

1. On April 29, 2020, I was picked up and I was taken to the courthouse holding cell. I was there for a few hours and then they brought me to DC Jail.
2. I went through R&D. They put me in a holding cell. I waited for a while and then they strip searched me, and gave me new clothes.
3. They had us talk to doctors. The doctor didn't ask anything about the coronavirus or any questions about who I'd been in contact with. My temperature was never taken.
4. I was placed on S2. I had a cellmate when I first came. He came in at the same time I did. He left and I haven't had a cellmate since, but some people on my unit have cellmates.
5. Four people are now sick with the virus on my unit. For the people who were cellmates, they moved one person out of the cell and kept the other person here.
6. My cell was not cleaned when I came in. The water wasn't on and the toilet wasn't working. We finally got the water on, and that's when we found out the toilet wasn't working. They had to move me to another cell.
7. We don't have any access to hand sanitizer. The only thing they give us to clean our cell is a napkin with some spray on it. No one has come to clean the cell. As far as I can see, common spaces are only being cleaned once a day with spray.
8. On or about May 1, 2020, a person was maced on my unit. I could smell the mace for days. It had me coughing and makes my nose and throat scratchy.

I, Phoebe Mesard, certify that I have read the foregoing to Phillip Johnson and that he affirmed the foregoing is true and correct on May 14, 2020.

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

Executed on May 14, 2020

A handwritten signature in cursive script, reading "Phoebe Mesard", is written over a horizontal line.

Phoebe Mesard
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 29

DECLARATION OF VINCENT SCHIRALDI

On this 14th day of May, 2020, I hereby declare:

1. My name is Vincent Schiraldi. From 2005 to 2010, I was Director of the District of Columbia's executive branch juvenile justice agency, the Department of Youth Rehabilitation Services ("DYRS"). During that time, I closed the District's antiquated 208-bed youth correctional facility, the Oak Hill Youth Detention Center, and opened and ran two replacement facilities – the Youth Services Center, an 88-bed detention facility, and the New Beginnings Youth Development Center, a 60-bed commitment facility. During my tenure there, we closed our solitary unit entirely and moved toward an approach modeled after the one used in the state of Missouri and favoring the use of rigorous programming, improved staff to youth ratios, de-escalation and youth development training and, when a youth was a danger to staff or other youth, short-term "timeouts." We also rewrote our mechanical restraints policy to reduce the use of mechanical restraints. The Department did not use pepper spray at all for youth in our care. We also created "D.C. YouthLink" a continuum of regionally-based community-run services, supports and opportunities for youth in DYRS care, which helped reduce unnecessary confinement of youth in Oak Hill/New Beginnings.
2. From 2010 to 2014, I was Commissioner of New York City's Department of Probation which supervised approximately 30,000 adults and juveniles sentenced to probation by the city's courts. During my tenure, we safely reduced probation revocations by 45% and increased early discharges from probation more than five-fold. From 2014 to 2015, I was a Senior Advisor to the New York City Mayor's Office of Criminal Justice. One of my duties at the Mayor's Office was to work with the New York City Department of Correction, which had recently been sued by the U.S. Department of Justice, to improve conditions for youth ages 16 and 17 in the juvenile unit on Rikers Island. The city

expanded programming, trained staff in de-escalation techniques, improved staff-to-youth ratios and eliminated the use of punitive segregation on the juvenile unit.

3. During my time as Director of DYRS, I was a member of, and Regional Coordinator for, the Council of Juvenile Correctional Administrators (“CJCA”), a national membership association comprised of directors or administrators of statewide and county juvenile justice agencies. I was also a member of the Juvenile Justice Leadership Network at Georgetown University where I also served as a lecturer.
4. During my tenure as New York City Probation Commissioner, I was a member of both the New York State Council of Probation Administrators and the American Probation and Parole Association, and I am currently a member of the latter. Both of these associations dealt with best practices and standards for the treatment of court-involved young people, among other things.
5. Since my co-founding of the Columbia Justice Lab, I have established two separate associations of correctional administrators – Executives Transforming Probation and Parole (exitprobationparole.org) and Youth Correctional Leaders for Justice (YCLJ.org). EXiT convenes 85 current and former probation and parole executives, including several from Washington, D.C., seeking to safely and effectively reduce this size and punitiveness of probation and parole and make them more hopeful and helpful. In YCLJ, over 50 current and former youth correctional administrators, including several from Washington, D.C., seek to replace the youth prison model with a more effective approach to youth justice including community programs and supports and small, rehabilitative locked facilities for the few youth who need to be securely placed.
6. Previously, I was founder and executive director of the Center on Juvenile and Criminal Justice from 1991 to 2002 and founder and executive director of the Justice Policy Institute from 2002 to 2005. In both of those positions, I provided technical assistance

for criminal and juvenile justice systems through government and foundation funding.

7. I started my professional career as a line staff/houseparent working for New York State's juvenile correctional agency, the Division for Youth, from 1980-1982. I also served as a foster parent for a delinquent youth in 1989 through the San Francisco Department of Social Services.
8. I am currently the co-founder and co-director of the Columbia University Justice Lab and a Senior Research Scientist at the Columbia School of Social Work. I was previously a Senior Research Fellow directing the Harvard Kennedy School's Program in Criminal Justice Policy and Management ("PCJ"). I have also been an adjunct lecturer teaching graduate and undergraduate courses in juvenile justice at New York University's Wagner School of Public Administration and Silver School of Social Work and at San Francisco State University. I have additionally co-edited a book entitled *Reforming Juvenile Justice*. I have published over 40 articles and book chapters pertaining to criminal and juvenile justice during my 40-year career in the justice field.
9. I have testified before the United States Congress and to legislative and administrative bodies in the District of Columbia and numerous states about criminal and juvenile justice matters.
10. I was appointed to the California Blue Ribbon Commission on Inmate Population Management from 1988 to 1990 and was the first President of the San Francisco Juvenile Probation Commission in 1990. As DYRS Director, I was a member of Washington, DC's Criminal Justice Coordinating Council from 2005-2010. I served on Washington, DC's Juvenile Justice Advisory Group (2006-2009) and was a member of the Federal Juvenile Justice Advisory Commission of the Office of Juvenile Justice and Delinquency Prevention (2007-2008). I was also a member of the National Academies of Sciences Committee on Juvenile Justice Reform Implementation from 2013 to 2014 that

produced the book *Implementing Juvenile Justice Reform: The Federal Role*.

11. I have a Bachelor's Degree in Social Psychology from the State University of New York at Binghamton and a Master's of Social Work from New York University. I have attached a true and correct copy of my Curriculum Vitae to this declaration as Appendix A.
12. Because of my experiences within and knowledge of the District of Columbia criminal justice system as well as other criminal justice systems throughout the country, I have given considerable thought to how the District of Columbia Department of Corrections could downsize the population of the Jail (and the Correctional Treatment Facility) on an emergency basis to a level where the number of staff and of inmates will allow for the implementation of policies that will stop the spread of COVID-19 and reduce potential infection of staff and inmates.
13. An actual downsizing effort would require more information to which I do not currently have access, but below I set forth a general approach that would be modified based on receipt of more detailed and up-to-date information and consultation with key District of Columbia system stakeholders.
14. Downsizing would focus on two groups: First, pre-trial arrestees and detainees, and, second, people serving sentences. An expert would work with relevant agencies to create and implement release policies related to both groups in order to reduce the population so that there is (a) more room to allow for generally greater separation of inmates in the jail and, when necessary, medical separation, and (b) fewer inmates to allow the thinning complement of correctional officers and other staff to adequately implement COVID-19 related policies, as well as secure and provide health care and programming for the reduced population.
15. Regarding pre-trial arrestees, persons accused of misdemeanors that do not involve domestic violence or firearms will not be detained at the jail, preferably by providing them with

summonses in lieu of arrest. In the alternative, these individuals will be screened for release prior to any presentment in court following arrest. To the extent that policies to this effect have been established, they should continue. Those who have already been detained in this category will be released.

16. Individuals accused of technical violations of supervised release, parole, or probation will not be detained at the jail. Those who have already been detained in this category will be released.

17. A system will be established with the Pretrial Services Agency for the District of Columbia (PSA) to screen for potential release those accused of misdemeanors involving domestic violence or firearms, as well as certain felonies.

18. Utilizing the PSA's risk assessments, those scoring low risk shall either be unsupervised or limited to weekly telephonic reporting because supervising low risk individuals actually increases recidivism and leads to programmatic failures. Supervising low risk individuals also diverts limited PSA staff from focusing on higher risk individuals.

19. All releasees will receive regular reminders regarding their court appearances. It should be recommended that smart phones capable of receiving electronic reminders be provided to those who do not already have such devices.

20. Regarding sentenced defendants, those serving sentences for technical violations of supervised release, parole, or probation shall be released.

21. Persons serving sentences with 120 days or fewer remaining shall be released.

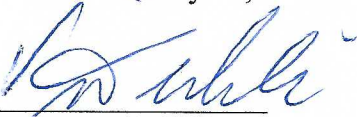
22. Persons with plea agreements where the parties have agreed to probation or a sentence that would result in 120 days or fewer of additional incarceration will be released.

23. Persons eligible for home confinement, work release, or other forms of furlough shall be released.

24. It should be recommended that assistance programs be established with D.C. government entities and local non-profit organizations for those who will be released. Individuals should be interviewed prior to release and provided with individualized voluntary assistance to help them with transportation, connect them with local and federal income supports and programs, and to provide other case management supports. For those without a verified address, the District should provide housing resources including, but not limited to, hotels, or through other innovative approaches (for example, the Kinship Reentry program in Manhattan and the Homecoming Project in Oakland).
25. An expert will oversee the implementation of these release mechanisms, monitor outcomes, and report results to the Court on a regular basis.
26. The expert and staff will also monitor all medically vulnerable populations for release who did not meet the criteria under any of the other mechanisms. The expert would provide weekly monitoring reports and recommendations for these individuals.
27. The expert would also work to identify individuals held on detainers from other jurisdictions to ensure swift transfer or release. The expert will work with the Federal Bureau of Prisons (BOP) regarding individuals who have been sentenced and are awaiting transfer to BOP custody. The expert would also work with BOP regarding those individuals serving sentences who are eligible for home confinement or placement into Residential Reentry Centers.
28. The expert will need daily updates regarding the entire Department of Corrections' inmate population and categories of inmates (for example pre-trial, pending sentencing, sentenced, parole violation, etc.). The expert will also need risk level assessments, length of time remaining on sentence, information regarding inmates with medical issues that increase risk to COVID-19, information regarding inmates with mental health issues, etc.
29. The data will inform the development and implementation of the release policies.

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

Executed on May 14, 2020.

