UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, et al.,
Plaintiffs

v.

QUINCY L. BOOTH, *et al.*,
Defendants

Civil Action No. 20-849(CKK)

ORDER
(June 18, 2020)

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 18th day of June, 2020, hereby

ORDERED that Plaintiffs' [70] Amended Motion for a Preliminary Injunction is GRANTED IN PART AND DENIED IN PART. Specifically, the Court ORDERS the following relief:

First, the Court does not order the release of any inmates. However, the Court does ORDER the United States to provide the Court with a detailed plan for the review and possible further reduction of DOC inmates under their supervision/care by JULY 1, 2020. The Court further ORDERS the United States Parole Commission to provide the Court with a detailed plan for the review and possible further reduction of DOC inmates under their supervision/care by JULY 1, 2020.

As to the conditions of Plaintiffs' confinement, the Court ORDERS the following.

First, the Court ORDERS that Defendants implement a medical care system on general population units that ensures inmates receive attention from a medical provider within 24 hours of reporting health issues. If this system continues to use sick call slips, Defendants shall ensure that inmates have consistent and immediate access to such sick call slips and that said slips are collected at regular intervals. Defendants shall provide the Court with details of their enhanced medical care system by JUNE 29, 2020.

Second, the Court ORDERS that Defendants comply with District of Columbia and Centers for Disease Control regulations on social distancing in DOC facilities. Defendants shall address challenges which have prevented the implementation of social distancing including but not limited to lack of education and staffing shortages. Defendants shall provide the Court an update on their improvements to enforcing social distancing by JUNE 29, 2020.

Third, Defendants shall continue the services of their newly-contracted environmental health and safety vendor. Defendants shall further continue their contract to provide COVID-19 cleaning services on the secure and non-secure sides of the DOC facility, including the common areas of all housing units. Defendants shall further continue their efforts to hire a registered sanitarian. Defendants shall ensure that inmates have access to the necessary materials to clean their cells, including cleaning solutions which protect against COVID-19 and adequate cleaning textiles and tools. Defendants shall further ensure that DOC staff and inmates are informed of

and trained on the proper techniques for mixing and preparing cleaning solutions as necessary. Defendants shall provide the Court an update on their improvements to sanitation by JUNE 29, 2020.

Fourth, Defendants shall ensure that conditions in isolation units are non-punitive. This includes ensuring reliable and regular access to legal calls, personal telephone calls, daily showers, and clean clothing and clean linens to all inmates on isolation status. Defendants shall provide the Court an update on their improvements to conditions in isolation cells by JUNE 29, 2020.

Fifth, Defendants shall ensure that all inmates have access to confidential, unmonitored legal calls of a duration sufficient to discuss legal matters. Insofar as inmates' access to confidential, unmonitored legal calls is reliant on the use of new technology, Defendants shall swiftly implement the use of such technology. Defendants shall provide the Court an update on their improvements to the legal call system by JUNE 29, 2020.

Finally, the Court notes that Defendants have increased testing for COVID-19, now testing any resident to be transferred to Saint Elizabeths Hospital or to a federal correctional facility. Defendants also test any cell mate of an inmate who tests positive and all new residents upon intake. Defendants continue to test those inmates who report positive for COVID-19 symptoms. The Court ORDERS that Defendants continue implementing this increased testing. The Court further ORDERS that Defendants update the Court on any changes to the testing protocol at DOC facilities, including the further testing of asymptomatic inmates.

After the Court has received the ordered updates, the Court shall schedule a further hearing to discuss next steps and the continued role of the amici of the Court.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD BANKS, et al., Plaintiffs v. QUINCY L. BOOTH, *et al.*, Defendants	Civil Action No. 20-849(CKK)

MEMORANDUM OPINION
(June 18, 2020)

This case is brought by various inmates of the District of Columbia's Department of Corrections ("DOC") detained in the Central Detention Facility ("CDF") and the Correctional Treatment Facility ("CTF"). Plaintiffs bring claims against Quincy Booth, in his official capacity as Director of the DOC, and Lennard Johnson, in his official capacity as Warden of the DOC. Plaintiffs' claims relating to the conditions of their confinement during the COVID-19 pandemic are brought pursuant to the due process clause of the Fifth Amendment of the United States Constitution and the Eighth Amendment of the United States Constitution. Plaintiffs' claims relating to release from confinement are brought pursuant to writs of habeas corpus.

Before the Court is Plaintiffs' [70] Amended Motion for a Preliminary Injunction, which is opposed. Upon consideration of the pleadings,[1] the relevant legal authorities, and the record

[1] The Court's consideration has focused on the following documents:
- Pls.' Am. Mot. for a PI ("Pls.' Mot."), ECF No. 70;
- Opp'n by U.S. to Pls.' Mot. for a PI ("Def. U.S.'s Opp'n"), ECF No. 80;
- Defs.' Opp'n to Pls.' Am. Mot. for a PI ("D.C. Defs.' Opp'n"), ECF No. 82;
- Pls.' Reply Brief in Support of Am. Mot. for a PI ("Pls.' Reply"), ECF No. 89;
- Defs.' Notice of Supp. Decs. ("Defs.' Notice"), ECF No. 94;
- Defs.' Notice of Supp. Authority ("Defs.' Auth."), ECF No. 95; and
- Pls.' Res. to Defs.' Notice of Supp. Authority ("Pls.' Res."), ECF No. 96.

for purposes of this motion, the Court GRANTS IN PART AND DENIES IN PART Plaintiffs' [70] Motion. The Court concludes that Plaintiffs have shown a likelihood of success on the merits, irreparable harm, and that the balance of the equities and the public interest favors injunctive relief. However, as will be further explained below, the Court concludes that some of the relief requested by Plaintiffs is not appropriate at this time.

I. BACKGROUND

The Court previously recounted the background of this case in its Memorandum Opinion granting Plaintiffs' Motion for a Temporary Restraining Order ("TRO"). ECF No. 51. However, for ease of reading, the Court shall recount that background here.

