UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, *et al.*, *Plaintiffs-Petitioners* v. QUINCY BOOTH, in their official capacity as Director of the District of Columbia Department of Corrections, *et al.*, *Defendants-Respondents*.	No. 1:20-cv-00849 (CKK)

REPLY BRIEF IN SUPPORT OF APPLICATION
FOR TEMPORARY RESTRAINING ORDER

Plaintiffs' Application for Temporary Restraining Order has only gained in urgency since filing. In just a matter of days, the number of positive cases in DOC custody has more than doubled, and the rate of infection in the DOC now stands over seven times as high as the rate of infection in the District of Columbia generally. In prisons and jails across the country, outbreaks that started only two weeks ago are already killing residents; in one federal facility, for instance, four residents have already died, 18 residents are hospitalized, and several are in the ICU.[1] Defendants, having failed both to follow their own policies and to heed the warnings about COVID-19 that began in January, admit that they have inadequate supplies of items like hand sanitizer, masks, and "other PPE," necessary to follow established guidelines for stopping the spread of the virus, *see* Dkt. No. 25 ("Defs.' Br."), at 18, 33. It is against this backdrop that Plaintiffs seek a temporary restraining

[1] *See* 7KPLC, *Death Toll Rising at Federal Prison in Oakdale* (April 3, 2020, 10:32 PM), https://www.kplctv.com/2020/04/03/death-toll-rising-federal-prison-oakdale/.

order that provides, among other forms of relief, rapid downsizing of the DOC's population — relief that Plaintiffs' expert Dr. Marc Stern advises should urgently be implemented. *See* Dkt. No. 5-2, Ex. 2 ("Stern Decl."), at ¶¶ 10-13.

In this emergency, Defendants assure the Court they have the situation under control. Relying on policies and procedures they have disclosed to the Court, *see* Dkt. Nos. 19-21, Defendants aver that the "DOC has taken and continues to take extensive measures" to protect those in their custody. Defs.' Br. 2.

Defendants' reliance on their written policies and procedures runs headlong into Plaintiffs' direct evidence that those policies and procedures are not being implemented. While Defendants produce no evidence from personal knowledge that their policies have even been made known to staff, let alone that they have been put into practice, Plaintiffs supply evidence from DOC staff members themselves who have been utterly unaware of these policies and who confirm that they are not being followed. These staff members confirm the reports of Plaintiffs and of Public Defender Service ("PDS") attorneys, who have also witnessed firsthand the failure of DOC to implement their policies. Moreover, even if Defendants' written policies were followed to a T, Defendants have offered no evidence that the many deficiencies identified by Plaintiffs' expert Dr. Meyer — including a failing ventilation system and grossly insufficient medical equipment, *see* Dkt. No. 5-2, Ex. 1 ("Meyer Decl."), ¶ 28(d) — will be corrected in time to save DOC residents' lives.

This emergency calls for immediate and urgent relief to protect the constitutional rights of Plaintiffs and proposed class members. It is clear from the record before the Court that DOC cannot, and is not, meeting its constitutional obligations. The Court should act swiftly and decisively in vindicating those rights by granting the requested relief, and most importantly, by

granting writs of *habeas corpus* to effectuate the rapid downsizing of the DOC to a level at which Defendants can reasonably ensure the constitutional rights of its residents.

I. Plaintiffs' Evidence Regarding the Nature of COVID-19 and the Facilities at Issue Shows They Have Standing to Seek Each Form of Relief They Request.

Defendants' attack on Plaintiffs' standing, *see* Defs.' Br. 20-21, is not only misguided, but also emblematic of a bigger problem inherent in Defendants' arguments: their failure to appreciate how the COVID-19 pandemic poses particular risks in the jail setting that make a comprehensive set of precautions necessary for the protection of everyone in a given facility. Defendants' argument boils down to the claim that if a proposed aspect of relief does not result in the named Plaintiffs' release or address a condition they have personally encountered, then they do not have standing to seek it. That contention is both legally and factually wrong.

Plaintiffs' theory of standing is straightforward: Their injury is the risk of contracting COVID-19, which is a legally cognizable injury under the Eighth Amendment *before* Plaintiffs themselves are infected. *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Each of the Plaintiffs is suffering that injury today. This injury is caused by Defendants' failure to take basic precautionary measures consistent with the D.C. government's own recommendations for the general public and the guidance of public health experts. And that injury would be redressed by the relief Plaintiffs seek. Plaintiffs need not establish that granting the requested relief would *completely* obviate the risk that they contract COVID-19; as the Supreme Court has explained, a plaintiff "need not show that a favorable decision will relieve his *every* injury." *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007) (quoting *Larson v. Valente*, 456 U.S. 228, 244 n. 15 (1982)).

At the outset, Defendants' attempt to avoid grappling with Plaintiffs' extensive evidence by limiting the standing analysis to the face of Plaintiffs' complaint is unavailing. Defendants argue that materials outside the pleadings are irrelevant here, based on a portion of a case analyzing

a motion to dismiss *for failure to state a claim*. *See Kingman Park Civic Ass'n v. Gray*, 27 F. Supp. 3d 142, 160 n.7 (D.D.C. 2014). But standing is a question of subject-matter jurisdiction, which unlike the failure to state a claim may be analyzed based on evidence outside the pleadings. *See Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987).

In any event, Plaintiffs have both pled and proved, via expert declarations that stand entirely unrebutted, that the requested relief would redress their injuries (*i.e.*, mitigate their risk of contracting COVID-19). As Plaintiffs' complaint explains, they are in custody at DOC correctional facilities, Dkt. No. 1 (Compl.) ¶¶ 14-17; such facilities "are highly susceptible to rapid person-to-person transmission of the virus because cramped conditions place residents and staff in close proximity," *id.* ¶ 37; and "COVID-19 will spread rapidly in Defendants' facilities because of the belated and inadequate policies discussed above and the failures to take other policies that are recommended and required by the CDC and other experts," *id.* ¶ 127 (emphasis added) (referring to the inadequacies and failures "discussed above" at ¶¶ 67-95, 115-16). These policies, the Complaint explains, "systemically affect all proposed class members," *id.* ¶ 150, because absent proper precautions, COVID-19 can "spread like wildfire" among a detained population in close quarters, *id.* ¶ 2. The plausibility of these allegations is underscored by the fact that such rapid transmission has occurred in carceral facilities during previous epidemics and already during this one. *See id.* ¶¶ 39-44.

The declarations of Drs. Meyer and Stern support each of the allegations in detail: how easily COVID-19 is transmitted, *see* Meyer Decl. ¶¶ 22, 25; why detention facilities in general are dangerously susceptible to the spread of viruses, *see* Meyer Decl. ¶¶ 9-21; Stern Decl. ¶ 13, and how DOC facilities are particularly dangerous to all who reside there in light of the characteristics and practices documented in Plaintiffs' evidence, *see* Meyer Decl. ¶¶ 27-30, 33, 37; Stern Decl.

¶¶ 9, 10. It logically follows that Plaintiffs are placed at risk equally by precautionary lapses that they have experienced personally and those that they have not: both determine how quickly and widely the disease will spread within the facility. *See* Meyer Decl. ¶¶ 12, 25, 28(a)(i)-(iii), 28(d), 28(d)(ii) (discussing the importance of various precautionary measures, including ones that Defendants claim Plaintiffs do not have standing to seek — cleaning supplies, personal hygiene implements, personal protective equipment, nonpunitive quarantine, and prompt medical care); Stern Decl. ¶¶ 9, 10, 16(c), 16(e), 16(f) (same). Further, Drs. Meyer and Stern make clear that proximity of detainees to one another is a critical factor that makes jails so dangerous to their inhabitants during a pandemic. *See* Meyer Decl. ¶ 11; Stern Decl. ¶ 13. Accordingly, downsizing is the experts' primary recommendation; releasing individuals in custody other than Plaintiffs themselves would diminish the risk *to Plaintiffs* by enabling Defendants to better implement precautionary measures for those who remain in custody. *See* Meyer Decl. ¶¶ 34-35; Stern Decl. ¶¶ 10-14. In particular, downsizing will enable individuals in custody to practice appropriate social distancing, a critical precautionary measure. *See* Meyer Decl. ¶¶ 11, 28(c); Stern Decl. ¶ 13. Defendants provide no rebuttal, logical or evidentiary, to any of this record evidence showing that Plaintiffs' present injury (the risk of contracting COVID-19) would be redressed by the release of a suitable number of residents, all of whom are members of the putative class of which Plaintiffs are part.

The Supreme Court has recognized that detained persons' health does not exist in a vacuum but instead can be dramatically affected by the size of the institution's population. Specifically, in *Brown v. Plata*, 563 U.S. 493 (2011), the Supreme Court considered whether a district court had erred in ordering the release of tens of thousands of inmates in California prisons that were so overcrowded they could not provide the minimum medical or mental health services required by

the Eighth Amendment. The Court observed that "[e]ven prisoners with no present physical or mental illness may become afflicted, and all prisoners in California are at risk so long as the State continues to provide inadequate care. . . . Prisoners who are not sick or mentally ill . . . are that system's next potential victims." *Id.* at 531-32.

Defendants' failure to grasp the basis of Plaintiffs' standing is part and parcel of Defendants' failure — both in practice and even now before this Court — to appreciate the interconnected nature of the health of each individual in Defendants' custody and the precautionary measures required to protect them. This failure is reflected in the Defendants' sorely deficient response to the crisis, which for the reasons that follow violate Plaintiffs' Fifth and Eighth Amendment rights.