A handwritten signature in blue ink, appearing to read "Vincent Schiraldi", written over a horizontal line.

Vincent Schiraldi
46 S 2nd Street
Brooklyn, NY 11249

EXHIBIT A

Vincent N. Schiraldi, MSW

46 S. 2nd St., Brooklyn, NY 11249

vs2637@columbia.edu

347-559-3699

Academic and Nonprofit Experience

Columbia University School of Social Work

Co-director, Columbia University Justice Lab

Senior Research Scientist/Adjunct Professor, 2017 - Present

Co-founded the Justice Lab at Columbia University (with Sociologist Bruce Western) devoted to reducing society's reliance on the criminal justice system as a solution to social problems through research, writing, teaching, and convening scholars, practitioners, policy makers, advocates and formerly incarcerated people. Projects include reducing the footprint and negative impact of community corrections, eliminating youth prisons, and creating a developmentally appropriate response to offending by young adults.

Harvard University, Kennedy School of Government

Program in Criminal Justice Policy and Management

Senior Research Fellow, 2015 – 2017

Jointly with Academic Chair Bruce Western, directed the Program in Criminal Justice Policy and Management for one of the nation's premier government academic institutions, the John F. Kennedy School of Government. Areas of focus included Community Corrections, Mass Incarceration, Young Adult Justice, and Juvenile Justice. Program has approximately doubled in size and budget during my tenure. Recently hosted a series of independent studies and a reading group on young adult justice with graduate students from the Kennedy School, Law School, and School of Education. Co-taught a graduate course in the Harvard Law School on mass incarceration that was cross-listed in Law, Sociology, and at the Kennedy School.

Justice Policy Institute

Founder and Executive Director, Washington, DC – 2002 - 2005

Established and directed a progressive research, public policy, and advocacy organization devoted to reducing society's reliance on incarceration as a solution to social problems. Research and advocacy focused on, among other topics, racial disparities in America's incarceration rate, the tradeoff between funding prisons and higher education, the destructive impact of incarcerating juveniles in adult facilities, the failure of "Three Strikes" laws, media coverage of crime, and approaches to reducing mass incarceration. JPI consistently ranked among the top most frequently quoted think tanks in the United States during my tenure. In addition to national research on the impact of mass incarceration, JPI worked collaboratively on criminal/juvenile justice campaigns at the Federal level and in Alabama, California, Illinois, Louisiana, Maryland and Texas.

Center on Juvenile and Criminal Justice (CJCJ)

Founder and Executive Director, Washington, DC and San Francisco, California

1991 - 2002

Established an innovative private, non-profit criminal/juvenile justice agency that developed alternatives to incarceration, advocated against the mass incarceration of adults and juveniles, and provided mitigation work in death penalty cases. During my tenure, established offices in Hawaii, Philadelphia, Baltimore, and Oakland, CA, in addition to anchor offices in San Francisco and Washington, DC.

National Center on Institutions and Alternatives (NCIA)

- **Western Regional Director, San Francisco, CA 1985 – 1991**
- **Case Developer, New York, NY 1982 - 1985**

Established Western Regional Office of private, non-profit criminal/juvenile justice agency. Grew Western Regional Office from a one-person start-up to a multi-program organization with a reputation for cutting-edge advocacy in opposition to California's prison boom that successfully separated from NCIA as the Center on Juvenile and Criminal Justice in 1991.

Government Experience

New York City Mayor's Office of Criminal Justice

Senior Advisor, 2014 – 2015

Appointed by Mayor Bill de Blasio as Senior Advisor to his Office of Criminal Justice. Developed and promoted policies to improve safety, reduce incarceration and increase fairness in New York City's criminal justice system. Specific portfolio included improving school safety while reducing unnecessary school arrests and suspensions; reducing incarceration and improving outcomes for young adults in New York's criminal justice system; reducing the number of adolescents in city jails and improving conditions at Rikers Island; and raising the age of juvenile court jurisdiction to eighteen.

New York City Department of Probation

Commissioner, 2010 – 2014

As an appointee of Mayor Michael Bloomberg, reformed one of the nation's largest probation departments. Established a substantially less correctional culture for our 1000-staff department that actively supervised 30,000 adults and juveniles. Major accomplishments included passage of watershed "Close to Home" legislation that transferred nearly all of New York City's youth from abusive state facilities to community-based programs and facilities within the five boroughs; making the Department's work more community- and evidence-based through the ground-breaking Neighborhood Opportunity Network (NeON) initiative; and substantially reducing failures-to-report and violations of probation. Probation violations dropped by 45% during my tenure with Department boasting the highest completion rate in the state (80% vs. state average of 65%) and a revocation rate one-third the state average. Also raised \$30 million during my tenure to focus rehabilitative resources on young men of color under our Department's supervision.

District of Columbia Department of Youth Rehabilitation Services (DYRS)

Director, 2005 – 2010

Directed and reformed the District of Columbia's newly created, cabinet-level juvenile justice agency under Mayors Anthony Williams and Adrian Fenty. Inherited an agency in crisis that was morphing into a full-fledged department that had had 20 directors in the previous 19 years which was on the cusp of being placed into court receivership due to

decades of operating in an abusive and unconstitutional manner. Closed the notorious, overcrowded 208-bed Oak Hill Youth Correctional Facility, and replaced it with the state-of-the-art 60-bed New Beginnings Youth Center and 86-bed Youth Services Center. Established a neighborhood based and community-driven continuum of innovative programs. Incarceration and recidivism rates dropped significantly during my tenure. During my tenure, DYRS was named one of the “Top 50” programs by Harvard University’s Kennedy School of Government Innovations Awards program and received the A. L. Carlisle award from the Coalition for Juvenile Justice.

Human Services Agency of San Francisco

Foster Parent, 1989

Foster parent for a seriously emotionally disturbed, delinquent youth for a six-week transitional period following his release from San Francisco’s juvenile hall.

New York State Division for Youth

Houseparent/Recreation Coordinator, 1980 - 1982

Served initially as a live-in house parent to a state-run group home for seven juvenile delinquent boys. Promoted to recreation coordinator of three homes housing 14 girls and 7 boys.

Additional Experience

Academic Lecturing

Columbia School of Social Work, Fall 2018 and Spring 2020

Harvard University Law School, Fall 2016

New York University, Silver School of Social Work, Spring 2013

New York University, Wagner School of Public Service, Fall 2012

Georgetown University, Center for Juvenile Justice Reform, 2009-2013

San Francisco State University, 1996

Taught Masters Level Juvenile and Criminal Justice classes in the Harvard Law School, Columbia School of Social Work, NYU Wagner School of Public Service and Silver School of Social Work. Lectured on leadership in certificate program at Georgetown University, which promotes juvenile justice reform through collaborative efforts with key system stakeholders. Taught an undergraduate course on the history of juvenile justice and juvenile justice reform movements at San Francisco State University.

Freelance Commentator

1985 - Present

Have published commentary pieces in the *New York Times*, *Washington Post*, *New York Daily News*, *Los Angeles Times*, *Marshall Project*, *Baltimore Sun*, *Christian Science Monitor*, *San Francisco Chronicle*, *Miami Herald*, *Philadelphia Inquirer*, *San Jose Mercury News*, *Sacramento Bee*, *Albany Times-Union*, *National Law Journal*, *Marshall Project* and *American City and County*, among others. Regular commentator on Washington, DC’s National Public Radio affiliate, WAMU, from 1998 to 2004, *Huffington Post*, from 2015 to 2017, and *Crime Report* from 2015 to present.

Boards and Commissions

- **Columbia University Justice Lab**
Member, Executive Session on the Future of Justice Policy
2018 – present
- **Common Justice**
Board Member, 2017 – present
- **Stella Adler Studio**
Board Member, 2017 – present
- **Harvard University, Kennedy School of Government**
Member, Executive Session on Community Corrections
2013 - 2016
- **National Academy of Sciences**
Committee on Juvenile Justice Reform Implementation
2013 – 2014
- **New York State Council of Probation Administrators**
Member, 2010-2014
- **Federal Advisory Commission on Juvenile Justice, Office of Juvenile Justice and Delinquency Prevention**
Member 2007-2008
- **Council of Juvenile Correctional Administrators**
Board member and Northeast Regional Coordinator – 2005-2010
- **Washington, DC Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform**
Advisor, 2001
- **National Criminal Justice Commission, National Center on Institutions and Alternatives, Alexandria, VA**
Member, 1995 – 1996
- **California Commission on the Status of African American Men**
Advisor, 1992 - 1996
- **San Francisco City and County, Juvenile Probation Commission**
President, 1990 - 1991, Commissioner, 1991 - 1992
- **California Blue Ribbon Commission on Inmate Population Management**
Commissioner, 1988 - 1990

Training, Technical Assistance, Expert Witness

Plaintiffs' Expert

GH vs. Marstiller, 2019 – present

Serve as Plaintiffs' expert in successful Federal litigation filed by the Southern Poverty Law Center and Florida Legal Services against the Florida Department of Juvenile Justice for conditions of confinement in youth detention.

Plaintiffs' Expert

McNeil vs. Community Probation Services, LLC, 2019 - present

Plaintiffs' expert in Federal Litigation filed by Civil Rights Corps against a private, for-profit probation provider in Tennessee.

Expert Witness

Jacksonville, FL Death Penalty Sentencing – 2018 - 2020

Served as defense witness for Florida vs. James Belcher on subject of the impact of Mr. Belcher's confinement in Rikers Island as a juvenile during the 1970s.

Plaintiffs' Expert

JJ vs. Litscher – 2017 – 2018

Serve as Plaintiffs' expert in successful Federal litigation filed by the ACLU of Wisconsin and the Juvenile Law Center against the Wisconsin Department of Corrections for conditions of confinement in a boys and girls' youth prison.

Research Development Associates

Los Angeles County Probation Governance Study – 2017– 2018

Co-principal Investigator on comprehensive evaluation of the Los Angeles County Probation Department. Los Angeles Probation is the nation's largest department with 6,600 staff and a budget of \$840 million.

City University of New York

Institute for State and Local Government – 2015- 2017; 2019-present

Serve as part of an expert panel to evaluate and advise on probation reforms in 10 separate jurisdictions (2019-present).

Served as part of a consulting team assisting the Mayor's Office of Criminal Justice and Manhattan District Attorney Cyrus Vance to develop a model approach to young, court-involved adults in New York City (2015-2017).

California Leadership Academy

2015 – 2016

Served as a member of a consultant panel designing an innovative correctional facility for young adults incarcerated in the California Department of Corrections and Rehabilitation.

Cuyahoga County Technical Assistance

Annie E. Casey Foundation

Cleveland, Ohio (2002-2003)

Worked as part of a team to analyze Cuyahoga County's (Cleveland), Ohio's use of secure detention and made recommendations for reform as part of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative.