Prior to proceeding through the procedural background of this case, the Court notes that the hearings held in this matter have been conducted either telephonically or through video conferencing. Due to the restrictions of the COVID-19 pandemic, the United States District Court for the District of Columbia postponed all civil hearings to occur before July 15, 2020. In Re: Further Extension of Postponed Court Proceedings in Standing Order 20-9 and Limiting Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic, Standing Order No. 20-29 (BAH), May 26, 2020. As such, in compliance with the standing order and recommended precautionary measures, the Court has conducted these emergency matters virtually.

On March 30, 2020, Plaintiffs filed their Complaint in this matter. That same day, Plaintiffs also filed a Motion to Certify a Class of all persons confined or to be confined in DOC facilities, a Motion for a TRO, and a Motion for a Preliminary Injunction. ECF Nos. 3, 5, 6.

On March 31, 2020, the Court ordered that a teleconference be held to discuss scheduling for Plaintiffs' pending Motion for a TRO. March 31, 2020 Minute Order. During the hearing, the Court ordered Defendants to provide specific, relevant information to the Court over the following two days. For example, the Court ordered Defendants to provide a list of the names of the approximately 94 inmates who had been sentenced to misdemeanors and who could be released; the numbers of people who had been tested for COVID-19 and a break-down of the identities of those individuals (such as inmates, visitors, etc.) and the results of those tests; the date on which Defendants began testing people coming into the jails; the number and a breakdown of the results of COVID-19 tests which had been done on those who were incarcerated prior to the date on which Defendants began testing all incoming inmates; all relevant written procedures and practices concerning COVID-19; and Defendants' process which was in place or would be put in place to allow legal counsel to communicate with their clients electronically or by other means. April 1, 2020 Minute Order. The Court also ordered Defendants to provide Declarations about the processes and procedures in place and the conditions of DOC facilities in light of COVID-19. *Id.* The Court further set a briefing schedule for Plaintiffs' Motion for a TRO and stayed Defendants' Responses to Plaintiffs' Motion for a Preliminary Injunction, Complaint, and Motion for Class Certification pending the resolution of the TRO. *Id.* A court reporter was present at the hearing, and a transcript of the hearing is on the docket. ECF No. 18.

On April 1, 2020 and April 2, 2020, Defendants filed Responses to the Court's Order. ECF Nos. 19, 20, 21.

On April 2, 2020, the Fraternal Order of Police for the District of Columbia Department of Corrections Labor Committee filed for leave to submit an amicus curiae brief in support of

Plaintiffs' Motion for a TRO. ECF No. 23. After considering Defendants' opposition, the Court granted the motion, finding that the amicus brief could assist the Court in its analysis of certain, relevant issues. April 3, 2020 Minute Order.

On April 3, 2020, Plaintiffs filed an Emergency Motion to Expedite the Hearing on the Application for a TRO. ECF No. 24. In consideration of Plaintiffs' arguments, the Court scheduled a videoconference on the merits of Plaintiffs' Motion for a TRO for April 7, 2020. April 3, 2020 Minute Order.

Prior to the hearing on Plaintiffs' Motion for a TRO, Defendants filed their Opposition to Plaintiffs' Motion for a TRO on April 3, 2020, and Plaintiffs filed their Reply in support of their Motion on April 4, 2020. ECF Nos. 25, 26.

On April 7, 2020, the court conducted a two-hour video conference on the merits of Plaintiffs' Motion for a TRO. A court reporter was present, and a transcript of the hearing is on the docket. ECF No. 37. Also on that day, the Court conducted a second teleconference with the parties. The parties determined that they would confer and propose names for an amicus of the Court to inspect the conditions of CTF and CDF. April 8, 2020 Minute Order.

On April 8, 2020, the Court again conducted a teleconference with the parties to ascertain their proposed amicus of the Court. The parties ultimately agreed to the appointment of Grace Lopes and Mark Jordan as amici of the Court to provide information on the actual conditions of CTF and CDF and to make findings on Defendants' responses to COVID-19. A court reporter was present, and a transcript of the hearing is on the docket. ECF No. 33. On April 9, 2020, the Court issued a consent order appointing Ms. Lopes and Mr. Jordan as amici. ECF No. 34.

The amici reviewed records from the DOC facilities and conducted unannounced and unescorted site visits on multiple shifts at both CDF and CTF on April 10, 11, and 12, 2020.

Defendants cooperated with amici in providing them with necessary materials and in providing them access to the facilities, staff, and inmates during their visits.

On April 15, 2020, the Court held a telephone conference at which the amici presented their oral preliminary findings and both parties as well as the Court asked questions. A court reporter was present, and a transcript of the hearing is on the docket. ECF No. 45.

On April 18, 2020, the amici submitted their final written report. Attachment 1.[2] The Court incorporates that report into this Memorandum Opinion. The Court further notes that on April 17, 2020, following the amici's oral presentation of their preliminary findings, Mr. Booth provided a memorandum to all DOC employees and contractors entitled "Reminders and Updated COVID-19 Policies and Procedures." Exhibits to Report Submitted by Amicus Curiae, Attachment 2, Ex. 11. In this memorandum, Mr. Booth addressed some of the deficiencies identified by the amici.

On April 19, 2020, the Court granted in part and denied in part Plaintiffs' motion for a TRO. Specifically, the Court ordered that Defendants follow many of the recommendations set out in the amici report relating to the conditions of confinement at DOC facilities. However, the Court did not order the release of any inmates. ECF Nos. 50, 51.

On April 22, 2020, the Court held a teleconference during which the parties agreed to propose a schedule for briefing Plaintiffs' Amended Motion for Preliminary Injunction. April 23, 2020 Minute Order. A court reporter was present, and a transcript of the hearing is on the docket. ECF No. 57.

[2] On April 19, 2020, the amici filed a corrected version of their Report with minor edits. The corrected version is attached to this Memorandum Opinion.