II. Plaintiffs Have Demonstrated That They are Entitled to a TRO.

To prevail in seeking a TRO, Plaintiffs must show that they are "likely to succeed on the merits," that they are "likely to suffer irreparable harm in the absence of preliminary relief," that "the balance of equities tips in [their] favor," and that "an injunction is in the public interest." *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011).

As an initial matter, Defendants wrongly urge the Court to hold Plaintiffs to a stricter standard for a "mandatory injunction," but the D.C. Circuit has "has rejected any distinction between a mandatory and prohibitory injunction." *League of Women Voters v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016). Nevertheless, Plaintiffs have met their burden as to each factor, and the Court should enter the requested Order.

a. Plaintiffs are likely to succeed on the merits.

Plaintiffs have established through declarations from DOC residents, DOC staff, PDS staff and attorneys, and expert reports, that they are exposed to an unreasonable risk of serious — even

deadly — harm to their health, and that Defendants acted with deliberate indifference in exposing them to that risk. Accordingly, Plaintiffs are likely to succeed on their Fifth and Eighth Amendment claims.

Defendants' argument begins by misstating the law, characterizing the Fifth and Eighth Amendment standards as the same. Defs.' Br. 14-15. In fact, "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015); *accord Bell v. Wolfish,* 441 U.S. 520, 535 n.16 (1979). Pretrial detainees can demonstrate that they have been "punished" if the actions taken against them are *either* motivated by an intent to punish, *Kingsley*, 135 S. Ct. at 2473, *or* are objectively unreasonable, *see id.* If the Court finds here that the conditions are objectively unreasonable, then the non-convicted Plaintiffs and class members have made out a Fifth Amendment claim regardless of Defendants' subjective intent. *See id.*; *accord Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) ("[T]he Due Process Clause can be violated when an official does not have subjective awareness that the official's acts (or omissions) have subjected the pretrial detainee to a substantial risk of harm."). In any event, Defendants prevail under both the Fifth and Eighth Amendment standards.

i. Plaintiffs have been exposed to an unreasonable risk of serious damage to their health.

Defendants recognize "the seriousness of the COVID-19 pandemic." Defs.' Br. 15, and do not deny that exposure to a life-threatening substance poses a "risk of serious damage" to health. *Helling v. McKinney*, 509 U.S. 25, 35 (1993). Nevertheless, they argue that Plaintiffs, who live in confined housing units with upwards of 100 people at a time, are no more likely to be affected by COVID-19 than any other people who "share[] a living space with others," Defs.' Br. 15-16, and they claim that DOC residents are able to take the same precautions to prevent the risk of infection

as anyone else in society and that the risks Plaintiffs face in DOC facilities "are comparable to the general risks faced by everyone." *Id.*

It does not pass the laugh test to compare the living arrangements of D.C. Jail residents, most of whom share cells and live on housing units with upwards of 100 people, with people who share a house or apartment with their families or roommates. And even a cursory glance at District of Columbia's data disproves Defendants' arguments on an empirical level: The rate of infection in DOC facilities is over seven times higher than the rate of infection in the District of Columbia community.[2]

That gross statistical disparity is explained in the expert reports of Drs. Meyer and Stern, which go conspicuously unmentioned in Defendants' opposition. Dr. Meyer, who reviewed D.C. government reports on the conditions of DOC facilities, concluded in no uncertain terms:

> It is my professional judgment 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.

Meyer Decl. ¶ 33. Dr. Stern reaches a similar conclusion: "Institutional settings such as jails, prisons, shelters, and inpatient treatment programs are congregate environments where . . . infections like COVID-19 can spread more rapidly." Stern Decl. ¶ 13. Both Dr. Meyer and Dr. Stern conclude, contrary to Defendants' unsupported contrary assertion, that people in DOC are at

[2] The government's data of April 2, 2020, reported 757 positive COVID-19 tests in the District, and 12 positive COVID-19 tests among DOC residents. *See* District of Columbia, *Coronavirus* Data (last accessed Apr. 4, 2020), https://coronavirus.dc.gov/page/coronavirus-data. According to Defendants, there were 1580 people in DOC custody as of April 2, 2020, *see* Dkt. No. 25-3, 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 Apr. 4, 2020), https://www.census.gov/quickfacts/DC. Therefore, the rate of infection in the District of Columbia was .10 percent, while the rate of infection in the DOC was .76 percent.

significantly higher risk of contracting COVID-19, and of developing serious injuries as a result, than people in the community.

The reasons why Plaintiffs are at elevated risk should be familiar to Defendants: They are the same reasons identified by Attorney General Racine just two weeks ago: that people detained in jails are forced "together in close quarters, without access to proper hygiene or medical care . . . breathing the same recycled air for up to 23 hours per day." Karl Racine et al., *Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody* 1 ("*Joint Statement*") (March 25, 2020), *available at* https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf. Dr. Meyer identified those same conditions as factors that elevate the risk of serious injury to Plaintiffs. *See* Meyer Decl. ¶ 28(c) (crowding in congregate settings increases transmission of infection from person to person); *id.* ("[v]entilation conditions [in DOC facilities] ... will increase the rate of spread of the virus"); *id.* ¶ 28(a)(ii) (lack of sufficient hand soap and alcohol-based sanitizers for residents and staff).

Defendants' second argument — that the DOC has "implemented the same risk-reduction practices among the inmates that are recommended for the community at large," Defs.' Br. 15 — is disproven by the record. Defendants provide a list of policies, but as discussed below, those policies exist in name only (if at all). And it is glaring that Defendants omit the single biggest risk-reduction practice for mitigating the spread of COVID-19: social distancing. The importance of social distancing is highlighted in both Dr. Meyer's expert report, *see* Meyer Decl. ¶ 11 ("[T]he best initial strategy is to practice social distancing."), and Dr. Stern's expert report, *see* Stern Decl. ¶¶ 11-13. The extreme importance of social distancing is also the reason why schools, theaters, sports events, and restaurants are closed, and why the Court's hearing on this motion will take place by videoconference. Defendants claim blithely that DOC residents have "limited interaction

with other residents and staff." Defs.' Br. 16. But they ignore the evidence in the record, including from DOC residents themselves, who are still "sit[ting] in plastic chairs in a big group of around 30 people" for hours a day, Jackson Decl. ¶¶ 3, 7, and from DOC staff, including a woman who works on the age-50-and-over unit, who writes that "[s]ocial distancing is not happening in my unit," Nesbitt Decl. ¶ 14. Because Defendants' current policies prevent Plaintiffs from practicing one of the preventative measures most strenuously urged by professionals, including Plaintiffs' experts, they have shown that "the risk of which [they] complain[] is not one that today's society chooses to tolerate." *Helling*, 509 U.S. at 35.

At bottom, Defendants' conclusion that the risks "faced by those inside DOC facilities are comparable to the general risks faced by everyone," Defs.' Br. 16, is belied by commonsense, by Plaintiffs' experts, and by empirical data. Accordingly, Plaintiffs have shown that they are exposed to an unreasonable risk of serious harm to their health.

ii. Defendants acted with deliberate indifference towards Plaintiffs' risk.

Subjective deliberate indifference (required only for the Eighth Amendment claim, as noted) occurs where Defendants "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering." *Helling*, 509 U.S. at 33.

Defendants do not contend that they were unaware of COVID-19. *See* Defs.' Br. 5. Instead, their central contention — upon which their entire argument rests — is that they have adopted policies appropriate to mitigating the risk. Even assuming that those policies are sufficient, Defendants fail to supply any evidence to contradict Plaintiffs' extensive documentation that the policies are simply not being implemented, followed, or enforced. Defendants cannot insulate themselves from liability by showing that they have policies on the books when the record overwhelmingly demonstrates that these policies exist in name only.

First, Plaintiffs' unrebutted evidence strongly suggests that Defendants have not communicated their policies to staff and that key DOC officials were not even aware of these policies. Ms. Deterville — a DOC staff member for over three years, Deterville Decl. ¶ 2 — had never seen any of the policies provided by Defendants until this litigation. Instead, she took it upon herself to locate a policy and provide it to DOC leadership, who were previously unaware of it. *See* Deterville Decl. ¶¶ 5-8. Further, as discussed in Plaintiffs' Emergency Motion (Dkt. No. 24), Defendants seem to be navigating COVID-19 based on DOC's 2009 Flu Pandemic Plan, without having updated (or finished updating) it since the crisis began, and without looking to the more recent 2010 version.

Second, whatever the state of Defendants' policies and staff's awareness of them, the record evidence shows undeniably that these policies and procedures are not being implemented:

- Providing soap for hand washing: This is rebutted by three residents, who declare that "[t]he jail gave us a single bar of soap a couple of weeks ago," Dkt. No. 5-2, Ex. 4, Banks Decl. ¶ 8; that "March 21st was the first time CTF gave me a free bar of soap, and I have been on my unit since February 25th," Dkt. No. 5-2, Ex. 5, Jackson Decl. ¶ 10; and that "CTF gave us one bar of soap, once," Dkt. No. 5-2, Ex. 6, Smith Decl. ¶ 8.

- Frequently disinfecting high-touch areas: This is rebutted by members of DOC's staff, who declare that daily, all staff members "must place their hands on a biometric scanning device"—by definition, a high-touch area—that "is not wiped between uses." Dkt. No. 24-1, Deterville Decl. ¶ 16; *see also* Dkt. No. 24-2, Nesbitt Decl. ¶ 13 (describing the lack of cleaning supplies to wipe down a phone used by successive residents without disinfecting between uses). That residents do not have supplies themselves to clean high-touch areas in their own housing units and cells is also reflected in declarations of both DOC residents and staff. *See* Jackson Decl. ¶ 12 (describing "watered down" cleaning supplies").