State of Hawaii Youth Correctional Facility Study

Hawaii, March - July 1988

At the request of the Hawaii Department of Corrections, the Hawaii Legislature and ACLU National Prison Project, led a team that recommended a model juvenile correctional system designed to assure public safety while reducing the number of youths incarcerated in secure custody. In 1989, the Hawaii Legislature adopted our recommendations, created the Office of Youth Services and closed the Hawaii Youth Correctional Facility.

National Institute of Corrections Technical Assistance Reports

Sonoma County, California, August 1987

Santa Cruz County, California, June 1987

Through funding from the United States Department of Justice, National Institute of Corrections, researched the programs and policies in place in both counties and advised on potential jail population reduction measures.

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Selected Presentations

- *New Frontiers in Juvenile Justice: Expanding Juvenile Court Jurisdiction to 18- and 19-Year-Olds*. (March 2019). Plenary Panel. National Conference of Juvenile and Family Court Judges.
- *The Wisconsin Community Corrections Story*. (February 2019). Milwaukee Criminal Justice Council.
- *Too Big to Succeed: Has Community Corrections Grown Beyond Its Useful Capacity?* Keynote presentations to the Oregon Justice Reinvestment Summit (February 2019); the Philadelphia Chamber of Commerce (January 2019); and the County Chief Adult Probation and Parole Officers Association of Pennsylvania (September 2018).
- *Testimony of Vincent N. Schiraldi, on behalf of five former Commissioners of New York City Probation, before the New York State Assembly Standing Committees on Codes, Health, Governmental Operations, and Alcoholism and Drug Abuse*. (October 2018).
- *Unfinished Business: Changing Cultures/Changing Minds of Juvenile Justice Law Enforcement: What remains to be done to fundamentally alter the ethos, & most impact law enforcement in America's JJ system*. (October 2018). John Jay College of Justice, Center on Media, Crime and Justice.
- *The Future of Youth Justice – Moving Away from Youth Prisons*, National Conference of State Legislators, September 2017.
- *Lessons for Australian Officials from the U.S. Juvenile Justice Experience*, at the University of Sydney (Sydney, AU), the University of Queensland (Brisbane, AU), and Jesuit Social Services National Symposium (Melbourne, AU), March 2017.
- *How New York City Halved its Incarceration Rate and Reduced Crime*, Harvard Club, New York City, December 2016.
- *A Community-based Approach to Juvenile Justice*, United States Department of Justice, Office of Justice Programs, October 2016.
- *Creating a Developmentally Appropriate Approach to Young, Court-Involved Adults*, National Summit on Preventing Youth Violence, Department of Justice, Baltimore, MD, June 2016.
- *Alternatives to Incarcerating Juveniles*, Organization of the American States. December 2015.
- *Community-based Responses to Young Adults*. Columbia University School of Law, Justice Forum. November 2015.
- Forum on Young Adult Justice in the U.S. Justice Department's Great Hall of Justice (Opening Remarks by Attorney General Loretta Lynch), September 2015.
- *What Our Incarceration Policies Tell Us about Ourselves*, Keynote, University of Baltimore School of Law, March 2015.
- *Young Adults and America's Criminal Justice System*, Bi-partisan Conference on Criminal Justice, Washington, DC, March 2015.
- *Young Adult Justice in the US and UK – A Burgeoning Area of Reform*, Keynote at Transition to Adulthood Conference, London, England, February 2015.

- *Mass Incarceration in America*, Wits University, Johannesburg, South Africa, August 2014.
- *Young Adult Justice. Is a “Third Way” Warranted?* Organized and moderated panel with Bruce Western and Alice Goffman, Annie E. Casey Foundation Annual Conference, June 2014
- *Young Adult Justice*, National Academy of Sciences, Committee on Improving the Health, Safety and Well-Being of Young Adults, April 2014.
- *Raise the Age, Turn the Page* Keynote, John Jay University, November 2013.
- *Realigning Juvenile Justice – A Safe and Effective Approach to Juvenile Justice Reform*, National Association of Counties Annual Conference, 2012
- *Innovative partnerships in community justice* – a series of presentations and meetings with the leadership of the British juvenile justice system and the City of London regarding ways to create community based justice systems. November 2011
- Training on Probation Services for new judges in New York City, 2010 and 2011
- *Replicating the Missouri Model –DC’s Experience so far*, Wisconsin Legislative Council, Special Committee on High Risk Juvenile Offenders, 2008
- *A Road Map for Juvenile Justice Reform*, Annie E. Casey Foundation Congressional Briefing/Panel Discussion, Washington, DC, 2008
- Congressional Roundtable on the Youth Promise Act, Congressman Bobby Scott, Chair, House Judiciary Committee on Crime, Terrorism and Homeland Security, Washington, DC, 2008
- *Using Positive Youth Development to Turn Young Lives Around*, Council of Juvenile Correctional Administrators, 2008
- *New Developments in Juvenile Justice Reform*, Keynote, University of Richmond, School of Law, 2008
- *Using Best Practices to Promote Juvenile Justice Reform*, Florida Blueprint Commission on Juvenile Justice, 2007
- *Race and Incarceration in Maryland*, Maryland House Judiciary Committee – Special Session, January 2004
- *Prison Population Growth in America*, Harvard University, Kennedy School of Government, January 2002.
- *Reforming the District of Columbia’s Juvenile Justice System*, before the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform, Washington, DC, 2001
- *Coverage of Violent Crime in the News Media*, Dartmouth University, December 2001
- National Council of Juvenile and Family Court Judges, 1999
- *Race and the Juvenile Justice System*, Keynote, William and Mary School of Law, 1998
- Presentation before Congressional Black Caucus hearings on Violent Juvenile Crime, 1997
- University of Minnesota Law School Judicial Sentencing Training Workshop, 1996
- California Department of Corrections - Leadership Training Institute, 1994 - 1995
- California Probation, Parole and Correctional Association Annual Meeting, 1994
- Western Society of Criminology Annual Meetings (1991, 1993, 1994). Keynoted the 1991 conference during which I received the June Morrison-Tom Gitchoff Founders Award
- American Society of Criminology (1991, 1999, 2012, 2015)
- American Correctional Association (1988, 1998)

- Administrative Office of the Courts, Judicial Council (California), 1992
- California Center for Judicial Education and Research (1991, 1992)

Media Appearances

Media appearances include *Today Show*, CBS' *Early Show*, *Nightline*, *CBS Evening News*, MacNeil Lehrer *News Hour*, National Public Radio, Fox News, British Broadcasting System (Radio and Television), Canadian Broadcasting System (Radio and Television), Cable News Network (CNN), and MSNBC, among others. Print interviews include the *New York Times*, *Los Angeles Times*, *Washington Post*, *US News and World Report*, *Newsweek*, *Economist*, *San Francisco Chronicle*, *Boston Globe*, *San Francisco Examiner*, *Philadelphia Inquirer*, *the Sacramento Bee*, *the New York Daily News*, *the Honolulu Star-Bulletin*, *the San Jose Mercury News*, *the Miami Herald*, *the San Diego Union-Tribune*, *the Orange County Register*, *the Oakland Tribune*, and *the Atlanta Journal Constitution*, among others.

Education

Masters in Social Work, New York University, 1983.

Bachelor of Arts, Social Psychology, Binghamton University, 1981.

EXHIBIT 30

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF KENNETH KNIGHT

1. My name is Kenneth Knight. I am 29 years old. I am currently incarcerated at the CDF on the NW2 unit in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. Someone tested positive on my unit the week of April 12, 2020.
3. The person who tested positive was left on my unit, with a cellmate, for 4 days after he tested positive.
4. The cellmate of the person who tested positive was still on the unit as of April 23, 2020 and he had not been isolated from other people on the unit. At some point between April 23, 2020 and May 7, 2020 this person was released from the jail.
5. Sick call slips and Inmate Grievance Procedure forms were not been available on my unit between the dates of April 23, 2020 and May 12, 2020
6. I asked for a sick call a couple of days before April 23, 2020 because I was throwing up multiple times. There were no sick call slips available but I was able to speak to a white shirt who was on my unit. The white shirt said he would tell medical. I was never seen by medical in reference to that sick call.
7. There were no new masks on my unit for two days before April 23, 2020. Between April 23, 2020 and May 7, 2020 I have consistently had to reuse masks for 2 or 3 days at a time.
8. There was no hand sanitizer on my unit as of May 7, 2020.

I, Phoebe Mesard, certify that I have read the foregoing to Kenneth Knight and that he affirmed the foregoing is true and correct on May 12, 2020.

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

Executed on May 12, 2020

A handwritten signature in cursive script, reading "Phoebe Mesard". The signature is written in black ink and is positioned above a horizontal line.

Phoebe Mesard
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 31

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

-----X
UNITED STATES OF AMERICA : Case Number: 2017 CF3 1472
:
:
vs. :
:
MUSA REZEINE, :
Defendant. : April 30, 2020
-----X Washington, DC

The above-entitled action came on for a hearing
before the Honorable DANYA DAYSON, Associate Judge, in
Courtroom Number 317.

APPEARANCES:

On Behalf of the Government:

GRACE B. RICHARDS, Esquire
Assistant United States Attorney

STEPHANIE LITOS, Esquire
Assistant Attorney General
for the District of Columbia

On behalf of the Defendant:

NANCY E. ALLEN, Esquire
Washington, DC

VICKIE CUNNINGHAM
Official Court Transcriber

20-01990
202-879-1757

P R O C E E D I N G S

THE COURT: Okay, folks, we're ready to get started. This is in the matter of the United States v. Rezeine, Musa, 2017 CF3 1472.

Starting with the Government parties, for the record, please.

MS. RICHARDS: Good afternoon, Your Honor. Grace Richards for the United States.

THE COURT: Good afternoon.

OAG, please --

MS. ALLEN: Good afternoon, Your Honor.

THE COURT: Oh --

MS. ALLEN: I'm sorry. Go ahead --

MS. LITOS: Good afternoon, Your Honor. Stephanie Litos for the Office of the Attorney General, on behalf of the Department of Corrections.

THE COURT: Good afternoon.

Ms. Allen, I'm sorry to cut you off. For the record, please.

MS. ALLEN: Oh, no, that's all right.

Good afternoon, Your Honor. Nancy Allen, on behalf of Musa Rezeine.

THE COURT: Good afternoon.

All right. And Mr. Rezeine, if you could just state your name for the record, please.

1 MR. REZEINE: All right. Good afternoon, Ms.
2 Dayson. This is Musa Rezeine.

3 THE COURT: Good afternoon, Mr. Rezeine.

4 All right, folks, we are here today on the Rule
5 35 motion. I have received that motion as well as the
6 opposition. I also received correspondence from Ms. Allen
7 this morning, which we can discuss in just a moment.