On April 28, 2020, the Court entered a consent Order setting out a schedule for briefing on Plaintiffs' Amended Motion for a Preliminary Injunction, structuring the role of the amici, and extending the TRO Order pending the Court's resolution of Plaintiffs' Amended Motion for a Preliminary Injunction. ECF No. 62.

On May 1, 2020, the Court issued a Memorandum Opinion and Order joining the United States as a necessary party limited to issues involving the release of inmates under Plaintiffs' claims for writs of habeas corpus. ECF Nos. 63, 64.

On May 11, 2020, the Court held a telephone conference at which the amici presented their oral preliminary findings in response to particular questions and both parties as well as the Court asked additional questions. A court reporter was present, and a transcript of the hearing is on the docket. ECF No. 69, Attachment 3. And, on May 22, 2020, the amici submitted their final written report. Attachment 4. The Court incorporates that report into this Memorandum Opinion. The Court has excerpted portions of the report in this Memorandum Opinion, focusing on the issues which are most exigent and most relevant to the resolution of Plaintiffs' Amended Motion for a Preliminary Injunction.

As explained in the report, in preparation for their oral findings and their final written report, the amici reviewed records from the DOC facilities, conducted telephonic and in-person interviews with members of the DOC, and conducted unannounced and unescorted site visits on multiple shifts at both CDF and CTF on May 7 and 8, 2020. Amici also conducted an unannounced and unescorted site visit at CDF during the PM shift on May 14, 2020. Defendants cooperated with amici in providing them with necessary materials and in providing them access to the facilities, staff, and inmates during their visits.

Finally, on May 27, 2020, the Fraternal Order of Police for the District of Columbia Department of Corrections Labor Committee filed for leave to submit an amicus curiae brief in support of Plaintiffs' Amended Motion for a Preliminary Injunction. ECF No. 83. After considering Defendants' opposition, the Court granted the motion, finding that the amicus brief could assist the Court in its analysis of certain, relevant issues. June 8, 2020 Minute Order.

In resolving Plaintiff's Amended Motion for a Preliminary Injunction, the Court relies on the record evidence as it currently stands, including the findings in the amici's final report. In consideration of the above information, the materials which have been provided, and the present factual record, the Court now issues its decision on Plaintiffs' Amended Motion for a Preliminary Injunction.

II. LEGAL STANDARD

A preliminary injunction is an extraordinary form of relief. An application for a preliminary injunction is analyzed using factors applicable to a motion for a TRO. *See, e.g., Gordon v. Holder*, 632 F.3d 722, 723-24 (D.C. Cir. 2011) (applying preliminary injunction standard to district court decision denying motion for TRO and preliminary injunction); *Sibley v. Obama*, 810 F. Supp. 2d 309, 310 (D.D.C. 2011) (articulating TRO elements based on preliminary injunction case law).

Preliminary injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) ("[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." (internal quotation marks omitted)). A plaintiff seeking preliminary injunctive relief "must establish [1] that he is likely to succeed on the merits,

[2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (quoting *Sherley*, 644 F.3d at 392 (quoting *Winter*, 555 U.S. at 20) (alteration in original; internal quotation marks omitted)). When seeking such relief, "the movant has the burden to show that all four factors, taken together, weigh in favor of the injunction." *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quoting *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)) (internal quotation marks omitted). "The four factors have typically been evaluated on a 'sliding scale.'" *Davis*, 571 F.3d at 1291. Under this sliding-scale framework, "[i]f the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor." *Id.* at 1291-92.

The Court notes that it is not clear whether the United States Court of Appeals for the District of Columbia Circuit's ("D.C. Circuit") sliding-scale approach to assessing the four preliminary injunction factors survives the Supreme Court's decision in *Winter*. *See Save Jobs USA v. U.S. Dep't of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015). Several judges on the D.C. Circuit have "read *Winter* at least to suggest if not to hold 'that a likelihood of success is an independent, free-standing requirement for a preliminary injunction.'" *Sherley*, 644 F.3d at 393 (quoting *Davis*, 571 F.3d at 1296 (Kavanaugh, J., concurring)). However, the D.C. Circuit has yet to hold definitively that *Winter* has displaced the sliding-scale analysis. *See id.; see also Save Jobs USA*, 105 F. Supp. 3d at 112. In light of this ambiguity, the Court shall consider each of the preliminary injunction factors and shall evaluate the proper weight to accord the likelihood of success only if the Court finds that its relative weight would affect the outcome.

III. DISCUSSION

The Court will proceed to analyze each of the requirements for granting a preliminary injunction.

A. Likelihood of Success on the Merits

The Court will begin by analyzing whether or not Plaintiffs have shown a likelihood of success on the merits of their constitutional claims for inadequate conditions of confinement and their habeas claims for release of inmates.

1. Conditions of Confinement

In order to meet the first requirement for granting injunctive relief on their conditions of confinement claims, Plaintiffs must show that they have a likelihood of success on the merits of their Fifth Amendment claim for pre-trial detainees and of their Eighth Amendment claim for post-conviction detainees. The Court concludes that Plaintiffs have made a sufficient showing as to some of the conditions of their confinement.

It is undisputed that the proper avenue for relief for pre-trial detainees, such as Plaintiffs Phillips and Smith, is the Fifth Amendment due process clause and the proper avenue for relief for post-conviction detainees, such as Plaintiff Banks, is the Eighth Amendment. However, the parties dispute whether or not the standards for sustaining a claim under the different Amendments are the same. The parties agree that to show a violation of the Eighth Amendment, jail officials must have (1) exposed inmates to an unreasonable risk of serious damage to their health and (2) acted with deliberate indifference in posing such a risk. D.C. Defs.' Opp'n, ECF No. 82, 25. However, the parties disagree on the standard for showing a violation of the Fifth Amendment. Defendants contend that the two standards are the same. *Id.* at 26. However, under the due process clause, Plaintiffs argue that they need only show that the Defendants knew or should have known that the conditions posed an excessive risk to the health of the inmates. The

main difference being that the due process clause analysis does not require a finding of deliberate indifference. As explained in the Memorandum Opinion granting Plaintiffs' Motion for a TRO, the Court agrees with Plaintiffs. ECF No. 51, 9-12.