- Quarantining individuals who may be exposed: This is rebutted by DOC staff, who declare that "at least one of the inmates whose test results are pending is in general population." Dkt. No. 23-11, Hannon Decl. ¶ 56.

- Restricting large gathering[s] of inmates: This is rebutted by DOC residents, who recount gathering in mandatory large groups, *see* Jackson Decl. ¶ 3, as well as DOC

staff, who declare that they witness residents "crowded in" a small room to watch television, Nesbitt Decl. ¶ 14.

- Limiting inmates' exposure to members of the community: This is rebutted by DOC residents, who describe that they "have many people from outside CTF coming every day," including "clinicians, people from Narcotics Anonymous, [and] other people who lead programs," Jackson Decl. ¶ 7.

- Screening individuals who enter the facilities for COVID-19 symptoms: This is rebutted by PDS staff who have been through the screenings and describe the broken thermometer, Naini Decl. ¶ 5(c), as well as DOC staff, who "as recently as April 2, 2020" personally witnessed that the "thermometer is not being used properly." Hannon Decl. ¶ 52. This is also rebutted by a 12-year-veteran DOC staff member who works in DOC's "Receiving and Discharge" unit, where DOC "receive[s] new intakes." *Id.* ¶ 38. Corporal Reddick claims that Defendants are "not being truthful on how inmates coming into the facilities are processed. Inmates are having their temperatures taken only. No other procedures are in place to screen incoming inmates." *Id.*

- Contact tracing to record who may have COVID-19: There have been "at least three DOC staff members who have tested positive and alerted DOC," but "[n]o contact training has been done for at least one of it not all of these staff members" to determine who they came in contact with. Hannon Decl. ¶ 59.

The record evidence, from DOC residents, DOC staff, and PDS attorneys, all points in one direction: No matter the policies that Defendants claim are in place, the truth is that those policies are not being disseminated, followed, or enforced. This conclusion should be as concerning for the Court as it is for the nearly 1,600 residents who depend on Defendants to keep them safe.

Defendants' attempt to deflect liability on the basis of unimplemented policies flies in the face of binding authority. *Daskalea v. District of Columbia*, 227 F.3d 433 (D.C. Cir. 2000), rejected DOC's position that its "harassment policy" insulated it from liability: "[A] 'paper' policy cannot insulate a municipality from liability where there is evidence, as there was here, that the municipality was deliberately indifferent to the policy's violation." *See also Ware v. Jackson Cty.*, 150 F.3d 873, 882 (8th Cir. 1998) ("[W]ritten policies of a defendant are of no moment in the face of evidence that such policies are neither followed nor enforced."). In *Daskalea*, the Court found

liability where evidence included "not only the continued blatant violation of the policy, but also the fact that the policy was never posted, that some guards did not recall receiving it, that inmates never received it, and that there was no evidence of the training that was supposed to accompany it." 277 F.3d at 271. That same evidence is before the Court here, and liability should likewise follow. *See also Woodward v. Corr. Med. Servs. of Ill., Inc.*, 368 F.3d 917, 929 (7th Cir. 2004) ("[I]gnoring a policy is the same as having no policy in place in the first place.").

When confronted with this chasm between Defendants' policies and Plaintiffs' declarations showing that COVID-19 procedures are not being followed, Defendants claim that Plaintiffs' many sworn declarations from DOC residents and staff are "anecdotes" that may not be an "accurate representation" of the current policies. Defs.' Br. 32. But Defendants offer *no* evidence, let alone evidence based on personal knowledge, to demonstrate that their current policies are actually being enforced.

Defendants' sources of evidence for their alleged policies and practices are Warden Lennard Johnson and Medical Director Beth Jordan. But, unlike the many declarants who attest to the lack of implementation, neither Johnson nor Jordan claims to have *any* personal knowledge of the implementation of their policies. Indeed, neither Dr. Jordan nor Warden Johnson even states the last time they were in the jail or what they observed when they were there. Defendants simply lack any evidence at all that they have made any actual changes to the procedures in their facilities in light of this global pandemic. It is little wonder, then, that DOC staff say that "[v]ery few changes to the daily operations have been implemented in preparation for and in response to COVID-19." Hannon Decl. ¶ 45.

Defendants suggest that the systematic disconnect between their stated policies and the facts in the record is due to the "rapidly changing nature of public health recommendations." Defs.'

Br. 19. This excuse falls flat. Defendants cannot seriously claim that requiring residents to gather in groups of 30, passing papers and pens amongst each other, was consistent with (some uncited) public health recommendation on March 24, but is now verboten pursuant to updated recommendations. *See* Jackson Decl. ¶¶ 3, 7. Nor can Defendants say with a straight face that telling staff that "using personal protective equipment . . . could increase [the] risk of contracting the virus," Deterville Decl. ¶ 10, is consistent with the rapidly changing recommendations from public health bodies, as Defendants claim, Defs.' Br. 19. More generally, if Defendants' claim is that Plaintiffs' evidence from the last two weeks showing non-implementation is now out of date, Defendants must provide evidence documenting the change, rather than airy generalities about the rapidly evolving nature of the crisis.

Defendants' claim to be rapidly updating their policies is also not reflected in practice. In light of Defendants' representations that Plaintiffs' evidence are not an "accurate representation of the COVID-19 response practices currently being implemented (Defs.' Br. 32), Plaintiffs submit additional declarations from Kamal Dorchy, James Guillory, David Randolph, and Micheal Cohen, III, four DOC residents who all reside on different units, with two at CTF and two at CDF. These declarations, which are current as of today, are attached as Exhibits 1-4, respectively. They collectively cast great doubt on Defendants' representations about the "practices currently being implemented at the DOC." They should call the Court to immediate action.

- While Warden Johnson claims that units are cleaned "every two hours," Johnson Decl. ¶ 6, Mr. Dorchy attests that "[a]s of April 4, 2020, my unit [D4A] has not been cleaned and sanitized in *approximately one week*." Dorchy Decl. ¶ 4, Mr. Guillory says that on his unit, D2A, cleaning does not take place, Guillory Decl. ¶ 4, and Mr. Cohen says that even yesterday, the "cleaners had no cleaning solution," Cohen Decl. ¶ 28.

- While Defendants represented yesterday, without citation, that "professional cleaners *now* clean the common areas daily," Defs.' Br. 33 (emphasis added), Mr. Dorchy says that, as of April 4, 2020, "[n]o professional cleaning staff have come in to clean," Dorchy Decl. ¶ 20, Mr. Guillory also has "never seen professional cleaners come to clean the unit,"

Guillory Decl. ¶ 6, and Mr. Cohen says he has "never seen professional cleaners who were not inmates cleaning," Cohen Decl. ¶ 39.

- While Warden Johnson claims that "[e]ach resident receives a new bar of soap and a roll of toilet paper every week," Mr. Guillory says that "[n]o DOC staff has ever offered me soap," Guillory Decl. ¶ 19, Mr. Randolph says "[t]he DOC has never given me soap," Randolph Decl. ¶ 14.

- While Dr. Jordan claims that "DOC's medical staff meets regularly with staff and residents to discuss COVID-19 preventative measures," Dkt. No. 20-2, Jordan Decl. ¶ 8, Mr. Dorchy says that "[m]edical staff have never come to my unit to discuss coronavirus," Mr. Guillory says the same, Guillory Decl. ¶ 11, Mr. Randolph says that "[s]ince I got here, the staff tell us nothing about the coronavirus," Randolph Decl. ¶ 9, and Mr. Cohen says "[n]o one from DOC has ever met with me or my unit to discuss coronavirus," Cohen Decl. ¶ 4.

- While Warden Johnson claims that "[r]esidents have access to cleaning materials to clean their cells," Mr. Dorchy says that as of March 20, 2020 cleaning supplies "stopped coming," Dorchy Decl. ¶ 11, Mr. Guillory says that two days ago, he "asked for a rag to clean [his] cell" but "there were no rags either on our unit or in the supply closet," Guillory Decl. ¶ 20, and Mr. Cohen says that "COs frequently deny access to the closet when an inmate asks for cleaning supplies," Cohen Decl. ¶ 32.

- While Warden Johnson claims that "[e]very resident in DOC custody has access to a sink," Johnson Decl. ¶ 8, Mr. Dorchy says that "[t]here is no sink in my cell and no toilet in my cell. I cannot wash my hands when locked down," Dorchy Decl. ¶ 18, and Mr. Guillory says that "[t]here is no sink in my cell" and "no soap provided at the unit sinks," Guillory Decl. ¶ 21.

- While Dr. Jordan claims that "all new residents entering a DOC facility are quarantined for 14 days before they are assigned to their permanent housing unit," Jordan Decl. ¶ 7, David Randolph, who arrived at CDF on March 19, 2020, was held in intake for only five days. Randolph Decl. ¶ 2.

These four independent accounts, from just today, are shocking. Because of Defendants' inactions, DOC residents "think [they] are going to die." Cohen Decl. ¶ 56. Mr. Dorchy writes: "I believe that I am going to die in here if I do not get help." Dorchy Decl. ¶ 28. These accounts, and others of DOC staff, strongly support Plaintiffs' request that the Court appoint an expert to ensure compliance with any injunctive relief that the Court orders. Defendants have demonstrated the need for such outside accountability. *See, e.g.*, *Crawford v. Greater Cleveland Reg'l Transit Auth.*,

No. 86-cv-2490 (AA), 1991 WL 328037, at *1 (N.D. Ohio July 26, 1991) (appointing outside expert under Rule 706 to ensure compliance with injunctive relief).