8 So, if I, if I may, let me just begin. In
9 January 2000 and -- 2018, Mr. Rezeine was found guilty of
10 assault with significant bodily injury, assault with a
11 dangerous weapon, tampering with physical evidence, and
12 possession of contraband in a penal institution; sentenced
13 to 66 months on the top counts of the assault with a
14 dangerous weapon; and the ASPI and with the tampering and
15 possession charges, sentenced to 12 months; the top counts
16 were to run concurrent to each other as well as the 12
17 month counts, which were grouped then to run consecutive
18 to each other.

19 So, Ms. Allen, if I understand your arguments,
20 in addition to the Eighth Amendment arguments, that the
21 conditions at the Jail and Mr. Rezeine's continued
22 confinement at the Jail are in contravention of the Eighth
23 Amendment, which I'll address separately.

24 But my understanding is, with regard to the Rule
25 35 motion, that despite the seriousness perhaps of the

1 charges, that Mr. Rezeine should nonetheless be released
2 because there were no serious injuries sustained by the
3 complaining witness, that he has served a substantial
4 amount of time, and that he has a relatively minimal
5 history.

6 In sum, my understanding of the Rule 35,
7 separate and apart from the Eight Amendment arguments, are
8 that the three years that he has served, or the time that
9 he has served already, plus the threat to his health,
10 satisfy all the justifications of sentencing; is, is that
11 about the sum of it?

12 And before I ask you to answer that, I should
13 just say, to the extent -- I don't really think anyone's
14 argued the time limits vigorously, or at all. But I
15 would, I would just say that I do believe that for various
16 reasons the -- not the least of which, I think, as Ms.
17 Allen argues, that even -- that this is a timely Rule 35
18 because of the procedural posture. Even if it were not, I
19 would note that the time limits in Rule 35 are not
20 jurisdictional. So I do think it's appropriate to address
21 these issues on the merits.

22 So, could I hear from Ms. Allen; have I
23 accurately summed up your, your position?

24 MS. ALLEN: I, I think that's right, Your Honor.
25 The -- just noting what is different now than at the time

1 of sentencing, two things. Obviously, the, the danger of
2 COVID in the, the Jail and in the BOP; wherever is Rezeine
3 is held, obviously, he did get the disease, he was in the
4 hospital for four days as a result. And also, the fact
5 that at the time of sentencing, I think the Court had a, a
6 different sense of the injuries sustained by the
7 complainant that have been subsequently shown to the Court
8 through our 23.110 motion; and specifically, the, the
9 medical records from the Jail and the affidavit from Dr.
10 Templeton.

11 THE COURT: Okay. All right, thank you.

12 And then, Ms. Richards, again, just to sum up
13 the Government's position as I understand it; you can
14 certainly supplement that, if you wish. But my understand
15 -- standing of the Government's argument is that in light
16 of the charges and Mr. Rezeine's criminal history,
17 basically, the nature of the charges, striking another
18 inmate or another detainee -- excuse me -- from behind,
19 and -- just one moment -- and the fact that it took place
20 in a penal institution; for all of those reasons, that
21 this was an appropriate sentence.

22 Is that correct?

23 MS. RICHARDS: Yes, Your Honor. The
24 Government's position is that the Government certainly
25 takes into account the seriousness of COVID-19; but, it

1 does not outweigh the considerations of what happened in
2 this case and the defendant's criminal history;
3 particularly, given that he was incarcerated on a CPWL
4 conviction when this -- the offense underlying this case
5 happened. He was actually revoked to -- his probation was
6 revoked. He had been given a previous sentence of
7 probation; it was revoked, and then he committed this
8 offense.

9 The Government would just also note,
10 irrespective of the severity of the injuries, the jury
11 believed that he had a weapon, which is clear through
12 their conviction -- the counts of conviction; the fact
13 that they convicted on the ADW count, for example.

14 And so, this wasn't -- and we would just also
15 note, this wasn't arguably an act of protection, or
16 something like that. This was a pre-planned attack in
17 which the defendant snuck up from behind on the victim and
18 stabbed -- began stabbing the victim while the victim was
19 bent down serving another inmate.

20 And so, those acts combined with the weapons
21 offenses and the inability to do well on probation lead
22 the Government to the conclusion that the COVID-19
23 concerns do not out weight those other concerns. And so,
24 we believe that the original sentence was appropriate.

25 THE COURT: Okay.

1 MS. ALLEN: And Your Honor, could I just respond
2 to one thing?

3 THE COURT: Of course.

4 MS. ALLEN: Much of the Government's opposition
5 to the Rule 35 motion was based on Mr. Rezeine not being
6 particularly vulnerable to the COVID-19 infection, and
7 that -- the Government brought that up several times
8 during the course of its opposition. It was a, a bulk of
9 it's opposition.

10 And I, I think that the, the Government can't
11 really get out from under that when an otherwise healthy
12 27 year old is exposed to the -- such a level of virus in
13 -- while he's incarcerated. It, it just -- it tells us
14 that no one is safe. He, he didn't have any particular
15 condition, that's true, that would make him more
16 vulnerable to it; but, he did end up being acutely ill and
17 spending 4 days in the hospital.

18 THE COURT: Okay.

19 MS. ALLEN: And that was part of the
20 Government's opposition.

21 MS. RICHARDS: And, and the Government
22 recognizes that. And the Government would, would only say
23 that that has been a relevant factor in the calculus,
24 which is seen in the most recent legislation passed by the
25 DC Council where they enumerate factors that include risk

1 to the individual who's being considered for release as
2 well as whether they have any serious medical conditions;
3 their age, factors like.

4 So the Government thinks that's still a relevant
5 consideration although recognizes that illness can happen
6 in other individuals and is -- was sorry to hear about Mr.
7 Rezeine's condition.

8 THE COURT: Okay. Thank you.

9 Let me just, first, address the issues with
10 respect to the, the Rule 35 separate and apart from the
11 constitutional issues. I'll issue a written order
12 regarding the constitutional issues in this case in so far
13 as I don't believe, and I'll again, as I said, issue a
14 written order that lays out my thinking; but, I don't
15 believe that the appropriate relief under -- for a
16 constitutional claim is release, or immediate release as
17 is requested here.

18 So I want to just treat those two things
19 differently. And obviously, it is a somewhat complicated
20 issue, so I, I -- I'm -- I'd like to set that forth in
21 writing rather than try to go through all of that on the
22 record orally because it is, as I said, I, I think a
23 complicated legal issue.

24 With regard to this matter, I -- I'm just going
25 to note the following. The, the sentence was on the high

1 end of the guidelines; for the assault, I believe it was
2 on the bottom end of the guidelines; for the various --
3 the other groupings, the weapons charges and the tampering
4 charge.

5 I would note that the fact that Mr., Mr. Rezeine
6 was found guilty by a jury of committing this offense.
7 Under the most restrictive conditions, specifically, while
8 he was detained, is, is quite serious and, and a very
9 large factor in my determination of this motion.

10 I'll note that, obviously, the nature of the
11 offense, which, based on the video evidence that was
12 produced at trial, it does not appear to be self defense,
13 or, you know, even imperfect self defense. It's not as if
14 this was a fight that got out of hand. Those -- the video
15 evidence does reflect Mr. Rezeine coming up behind the
16 victim and attacking him while was bent over not engaged
17 with Mr. Rezeine in any way.

18 I, I do recognize that the victim in this case
19 was not badly injured. But, based on the jury's finding
20 there was a dangerous weapon, some sort of sharp device
21 was used and the number of strikes that are reflected; all
22 taking place within a penal institution while Mr. Rezeine
23 was not only pending another case, but was actually
24 serving a sentence for a charge that he had been found
25 guilty of really do speak quite loudly as to the

1 appropriateness of the -- at least the 66 months in this
2 case.

3 I do recognize that it was on the high end of
4 the guidelines for such an assault; but, that was taking
5 into account again the circumstances under which those --
6 that, that attack took place.

7 I would just note that with respect to the
8 record, I would just -- obviously, I can't do this part
9 under seal, so I would -- I, I would, indicate that the
10 record as set for especially on pages 6 and 7 of his PSR;
11 especially, 6 -- on page 6, and his adult conviction for
12 weapons offense and prior assaultive -- albeit misdemeanor
13 assaultive convictions are all concerning and all lead me
14 to the conclusion that that high-end guideline was the
15 appropriate guideline.

16 I'd also note that the, the relief that is
17 specifically sought here, which is a reduction that would
18 suspend the entire -- the entirety of the balance of the
19 sentence, so that -- and sentencing Mr. Rezeine
20 essentially to time served with the balance of his
21 sentence to be suspended is inappropriate, given the fact
22 that Mr. Musa has a conviction for, I believe, a, a
23 violation of conditions of release. He had a revocation
24 of probation in 2018; 2013, obviously, that's more -- old
25 and if it were the only thing, it might not weigh as

1 heavily, but an unsuccessful termination of probation.

2 But all of those things really suggest that Mr.
3 Musa's not an appropriate candidate for community
4 supervision. And so, to the extent that the request is
5 for a reduction in sentence that would result in Mr.
6 Rezeine's immediate release, I do not think that's
7 appropriate.

8 I will say that in revisiting the, the sentence
9 however, I do think -- I had sentenced these as basically
10 consecutive sentences -- not basically, they were
11 consecutive sentences or groups and that was really
12 because of what I at the time considered, I think to be
13 sort of two separate courses or conduct in the assaultive
14 behavior versus the tampering evidence.

15 However, in revisiting that, revisiting that,
16 which is what Rule 35, frankly, envisions, which, you
17 know, a reconsideration, if perhaps there are things that
18 occurred to the sentence, or this time -- it does seem
19 that the time of these things, this is not an obstruction
20 case where there was some sort of rape between the
21 assaultive behavior and the -- in this case, tampering.

22 But my example is obstruction where it gains
23 later some attempts to -- or now is later, it attempts to
24 influence a witness or the like. This is really more
25 disposing of a weapon as part of the assault. And so, for

1 that reason, I am inclined, frankly, to run these all
2 concurrent at this point.

3 That will not, that will not result in Mr.
4 Rezeine's immediate release and I'm aware of that, nor,
5 nor do I think that's necessarily the appropriate result
6 here. But I do think that while that has not been
7 requested, it is -- I have been trying to look at this
8 case very carefully.

9 It is, obviously, quite difficult because Mr.
10 Rezeine has not only contracted COVID, but been
11 hospitalized. And Ms. Allen, as you've indicated, he is
12 -- he has become acutely ill because of that and I'm
13 mindful of that. I'm certainly taking that into account
14 on balance.