The rights of pre-trial detainees are different than the rights of post-conviction detainees. Because pre-trial detainees are presumed innocent, they are "entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982). "While a convicted prisoner is entitled to protection only against 'cruel and unusual' punishment [under the Eighth Amendment], a pretrial detainee, not yet found guilty of any crime, may not be subjected to punishment of any description." *Hardy v. District of Columbia*, 601 F. Supp. 2d 182, 188 (D.D.C. 2009) (quoting *Hill v. Nicodemus*, 979 F.2d 987, 991 (4th Cir. 1992)).

In *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), the United States Supreme Court considered the differences between pre-trial and post-conviction detainees in deciding that, to state an excessive force claim, a pre-trial detainee need only show that the use of force was objectively unreasonable. 135 S. Ct. at 2473-74. The officers' subjective state of mind in using the force was irrelevant. *Id.* While *Kingsley* relates to excessive force rather than prison conditions, in making its decision, the *Kingsley* court relied on *Bell v. Wolfish*, 441 U.S. 520 (1979), a case pertaining to prison conditions. According to the *Kingsley* court, "as *Bell* itself shows (and as our later precedent affirms), a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id*. Together *Kingsley* and *Bell* provide persuasive authority that a pre-trial detainee need only show that

prison conditions are objectively unreasonable in order to state a claim under the due process clause.

The parties did not cite, and the Court could not find, a D.C. Circuit case interpreting *Kingsley* in the context of a claim for deficient prison conditions. However, many circuit courts have extended *Kingsley's* objective standard to apply to other due process claims by pre-trial detainees. For example, the United States Court of Appeals for the Second Circuit has held that, following *Kingsley*, in the context of challenged prison conditions for pre-trial detainees, "the 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." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d 2017); *see also Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (applying *Kingsley* standard to failure to protect claims by pre-trial detainees); *Hardeman v. Curran*, 933 F.3d 816, 823 (7th Cir. 2019) (finding that "*Kingsley's* objective inquiry applies to all Fourteenth Amendment conditions-of-confinement claims brought by pretrial detainees"). And, at least one district court within this Circuit has also applied *Kingsley's* objective standard to due process claims brought by pre-trial detainees. *See United States v. Moore*, Case No. 18-198-JEB, 2019 WL 2569659, *2 (D.D.C. June 21, 2019) (explaining that a pretrial detainee could prevail on a due process claim "if she either introduces evidence of a subjective intent to punish or demonstrates that a restriction is objectively unreasonable or excessive relative to the Government's proffered justification").

Based on the pertinent reasoning of *Kingsley* and the persuasive authority of other courts, the Court concludes that pre-trial detainee Plaintiffs Phillips and Smith do not need to show deliberate indifference in order to state a due process claim for inadequate conditions of confinement. As such, under the due process clause, pre-trial detainee Plaintiffs Phillips and

Smith are likely to succeed on the merits by showing that the Defendants knew or should have known that the jail conditions posed an excessive risk to their health and intentionally or recklessly failed to act. And, under the Eighth Amendment, post-conviction detainee Plaintiff Banks must show that the jail conditions exposed him to an unreasonable risk of serious damage to his health and that Defendants acted with deliberate indifference in posing such a risk.

Despite recognizing that pre-trial detainee Plaintiffs need not demonstrate deliberate indifference to show a likelihood of success on their due process claims, the Court will also analyze the deliberate indifference prong as such a showing is still required for post-conviction Plaintiff's Eighth Amendment claim.

a. Unreasonable risk to Plaintiffs' Health

Now that the Court has determined the standards under the due process clause and the Eighth Amendment, the Court will assess whether or not Plaintiffs have shown a likelihood of success in proving that they have been exposed to an unreasonable risk of damage to their health. Determining whether or not Plaintiffs have been exposed to an unreasonable risk is an objective analysis which "requires a court to assess whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Helling v. McKinney*, 509 U.S. 25, 36 (1993) (emphasis in original). In sum, Plaintiffs "must show that the risk of which [they] complain[] is not one that today's society chooses to tolerate." *Id.*

Both parties and the Court recognize the seriousness of the threat posed by COVID-19. Despite the seriousness of the threat, in their briefing for Plaintiffs' Motion for a TRO, Defendants argued that Plaintiffs were unlikely to succeed in establishing that they have been exposed to an unreasonable risk to their health. ECF No. 25, 15-17. While Defendants previously

disputed the unreasonable risk factor, in their briefing for this Motion, Defendants make little mention of unreasonable risk, focusing instead on deliberate indifference.

Lacking substantial argument on this issue from Defendants, the Court finds that Plaintiffs have been exposed to an unreasonable risk to their health. It is undisputed that as of May 15, 2020, the rate of infection in DOC facilities was 13.5%, which is nearly 14 times higher than the rate of infection for other District of Columbia residents. Pls.' Mot., ECF No. 70, 29. The Court notes that this percentage represents an increase from April 4, 2020, when the infection rate in DOC facilities was only 7 times the infection rate of the District of Columbia at large. ECF No. 51, 13.

In a supplemental declaration, Defendants state that on May 22, 2020, the DOC tested a sample of 304 asymptomatic DOC residents which revealed a positive testing rate of 4.6%. Dec. of Beth Jordan, ECF No. 94, ¶ 7. While any progress in decreasing the positive testing rate of asymptomatic inmates is to be lauded, such progress does not negate the fact that those detained in DOC facilities are far more likely to be exposed to and infected by COVID-19. Defendants further highlight a downward trend in the number of new positive cases. Again, the Court commends Defendants on this progress; however, this progress post-dates the Court's TRO Order and the mandated steps for improvement of conditions at DOC facilities. Additionally, Defendants' identification of potentially infected inmates relies primarily on self-reporting, which may be affected by deficiencies with the sick call system and the punitive conditions of isolation units discussed further below. *See Supra* III.A.1.b.