Additional evidence also sheds light on DOC staff representations made in their declarations about access to legal calls. (Dkt. No. 21-1). While a system has been put in place, the "limited telephone conversations have not been sufficient to accomplish" the need for "substantive, confidential communications." Ex. 5, Winters Decl., at ¶ 17. Whether due to facilities constraints or other reasons, the reality is that ensuring the right to counsel is greatly compromised by residents' continued detention. For Mr. Randolph, this means that he has been unable to talk about his case and his never seen the police report in his case, Randolph Decl. ¶ 16, and he has been detained for over two weeks.

Defendants cite the "constraints facing the official[s]" as important context under this prong. Courts have held that constraints are relevant under this prong, although the case law is clear that budgetary constraints do not absolve prison officials from liability for deliberate indifference. *See, e.g.*, *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (*en banc*). Defendants' conclusion, however, that they cannot be liable on account of such constraints, is foreclosed by the Supreme Court's decision in *Brown v. Plata*, affirming a downsizing remedy where the state's resources disabled it from meeting its constitutional obligations regarding prison medical care. See 563 U.S. at 527-30.

In any event, certain of the "constraints" cited by Defendants as justification for their actions do not add up. Defendants cite a "shortage of hand sanitizer" as a reason why they cannot provide any for DOC residents. Yet the "Current COVID-19 Supply List" produced by Defendants shows that Defendants have ample hand sanitizer, which they have refused to distribute. That list shows Defendants in possession of 864 bottles of foam hand sanitizer (648 liters worth), and 80

cases of assorted size Purell. Dkt. No. 25-2. Further, that list shows that Defendants have not used any of those supplies, as the "Original Quantity" and "Quantity as of March 24, 2020" for all of their hand sanitizer is identical. Further, to the extent Defendants are under-resourced, it is because of their own apparent failure to comply with their own 2009 Pandemic Flu Plan, which called on the DOC to stockpile N95 masks and alcohol-based hand sanitizer sufficient for both staff and inmates. *See* Dkt. No. 22-2. Similarly, Defendants claim to "not have the legal authority to unilaterally release individuals from its custody," Defs.' Br. 9, while recognizing at the same time the emergency legislation that gives them the authority to do just that with at least some residents, *see* D.C. Act 23-247, March 17, 2020.[3] Despite the emergency nature of both the pandemic and that legislation, Defendants have released only around 25 percent of the roughly 100 detainees who qualify.

Finally, Defendants also contend that they cannot have acted with deliberate indifference because a doctor from Emory University was "'highly satisfied' with what DOC is doing." Jordan Decl. ¶ 10. But that offers the Court little assurance, as Defendants provide no information as to what information they shared with the Emory University doctor or that they themselves know "what DOC is doing." Far more persuasive is the analysis offered by Dr. Meyer, who reviewed DOC's facility specifications, and opined that the capacity of the medical unit to handle the COVID-19 outbreak was grossly insufficient. *See* Meyer Decl. ¶ 28(d).

[3] Defendants do not explain why they understand the emergency legislation to bind their discretion to effectuate unilateral release. They claim that this discretion "only be exercised 'consistent with public safety,'" Defs.' Br. 10 (citing D.C. Code § 24-221.01c(c)), but that caveat itself does not require DOC to engage in binding consultation with other agencies. Rather, the emergency nature of the legislation should suggest to DOC that it can and should act quickly in effectuating the powers granted to it "on an emergency basis."

In addition to all of the evidence that Defendants policies are largely illusory, Plaintiffs' evidence also highlights problems that Defendants' paper policies do not address, even in theory. Defendants say not one word about the DOC's documented problems regarding ventilation, the lack of compliance checks in of DOC medical facilities, the serious shortage of medical equipment, and the delays in receiving medical care. Dr. Meyer's expert report stresses these problems:

- "The ventilation conditions described in the District of Columbia's Auditor's report is also concerning and will increase the rate of spread of the virus." Dr. Meyer also noted "DOC's own conclusion that the 'current HVAC system has significant design problems that inhibit proper airflow.'" That same Auditor's Report also notes that DOC's HVAC system is out of compliance with DOH regulations. As such, Dr. Meyer concludes that the virus will spread "in an airborne state." Meyer Decl. ¶ 28(c). This concern is highly acute for Plaintiff Smith, who attests that air flows back and forth between his unit and the quarantine unit at CTF. Smith Decl. ¶ 3.

- DOH does not check DOC medical facilities for compliance. Meyer Decl. ¶ 28(d).

- The "single medical isolation space in CTF with negative pressure capacity," about which Dr. Meyer does not mince words: "To say this is unacceptable is an understatement." Meyer Decl. ¶ 28(d)(i).

- The multi-day delay to receive medical care, as attested to by four DOC residents, *see* Eric Smith Decl. ¶ 5; Dkt. No. 5-2, Ex. 7, Phillips Decl. ¶ 4; Ex. 2, Guillory Decl. ¶ 9; Ex 4, Randolph Decl. ¶ 4 ("I have sent about seven medical slips . . . . I have not seen a doctor.") is evidence that "DOC is seriously ill-equipped and under-prepared." Meyer Decl. ¶ 28(d)(ii).

In addition to Plaintiffs' own fears that Defendants' failings put them at risk, see Smith Decl. ¶ 9; Phillips Decl. ¶ 2, it is telling that a ten-year veteran of the DOC would be "afraid to come to work — so much so that [she] would have to sit in [her] car for about thirty minutes every day so [she] could calm [her]self down before entering the building," because the "nature of our facility, the lack of protective gear, [her] inability to obtain adequate cleaning supplies" all put her at risk. Nesbitt Decl. ¶ 3. It speaks volumes that Defendants' own employees, like Jean Johnson, who is "scared about [her] ability to afford basic necessit[ies]," would choose to go on unpaid

leave than take "the risks to [her] life and health that come from continued work" in DOC facilities. Ex. 3, Jean Johnson Decl. ¶ 3. These extraordinary circumstances — where DOC residents and DOC staff both describe life-threatening conditions that Defendants fail even to mention — comprise deliberate indifference.

b. Plaintiffs meet the remaining TRO factors.

Defendants do not contest that the risk of contracting COVID-19 constitutes irreparable harm. They recycle their standing argument, claiming that "[P]laintiffs have not pled facts sufficient to show that granting injunctive relief would remedy any purported individualized injuries they are suffering," Defs.' Br. 22, but a motion for a TRO is not a motion to dismiss, and looks to evidence, not pleading. As discussed, Plaintiffs have adduced plentiful evidence showing that Defendants' failure to implement basic precautions in their facilities places Plaintiffs irreparably "at a significantly higher risk of infection with COVID-19 as compared to the population in the community" and "at a significant higher risk of harm if they do become infected." Meyer Decl. ¶ 33.

Defendants also do not dispute that the benefits to public health and of remedying unconstitutional violations run in favor of Plaintiffs. And Defendants share Plaintiffs' concerns about "the gravity of COVID-19." Defs.' Br. 23. Instead, Defendants claim that Plaintiffs fail to meet the combined third and fourth prongs of the preliminary injunction standards because, in their view, an injunction "would impose a remarkable level of intrusion on DOC's day-to-day operations that is simply not warranted under these circumstances." Defs.' Br. 23. Defendants essentially ask the Court to trust them to continue along the same path that has led them to boast an infection rate over seven times higher than the District of Columbia community.

Along similar lines, Defendants assert that there is a "public interest in permitting the government to carry out its authorized functions," *id.* at 24. The Supreme Court has recognized that Defendants' concerns about "intrusion" do not warrant judicial abdication: "Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration." *Brown*, 563 U.S. at 511. In fact, this Court, affirmed by the D.C. Circuit, has previously entered an injunction similar to that requested here, rejecting the same argument advanced again by Defendants. In *Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978), the Court affirmed a broad injunction imposing a set of conditions with similar particularity (including requiring daily recreation, a regular change of linen and outer clothing, and a minimum amount of space for each prisoner). *Id.* at 551-52. The Court rejected the position that the injunction's provisions were unduly intrusive, explaining, "we cannot conceive how they could ever be considered unwarranted intrusions" because the court saw "no alternative if the rights of pretrial detainees are to be respected." *Id.* at 552.

III. The Court should appoint an expert to assist it in decreasing the prison population.

The uncontested expert opinions in this case demonstrate—as do the defendants' admissions about inadequate safety supplies—that the inmate population of the Jail must be swiftly and drastically reduced in order to stem the spread of COVID-19 amongst a vulnerable and helpless population. *See* Stern Decl. ¶ 13-14; Meyers Decl. ¶ 34-37. Plaintiffs request that the Court appoint an expert who can suggest to the Court—after obtaining input from the relevant stakeholders—the best approaches to quickly reduce incarceration levels, in order to protect the health and safety of the inmates, the correctional and medical staff, and the broader community.

The COVID-19 pandemic is the very type of compelling circumstance that Federal Rule of Evidence 706 is designed to address. Federal Rule of Evidence 706 authorizes courts, within

their discretion, to appoint a neutral, independent expert witness. *See* Fed. R. Evid. 706(a) ("On a party's motion or its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing."); *Walker v. Am Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999).

Defendants do not dispute the Court's authority to appoint the requested Rule 706 expert. Instead, Defendants' argument hinges entirely on a faulty premise: that the viral pandemic sweeping the world, which has interrupted the operations of schools, businesses, and houses of worship, and has mobilized the spending of trillions of government dollars, is simply not compelling. Defendants' suggestion that these are not the "unusual" or "extraordinary" circumstances justifying the appointment of an expert under Rule 706 is indicative of their dangerous underestimation of this crisis.

