UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY BAEZ, JONATHAN BERMUDEZ JERMAINE GONSALVES, and DEDRICK LINDSEY on behalf of themselves and all others similarly situated,	)	
Petitioners,	)	
v.	)	Civil Action No. 20-10753-LTS
ANTONE MONIZ,	)	
Respondent.	)	

RESPONDENT ANTONE MONIZ'S RESPONSE
TO THE COURT'S ORDER DATED MAY 1, 2020

Pursuant to the Court's Order, dated May 1, 2020 (Doc. # 52), Respondent Antone Moniz, Superintendent of the Plymouth County Correctional Facility ("PCCF"), by and through his attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, respectfully submits the following materials, which contain answers to the Court's questions:

- **Declaration of Sheriff Joseph D. McDonald, Jr., dated May 6, 2020, attached hereto**. This declaration responds to the questions in Parts A (social distancing), B (face masks), D (cleaning and hygiene), and E (other) of the Court's Order.

- **Declaration of Marcia Norat, RN, dated May 6, 2020, attached hereto**. This declaration responds to the questions in Part C (testing) of the Court's Order.

In addition, by way of update, as of the date and time of filing, 17 inmates and detainees at PCCF have been tested. As previously reported, one result of a state pretrial detainee was positive. All other results of inmates and detainees were negative. Currently, there are no outstanding tests of inmates or detainees.

Respectfully submitted,

ANTONE MONIZ
Superintendent of the Plymouth
County Correctional Facility

By his attorneys,

ANDREW E. LELLING,
United States Attorney

By: */s/ Jason C. Weida*
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Dated: May 6, 2020

DECLARATION OF SHERIFF JOSEPH D. McDONALD, JR.

I, Joseph D. McDonald, Jr., provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from records of the Plymouth County Correctional Facility maintained and relied upon by me in the regular course of business:

A. Social Distancing

1. Housing Arrangements.

According to the Federal detainee roster and housing reports, the 164 members of the proposed class are housed as follows as of May 6, 2020:

74 detainees (45% of proposed class) are housed in large housing units. These units are designed to house up to 139 detainees each. The populations of the large units are 65 (H1) and 67 (H3) respectively. Most cells in the units are double-bunked. After the Department moved a detainee on May 4, all detainees in the large units have single cells.

64 detainees (39%) are housed in small units, designed to house up to 62 detainees. The current populations are: 20 (DN1); 31 (DS1); 33 (FN3); and 36 (FS3) respectively. As of May 6 at 7:32am, seven detainees in the proposed class have single cells. 10 detainees are in five-man cells with one other detainee, and there is more than six feet between the occupied beds on either end of the cell. 47 detainees are in five-man cells with two other detainees. In such assignments, there is six feet from head to head of each bed, but the head or foot of each bed is within six feet of another bed. After the Department moved detainees on May 4, there are no detainees in the proposed class in the small units with four or more in a cell.

13 detainees (8%) are in dormitory units. Two members of the proposed class are in Unit BN1, a unit designed for 62 detainees, currently housing 15. In that unit, the Department has moved the bunks apart so that they are at least six feet apart. 11 members are in Unit BS2, a unit designed for 62, with 52 total beds, and currently housing 31. The bunks are closer than six feet, but the Department has directed the detainees to sleep head to toe, in compliance with recommendations from the Center for Disease Control (CDC).

13 (8%) detainees are in administrative segregation units. Each has his own cell.

2. Meals.

All detainees are able to eat at the various dayroom tables or at dayroom chairs when they are out of their cells for meal periods. The Department has spread the dayroom chairs at least six feet apart. The meal arrangements vary by unit, as described below:

Large units. The Department splits meal periods, so that each side of the unit eats separately. There are 10 octagon tables seating four, 6 rectangle tables each seating 4-6,

and 52 (H1) or 58 (H3) dayroom chairs in each unit. This gives significant opportunity for each detainee to eat six feet from the others.

Small units. The Department splits meal period, so that each tier of the unit eats separately. There are eight rectangle tables and between 14 and 20 dayroom chairs in each unit. This gives significant opportunity for each detainee to eat six feet from the others.

Dormitory units. The detainees go out to a common area where they eat at the tables and dayroom chairs. There are 13 octagon tables and eight dayroom chairs. While social distancing is more challenging in the dormitories, especially the more crowded BS2, there is some opportunity for detainees to eat with more than six feet space from others.