15 But, when considering the dangerousness of this
16 offense as well as the criminal history in this case, it
17 simply seems to me that the relief that you are seeking is
18 not the appropriate relief. But I will grant the Rule 35
19 insofar as I'm willing to run these all concurrent rather
20 than consecutive as I originally did.

21 MS. ALLEN: So that --

22 THE COURT: Let me --

23 MS. ALLEN: -- okay.

24 THE COURT: I'm sorry, go ahead.

25 MS. ALLEN: So that the total then, 66 months,

1 rather than the 78 months that was the --

2 THE COURT: That's correct.

3 MS. ALLEN: -- original total, okay.

4 THE COURT: That's correct. And I understand
5 that that's not addressing your main concern with regard
6 to the COVID outbreak. I, I will say that I am mindful of
7 that decision; and frankly, every decision that we are
8 making now --

9 MS. ALLEN: Um-hum.

10 THE COURT: -- is, is really take -- is against
11 the backdrop of understanding increased risk to those who
12 are detained and incarcerated for COVID and not at all
13 ignoring that and -- but trying to balance it out with
14 other concerns regarding public safety as well.

15 Having said all that and, and having made that
16 decision regarding the Rule 35, I do -- I did ask the OAG
17 to join us to day because I wanted to make sure that,
18 given the fact that Mr. Rezeine has contracted COVID and
19 that he has been returned to DC Jail, well, there are a
20 couple things.

21 The first thing is, Ms. Allen, let me address
22 your request regarding the transfer to Hazelton. And as
23 you are aware, I don't have the ability to order BOP
24 placements -- I mean --

25 MS. ALLEN: Right. It, it, it wasn't really a

1 request for transfer to Hazelton. I was just anticipating
2 that the Government might say that Mr. Rezeine would be
3 safer in the BOP facility that's now designated as a
4 quarantine facility, and I --

5 THE COURT: I see.

6 MS. ALLEN: -- disagree with that. And I just
7 sent along the, the, the prison union opposition to that
8 transfer plan --

9 THE COURT: Right.

10 MS. ALLEN: -- so the Court have that
11 information.

12 THE COURT: Okay. I --

13 MS. ALLEN: It was not my -- I don't --

14 THE COURT: If --

15 MS. ALLEN: I don't have a suggestion for how
16 Mr. Rezeine should continue to be held because I, I think
17 that's not -- I don't -- I would -- I'm arguing that he
18 not continue to be held at all.

19 THE COURT: Right. No, I understand that, I
20 understand that. Okay. Well, then I'm sorry I
21 misunderstood the reason for providing that information.

22 Let me then turn to OAG to see if you have this
23 information, and if, if Mr. Rezeine consents to having
24 this information put on the record, Ms. Allen. Obviously,
25 Mr. Rezeine is back from the hospital. He's been

1 discharged.

2 Mr. Rezeine, I'm very glad to hear that and I'm
3 glad to hear that you are back.

4 MR. REZEINE: Thank you.

5 THE COURT: But, obviously, you know, and, and
6 certainly it's that would seem to suggest that the most
7 acute danger has passed, but we also hearing that does not
8 mean that it is -- that Mr. Rezeine's care cannot be, you
9 know, somehow -- I, I think I, I need to hear if Mr.
10 Rezeine is willing to have it put on the record what
11 provisions are being made for his, his care upon his
12 discharge.

13 Is there any objection to that, Ms. Allen?

14 MS. ALLEN: Mr. Rezeine, is it okay if the, the
15 Jail information is, is conveyed to the, to the Court
16 about your condition, medical treatment, what all happened
17 at the Jail?

18 MR. REZEINE: No, you -- it, it can -- I, I
19 don't mind.

20 MS. ALLEN: Okay.

21 THE COURT: Okay, thank you.

22 So if I can hear from the OAG as to what
23 provisions are being made for individuals who are
24 discharged back to the Jail from the hospital.

25 MS. LITOS: Okay, Your Honor. So Mr., Mr.

1 Rezeine is currently at the correctional treatment
2 facility. So he was discharged from Howard University
3 Hospital and transferred to the correctional treatment
4 facility where he's been receiving treatment. And as you
5 noted, he -- the records indicate that he -- his condition
6 has been improving.

7 He will not be released from the central
8 treatment facility until the medical staff, and
9 specifically, doctor, determines that he is -- that he has
10 -- that he meets the CDC guidelines for being released
11 back into the Jail.

12 And then, once he's released back into the Jail,
13 he will be -- that, that determination will be made by the
14 Jail in terms of, like, where exactly he will be located
15 and he will have the same access to calls and everything
16 that, that any other inmate has.

17 THE COURT: Could I just ask a few questions.

18 And Ms. Allen, if you have any questions, I'll
19 -- I'm happy to hear from you as well.

20 When you say that he is being treated now at
21 CTF, what does that consist of?

22 MS. LITOS: So that consists of the -- according
23 to his medical records, it consists of examination, he
24 gets, he gets a daily visit, he's asked his, his medical
25 condition, they check his pulse oximeter -- they use a

1 pulse oximeter to check his breathing, they check blood
2 pressure, pulse rate; his vitals, essentially.

3 They take, they take his temperature twice a day
4 and, and they examine him and make sure the -- that he
5 continues to improve, which every record that I see, every
6 day indicates continued improvement.

7 THE COURT: Okay. And then, the next question I
8 had is when you had indicated he would be released back
9 into general population when it is indicated by the CDC's
10 guidelines, what, if you know, is the DOC's understanding
11 of what the CDC guidelines are as far as someone who's
12 been hospitalized and discharged about when they may
13 be --

14 MS. LITOS: Yeah, it's -- the -- she -- he has
15 to free of fever for at least 72 hours without the use of
16 any fever reducing medication; and his other symptoms,
17 such as cough, shortness of breath, have to be improving;
18 and at least seven days has to pass between -- from the
19 time that he first had symptoms.

20 THE COURT: Okay. All right. And when you say
21 free of fever, do you mean free of fever in any other
22 symptom, or do -- does DOC understand it to be fever only?

23 MS. LITOS: Yeah. So it's free of fever for at
24 least 72 hours without fever reducing medicine and free --
25 and that, and that his other symptoms improve --

1 THE COURT: Okay.

2 MS. LITOS: -- the cough, the shortness of
3 breath, etcetera.

4 THE COURT: Okay.

5 Ms. Allen, do you have any other questions
6 regarding Mr. Rezeine's care, or any other requests
7 regarding that at this time?

8 MS. ALLEN: I, I do. I would like to ask Mr.
9 Rezeine, if, if indeed he is -- about his, his treatment
10 there at CTF, if I can.

11 THE COURT: Okay.

12 MS. ALLEN: So, Mr. Rezeine, are you listening?

13 MR. REZEINE: Yeah, I'm listening, Ms. Allen.

14 MS. ALLEN: Okay. So are you being visited by
15 the doctor everyday?

16 MR. REZEINE: Yeah, I'm -- yeah, they coming to
17 see me.

18 MS. ALLEN: Okay. How many times a day are they
19 coming to see you?

20 MR. REZEINE: Ah, they, the came once today; so,
21 I don't know if they gone come again. So, it's -- every
22 other day it's been two times a day. They told me --

23 MS. ALLEN: Okay.

24 MR. REZEINE: -- that, that -- they told me that
25 by the tomorrow I should be released back to the Jail, if

1 I'm -- tomorrow, if I'm -- tomorrow will be the third day
2 that I'm no fever, no symptoms. So I should be released
3 back to the Jail, they said, tomorrow back to my --

4 MS. ALLEN: Um-hum.

5 MR. REZEINE: -- regular, regular block.

6 MS. ALLEN: Okay. And then, are you having any
7 coughing, or difficulty breathing at this point?

8 MR. REZEINE: Nah, I'm good. I'm, I'm, I'm just
9 happy that I -- that, that I beat the COVID-19 because it
10 really had me down.

11 MS. ALLEN: Okay. Okay. And thank you, Mr.
12 Rezeine.

13 I don't have any questions for Mr. Rezeine right
14 now. But I, I do want to point out to the Court that what
15 happened to him occurred during -- this is -- what
16 happened to him occurred subsequent to Judge
17 Kollar-Kotelly's memorandum opinion and the order that she
18 issued to the DC Jail regarding, you know, cleanliness,
19 sanitation, treatment, response --

20 MR. REZEINE: Yeah.

21 MS. ALLEN: -- to the, to the COVID-19 virus.

22 So it's, it's hard to -- it's difficult to just
23 take the Jail at its, at its word, given that Mr. Rezeine
24 was suffering acutely; but notified people, wasn't taken
25 to, to see anyone medical.

1 They find, you know, on April 23rd -- and this
2 is after Ms. Kollar-Kotelly's opinion issued on the 19th,
3 they find him on the 23rd unable to move, sweating
4 profusely. Three hours later an ambulance takes him to --
5 or, two hours later, actually, an ambulance takes him to
6 Howard University Hospital.

7 There -- there's no notification to his
8 attorney, to his family. They wouldn't even tell his
9 attorney where he was taken and it took a court order and
10 two days for his mother to hear his voice.

11 So it -- it's -- it, it -- given Judge
12 Kollar-Kotelly's order and the, the reality of what
13 happened to Mr. Rezeine, it's difficult to credit the
14 Jail's ability to, to continue to care for him. And I, I
15 don't think there's any indication that just because he's
16 had the disease once he won't get it again.

17 THE COURT: So, if there are specific things
18 that you're asking for, I'm happy to entertain those
19 requests. For instance, if you're asking to be notified,
20 I have ordered and I'm prepared in this case to order
21 that, if Mr. Rezeine falls ill again --

22 And Mr. Rezeine, obviously, I'm hopeful that
23 that does not happen, and Ms. Allen is right,
24 unfortunately, I don't think we know whether or not that's
25 something that's possible or likely. I, I just don't know

1 that there's enough information out there to, to be able
2 to say that that's not something that would happen.

3 But, Ms. Allen, if you're asking to be notified
4 if Mr. Rezeine falls ill again, I'm prepared to order
5 that; that you be proactively notified, not, not just that
6 you be --

7 MR. REZEINE: Can I --

8 THE COURT: Yes.

9 MS. ALLEN: Right, go ahead, Mr. Rezeine.

10 MR. REZEINE: Would I be able to say something
11 -- yeah, like, for, for -- I was, I was, I was complaining
12 for days that I was, that I was feeling ill. And then,
13 when I -- when, when they finally took a test, it's like
14 I, I wasn't, I wasn't allowed to get a shower, I was -- it
15 was, it was just horrible and I, I ain't, I ain't --

16 THE COURT: No, I, I understand the concerns set
17 forth --

18 MR. REZEINE: And when I --

19 THE COURT: -- and I'm certain, Mr. --

20 MR. REZEINE: So, it, it was, like, eight day --
21 my fault, I'm sorry for interrupting.

22 THE COURT: No, go ahead.

23 MR. REZEINE: It was, it was, like, for eight
24 days I didn't, I didn't receive no shower, I didn't get to
25 brush my teeth. Like, when I was in the hospital, they

1 didn't even let me take a shower. I was handcuffed from
2 the hand to the ankle. And I had to use hand -- I, I had
3 to shackled just to use the bathroom in a bed -- in a
4 bedpan. I couldn't brush my teeth, couldn't -- I couldn't
5 take a shower; like, it was horrible, man.