Here, Plaintiffs have "present[ed] compelling circumstances warranting the appointment of an expert." *See Carranza v. Fraas*, 471 F.Supp. 2d 8, 10 (D.D.C. 2007) (internal citation and quotation marks omitted). Plaintiffs have documented the inability of DOC to effectively take the measures necessary to stem the spread of the virus in its facilities and have shown the need for a drastic reduction in inmate population; and the Defendants have now admitted that they do not have adequate supply levels to protect the health and safety of the large number of inmates they hold within their walls. In other cases requiring inmate population downsizing courts have employed special masters to fill a similar role. *See Brown*, 563 U.S. at 511. While some courts are now engaging special masters to aid in emergency reductions of inmate populations in response to the COVID-19 pandemic, *e.g. Office of the Pub. Def. v. Connor*, SCPW-0000200, at 3, 4 (Haw. Apr. 2, 2020) (appointing special master to achieve "a reduction of inmates held within

correctional centers and facilities"); *Comm. for Pub. Counsel Servs v. Chief Justice of the Trial Ct.*, SJC-12926, at 7, 26 (Mass. Apr. 3, 2020) (special master appointed to carry out "urgent…reduction in the number of people who are held in custody"), Plaintiffs believe that an expert can fill a similar but more efficient role by aiding the Court with a necessarily rapid reduction of the Jail's inmate population.

IV. Abstention does not bar relief.

The government (wisely) has not invoked the doctrine of equitable restraint established by *Younger v. Harris*, 401 U.S. 37 (1971) and its progeny. This omission may preclude the Court from considering dismissal based on those authorities. *Ford v. Tait*, 163 F. Supp. 2d 57, 63–64 (D.D.C. 2001) (noting that courts "cannot invoke [*Younger*] . . . *sua sponte*"). Nonetheless, because members of the plaintiff-class face ongoing criminal proceedings, Plaintiffs address this issue briefly to assure the court that *Younger* does not apply.

When a federal court has jurisdiction over an action, its "obligation to hear and decide a case is virtually unflagging." *Sprint Comm'n, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (internal citation and quotation marks omitted). *Younger* marks an exception to this rule and, accordingly, is only properly invoked in "exceptional circumstances." *Bridges v. Kelly*, 84 F.3d 470, 476 (D.C. Cir. 1996) (citation and internal quotation marks omitted). For the doctrine to apply, (1) there must be "ongoing state proceedings that are judicial in nature," (2) "the state proceedings must implicate important state interests," and (3) "the proceedings must afford an adequate opportunity in which to raise the federal claims." *Hoai v. Sun Ref. & Mktg. Co.*, 866 F.2d 1515, 1518 (D.C. Cir. 1989) (citation and internal quotation marks omitted).

The third prong dooms any abstention claim here. That component of the test requires the ongoing state proceedings to provide the plaintiffs with the ability to obtain "the full relief

requested in connection with [their] federal claims," *Bridges*, 84 F.3d at 477. Here, individual class members are involved in Superior Court proceedings such as emergency motions or criminal trials (or appeals therefrom) that could result in their release. But this individualized relief differs markedly from the comprehensive remedies sought by the class — relief that includes the release of a large number of prisoners, the appointment of an independent monitor, and drastic improvements to cleaning protocols at DOC facilities. *See* Compl., Relief Requested ¶ B. Plaintiffs' pending Superior Court proceedings are not well-suited to providing such broad remedies, as the D.C. Circuit made clear in *Campbell v. McGruder*, 580 F.2d 521, 524 (D.C. Cir. 1978)—which rejected the government's abstention argument in a case involving a class of pretrial detainees challenging overcrowding at the D.C. jail and seeking, among other remedies, the release of prisoners. *Id.* at 524. As in *McGruder*, the class relief sought here transcends securing an individual defendant's release from ongoing or threatened incarceration; a criminal tribunal cannot provide the comprehensive relief they have requested.

Some class members may have filed motions for emergency release with the Superior Court; however, the proceedings on those motions cannot provide full relief either. *See* Super. Ct. Crim. R. P. 35 (providing authority to "reduce a sentence," not modify conditions); *see also* D.C. Code § 23-1321 et seq. (authority regarding to decide whether to detain, not conditions of detention).

The Superior Court's order governing emergency release motions further demonstrates that such motions are not a proper vehicle for demanding broad reforms. Through that order, the court required "any motion seeking relief from detention based upon the COVID-19 Pandemic" to address seven questions about issues such as the health of the defendant and the likelihood of the defendant causing harm if released. *See* Order Establishing Procedures, Effective Immediately,

For Filing Emergency Motions for Release from Custody Due to the Covid-19 Pandemic (Super. Ct. March 22, 2020) (as amended March 25, 2020) at 1 (hereinafter "Emergency Release Order").[4] None of the questions concerns conditions at the CTF or CDF, and the order does not invite defendants to provide information beyond what it specifically requests. *See id.* This text indicates that the Superior Court envisions its emergency release proceedings as creating a forum for individualized relief, as opposed to the comprehensive remedy sought here.

Abstention is also improper for an additional reason: The Superior Court is under siege. The COVID-19 crisis has forced the court to drastically curtail its capacities. Only four court rooms remain active. Order at 2 (D.C. Super. Ct. Mar. 18, 2020) (as amended Mar. 19, 2020).[5] Only one is reserved for criminal emergencies, *id.*, and it has two judges responsible for adjudicating over 300 applications for emergency release. Ex. 5, Fowler Decl. at ¶¶ 5, 8. If, somehow, a criminal defendant raised the claims at issue here in his or her ongoing proceeding, the burden for resolving them would fall on that single emergency judge. For the Superior Court, this development would add the challenge of managing a complex constitutional case to its already nearly impossible task of adjudicating individual motions.

These burdens mean delays and those delays further demonstrate that Superior Court is not an adequate forum for the claims at issue. A state proceeding is only adequate if it can "timely" adjudicate "the federal issues involved." *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973). Because even small delays could be the difference between life and death, *see* Dkt. No. 24 at 2–3 (noting 71% increase in covid-19 positive tests at DOC facilities over three days), this Court must act where the Superior Court cannot.

[4]https://www.dccourts.gov/sites/default/files/Order-Attachment-PDFs/Standing-order-amended.pdf
[5] https://www.dccourts.gov/sites/default/files/Order-Attachment-PDFs/Order-3-19-20.pdf

CONCLUSION

These extraordinary circumstances cry out for extraordinary relief, forthwith. Plaintiffs' overwhelming evidence shows that the conditions they face are dire and the risk is acute. The time to act is now. Plaintiffs' TRO should be granted.

DATED: April 4, 2020
Washington, D.C.

Respectfully submitted,

/s/ Steven Marcus
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2 1

DECLARATION OF Kamal Douchy

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

1. My name is Kamal Douchy. I am 46 years old. I am currently incarcerated at Correctional/Central Treatment Facility in Washington, D.C., in the D-4-A unit. I have been at this facility since 7/26/19.

2. On or about March 13, Officer Bridget Carter met with the men housed on my unit. She is the unit officer. Officer Carter told us that the coronavirus meant there were new daily procedures.

3 The new policy was that inmates were not allowed hand sanitizer.

4/4/20

There were hand sanitizer dispensers mounted on the walls. They were taken down and given to COs.

4. Officer Carter said anyone who was on the unit had to take part in cleaning the unit.

5. As of April 4, 2020, my unit has not been cleaned and sanitized in approximately one week.

5. Inmates on detail do basic sanitation such as sweeping and taking out trash. There was a special sanitation detail in March, but it has been discontinued.

6. The medical staff last came to our unit about a week ago because a resident asked an officer to take his temperature because he felt sick

4/4/20

3

The medical staff were called to the unit, but refused to meet with the sick resident. He was told he had to fill out a sick call slip. I believe that was Monday or Tuesday.

7. Medical staff have never come to my unit to discuss coronavirus. The week before we heard about Coronavirus, the first week of March, medical came to discuss Tuberculosis. They have not come back to speak to us since

8. Residents on my unit have complained of fever, cough, and shortness of breath but have not been seen by medical.

4/4/20

9. The only person taken off our unit for medical infirmary care fainted or passed out, and had to be carried off the unit. Previously he was sick but continued to work. This happened the week befork last.

10. The facility does laundry only once a week.

11. We were told in the week of March 13, 2020 that we could have cleaning supplies.. A week later, the supplies stopped coming. Since the supplies stopped coming I have been unable to clean my cell.

12. I clean my cell with watered down cleaner and my personal shower towel. No strong cleaners or rags or paper towels are available.

4/4/20

13. The week of March 13, 2020, there were daily broadcasts over the loudspeaker reminding us to clean our cells. Those announcements stopped after 1 week and I have no heard one since.

14. Inmates cannot use hand sanitizer.

15. There are not enough officers to deliver Commissary so we cannot order extra soap if we need it. Commissary Is Late K.C.

16. DOC does not clean common areas every 2 hours.

17. Today at about 10:15am, Lieutenant Holland told us that we would be restricted to our cells 23.5 hours per day. A lot of inmates are locked in with their cellmates.

18. There is no sink in my cell and no toilet in my cell. I cannot wash my hands

4/4/20

when locked down.

19. The bathrooms are shared by all and are only cleaned once per day.

20. No professional cleaning staff have come in to clean. DOC staff no longer come to our unit to clean

21. The hand sanitizer units on the walls we are not allowed to use.

22. As fewer and fewer staff help us, I am afraid the facility is breaking down. I am afraid that I will die in CTF.

23. I am preparing for my death. Every day a new person gets sick, and if I get sick, I fear that I will die due to my fragile health.

24. I think things will be a lot worse by next week. The

4/4/20

Cleaning supplies are gone. The food is cold and inedible.