Segregation. The detainee all eat in their cells.

Intake quarantine. The detainees all eat in their cells, all singles.

3. Recreation.

Large units. The Department splits recreation periods, with each side of the unit coming out of the cells separately. The detainees can roam a dayroom which measure 52'x146'. Detainees also have access to a recreation deck which measures 28'6"x37'. There is significant opportunity for detainees to recreate with more than six feet space from others.

Small units. The Department splits recreation periods, with each tier coming out of the cell separately. The dayrooms measure 127'x24'. There is significant opportunity for detainees to recreate with more than six feet space from others.

Dormitory units. The units are triangle-shaped, 66'x98' at the widest point and narrowing to 8' at the front of the units. The detainees access various areas of the unit during recreation, including the phones, tables, two separate television areas, and their bunks. They have assigned times for the recreation deck measuring 46'6"x19'6". While social distancing is more challenging in the dormitories, especially in the more crowded BS2, there is some opportunity for detainees to recreate with more than six feet space from others.

Segregation units. Detainees have recreation in numbers no more than four. Detainees in disciplinary detention have recreation alone. They have access to a dayroom which measures 51'x35' or 46'x28'. Detainees have access to a recreation deck measuring 18'x38'6". There is significant opportunity for detainees to recreate with more than six feet space from others.

Intake quarantine. Detainees come out for recreation in three very small groups based on their time of entry into the Facility. As of May 5, the population in the unit was 11. They have access to a dayroom measuring 52'x146'. Detainees also have access to a

recreation deck which measures 28'6"x37'. There is significant opportunity for detainees to recreate with more than six feet space from others.

B. Face Masks

1. The Department has distributed face masks to all detainees and staff.

On April 6, 2020, the Department distributed one surgical mask to each detainee and staff. The Department issued a roll call memo encouraging all staff to wear their masks on duty and permitting them to bring their own mask from home if they chose. All detainees are encouraged to wear their masks while out of their cell.

On April 9, the assistant superintendent issued a directive that all detainees are required to wear a mask when leaving their housing units and that all inmate workers would wear a mask while performing their job duties.

On April 13, the Department issued 100 cloth masks to the kitchen manager for use by all workers assigned to the kitchen, laundry, and canteen assignments for use while on duty.

On April 14, the Department issued one surgical mask each to all detainees and staff.

On April 21, the Department issued one surgical mask each to all detainees and one KN-95 mask each to all staff.

On April 24, the Department issued a roll call memo directing employees to keep their masks on whenever they are within six feet of another person.

On April 30, the Department issued one surgical mask each to all detainees and staff.

2. In formulating its policies and practices, the Department considered the published guidance from the CDC. In guidance specific to correctional and detention facility, the CDC advised use of face masks in specific circumstances but stopped short of requiring use of masks at all times within the facility. The Department has exceeded CDC guidance by requiring employees to wear masks whenever they are within six feet of another person.

3. While the Department has not provided detailed instruction to inmates or staff, the Department has strategically placed additional masks throughout the Facility, distributing 2,767 surgical masks to managers to provide to staff and inmates for replacement. This supplements the 3,043 surgical masks and 381 KN95 masks the Department has distributed in stages.

4. The Department does not track verbal requests for masks, and I am not aware of any written requests. Detainees can ask unit officers, lieutenants, or unit team managers for replacement masks. In addition to the masks distributed, the Department has 10,400 surgical masks on hand, all 3ply and 4ply from various manufacturers. The Department

places a weekly order through the Massachusetts Emergency Management Agency ("MEMA"). The Department also has been exploring private vendors and recently received 2,000 surgical masks from a private vendor in Plymouth.

C. Testing

The Department conducts testing according to protocols established with guidance from the CDC and Massachusetts Department of Public Health. Health Service Administrator Marcia Norat oversees the Department's medical operation, and I understand she will provide details in a separate declaration.

D. Cleaning and Hygiene

1. Cleaning procedures for the housing units are governed by PCCF#402, Unit Management, and PCCF#750, Hygiene Standards. Multiple times each day, unit workers sanitize the units. Workers clean all tables, phones, day room chairs, showers, and cell door handles with disinfectant. Detainees are responsible for maintaining the daily cleanliness of their rooms. The detainees have access to the 100 product disinfectant to clean their cells. The unit officer is responsible for ensuring that unit workers perform their sanitation duties each shift and that all detainees maintain the cleanliness of their cells.