6 And then, in, in the Jail, they -- it's, like,
7 while you -- before, before the, the symptom -- before the
8 test results come back, you're locked in a cell, you're
9 not allowed to come out, no shower, no nothing.

10 THE COURT: So I certainly -- I, I certainly am
11 mindful of how -- and I'm not at all trying to down play
12 what you have been through, Mr. Rezeine. It, it sounds,
13 frankly, horrible. And this is certainly not my -- I, I
14 don't think it's anybody's goal that that's what occurred.

15 I, I will say, Ms. Allen, with respect to Judge
16 Kollar-Kotelly's order, that that is, frankly, the, the
17 1983 action that is being pursued is, I think, the
18 appropriate vehicle to address conditions of confinement,
19 and that's part of the analysis regarding the Eighth
20 Amendment claims.

21 MS. ALLEN: Right, right.

22 THE COURT: And so, to the extent -- to the -- I
23 -- I'm not prepared to sort of duplicate specific orders
24 that are being -- that were set forth -- well, I won't say
25 specific, I won't -- I'm not willing to duplicate the sort

1 of groups of orders.

2 But I will say that to the extent that this has
3 been pled before me and there are ongoing concerns about
4 the specific medical condition that Mr. Rezeine finds
5 himself in, there --

6 MR. REZEINE: May I please --

7 THE COURT: -- there are orders that I'm, I'm
8 willing to enter.

9 Yes.

10 MR. REZEINE: Hey, Ms. Allen and Ms. Dayson,
11 will I be able to -- can I -- would I be able to something
12 too about, about, like, about me being in jail. Can I,
13 can I reflect on, like, I just wanted to make a -- I
14 wanted to say something to Ms. Dayson.

15 THE COURT: Sure. Sure.

16 MS. ALLEN: Mr. Rezeine, I think I --

17 THE COURT: Oh -- well --

18 MS. ALLEN: -- I know where you're going. Can,
19 can we hold off one second, can we hold off --

20 THE COURT: Oh, I'm sorry --

21 MR. REZEINE: Yes, ma'am.

22 THE COURT: I'm sorry, Ms. Allen, I should not
23 have -- I should have --

24 MS. ALLEN: That's okay. I, I wanted to, I
25 wanted to address some questions; specifically, regarding

1 where and how Mr. Rezeine will be held at the, the Jail.

2 THE COURT: Okay.

3 MS. ALLEN: My question is one of the things,
4 one of the things that Judge Kollar-Kotelly noted was the
5 air flow between quarantine areas and isolations and, and
6 where healthier inmates were, were housed. And I, I want
7 to know specifically as to Mr. Rezeine, how is, how is
8 that addressed at the Jail; how will he be kept from other
9 people who are, who are sick, or, or symptomatic?

10 MR. REZEINE: Ah, and Ms. Allen, they, they --
11 like, for people that was --

12 MS. ALLEN: No, hang on --

13 THE COURT: I'm sorry, Mr. Rezeine.
14 Could I ask OAG to answer that?

15 MR. REZEINE: Oh, I'm sorry.

16 THE COURT: That's okay.

17 I actually have another hearing that's starting
18 in just a few minutes; so, if I could just ask -- if I
19 could ask anybody who's on the call who's not speaking to
20 please mute your phone.

21 Thank you.

22 If I could hear from the OAG, please.

23 MS. LITOS: Yes. My understanding is that Mr.
24 Rezeine will be -- Hi, this is Stephanie Litos from OAG.
25 My understanding is that --

1 (Pause.)

2 THE COURT: Okay, Yes.

3 MS. LITOS: Yeah --

4 (Pause.)

5 THE COURT: Yes, OAG, sorry.

6 MS. LITOS: This is Stephanie Litos from OAG.

7 My understanding is that Mr. Rezeine will be
8 released back into the general population. He will not be
9 put into an isolation unit. He wouldn't be put into a
10 quarantine unit upon his return. He would be put into a
11 unit that is neither a quarantine, nor an isolation unit.

12 MS. ALLEN: And is there air flow between those
13 units as that was one of the issues in, in the lawsuit,
14 the air flow between the isolation and quarantine units,
15 and the general population?

16 MS. LITOS: I'm not - I don't -- I am not a -- I
17 don't know about the air flow between the units -- I mean,
18 if this is a subject of the class action, then I am sure
19 that the Jail is working to, to rectify any problems and
20 to comply with Judge Kollar-Kotelly's order. I, I can't
21 speak more specifically to air flow concerns other than to
22 say that the, the Department is attempting to comply with
23 the Court's order in that case.

24 MS. ALLEN: Then -- and do you what steps the,
25 the Jail is currently taking to maintain social distance,

1 for the inmates to have soap, disinfectant, that kind of
2 thing?

3 MS. LITOS: What I know is, is what has been
4 most recently set forth in the --

5 MS. ALLEN: Um-hum.

6 MS. LITOS: -- class action that; that, that the
7 inmates are getting soap once a week, that they are
8 engaging in social distancing, that they are advising
9 inmates numerous times in a number of different ways
10 regarding social distancing, that if there is anybody
11 who's symptomatic they're getting a mask -- I think
12 everybody's getting a mask.

13 But I, I, I, I was not prepared to speak
14 specifically to the issues at play in the class action
15 case, so.

16 MS. ALLEN: Okay.

17 MS. LITOS: I'm not handling that case; and so,
18 I'm not -- I, I can't specifically speak to exactly what
19 is going on with regard to those specific questions.

20 MS. ALLEN: So, Your Honor, to your, to your
21 point, yes -- my, my point was that, that what happened to
22 Mr. Rezeine after Judge Kollar-Kotelly's order. So, yes,
23 I, I would like to be notified of his medical condition.
24 And I would like to be notified of how in respect to Mr.
25 Rezeine the, the Jail is abiding by that order because it,

1 it wasn't abiding by it when he first went into the
2 hospital and when he first got sick.

3 THE COURT: OAG, what's your position with
4 respect to that?

5 MS. LITOS: I, I know that Your Honor has, has
6 made similar orders regarding notification, regarding the
7 specifics about what exactly is being done to control air
8 flow and to handle social distancing and all of that, and
9 I'll say few things.

10 My understanding is that Judge Kollar-Kotelly's
11 order came out on the 19th; my understanding is that
12 people can be a-symptomatic for several days. So I think
13 that it is conjecture to assume that Mr. Rezeine
14 contracted COVID after Judge Kollar-Kotelly's order --

15 THE COURT: Can I --

16 MS. LITOS: -- was issued --

17 THE COURT: Can I just stop you there because I
18 really do need to move on.

19 But let me just say that the allegation is that
20 he contracted it after; but, that he was symptomatic and,
21 and, and had issues -- I mean, that's after -- that he was
22 not a-symptomatic and then just that, that he was in fact
23 symptomatic and that was the thing that was being pled.

24 Can I just ask very -- without -- I'm not making
25 any findings with regard to that. But I am prepared at

1 this point to order that you notify counsel if he -- if
2 Mr. Rezeine becomes ill again; and also, before he is
3 moved, that you notify counsel to where he's being and
4 just let her know what the specific -- what, what the
5 specifics are with respect to how that is -- how that --
6 where you're proposing to move her -- move him, excuse me,
7 would -- being separated both physically and, and how --
8 however is required by the order. So it's, it's simply a
9 notification issue.

10 MS. LITOS: But the --

11 MS. ALLEN: And that will be put in writing,
12 Your Honor?

13 THE COURT: I, I can -- sure, I can put that in
14 writing.

15 MS. ALLEN: Okay.

16 THE COURT: All right.

17 MS. LITOS: Thank you, Your Honor.

18 THE COURT: Anything else, folks?

19 MR. REZEINE: Um --

20 MS. ALLEN: Um, Mr. Rezeine, briefly, did you
21 want to just briefly tell the Court what you wanted to
22 tell the Court?

23 MR. REZEINE: Yeah, I just wanted to say that
24 they should, like, you know, I respect, I respect
25 everything you -- your, your decisions. But I was -- I

1 would just like you to know that when, when I, I came to
2 Jail -- I got locked up on November 10th, 2016, and the
3 incident case was November 27th; so, basically, it was
4 like my second week inside of DC Jail and I was, you know,
5 being in a hostile environment and stuff, I, I, I made, I
6 made a mistake by, by, by assaulting the inmate and I --
7 every, every single day since that, since that day I, I, I
8 had plenty of time to self reflect and grow and, and I, I
9 -- I'm remorseful and that, that -- and that, that, you
10 know, I -- the, the original case that came -- the day I
11 got arrested for, I -- it was dismissed and I was -- I
12 could have been free.

13 And then, every single day that I been held is
14 for that and it's just been time for me to grow and I was
15 just, you know, got -- I'm just, I'm just ready for
16 society. I'm ready to help out, like, help out people
17 even with the COVID-19 situation because I been through it
18 myself. And that, like, if I, you know, I, I would just
19 like to start in society and start going good and be
20 successful, so I can just grow -- so I can, I can do good
21 in society, man, and possibly have a family, you know. I
22 have a mother that's growing old every day, that, that,
23 that, that needs me out there.

24 And I just would like to, to say that I have
25 grown tremendously. Every single day -- I been through a

1 lot. I been in the Jail -- since I been in jail for these
2 42 months. And, you know, even if, even if it -- if it's
3 a celebration now, even if it's not the now, or not, or,
4 or, or whenever it is, I'm ready for society. And I am
5 not, like, a, a, a, a, like, a danger to people. I'm just
6 -- I'm, I'm, I'm willing to do, I'm willing to do good and
7 succeed in life.

8 I'm tired of -- like, I, I been through it all
9 and I'm just ready for -- I'm ready, I'm ready for society
10 and I have truly, truly grown from, from, from that day.
11 That was like my second week in jail. I'm, I'm -- I've
12 grown tremendously and I apologize to -- and if you was,
13 if you was to give me that chance, I would not let you
14 down or myself down, or my parents, you know.