25. When we are out, of our cells. 15 people are out at a time. But Today that has changed to 5 30 min per day. We have to do everything in 30 min

26. We sanitize the phones ourselves. DOC Staff do not.

27. DOC staff are just trying to serve. They do not come in to Cleam.

28. I believe that I am going to die in here if I do not get help and if conditions are not improved. Other people have told me they are afraid they will die in here if no one helps us. ~~[illegible]~~

29. People need to be sent home. There are not enough medical or supplies to go around if we are all left in here.

A. Q. 4/4/20

30. In 30 minutes we have to use phones, heat food and water, take a shower, and get access to any cleaning supplies. Sometimes there are no cleaning supplies

31. On Monday or Tuesday I talked to The Washington Post on the phone. An article was published and I am quoted in it.

32. Last night 4/3/19, Lieutenant Icamara took me to medical. I sat for 30 minutes and was not seen.

33. ~~Lieutenant~~ An officer told me that they, the people up top, do not like me in this jail because I talked to The Washington Post. He warned me not to talk to the press or to lawyers investigating the jail. I am talking to you voluntarily and freely but I do fear retaliation.

4/4/20

34. I fear retallation from staff and from the government.

35. I do not know the identity of the staff member who warned me because he wore a mask and I could not see his face.

36. Staff open our legal mail. We fear they are reading it.

37. I cannot reach my lawyer. He does not visit. I cannot call him on the phone. I have a stack of documents for him to read and no way to show them to him. This is because of the new rules about Coronavirus. He is a very good lawyer when this is not going on.

4/4/20.

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 4 day of April 2020, in Washington, D.C.

Kamal G Doucet

~~Central Detention Facility~~
~~1901 D Street SE~~
~~Washington, DC 20003~~

Correctional Treatment Facility
1901 E Street SE
Washington, DC 20003

DECLARATION OF James Guillory

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

1. My name is James Guillory JR.. I am 19 years old. I am currently incarcerated at Correctional Treatment Facility in Washington, D.C., in the D2A unit. I have been at this facility since August 12, 2019

James Guillory
4/4/20

2. When I was brought down for this legal visit from my unit, an officer told me I should cover my face. I asked what I should use. My unit has no masks available. Inmates have never had access to masks. The CO gave me a paper towel and told me I could use it as a mask.

3. Inmates do not have access to hand sanitizer. For the last 2 weeks, we have been told that if we use the sanitizer dispensers on the unit we will get in trouble.

4. For the last few days, there have only been announcements to clean the units every 3-4 hours. Inmates are supposed to clean when they hear the announcement. The person assigned to clean my unit only cleans when he is hoping to get out of lockdown. No one confirms whether he has cleaned.

5. I and some of the other guys clean when the assigned person doesn't. No one checks.

6. I have never seen professional cleaners come to clean the unit.

James Gillory
4/4/20

7. I have only ever seen the COs clean their desk, not any where else on the unit.
8. I get a tablet to do schoolwork that has been used by other inmates. It is not cleaned or sanitized between uses.
9. I put in a sick call slip 3 ~~Saturdays~~ weeks sa ago, on a weekday. It took 2 weeks to get seen by sick call. I did not sa get taken to the infirmary.
10. I have chronic bronchitis. Medical has not evaluated my breathing or my coughing since we first heard about Coronavirus.
11. No one from medical has ever met with us to discuss coronavirus.
12. COs advise us to wash our hands every day.
13. Every thing I know about social distancing or the dangers of being around other people is what I saw on TV news.

James Quillory
4/4/20

14. No one from DOC has ever told us about social distancing. There are no signs about social distancing. We have to stay in our cells. A lot of people on other units have cellmates.

15. The only signs on the walls talk about washing hands and coughing into your elbow.

16. There are no signs up or announcements made to know what the symptoms of coronavirus are. I learned the symptoms from a part of my biology homework at Georgetown Prism Scholars. We were learning about coronavirus before it arrived in the United States.

17. I hear people on my unit coughing. Some people are sick. Sick call does not examine them and they are not sent to medical.

18. Some of the staff have masks and paper suits that they bring from home. There are masks on our unit for residents.

James Guillory
4/4/20

19. Toilet paper we get free access to. I get soap from commissary. No DOC staff has ever offered me soap. I do not know how I would get soap if I needed it.

20. ~~Thursd~~ Thursday, 2 days ago, I asked for a rag to clean my cell. We were told to clean our cells for room inspection. The CO told me there were no rags either on our unit or in the supply closet, which is kept locked. I ended up using an old ripped up rag. The rag looked ~~clean~~ stained and not clean.

21. There is no sink in my cell. There is no soap provided at the unit sinks. People share their personal soap so that we can have soap at the sinks.

22 No one is telling us how many people have Coronavirus. I believe based on what other inmates have told me that coronavirus patients are housed in many different units including medical, SHU-B, and the C building.

James Guillory
4/1/20

23. Our food is delivered on trays from CDF. The lady who brings our lunches does not wear gloves. I am afraid to drink the juice in case there are germs.

24. When COs sneeze or have bad coughs, no one questions them about their symptoms or takes them off our unit.

25. I feel worried. I believe I will get coronavirus & because of the conditions in here. The precautions being taken are too late and are not effective. I am worried that if I get coronavirus in here I will die. I could put in a medical request if I get sick with coronavirus and by the time anyone comes to check on my symptoms I could be dead.

26. The ~~milk~~ food they bring us from the jail is cold and the milk is spoiled and not kept on ice. I am afraid that if I drink the milk I will get sick. I am hungry because I am afraid to eat all of the food. The food trays spoiled.

James Quillory
4/4/20

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 4th day of April 2020, in Washington, D.C.

James Guillory

James Guillory JR.

~~Central Detention Facility~~
~~1901 E Street SE~~
~~Washington, DC 20003~~

Correctional Treatment Facility
1901 E Street SE
Washington, DC 20003

1 page

DECLARATION OF David Randolph

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

1. My name is David Randolph. I am 20 years old. I am currently incarcerated at

central Detention Facility

in Washington, D.C., in the NE2 unit. I have been at this facility since

March 19, 2020.

April, 4/ 2020

David Randolph

2) When I was brought over to the Jail. I was on intake for 5 days. After intake I was taken to NE 2.

3) I do not DR know what quarantine is. No one ever told me that I was being separated from other people to make sure I'm not sick.

4) I have sent about seven medical slips asking to see the doctor because my immune system is messed up.

5) I was coughing up blood for two days this week. I have not seen a doctor. I have been telling sick call but they just walk past me.

6) Right now I just feel sick and my eyes and throat hurt.

7) I am locked in my cell 23 hours a day

8) my cell mate has a cough. ~~It is~~ DR He has been asking for the doctor

4/4/20
David Randolph

but no one takes him.

9) Since I got here, the staff tell us nothing about the Coronavirus. On the TV they say the coronavirus is getting worse.

10) The staff ignore us so they don't have to come near us.

11) I have an inhaler for asthma.

12) I know you have to be six feet away from people to be safe from coronavirus. I learned that from the news.

13) I can't stay six feet from people in here.

14) I only have soap because someone another inmate gave it to me. The DOC has never given me soap. The DOC did not give out soap last week to me.

15) I feel scared because I don't want to catch it. I'm scared I'm going to catch it. I'm always in a room with somebody. I'm afraid I'll get

4 Page

real sick and be throwing up. I don't know any other symptoms of Coronavirus. I did not know that coughing was a symptom until my lawyer just told me.

16) This is the first time I have met my attorney in real life. We have not been able to talk about my case. I have never seen my police report.

17) No one has been moved off the unit because they are sick. Lots of guys on my unit are coughing including the guy in the cell next to mine.

18) I'm not getting heated right. I don't feel safe.

19) one time my chest felt tight in intake. I told staff and they did not take me to medical and refused to give me water

David Randolph 4/4/20

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 4 day of April 2020, in Washington, D.C.

David Randolph

Central Detention Facility
1901 D Street SE
Washington, DC 20003

~~Correctional Treatment Facility~~
~~1901 E Street SE~~
~~Washington, DC 20003~~

1

DECLARATION OF Micheal Cohen II

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

1. My name is Micheal Cohen II. I am 42 years old. I am currently incarcerated at Central Dentention Facility in Washington, D.C., in the NE-3 unit. I have been at this facility since 7-7-2018.

4-4-2020

2. I suffer from asthma. I carry an inhaler. I have an asthma attack about once a week.
3. The first time I heard about coronavirus was on the news in January.
4. No one from DOC has ever met with me or my unit to discuss coronavirus or COVID with me or any other residents.
5. No one from Unity Health has ever met with me or my unit to discuss COVID with me or any other residents.
6. An inmate on my unit was locked into his cell 73 cell about 2 days ago. He was quarantined. The staff did not tell us any thing. I learned this from another inmate. He was suspected of having coronavirus. I do not know if medical saw him. I do not know if he went to the infirmary. I never saw anyone go into his cell to provide medical care.
7. There are at least 5 people on my unit who are coughing frequently. No one from the staff approaches them when they

M. L. 4-4-2020

4-4-2020

cough to ask them to cover their mouths or to offer medical care.

8. When I use the phone to call my loved ones, I have to stand right next to other inmates, including inmates who are coughing.