   Sanitation of the intake quarantine unit is governed by the same unit management and hygiene procedures as the other housing units.

   Inmate workers are responsible for cleaning the medical unit multiple times each day.

   In addition to the cleaning by unit workers, maintenance officers regularly use Virex spray to disinfect showers, day room chairs, tables, phones, all door handles, and railings in the morning before recreation periods begin. A cleaning crew cleans all visit rooms and sally ports with Virex fogging spray.

2. Each housing unit has a chemical mixing/dispensing station which is refilled multiple times per week by the housekeeping staff. The chemical product is Lonza Formulation R-82 (100 chemical), an EPA-approved disinfectant for use against SARS-CoV-2. The detainees access these cleaning chemicals when they are out of their cells for recreation. The unit workers have access to the chemicals during lockdown periods when they are out cleaning the unit. In enforcing the hygiene standards for the unit and the cells, the unit officer demonstrate to the detainees the importance of proper cleaning. The detainees also learn of cleaning procedures from word of mouth and observation of other detainees. Supervisors instruct officers to permit access to cleaning chemicals when they perform their duties and other detainees when they are out of their cells for recreation.

3. For many years, there has been hand sanitizer in every housing unit at the officer station. Since April 15, there is hand sanitizer on the dayroom wall of each housing unit for use by detainees. The housekeeping staff is responsible for monitoring and refilling it.

E. Other

1. There have been approximately 16 inmate grievances related to COVID-19:
    a. 3/23/20 complaint from federal pretrial detainee regarding nurse not wearing gloves when distributing medication in cups; denied because gloves required for hazardous medication. I note that CDC guidelines issued that day did not provide for staff gloves outside quarantine, suspected or confirmed COVID cases, or while performing mouth checks.
    b. 3/25/20 complaint from county sentenced inmate regarding general dissatisfaction with preventative procedures, including lack of access to gloves or mask, and decision to permit program staff to work at the Facility during the pandemic, denied based on Department following state and federal guidelines. I note that the Facility began distributing masks to detainees on April 6 and that detainees have access to gloves for work assignments and cleaning of cells.
    c. 3/25/20 complaint from county sentenced inmate regarding employee at the Facility on March 19 who subsequently tested positive, inmate released before reply due.
    d. 3/26/20 complaint from federal pretrial detainee regarding nurse not wearing gloves when distributing medication in cups; denied because gloves required for hazardous medication. I note that CDC guidelines did not provide for staff gloves outside quarantine, suspected or confirmed COVID cases, or while performing mouth checks.
    e. 3/26/20 complaint from state pretrial detainee regarding oral surgery appointment cancelled as non-emergency during the pandemic, denied when detainee met with the dentist.
    f. 3/27/20 complaint from state pretrial detainee regarding request for lab results and for medical records to be sent to attorney, provided.
    g. 4/1/20 complaint from state pretrial detainee regarding concern about dental problems causing infection; referred to dentist and given instructions to contact medical if further problems.
    h. 4/3/20 complaint from county sentenced inmate regarding failure to grant medical parole, denied because detainee had not filed petition. Detainee subsequently filed petition, which the Department submitted to the commissioner of correction along with supporting materials.
    i. 4/6/20 complaint from federal detainee regarding facemask shortage with suggestions for home-made masks, denied based on Department providing masks.
    j. 4/8/20 complaint from state pretrial detainee regarding lack of access to gloves, sanitizer, and officers' failure to wear masks, denied based on guidelines from CDC and DPH. I note that the Facility began providing sanitizer in all units on April 15, that detainees have access to gloves for work assignments and cleaning of cells, and that the Facility requires staff to wear masks when within six feet of another person.
    k. 4/21/20 complaint from ICE detainee regarding lost property during medical quarantine; property replaced.

l. 4/22/20 complaint from county sentenced inmate regarding officers' failure to quarantine for 14 days after working a hospital detail, denied based on Department following federal and state guidelines.
m. 4/22/20 complaint from county sentenced inmate regarding insufficient protection of medical privacy, concerns addressed with employee.
n. 4/23/20 complaint from state pretrial detainee regarding being held in booking during quarantine; response that detainee was quarantined after return from hospital.
o. 5/5/20 complaint from state pretrial detainee thankful for mask but suggesting inmates should be able to buy from retailer or distributor, denied based on masks provided.
p. 5/5/20 complaint from state pretrial detainee regarding facemasks provided without sealed packaging, denied because vendor provided them in bulk unwrapped.