15 MS. ALLEN: Thank you, Mr. Rezeine.

16 THE COURT: Thank you, Mr. Rezeine. And I, I
17 appreciate words; and I, I certainly hope that at the time
18 that you are released, that you are as successful as, as
19 you are preparing yourself to be.

20 MR. REZEINE: Yes, ma'am.

21 THE COURT: All right, folks, so I'll issue the
22 written order regarding the specific orders that I've
23 made, and will issue the amended JNC. But, as I
24 indicated, I'm denying the specific request that was made.

25 MR. REZEINE: Oh, one last thing, Ms. Allen --

1 Ms., Ms. Dayson, one last thing.

2 THE COURT: Yes.

3 MR. REZEINE: Ms. Allen, will we have Court's
4 indulgence real quick?

5 THE COURT: Sure.

6 MS. ALLEN: You know what --

7 THE COURT: If you need to speak with your
8 attorney --

9 MR. REZEINE: Ah, that's okay.

10 THE COURT: -- however, this is recorded, so I
11 don't think that's --

12 MS. ALLEN: I was just going to ask the OAG if,
13 if she could arrange for Mr. Rezeine to be able to call me
14 right after this?

15 MS. LITOS: I don't know that I will be able to
16 because I don't have direct access to the individual who
17 is sitting --

18 THE COURT: Yeah. So, Ms. Allen, unfortunately,
19 we have, we have another hearing that's right after this
20 --

21 MS. ALLEN: Okay, yeah.

22 THE COURT: -- and because they're occurring --

23 MS. ALLEN: Yeah.

24 THE COURT: -- on the unit, unfortunately, I
25 can't -- well, actually --

1 MS. ALLEN: Oh --

2 THE COURT: -- you know what, could, could you
3 get the CO -- is the CO available?

4 MR. REZEINE: Yeah, I'm, I'm about to ask -- I'm
5 about to get him right now, hold on, hold on, y'all.

6 THE COURT: Okay.

7 (Pause.)

8 MR. REZEINE: He's coming right now, he's coming
9 -- the phone.

10 THE COURT: Okay.

11 Hi.

12 MR. REZEINE: Oh, he's not here yet, he about to
13 come.

14 And Ms. Allen --

15 MS. ALLEN: Um-hum.

16 MR. REZEINE: -- I was going ask you about the
17 probation issue. Remember the, remember that extra year
18 that I was, I was telling you about?

19 MS. ALLEN: Yeah, I, I remember. I looked that
20 up, I figured that all out. I'm going to talk, I'm going
21 to talk to you in a few minutes.

22 MR. REZEINE: All right, here go the CO.

23 THE COURT: Okay, hi, how are you? This is --

24 CORRECTIONS OFFICER: I'm okay. And yourself?

25 THE COURT: -- Judge Dayson. Hi, I'm good,

1 thanks.

2 Are you, are you at video -- are you at the
3 place where there's the, the attorney room next to the
4 video room?

5 CORRECTIONS OFFICER: No, I'm in the C&P office.

6 THE COURT: Okay.

7 CORRECTIONS OFFICER: -- room -- 82 --

8 THE COURT: Okay. All right.

9 So, Ms. Allen, that's, that's the issue, is that
10 they're not somewhere where there's another phone. And
11 unfortunately, I have to -- I, I -- well, actually, is, is
12 the next hearing --

13 Could I ask -- I'm sorry, the DOC staff, is the
14 next hearing going to take place somewhere else since it's
15 a video --

16 CORRECTIONS OFFICER: I do --

17 THE COURT: -- conference?

18 CORRECTIONS OFFICER: I do believe so. The next
19 hearing is taking place in a different part of the
20 building.

21 THE COURT: Okay. Could you, could you then
22 allow Mr. Rezeine to have a phone call with his attorney
23 before you take him back?

24 CORRECTIONS OFFICER: To his cell?

25 THE COURT: Yeah, exactly; before you take him

1 back to his cell, when you hang up with us, could he,
2 could he call his attorney?

3 CORRECTIONS OFFICER: I'll give him five minutes
4 with his attorney.

5 THE COURT: Okay, thank you so much.

6 CORRECTIONS OFFICER: No problem.

7 MS. ALLEN: Thank you.

8 CORRECTIONS OFFICER: You're welcome.

9 THE COURT: All right..

10 CORRECTIONS OFFICER: Do you need -- are you
11 finished with him?

12 MS. ALLEN: You want me to ---

13 THE COURT: I'm finished with Mr. Rezeine, yes.
14 Thank you.

15 MS. ALLEN: Yeah.

16 THE COURT: Okay.

17 CORRECTIONS OFFICER: Okay, have a good day.

18 MS. ALLEN: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 Well, everyone, thank you for participation
21 today. And we'll -- this matter is adjourned.

22 MS. ALLEN: Thank you, Your Honor.

23 (Thereupon, this concludes these proceedings.)

24 * * * * *

25

CERTIFICATE OF TRANSCRIBER

I, VICKIE L. CUNNINGHAM, an Official Court Transcriber for the Superior Court of the District of Columbia, do hereby certify that in my official capacity, I prepared from electronic recordings the proceedings had and testimony adduced in the matter of: UNITED STATES v. MUSA REZEINE, Case No.: 2017 CF3 1472, in said Court on the 30th day of April, 2020.

I further certify that the foregoing 34 pages were transcribed to the best of my ability from said recordings.

In witness whereof, I have subscribed my name this the 5th day of May, 2020.



OFFICIAL COURT TRANSCRIBER

EXHIBIT 32

Filed Under Seal

EXHIBIT 33

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF KOBIE SWINT

1. My name is Kobie Swint. I am 22 years old. I am currently incarcerated at the Central Detention Facility on Northeast 2 in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I have been incarcerated at the Central Detention Facility since February 18, 2020.
3. On April 15, 2020, I was housed on Southwest 3.
4. On April 15, 2020, my cell mate tested positive for COVID-19 after exhibiting symptoms. My cellmate was removed from our cell.
5. I remained in our cell. I was put on "quarantine."
6. On April 15, 2020, I was not feeling well. I was experiencing body aches, shortness of breath, and diarrhea. I lost my sense of taste and smell. I reported my symptoms to the nurse. The nurse took my temperature which was 100.6.
7. I asked whether I could be tested and a nurse said no. The nurse said something to effect of there are not enough tests to test everyone.
8. On April 16, 2020, I continued to experience symptoms consistent with COVID-19. The correctional officer popped open my door for a temperature check. I had a temperature of 101.3
9. I told the correctional officer that I was not going back into my cell until I was tested. A lieutenant came onto my unit and I told him that I was refusing to go back into my cell until I was tested.

10. A nurse came to my cell and administered a COVID-19 test. The nurse put a swab up my nose.
11. On April 17, 2020, I was allowed out of my cell even though I was supposed to be on quarantine. I called my wife and took a shower. A nurse took my temperature and I had a fever.
12. On April 18, 2020, a doctor informed me that I tested positive for COVID-19.
13. Later that day, I was moved to the quarantine unit on North 2.
14. I was in the quarantine unit on North 2 for about 14 days. I arrived on April 18th and remained until the first week of May. I do not remember the exact date I returned to general population
15. During the first 7 days on the quarantine unit, I did not receive any cleaning products or disinfectant to clean my cell. No one cleaned my cell. I repeatedly asked the correctional officers on the unit for cleaning supplies. They ignored my requests.
16. After the first 7 days, I received a spray bottle of an unknown cleaning solution to clean my cell when I asked for it. It took about 3 or 4 hours for a correctional officer to bring me cleaning solution after I asked.
17. I do not know what was in the cleaning solution or how strong it was because I did not have any sense of smell. I did not receive any paper towels or rags to clean my cell. I had to clean my cell with my personal towel.
18. During the 14 days in quarantine, I did not receive any soap. I asked the correctional officers on the unit repeatedly for a bar of soap. They ignored my request.
19. During the 14 days quarantine, I did not receive any clean clothes. I wore the same pajamas and underclothes during this time.
20. During the 14 days in quarantine, I received a new mask and pair of gloves once every three days.
21. On April 21, 2020, a correctional officer fixed the clogged toilet in my cell. He left all of the dirty water from the toilet on the floor of my cell. I had to use my personal towel to clean the dirty water off of the floor.
22. On April 21, 2020, I tried to send legal mail to my attorney. On April 27, 2020, a correctional officer on the unit returned it to me unsent.
23. During the first 7 days in quarantine unit, I was not allowed to shower. I asked the correctional officers repeatedly to shower. They ignored my requests.
24. On April 27, 2020, the correctional officers popped our cell doors open for temperature checks. Everyone on my tier told the correctional officers that we would not go back in

our cells until we received a shower. A lieutenant came onto our unit and told us we would be allowed to shower.

25. From April 21 to April 27, 2020, I was allowed to shower every three or four days. The correctional officers did not allow us to shower. We were only allowed to shower when a lieutenant came on the unit.
26. The showers were dirty and appeared as if they had not been cleaned for several days. A correctional officer gave me a chemical solution and instructed me to wipe down the shower myself. I used the chemical solution and my personal towel to clean the shower.
27. On April 27, 2020, an inmate on the unit asked a correctional officer for tissues. The correctional officer ignored him. The inmate insisted that he would not go back into his cell until he received tissues. The correctional officer sprayed mace on this inmate.
28. The mace spread throughout the unit. I told a correctional officer that the mace was irritating my throat and I was having trouble breathing.
29. I asked the correctional officer if I could be seen by a doctor or nurse. The correctional officer told me to lie down.
30. Later that day, I told the nurse who took my temperature that the mace irritated my throat and I was having trouble breathing. The nurse listened to my lungs with a stethoscope.
31. The nurse told me that my lungs were fine, but my heart was beating really fast. The nurse said that my heart was beating fast because I was running around and using too much energy. The nurse told me to lie down.
32. I am concerned that a correctional officer would spray mace in a unit with people who have a respiratory virus.
33. On April 28, 2020, a correctional officer collected dirty sheets and towels for the first time on the quarantine unit.
34. On April 29, 2020 at approximately 3:50 in the afternoon, I was out of my cell for an hour of recreation. I had just got out of shower and was sitting outside of cell. I fell asleep. An inmate on my tier woke me and told me to go back inside my cell.
35. When I opened my eyes, I saw a member of the ERT team pointing a paintball or mace gun at me. The ERT team member told me was going to shoot me. I told the ERT that I wanted to make a legal call. A member of the ERT team said, "fuck your lawyer and get your sick ass back into your cell." I stepped inside my cell.
36. During the 14 days in quarantine, I continued to experience symptoms of COVID-19. On multiple occasions, the medical staff told me that I would return to Southwest 3 after seven days in quarantine even as I continued to be symptomatic.