Plaintiffs' statistical data is also supported by Plaintiffs' unrefuted expert declaration. In her Declaration, Dr. Jaimie Meyer, who reviewed reports on conditions in DOC facilities,

reaffirmed that "people living and working in DC DOC facilities remain at risk of serious harm due to COVID-19 infection." Dec. of Jaimie Meyer, ECF No. 70-2, ¶ 3.

The Court further considers the conditions in the DOC facilities which pose an unreasonable risk of harm to Plaintiffs' health. These conditions include issues with medical care, social distancing, sanitation, and conditions in isolation units. These conditions will be discussed in greater detail in the Court's discussion of deliberate indifference. *See Infra* Sec. III.A.1.b. However, for purposes of establishing an unreasonable risk to Plaintiffs' health, the Court notes that Defendants' policies, and the delayed and insufficient implementation of many of those policies, has prevented Plaintiffs from being able to take the preventative and precautionary steps that the larger, non-detained population has been able to take to slow the spread of COVID-19.

The Court recognizes that Defendants' response to this sudden and unprecedented pandemic is ongoing. And, the Court recognizes that additional evidence will likely be provided as litigation proceeds. But, based on the current record, the Court credits Plaintiffs' argument that they experience a significantly higher rate of infection and risk of harm than the population at large. Plaintiffs' argument is supported by statistical evidence, Plaintiffs' expert evidence, the declarations of DOC inmates and staff, and the amici reports. Accordingly, based on the limited record before the Court, the Court finds that Plaintiffs have established a likelihood that they will be able to show that they have been exposed to an unreasonable risk of damage to their health.

b. Deliberate Indifference

The Court will next determine whether or not Plaintiffs have shown a likelihood of success in establishing Defendants' deliberate indifference. A showing of deliberate indifference requires "that officials had subjective knowledge of the serious medical need and recklessly

disregarded the excessive risk to inmate health or safety from that risk." *Baker v. District of Columbia*, 326 F.3d 1302, 1306 (D.C. Cir. 2003). In order to establish deliberate indifference, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

There does not appear to be any dispute that Defendants are aware of the threat that COVID-19 poses to the health of Plaintiffs. Instead, the only dispute is whether or not Defendants have recklessly disregarded the risk to Plaintiffs' health. In analyzing this standard, the Court recognizes that COVID-19 poses an unprecedented challenge and that the precautionary measures taken by Defendants are rapidly evolving.

In its Memorandum Opinion granting Plaintiffs' TRO, the Court thoroughly recounted the conditions at DOC facilities as they stood at that time. ECF Nos. 50, 51. The Court will not recount that information in full and instead fully incorporates its findings from that Memorandum Opinion. Instead, the Court will focus on any new arguments presented by the parties. The Court will focus on difficulties noted in providing medical care to inmates in the general population units, in social distancing, in sanitation, in conditions on isolation units, and in access to legal calls.

To begin, the Court notes that much of Defendants' argument opposing injunctive relief is based on steps which Defendants have taken subsequent to the Court's TRO Order to remedy the cited deficiencies. While the Court appreciates that efforts have been made to improve conditions, "Defendants cannot claim that the need for an injunction is now moot because the [Defendants have] 'ceased [their] wrongful conduct.'" *Costa v. Bazron*, Case No. 19-3185, 2020 WL 2735666, *4 (May 24, 2020 D.D.C.) (quoting *Taylor v. Resolution Trust Corp*., 56 F.3d

1497 (D.C. Cir. 1995)). The inability of Defendants' actions to moot the need for injunctive relief is true particularly where those actions "follow[ed] the entry of a TRO." *Id.* A "'court's power to grant injunctive relief survives discontinuance of the illegal conduct,' ... because the 'purpose ... is to prevent future violations.'" *U.S. Dep't of Justice v. Daniel Chapter One*, 89 F. Supp. 3d 132, 143 (D.D.C. 2015), *aff'd*, 650 F. App'x 20 (D.C. Cir. 2016) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)). In so finding, the Court is in no way impugning the good faith behind Defendants' efforts to ameliorate conditions at DOC facilities. However, "[i]f compliance with the terms of a TRO were sufficient to defeat entry of a preliminary injunction, few—if any—cases would make it past the TRO stage." *Costa*, 2020 WL 2735666, at *4.

The Court begins by assessing Defendants' efforts in supplying general population inmates with adequate medical care. During their oral presentation, amici "described significant barriers to access to health care" for inmates on non-quarantine, non-isolation units. Attachment 4, 9. Most inmates who access care on general population units rely on the sick call process by which they request sick call forms from correctional officers and submit those forms to health care staff through designated collection boxes. *Id.* at 10. In their inspections, amici found that the sick call forms were not readily available to inmates and that many correctional officers were unable to produce the forms when requested to by amici. *Id.*; *see also* Attachment 3, 17: 2-4. Without consistent access to sick call forms, "the sick call process does not provide reliable, timely access to health care for inmates." Attachment 4, 10. For example, at CDF, 20% of sick call forms were collected two to three days after submission and 5% were collected four days after submission. Attachment 3, 18: 16-22. And, at CTF, 24% of the sick call forms were collected two to three days after submission and 12% were collected 4 to 5 days after they were

submitted. *Id.* at 18: 25-19: 3. In at least one case, an inmate at CDF had to wait over a week for medical assistance. *Id*. at 19: 22-23. Another inmate at CDF who requested care for COVID-19 symptoms was not seen for approximately four days and later tested positive for COVID-19. *Id*. at 20: 1-7.