2. The cases confirmed during the week of April 27 demonstrated the need for the security and protective measures adopted by the Department. The inmate who tested positive most likely contracted the virus from close contact with two women in the community who also tested positive. The Department's medical team identified the problem while the inmate was assigned to the intake quarantine unit which was established for just such purpose. The Department took immediate steps to isolate the inmate and quarantine others who came into close contact with him. The Department responded to suspected, then confirmed employee cases by quarantining individuals who had close contact with the individuals. The Department constantly is making adjustments to its operations in response to the ongoing pandemic, based on guidance from the CDC and DPH, examination of best practices of other correction agencies, advice from our medical professionals, and our own experience. On April 30, the Department issued face shields to medical officers to supplement existing equipment. On May 1, the Department provided face shields to officers in booking and transportation.

3. On March 23, the Department issued an employee advisory which directed all employees take steps to protect themselves and others from infection:

    a. Employees who have travelled internationally since February 1 should contact their healthcare provider for instruction
    b. Employees who are sick with fever or flu symptoms should not to report to work and should contact their healthcare provider
    c. Employees are encouraged to practice proper self-care and hygiene.

    As disclosed on a prior date, each employee undergoes a temperature check prior to entering the Facility.

    Upon entering the Facility, each employee sees a posted reminder to use multiple sallyports to maintain social distancing.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 5-6-2020

Joseph D. McDonald, Jr.
Sheriff of Plymouth County

DECLARATION OF MARCIA NORAT, RN

1. I, Marcia Norat, RN, BSN, am employed as the Health Services Administrator, Plymouth County Correctional Facility, Plymouth, Massachusetts. I have held this position since August 2018. My responsibilities include directing and coordinating administrative functions and enforcing adherence to federal, state, correctional health care standards and institutional regulations and guidelines in the provision of services. I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from records of the Plymouth County Correctional Facility maintained and relied upon by me in the regular course of business.

2. As of May 4, 2020, the Facility had a total of 107 test kits on hand: 33 from Tufts, 9 from the Department of Public Health, and 65 from Trident. Tufts Medical Center has the preferred laboratory due to a faster turnaround time for results. Trident has supplied the department with swabs accompanied by bacterial transport media with the explanation that they can utilized for the purposes of testing for COVID-19. CDC and MA DPH guidelines explain, however, that viral transport media is to be used when testing for viruses such as COVID-19. To obtain more tests, the Department sends a request to the Tufts Medical Center Laboratory, where the staff puts together the kits and issues them to the Facility. Tufts can supply up to 20 kits a day for a limited for the purposes of outbreak management.

3. I have conducted a review of sick call requests between March 10 and May 4, 2020. During that timeframe, the Department's medical staff has issued 107 detainees nursing protocols for upper respiratory infection, associated with the common cold. The protocol established by the Facility's medical director calls for treatment with Tylenol and Chlorpheniramine maleate, an antihistamine. 11 detainees of the 107 and one additional

detainee were prescribed cough medication. A cough is listed as a symptom of an upper respiratory infection as well as a lower respiratory infection. The CDC advises that clinicians should use their judgment to determine if a patient has symptoms and whether to test. Inmates/detainees are tested based on symptoms, reported onset of symptoms, and their clinical presentation.

4. An additional 48 detainees were seen by medical providers after being assessed by nursing. Of the 48, 7 had an objective assessment of a fever, and 27 had reports of upper respiratory illness to include sore throat, nasal congestion, and cough. A cough can be present in an upper respiratory infection as well as a lower respiratory infection, and testing would be considered based on symptoms, reported onset of symptoms, and their clinical presentation. The remaining patients' complaints included reported seasonal allergy flare-ups with chart review showing frequent requests for antihistamines, asthma exacerbations for a pre-existing condition, not feeling like themselves, general requests for COVID-19 testing, and no symptoms when seen by the provider. All testing determinations were based on an objective assessment of the presence or absence of accompanying symptoms and the medical provider's clinical judgment.

I swear that the foregoing is true and correct to the best of my ability, on this 6th day of May, 2020,

Marcia Norat RN, BSN
Health Services Administrator
Plymouth County Correctional Facility