37. The medical staff told me that they would not test me for COVID-19 again. I was afraid to return to Southwest 3 without a confirmed negative test because I did not want to get sick again or infect anyone else.
38. On April 30, 2020 I told Dr. Suziski that I was still experiencing symptoms on COVID-19. I told Dr. Suziski that I did not want to go back to general population. Dr. Suziski told me that my symptoms were normal.
39. I asked Dr. Suziski if I could get tested. Dr. Suziski told me that I could not get tested because the test would come back positive since I already had the virus.
40. Sometime during the first week of May, I was sent to Northeast 2. I was not tested before I was sent to Northeast 2. I still do not have a sense of smell or taste.
41. I have a cell mate on Northeast 2. I do not know if my cellmate has had the coronavirus.
42. I am scared and worried that DOC is not providing adequate care for people with COVID-19.

I, Elizabeth Olsen, certify that I have read the foregoing to Kobie Swint and that he affirmed the foregoing is true and correct on May 14, 2020.

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

Executed on May 14, 2020

A handwritten signature in black ink, appearing to read "Elizabeth Olsen", with a horizontal line underneath.

Elizabeth Olsen
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 35

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF ANTONIO JACKSON

1. My name is Antonio Jackson. I am 34 years old. I am currently incarcerated at the Central Detention Facility (CDF) in Washington, D.C. I am currently housed on the SW3 unit. Before I was moved to the SW3 unit, I was housed on the S1 unit for approximately 2 weeks.
2. I am offering the following information based on my own personal knowledge.
3. From approximately April 16, 2020- April 30, 2020, I was housed on the S1 unit at CDF.
4. During my time on the S1 unit, I observed conditions that were very unsanitary. When I used the showers, I saw there was blood and mold throughout the showers. From my cell, I could see the shower area. During my weeks on the S1 unit, I never saw anyone cleaning the showers. To my knowledge, no one cleaned the showers between uses.
5. For the entire time I was on the S1 unit, I did not receive any cleaning supplies for my cell. I had to use my body soap to clean my cell. I ripped my bath towel and used this ripped piece of towel as a rag to clean my cell.
6. I was given a white disposable mask approximately a couple days before I was moved to the S1 unit. I was forced to use this same disposable mask the entire time I was housed in S1. As soon as I got to SW 3, I was given a new mask.
7. While I was housed on the S1 unit, I frequently observed DOC staff who were not wearing personal protective equipment. On any given day while I was on the S1 unit, I would see approximately 2 DOC staff without masks on and it was even more common for DOC staff on S1 to not wear gloves. On the SW3 unit, all the staff wear gloves and masks.

8. On the S1 unit, there were two inmates who were designated for cleaning detail. It was their job to clean the common spaces in the unit between recreation times. The cleaning detail inmates were supposed to clean the unit common areas twice daily. From my cell, I could see the unit areas that the two detail inmates were supposed to clean. The detail inmates rarely actually cleaned the common areas. The detail inmates would actually clean the common areas between 2-3 times a week, as opposed to twice a day. These were the only people I ever saw doing any cleaning in the common spaces while I was on the S1 unit.
9. On my birthday, April 20, 2020, I suffered from chest pains. I told a guard on my unit about these chest pains, and the guard called the infirmary. The woman working in medical stated they were dealing with a medical emergency but would call for me when they were done. The infirmary never called back. I was never seen for the chest pains I reported.

I, **Jessica Willis**, certify that I have read the foregoing to **Antonio Jackson** and that he affirmed the foregoing is true and correct on **May 15th, 2020**.

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

Executed on May 15th, 2020.



Jessica Willis
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

EXHIBIT 36

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

No. 1:20-cv-00849

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

Defendants-Respondents.

DECLARATION OF DONNELL HOWARD

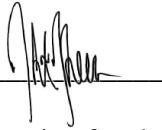
1. My name is Donnell Howard. I am 51 years old. I am currently incarcerated at CDF on the unit South 3 in Washington, D.C. I am offering the information detailed herein based on my own personal knowledge.
2. I began feeling sick in the end of February. I kept sneezing and coughing. I had cold sweats. I kept waking up in a sweat. I was tested toward the end of February. They did not tell me what kind of test it was. Some sort of swab was stuck up my nose. My test was returned in 10 minutes. Medical told me my test was negative, but they did not say what they tested me for. After my test, I was sent back to my unit. I am coughing right now. I have been coughing on and off for the past two months.
3. I did not seek out medical help for a while after that because the medical unit has been giving out false information. The medical unit was telling people that they were not sick when they were sick. I know three people to whom this has happened. One of those people is still currently sick. The person currently sick cannot even leave his cell.
4. My temperature was being taken twice a day, but medical stopped taking temperatures at all on May 8th. Medical did not tell us why they stopped taking our temperatures. My lowest temperature was 96.5 degrees. Medical did not retake my temperature after that reading. Medical just told me that I was fine and to drink some water. To date, I never declined to have my temperature taken.
5. I have not been receiving confidential legal calls. I either have to use unit phones which are in earshot of other residents, or use the phone in a case manager's office. When I use the phone in the case manager's office, the case manager is sitting in the same room as me. Until this Tuesday May 12th, nobody has been wiping down the phones.

6. To date, DOC staff will only give new masks if I ask for them. To date, DOC has not provided instructions on how to use masks, gloves, or cleaning supplies.
7. I have been incarcerated since December of 2019, and I have not received a new jumpsuit since then. I have been hand-washing my jumpsuit in the shower using my own body soap. My jumpsuit has never been washed in the laundry machines. My unit has been receiving used socks and underwear. I believe they are used because they look stained and dirty, and sometimes the socks have lint balls in them.
8. I am not able to stay six feet away from people in common areas. At one point the week of April 20th, 9 residents were brought out of their cells at once. Today, 6 people were brought out of their cells. Those 6 people were sometimes about three feet apart. Some DOC staff will tell us to keep apart, but many do not. Nobody today was told to keep 6 feet apart.
9. Toward the end of April, my unit has been given some cleaning materials to clean our cells. We are given these cleaning materials a couple times a week but not every day. Until this week, the cleaning solution and rags are passed from cell to cell without being cleaned. As of this week, sometimes DOC staff hand us a paper towel that they have sprayed with cleaning supplies instead of a rag. I cannot clean my whole cell with a paper towel because it will fall apart. I was only given one paper towel sheet for my whole cell.
10. I have not been receiving soap and toilet paper every week. At one point in April I received toilet paper two weeks in a row, but after that DOC staff stopped regularly distributing it. I have to ask for toilet paper when I need it.
11. Detail has been using the same rags to clean surfaces over and over again for the whole week. The rags are made out of torn towels. I saw when they first started using these rags, and I have seen them turn brown over the course of this week.
12. Most of the people on South 3 who got sick were on detail. Detail workers who felt sick still passed out food or cleaned sometime until they were tested. One detail worker, Mr. Jordan, passed out food for at least 3-4 days before he got too sick to leave his cell. Medical workers came to Mr. Jordan's cell to test him. After another few days, medical told Mr. Jordan he tested positive. Mr. Jordan was taken out of his cell in a stretcher.
13. I put in a medical slip in April for my teeth, and it took them three weeks to respond to it. When they responded, medical told me I needed teeth pulled but that they would not be able to pull my teeth until after COVID-19 was over. Medical sent me back to my unit with Tylenol and Motrin. The Tylenol is not really helping the pain.

I, Katherine Rees, certify that I have read the foregoing to Donnell Howard and that he affirmed the foregoing is true and correct on May 15th, 2020.

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

Executed on May 15th, 2020.

A handwritten signature in black ink, appearing to read 'Katherine Rees', is positioned above a horizontal line.

Katherine Rees
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004

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

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

QUINCY BOOTH, *et al.*,

Defendants-Respondents.

No. 1:20-cv-00849 (CKK)

**[PROPOSED]
PRELIMINARY INJUNCTION**

Upon consideration Plaintiffs' application for a preliminary injunction, and any opposition, reply, and further pleadings and argument submitted in support thereof, or in opposition thereto;

It appearing to the Court that Plaintiffs are likely to succeed on the merits of their action, that Plaintiffs and the members of the class they seek to represent will suffer irreparable injury to their Fifth and Eighth Amendment rights and, at a minimum, severely increased risks to their health, perhaps including death, if Defendants are not preliminarily enjoined and ordered to take appropriate measures against Plaintiffs' exposure to the COVID-19 virus, that the Defendants will not be harmed if such an order is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Plaintiff's motion for a preliminary injunction is hereby GRANTED. By separate order, the Court will appoint an expert under Federal Rule of Evidence 706 to make recommendations to the Court regarding how many and which class members to order released so as to ensure that the number of prisoners remaining at the CDF and CTF can be housed consistently with CDC guidance on best practices to prevent the spread of COVID-19, including the

requirement that prisoners be able to maintain six feet of space between them and further order that such recommendations take into account CDC guidance concerning health factors that put individuals at elevated risk of death from COVID-19.

It is further ORDERED that Defendants Booth and Johnson (together with their respective successors in office, officers, agents, servants, employees, attorneys and anyone acting in concert with them), are required, pending trial in this action or further order of this Court, to:

1. Within five days of this Court's order, retain a registered sanitarian to oversee the environmental health and safety programs at both facilities, to 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 products are used properly.
2. Within five days of this Court's order, contract for professional cleaning services on the secure side of the facility.
3. Within five days of this Court's order, provide all DOC residents with a device (whether a cell phone or a tablet) that can be used to make confidential, unmonitored phone calls to residents' attorney of record.
4. Within five days of this Court's order, implement a system that allows all DOC residents to directly contact medical staff to ensure that residents are timely seen.
5. Within five days of this Court's order, implement a system for medical staff to visit each non-quarantine unit in DOC facilities to assess residents' health.
6. Within five days of this Court's order, provide to the Court a plan to address staffing shortages.

7. Within five days of this Court's order, provide to the Court a plan to conduct a point prevalence survey as soon as possible to determine the spread of COVID-19 among residents and staff. For purposes of the point prevalence survey, a single test for each staff member and resident is sufficient.
8. Within five days of this Court's order, meet and confer with Plaintiffs and provide to the Court a plan for providing Plaintiffs with information about Defendants' efforts to comply with this Order.

It is further ORDERED that Defendants shall comply with the Temporary Restraining Order entered on April 19, 2020, provided that, where this Order requires more specific action, this Order controls. It is also further ORDERED that Defendants shall comply with all recommendations made by *amici* in their May 20, 2020 final report, pending trial in this action or further order of this Court.

It is further ORDERED that Plaintiffs shall not be required to furnish security for costs.

Entered on May ____, 2020 at ____ a.m./p.m.

By: _____
Hon. Colleen Kollar-Kotelly
United States District Judge