The difficulties with obtaining medical care through the sick call process, which were documented by amici, are also supported by the declarations of various inmates. One inmate reported that "they ran out of sick slips" in his housing unit so no residents in that unit were able to utilize the system. Ex. 4, Dec. of LeDauntae Perry, ECF No. 70-5, ¶ 8. Another inmate reported that "[s]ick call slips and Inmate Grievance Procedure forms were not … available on my unit between the dates of April 23, 2020 and May 12, 2020." Ex. 30, Dec. of Kenneth Knight, ECF No. 70-31, ¶ 5. A housing unit in CTF, which houses inmates over 50 years of age, reportedly did not have sick call slips "[f]or the entire week of May 4, 2020." Ex. 5, Dec. of Joseph Stankavage, ECF No. 70-6, ¶ 15. This delay in obtaining medical care allows those who may be infected with COVID-19 to spread the infection to others.

Defendants contend that, as of May 18, 2020, they have enhanced the sick call process by tasking medical providers with visiting housing units daily to retrieve sick call slips thus ensuring that inmates are seen by a high-level medical provider within 24 hours. Dec. of Beth Jordan, ECF No. 82-2, ¶ 9. However, it is not evident that this new system will address the issues that amici identified involving difficulties accessing sick call forms. Additionally, Defendants failed to make these improvements until recently, despite having been previously alerted to the insufficiencies with the medical care system in the Court's TRO Order. ECF No. 50, 1. And, the Court has no evidence as to how or whether this new procedure works in practice.

Defendants primarily rely on inmates to self-report symptoms of COVID-19. If inmates cannot adequately access medical care, then they will not be effectively or efficiently tested for infection. Absent testing, sick inmates may continue to reside in the general population and infect others. Following amici's initial report, Defendants were on notice of the deficiencies in the sick call process; however, many of these deficiencies continue to hinder Defendants' response to the COVID-19 pandemic.

The Court next examines Defendants' efforts in maintaining social distancing. In its TRO Memorandum Opinion, the Court described in detail the insufficiencies in social distancing practices at DOC facilities. ECF No. 51, 13-15. Following the TRO Order, amici have reported some improvements in social distancing practices. Amici cited additional educational materials on social distancing as well as reports that "staff are being disciplined for the failure to enforce social distancing." Attachment 3, 42: 14-16. Amici further reported that, because fewer inmates are allowed out of their cells at any given time, "at least some housing units are less chaotic." *Id*. at 43: 1-2. Despite these improvements, amici reported that social distancing in DOC facilities "certainly is not prevalent, certainly not during our visits." *Id*. at 42: 18-19. Amici further stated that "there still isn't a prevalence of social distancing." *Id*. at 43: 14-15. Amici attributed this deficiency, in part, to insufficient staffing on the housing units. *Id*. at 43: 16-18.

In arguing that it has made progress in enforcing social distancing, Defendants cite a decrease in the overall inmate population as well as an increase in the percentage of inmates housed in single cells. Dec. of Rena Chakraborty, ECF No. 82-3, ¶¶ 5-6. Defendants have also provided inmates and staff with increased educational information about social distancing. Dec. of Lennard Johnson, ECF No. 82-1, ¶¶ 6-7. Defendants echo the amici finding that staff are being monitored for inmate compliance with social distancing requirements and are being

disciplined for failures. *Id*. at ¶ 6. Given the steps which have been taken to enforce social distancing, Defendants contend that they cannot be blamed for isolated instances of clustering.

The Court commends Defendants for their increased focus on social distancing policies. However, better policies mean little if they are not correctly implemented in practice. *Daskalea v. District of Columbia*, 227 F.3d 433, 442 (D.C. Cir. 2000) (explaining that "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."). And, amici found more than isolated instances of clustering. They specifically stated that social distancing "is not prevalent." Attachment 3, 42: 18-19.

In addition to the amici findings, Plaintiffs have presented evidence that social distancing is still inadequately enforced. One inmate reported that he was never told to socially distance himself from others. Ex. 2, Dec. of Brian Thomas, ECF No. 70-3, ¶ 17. Another inmate on a different housing unit stated that, sometimes, more than 10 inmates are allowed out of their cells at one time, resulting in clustering. Ex. 11, Dec. of Tony Horne, ECF No. 70-12, ¶ 9. One inmate reported that, on May 12, 2020, DOC staff forced him into an elevator with approximately a dozen other inmates from various housing units to travel to the medical unit. Ex. 5, Dec. of Joseph Stankavage, ECF No. 70-6, ¶ 3. Once at the medical unit, the inmate had to await medical attention in a small room with 15 to 20 other inmates. *Id*. at ¶ 6. These inmate declarations are supported by video footage from DOC facilities showing approximately 10 inmates out of their cells congregating around telephones and DOC staff. Ex. 32.

As such, the Court finds that many of the deficiencies in social distancing practices which were identified in the Court's TRO Order remain present today. Plaintiffs have provided expert evidence that social distancing is a crucial part of containing the spread of COVID-19. Dec. of

Marc Stern, ECF No. 1-1, ¶ 13. With the closures of schools, theaters, and restaurants, governments across the nation have emphasized social distancing as a way to slow the spread of the disease. In the District of Columbia, Mayor Muriel Bowser has implemented an order for social distancing which requires individuals "to maintain a distance of at least six (6) feet from persons not in their household." Phase One Order, https://coronavirus.dc.gov/phaseone (May 27, 2020). Despite widespread understanding of the importance of social distancing, Defendants have taken insufficient and delayed steps to ensure that social distancing is occurring consistently.

The Court next examines the status of sanitation efforts at DOC facilities. In its TRO Order, the Court noted the deficiencies in sanitation. The court ordered DOC to retain a registered sanitarian and to provide appropriate cleaning products, and training on the use of those products, to inmates and staff. ECF No. 50, 2-3.

Defendants have made progress on ensuring adequate sanitation. Defendants have received authorization to post a vacancy for a full-time sanitarian at the DOC. Attachment 4, 14. Until a sanitarian can be hired, beginning on May 18, 2020, Defendants contracted with a vendor to provide services related to environmental health and safety. *Id.* Additionally, as of May 12, 2020, Defendants contracted for professional cleaning services on the secure and non-secure sides of the DOC facility, including the common areas of all housing units. *Id.* at 15. And, Defendants have created new protocols to ensure that cleaning supplies are available and to require correctional officers to verify that cells are cleaned daily. Dec of Michele Jones, ECF No. 82-6, ¶¶ 5, 9.