9. The phones we use are not cleaned or sanitized between each use.

10. There is a backup at the infirmary so that it will take time to be seen.

11. If I put in a sick call slip, I will not be seen by sick call for 2-3 days.

12. I work in the kitchen. I have seen others who work in the kitchen complain of being sick and ask to go to the infirmary. One of the kitchen staff was coughing. Another inmate in the kitchen was sick with flu like symptoms. Neither of them were seen by sick call or the infirmary. Both inmates kept working in the kitchen while sick

13. If I tell a CO that I am too sick to go to work, I am told to go to work anyway. the only way to get out of

M. [illegible] 4-4-2020

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work for illness is if the Infirmary or sick call gives you a slip. But since we can't get to the infirmary or sick call the day we begin to feel sick, we are forced to work sick or we face punishment.

14. Kitchen workers' declarations of being sick are ignored. Inmates are working in the kitchen today who are coughing. Inmates are working in the kitchen today who have told COs that they have diarrhea.

15. We are now making food in the CDF kitchen for both CDF and CTF.

16. In the kitchen we get hair nets and beard guards and gloves. We do not get masks. We wear white clothes. We get back different ones every day. Sometimes they don't seem like they have been washed between shifts because when we go to put them on there are dirty clothes and old hairnets in the bin we get the white kitchen clothes out of.

17. The COs told me that they get their temperatures taken on the way into the building. They did not say whether they have to take surveys. If you pass the survey you get

M. [illegible] 4-4-2020

4/4 CTF USIP

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a green or pink dot sticker to put on your badge. I have seen people inside the facility without a dot sticker on their badges every day since that procedure started.

18. Once new inmates are assigned to a permanent housing unit, if they later get reassigned to detail, they move to our unit w/o quarantining to see whether they have gotten sick since entering the jail.

19. There are signs up in our unit that describe COVID-19. The signs do not tell us what the symptoms are. The signs tell us not to spread misinformation about COVID, but the signs do not give us the correct information we should know.

20. There are signs up in the unit with the lighthearted slogan "Keep Calm and Wash Your Hands." I feel that the signs trivialize what is going on.

21. Staff assume that we get information about COVID from the news or from family phone calls. People whose rec time is not during the news or who don't talk to family wouldn't be able to find out if corona

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has gone airborne or mutated or could otherwise hurt us in some new way.

22. When we travel from our unit to work, we are packed 10 people into an elevator about 6 feet by 6 feet wide.

23. When inmates or staff bring food trays in the units, the inmates are not wearing masks. Some staff do not wear gloves.

24. The staff do not have access to masks. Some of them wear homemade masks they bring from home. One staff member on a unit (I think it was South 1) was wearing a red bandana over his face today. The white shirts, only some wear masks.

25. When inmates exhibit symptoms they are not being taken seriously or given treatment promptly.

26. I filed a complaint on March 29, 2020, about un-screened inmates being transferred to my unit. On April 1, 2020, the grievance was returned to me with no response. I spoke to Deputy Warden K. Landerkin on ~~April 1.~~ approx MAR 28th She told me that they will not stop transferring inmates between units.

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There is no reason to stop transferring inmates, she said, because medical has not given us a reason to stop transferring inmates between units.

27. Video visitation still takes place. Loved ones come to the video visiting center. The DOC staff member who works in the video visiting center to screen loved ones making a visit came in person to my unit about two weeks ago. He was not wearing gloves or a mask.

28. Inmates, not DOC staff, clean common areas of housing units. Inmates clean a few times a day, using the same dirty rags each time they clean. The rags are ~~changed~~ laid on a rail to dry at the end of each day as though they are to be utilized the next day.

29. The cleaning solution is refilled by the detail workers. The DOC staffer who refills the bottles left yesterday before the cleaning inmates could refill the bottles from the large jug he brought to refill, and so many of the cleaners had no cleaning solution yesterday.

M. Hill 4-4-2020

30. I have never heard an announcement advising people to clean. I have not heard such an announcement either in person or over the PA system telling people to clean.

31. No one inspects the inmates work after they clean to see if the areas are clean.

32. There is a closet of cleaning supplies on my unit meant for inmates to use to clean their cells. That closet is kept locked. COs frequently deny access to the closet when an inmate asks for cleaning supplies. I saw someone ask for cleaning supplies and get denied yesterday.

33. We have sinks in our cells. There is no communal sink to wash hands. When we are having communal rec time. I cannot wash my hands after playing chess or using the phones without sacrificing the remainder of my rec time. The doors to the cells are opened every hour on the hour, so if I ask to wash my hands I am told to wait until the hour mark during rec time.

34. My sink has warm and cold water. It does not get hot.

35. We get one roll of toilet paper per week. It is not enough for a week.

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36. Laundry is once per week, but there are no laundry bags, so you can't wash your clothes if you can't find one or didn't get one when you came in. It has been months since new inmates got laundry bags.

37. If you are at work when the laundry service comes around, there is no way to get your clothes laundered.

38. Inmates wash clothes in their sinks and toilets. They do that because the laundry service often gives people staph infections because clothes do not come back clean. I get pimples that I was told were a staph infection when I use the laundry in the jail.

39. I have never seen professional cleaners who were not inmates cleaning.

40. The cleaning supplies are watered down. I was on the programming unit at CTF from October 2018 to October 2019. One of our chores was to water down the cleaning solution for my unit, 25% cleaner, 75% water.

41. ~~We~~ I have no access to hand sanitizer. There is hand sanitizer in the kitchen but nowhere else at CDF. At CTF, the hand sanitizer dispensers were filled with surface cleaner like Orange Glo, instead of with sanitizer.

-M-H

4-4-2020

42. Inmates need more guidance on cross contamination such as dirty mop heads and dirty water ~~from~~ that is used throughout the unit

43. I know about social distancing from the news. No staff or anyone who works at DOC has ever told me about it. It's laughable to talk about it here because its impossible here.

44. In the kitchen, I am only a few inches from other inmate kitchen staff.

45. When the CTF kitchen closed, the CTF kitchen staff were brought over to work at the CDF kitchen. Many of those staff are sick or coughing. I move my work station in the kitchen to try to avoid being near kitchen staff from CTF.

46. DOC assumes that we know what is going on, but we have little information about this illness.

47. When we have rec on modified schedules, the unit is not adequately cleaned between rec shifts.

48. Some cleaners volunteer in the kitchen and then do not clean.

M. [illegible] II
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49. I do not believe that DOC knows that people can be asymptomatic carriers. I learned about asymptomatic carriers only from phone calls with loved ones. I think DOC does not know because they act like if someone isn't obviously sick there is no risk.

50. No one tells us what is going on. The signs do not tell us. If I were in lockdown and had lost TV or phone privileges I would have no idea what corona is.

51. People on my unit still give each other high fives. People still eat and drink each other's food and beverage bottles. Staff do not warn people these things are unsafe.

52. The kiosk that we order commissary from is almost never cleaned. It was visibly dirty with fingerprints when I saw it earlier today.

53. No one has told us not to lick our fingers.

54. Other inmates cough on me or in my vicinity.

55. Four of the ~~DOC~~ contract staff from Summit in the kitchen have coughs. They continue to come to work. They have been sick ten days. I saw all four of them in the

M.I 4-4-2020

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kitchen today.

56. I think I'm going to die. Because I am asthmatic, I believe I am going to contract COVID, and that I will receive grossly inadequate medical care. I am very scared that I am going to die within just a few months of my release date.

57. I am concerned that the COs will stop coming to work because they don't get the proper equipment to feel safe being around us.

58. I know that CDC guidelines say we should stay 6 feet apart and there shouldn't be gatherings of 10 or more people. Those guidelines are not followed. They are putting my health and safety at risk.

59. They will lock us down and isolate people for punishment, but they are not properly isolating people who have symptoms even though they clearly know how to.

60. I believe I could die in jail. I've been in jail 21 months and I just want to go home alive. I fear that I will not live to see my June release date.

4-4-2020

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 4th day of April 2020, in Washington, D.C.

Michael Cohen

Central Detention Facility
1901 D Street SE
Washington, DC 20003

~~Correctional Treatment Facility~~
~~1901 E Street SE~~
~~Washington, DC 20003~~

4-4-2020

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

DECLARATION OF JOHN FOWLER
SUPERVISING ATTORNEY, PUBLIC DEFENDER SERVICE

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

1. My name is John Fowler. I make these statements based upon my personal knowledge.

2. I am a supervising attorney in the Trial Division at the Public Defender Service for the District of Columbia ("PDS") and have worked at the agency since late 2013. Prior to working as a supervising attorney, I was a staff attorney in the Trial Division at PDS. PDS is a federally funded, independent organization dedicated to representing indigent adults and children accused of crimes in the District of Columbia. My principal responsibility as a supervising trial attorney at PDS is to represent people in criminal proceedings in the District of Columbia Superior Court and to supervise the practice of PDS's trial attorneys.

3. Since the Criminal Division of Superior Court began holding emergency hearings in mid-March 2020 as a result of covid-19, I have participated in my own clients' release hearings and listened to other release hearings on the "emergency calendar." I have also reviewed the public docket for some proceedings taking place within the Criminal Division during the same time period.

4. To my knowledge, all requests for relief related to the covid-19 pandemic seek release or a reduction in release conditions. To my knowledge, none seek changes to conditions within any Department of Corrections ("DOC") facility.

5. To my knowledge, two judges are handling the "emergency calendar" for release requests. One judge screens and reviews *pleadings*. Another judge sits in courtroom 115 and conducts *hearings* on these requests.

6. At first, the judge conducting hearings was physically sitting in courtroom 115 while the parties participated largely via WebEx. Now, the judge conducting hearings for courtroom 115 is participating via WebEx, too.

7. The Deputy Presiding Judge of the Criminal Division has handled a number of hearings on the "emergency calendar." When confronted with evidentiary questions in a few cases—including questions about the conditions of the jail—the Deputy Presiding Judge indicated that the Criminal Division is not able to conduct 300 evidentiary hearings during this emergency.