However, there are other aspects of sanitation which have not improved. The amici noted that during their visits, availability of cleaning materials and cleaning equipment was not

uniform between the housing units. Attachment 3, 40: 24-41: 3. Defendants began providing inmates with paper towels sprayed with cleaning solution; however, because the paper towels are not absorbent, many inmates continue to have difficulties cleaning their cells. *Id*. at 41: 9-15. Some inmates continue to rely on ripped towels and ripped t-shirts to clean their cells. *Id*. at 41: 13-15. Amici noted that this issue is "[a]bout the same" as it was prior to the Court's TRO Order. *Id*. at 44: 2. Amici concluded that "appropriate sanitation is … a continuing issue at both facilities, and clearly especially deficient at the jail [CDF]." *Id*. at 41: 20-22.

Plaintiffs have provided evidence from inmates which echoes these noted deficiencies. Many inmates explained that they lack cleaning supplies to clean their cells. *See, e.g.*, Ex. 14, Dec. of Delonte Ingraham, ECF No. 70-15, ¶ 47 ("On April 27, our unit ran out of cleaning supplies"); Ex. 16, Dec. of Jarvis Burl, ECF No. 70-17, ¶ 8 ("I have not been provided any cleaning supplies to clean my cell") Ex. 12, Dec. of Delonte Johnson, ECF No. 70-13, ¶ 3 ("During the period from April 22, 2020 to May 8, 2020 I did not have access to any chemicals to clean my cell"). At least one inmate reported having to clean the cells of inmates who tested positive for COVID-19 with Oasis Pro Laundry Fresh Room Refresher, a product which does "not have activity against and is not approved for disinfection for COVID-19." Ex. 1, Dec. of Jaimie Meyer, ECF No. 70-2, ¶ 11; Ex. 21, Dec. of Elijah Warren, ECF No. 70-22, ¶ 21. Even when residents have adequate access to cleaning materials, often they have not been informed on how to effectively use those materials. Ex. 14, Dec. of Delonte Ingraham, ECF No. 70-15, ¶ 44 ("Since April 19, my unit has not received any instructions on which cleaning chemicals to use on which surfaces").

Without proper cleaning materials used effectively, COVID-19 can linger on surfaces allowing the virus to spread swiftly in contained environments such as DOC facilities. Ex. 1,

Dec. of Jaimie Meyer, ECF No. 70-2, ¶ 11. "Cleaning and disinfecting practices can mitigate this risk of disease transmission but remains inadequate in the DC DOC." *Id*. While progress has been made, most of that progress post-dates the Court's TRO Order. And, many of the issues initially identified by the amici persist.[3]

Next, the Court considers conditions in isolation units. In its TRO Order, the Court ordered Defendants to make conditions in the isolation unit non-punitive by providing reliable access to telephone calls, daily showers, and clean clothing and linens. ECF No. 50, 2. In conducting their review, the amici noted some continuing issues in the isolation units. While inmates in the isolation unit at the infirmary in CTF had access to calls through a rolling telephone cart, inmates in isolation at CDF had continued difficulties with personal and legal calls. Attachment 3, 29: 12-30: 8. The rolling telephone cart was not available to isolation inmates in a particular segment of the housing unit. Instead, they had to make calls from the office area which was not always available. *Id*. at 30: 3-10. While there has been improvement in the isolation units with access to legal and personal calls, "[i]t appears that additional progress may be necessary." *Id*. at 33: 10-12. The amici also noted that while showers were being provided to inmates in isolation, sometimes several days would pass between showers. *Id*. at 34: 15-18. Amici attributed the lack of shower access to inadequate staffing combined with other incidents and disturbances. *Id*. at 34: 19-23. Amici further explained that staff and inmates had reported clothing and linen exchanges. However, those exchanges were occurring with increased

[3] The Court notes that Defendants contend that they have now provided each inmate with a microfiber towel for cleaning. Defendants cite paragraph 12 of the declaration of either Kathleen Landerkin or Michele Jones. However, neither declaration contains a paragraph 12, and the Court did not see mention of a microfiber towel. *See generally*, Dec. of Kathleen Landerkin, ECF No. 82-5; Dec. of Michele Jones, ECF No. 82-6. Additionally, these towels were not provided until after the amici's visit, and the Court has no evidence of how this new cleaning tool works in practice.

frequency only very recently. It was too early for amici to be able to judge whether or not those exchanges occurred with consistency. *Id*. at 35: 9-16.

Defendants contend that conditions on the isolation unit are greatly improved. According to Defendants, following the amici review, all residents in isolation units have access to the rolling telephone carts. Dec. of Kathleen Landerkin, ECF No. 82-5, ¶ 11. Defendants also highlight that residents in isolation units are checked by medical staff at least twice daily. Dec. of Beth Jordan, ECF No. 82-2, ¶ 4.

Again, the Court credits Defendants for their progress in making isolation units less punitive environments. However, the Court notes that this progress occurred only subsequent to the Court's TRO Order. Moreover, there remains progress to be made. While Defendants claim that all inmates in isolation units now have access to the rolling telephone cart for personal and legal calls, this was not the case during the amici visits. Additionally, amici noted that Defendants had only recently increased the frequency of the clothing and linen exchanges for those in isolation. And, amici found that many inmates in isolation were having to wait several days between showers. Amici's findings are supported by declarations of inmates who have been in the isolation units. Ex. 7, Dec. of Romiel Hightower, ECF No. 70-8, ¶ 9 ("I had many fewer opportunities to shower, only once every three or four days after lots of complaining"); Ex. 13, Dec. of Anthony Robertson, ECF no. 70-14, ¶ 10 ("Between April 23rd and April 28th [in isolation unit], I was not able to shower"). The lack of daily access to showers for those in isolation violates Defendants' own policies and procedures. *See* Attachment 2, Ex. 11, 2 ("All residents housed in isolation units shall be allowed to shower each day."). The continuation of punitive conditions on the isolation units serves as a barrier to containing the spread of COVID-19 as Defendants primarily rely on inmates to self-report symptoms.