8. I understood this to mean that the Criminal Division had received at least 300 requests for release.

9. Of my cases in which the Criminal Division has scheduled a release hearing, several days pass from the time I file my pleadings requesting release to the time I receive a decision on statutory grounds at a hearing.

10. In an emergency release hearing before a different Associate Judge, the General Counsel for the Department of Corrections was on the phone. In that case, the Associate Judge also indicated that there would not be an evidentiary hearing. The Associate Judge did not require the General Counsel to make any statements at all. This meant that there was no opportunity to examine a witness on the conditions of the jail.

11. The Deputy Presiding Judge has resolved release questions at these hearings on statutory grounds—that is, under the District's statutory detention scheme.

12. The Deputy Presiding Judge has indicated that constitutional questions (e.g., conditions of confinement under the Fifth Amendment) would be resolved on the papers, without an evidentiary hearing. The Deputy Presiding Judge indicated that defense attorneys could submit additional materials, such as proffers, to the Criminal Division and that the Criminal Division would resolve the question in a written opinion within 30 days of the defense attorneys' submissions.

13. Some cases in which pleadings requesting release were filed over 10 days ago still do not have a scheduled hearing at all.

14. The Criminal Division releases a schedule of emergency hearings the afternoon or evening before the hearings take place. Often, this is the only notice that the Criminal Division sends out regarding these hearings. This notice comes either near the close of regular business hours or, more often, after regular business hours.

15. Pursuant to Superior Court Rule of Criminal Procedure 17, an attorney may serve a subpoena for testimony or records for an upcoming court date. That same rule requires that the subpoena state the time and place for the testimony or production.

16. In practice, this means that an attorney may have 18 hours or less to subpoena a witness or records for a hearing the following morning. This is not often enough time to secure this type of evidence.

17. On behalf of the DOC, the Office of the Attorney General for the District of Columbia has moved to quash defense subpoenas related to conditions of the DOC facilities served shortly before a hearing based in part on timeliness grounds.

18. The DOC has limited legal phone calls with defense attorneys to 15 minutes at a time. These calls are primarily being made through a case manager's office; it is my understanding that the case manager is in the room while the attorney and the attorney's client speak. The other mechanism by which clients may speak with attorneys is through the phones located in DOC facilities' housing units; it is my understanding that because other individuals are in close proximity to these phones, these phone calls are not confidential, either.

19. On April 4, 2020, the DOC issued a notice that legal visits will be suspended until further notice except for individuals who are "actively in trial."

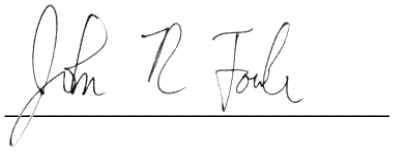
20. As far as I am aware, the Criminal Division has suspended all trials during the state of emergency.

21. As such, it is impossible for attorneys to have confidential conversations with their clients either in person or over the phone.

22. It is critical for attorneys to be able to have confidential conversations with their clients to discuss matters and review materials related to conditions of confinement, emergency release motions, ongoing investigation in their cases, discovery, plea offers, preparation for future trials, and other matters. Telephone conversations are not sufficient to accomplish these things.

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 April 4, 2020, in Washington, D.C.



John R. Fowler
Supervising Attorney
Public Defender Service for the District of Columbia
633 Indiana Ave. NW
Washington, D.C. 20004

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 DOMINIQUE WINTERS

1. My name is Dominique Winters. I am competent to make this declaration and I make these statements based on personal knowledge.
2. I am the Deputy Trial Chief at the Public Defender Service for the District of Columbia ("PDS"). I have held this position since 2017.
3. Prior to becoming Deputy Trial Chief, I was a Supervising Attorney in the Trial Division and a Staff Attorney in the Trial Division before that.
4. As part of my duties as Deputy Trial Chief, I initiated communications with the District of Columbia's Department of Corrections ("DOC") regarding the availability of legal calls from the Correctional Treatment Facility ("CTF") and the Central Detention Facility ("CDF") to PDS clients during the coronavirus pandemic.
5. Beginning around March 2020, PDS attorneys began reporting to me that there were a backlog of legal call requests to DOC. Many lawyers had submitted legal call requests to DOC by fax and/or email, but had not received responses to their requests or calls with their clients.
6. On March 25, 2020, I emailed Charles Akinboyewa, the Chief of Case Management for DOC,

to improve the procedure for PDS attorneys to be able to have legal calls with clients.

7. Mr. Akinboyewa and I agreed on two procedures that DOC represented would best ensure that PDS attorneys would be able to have expedited legal calls with their clients.
8. Under the first procedure, I send a list of PDS clients who require legal calls to CTF and CDF by 9:00 am every morning Monday through Friday.
9. DOC informed me that they will permit 10 legal calls[1] from CTF and CDF to take place each day, and that the calls will take place between 9:00 am and 2:30 pm.
10. Under this procedure, attorneys cannot schedule a time to receive the call, they must be available when the phone rings. Some lawyers have had to remain available from 9:00 am to 5:00 pm to receive a call only to be permitted to talk to their client for up to 15 minutes.
11. Because DOC limited the number of legal calls that can take place each day, I am not able to submit the complete list of legal call requests for each day. As a result, many lawyers are not able to have timely legal consultation with their clients. And some lawyers have not been able to consult with clients in preparation for court appearances.
12. Beginning on March 30, 2020, I began sending DOC the list of legal calls per day for PDS clients. Even under this agreement, DOC has not been able to complete all legal calls submitted for each day, and legal calls for clients at CTF rarely occur.
13. Outside of in-person legal visits, this procedure is the only way in which PDS attorneys can initiate a legal call with their client.
14. Under the second procedure, DOC agreed to arrange for PDS clients to initiate legal calls with their attorney by calling from a phone located in the common area of their housing unit.
15. The calls are limited to 10-15 minutes.

[1] Upon my request, DOC agreed to allow 15 call requests on March 30th, March 31st, and April 1st to try to clear the backlog of outstanding legal call requests.

16. DOC informed me that at CTF, there are around 3-4 phones per unit, with each unit housing approximately 50-60 residents, and at CDF, there are approximately 4 phones per unit, with each unit housing approximately 100 residents. This arrangement raises obvious privacy and confidentiality concerns due to the public nature of the housing units and the common areas.

17. It is essential for attorneys to be able to have substantive, confidential communications with their clients to provide effective representation. The limited telephone conversations have not been sufficient to accomplish these things.

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

Dated: April 4, 2020

Dominique Winters
Deputy Trial Chief
Public Defender Service
633 Indiana Avenue, N.W.
Washington, D.C. 20004

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 JEAN JOHNSON

1. My name is Jean Johnson. I am competent to make this declaration and I make these statements based on personal knowledge.
2. I work as a clerical assistant for the D.C. Department of Corrections (DOC) and have an office in the Correctional Treatment Facility (CTF). I have held this position since May 2019.
3. This March, I reported to work all but three days until March 18, 2020. That evening, after reflecting on the lack of preparedness at the CTF and the way DOC responded to past health emergencies, I realized that I could not go back to the facility. I began using sick leave on March 19, 2020. My sick leave expired on March 26, 2020 and I started on unpaid leave that day. Now that I am not earning income, I am scared about my ability to afford basic necessitates. But I am more afraid of the risks to my life and health that come from continued work at the CTF.
4. DOC does not respond well to medical emergencies in the best of times. On three occasions since December 2019, including two since late January 2020, I saw staff or inmates fall to the ground from heat, exhaustion, or a medical condition and noticed that they did not receive

medical attention for nearly fifteen minutes.

5. The start of the covid-19 crisis did not bring increased urgency. For example, on March 13, I brought a mask to work to protect myself from the virus. A correctional officer told me not to wear the mask because it might scare the inmates. Before I ceased coming to the facility on March 19, I did not see any other staff or inmates wearing masks or protective gowns.
6. I have concerns about the general hygiene at CTF. The building has a strong odor and mold covers many surfaces.
7. The only individuals I have ever seen clean the facility are inmates and I have never seen them receive any training or instruction on how to sanitize effectively. I have never seen an inmate wear a protective mask or a gown when cleaning.
8. DOC officials have made it difficult for me and my colleagues to contribute to social distancing efforts. On March 31, 2020, I asked my supervisor if I could work from home. My supervisor said that DOC "is not a teleworking agency" and that it would not allow employees in my position to work remotely.
9. My duties consist of entering data and organizing optional programs. Although programmatic work requires me to be at the facility, it is my understanding that DOC has cancelled optional programs in light of the covid-19 crisis. As for the data entry, this work could easily be done from home. It is my understanding that DOC has the technological capacity to allow employees to access administrative systems remotely and has a stockpile of laptops with those systems loaded onto them. If the Department allowed me to borrow such a laptop, or instructed me on how to connect to those systems through my personal computer, I could work from home without any problems.
10. Each time staff members enter the facility, they may bring traces of the virus inside. Those

particles will spread easily. For example, staff members must place their bare hands on a biometric scanner to clock in when they start work. Walking through corridors often requires passing through a set of secure doors. When staff members pass through one door, they must press a button and wait for a central control to open the second, they often stand in small groups in a narrow space, with little distance between them. Similarly, inmates and staff can only move through individual housing units via three elevators (the staircases are locked), and each elevator is no larger than a queen-sized bed.

11. These and similar features of the facility make it easy to for the virus to spread from person to person and makes DOC's refusal to allow more employees to work from home deeply disturbing.

I, Michael Perloff, certify that I have read the foregoing to Ms. Johnson and that she affirmed that the foregoing is true and correct on April 3, 2020. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 4, 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