Finally, the Court addresses inmates' access to confidential legal calls. In its TRO Order, the Court required Defendants to "ensure that all inmates, including those on isolation, have access to confidential, unmonitored legal calls of a duration sufficient to discuss legal matters." ECF No. 50, 3. As previously explained, inmates in isolation have access to a rolling telephone cart to make personal and legal calls. Lacking telephone carts, those in general population units have been forced to make calls through the case managers' office; however, these calls are not confidential. Dec. of Camile Williams, ECF No. 82-9, ¶ 4. Defendants state that they have recently obtained 50 cellphones and 10 wired headsets to allow inmates to make confidential calls. *Id*. at ¶ 5. Defendants have ordered an additional 50 wireless headsets which will arrive in June 2020. *Id*. Additionally, Defendants state that they have harnessed digital tablets to allow inmates to message securely with their attorneys. Dec. of Amy Lopez, ECF No. 82-8, ¶¶ 4-6. Defendants currently have 500 tablets and expect an order of 1,000 more to arrive in June 2020. *Id*. at ¶¶ 5, 8.

The use of cellphones, wireless headsets, and tablets is a recent development and was not seen during the amici visit. Amici reported that, in order to obtain 30-minute unmonitored legal calls, attorneys are required to email DOC case managers to register for the call system. Attachment 3, 31: 13-15. Once the attorney has registered, the attorney notifies the client by mail and provides contact information. *Id*. at 31: 23-32: 4. Due to mail delays, some inmates have difficulty accessing this information. *Id*. at 32: 4-8. When these calls are conducted, they are conducted in the presence of a case manager, so the calls are not confidential. *Id*. at 33: 13-23. Amici witnessed two to three inmates "conducting legal calls in the case manager's office with the case manager clearly within earshot." *Id*. at 33: 18-21; *see also* Ex. 9, Dec. of Kennard Johnson, ECF No. 70-10, ¶ 16 ("On April 27, 2020, I had a legal call in the case manager's

office. The case manager was sitting right there during the legal call and could hear the conversation.").

In addition to the case manager system, inmates in general population can use phones in the housing units to contact their legal counsel. However, a barrier to the use of phones in the housing units is the fact that inmates are frequently locked in their cells and sometimes "do not receive an hour out of their cells daily." Attachment 3, 17: 13-17. When inmates are let out of their cells, it may be in the middle of the night. *Id*. at 36: 10-19. So, while general population inmates may be allowed to call their attorneys from phones in the housing units, the inability to leave their cells during business hours prevents inmates from being able to reach their attorneys. Ex. 10, Dec. of Eric Cooper, ECF No. 70-11, ¶ 13 ("Sometimes I am not let out for my hour of recreation time. Sometimes when they do let me out it is done at 3:00 in the morning so I cannot call my family or attorney.").

The Court credits Defendants for their efforts to obtain new technology to ensure inmates have access to confidential legal calls. However, it appears that some of these new processes have not yet reached the implementation stage. Defendants report that they "*have been working* to set up accounts for each resident" to be able to use the tablets to message their attorneys. Dec. of Amy Lopez, ECF No. 82-6, ¶ 6 (emphasis added). Defendants "*have also been working*" with defense attorneys to ensure that they have access to the messaging system. *Id*. (emphasis added). Similarly, as to the cellphones, Defendants report that "[c]ase managers *will use* these cell phones to facilitate secure, unmonitored attorney calls." Dec. of Camile Williams, ECF No. 82-9, ¶ 5 (emphasis added). Defendants do not provide a timeline for the implementation of this new technology. As such, nearly four months into the COVID-19 pandemic, Defendants have not yet

developed a consistent procedure for all inmates to be able to make and receive confidential legal calls.

Based on the current record, Plaintiffs have provided evidence that Defendants are aware of the risks that COVID-19 poses to Plaintiffs' health and have disregarded those risks by failing to take comprehensive, timely, and proper steps to stem the spread of the virus. Again, the Court acknowledges that additional development of the record may show that Defendants are taking sufficient precautions and that Defendants' response continues to evolve. However, on the current record, the Court finds that Plaintiffs have established a likelihood of success in showing deliberate indifference.

c. Municipal Liability

Defendants further argue that Plaintiffs cannot show a likelihood of success on the merits of their constitutional claims because Plaintiffs have failed to establish a municipal policy or custom necessary for liability. "'[E]pisodic failures of process do not make out a constitutional violation.'" *Lightfoot v. District of Columbia*, 246 F.R.D. 326, 335 (D.D.C. 2007) (quoting *Lightfoot v. District of Columbia*, 448 F.3d 392, 402 (D.C. Cir. 2006) (Silberman, S.J., concurring)). Instead, "[p]laintiffs who seek to impose liability on local governments under § 1983 must prove that 'action pursuant to official municipal policy' caused their injury." *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (quoting *Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658, 691 (1978)); *see also Martin v. Malhoyt*, 830 F.2d 237, 255 (D.C. Cir. 1987) ("One instance, however egregious, does not a pattern or practice make."). Generally, in order to establish a policy or custom sufficient to confer liability, a plaintiff must establish an express municipal policy, actions of a policy maker, consistent conduct by non-policy makers, or

deliberate indifference to the risk of constitutional injury. *See Baker v. District of Columbia*, 326 F.3d 1302, 1306-07 (D.C. Cir. 2003).

Defendants contend that Plaintiffs cannot make such a showing because their evidence of misconduct amounts to no more than anecdotes and hearsay. Defendants further assert that they have established policies to address the conditions, and the imperfect implementation of those policies is insufficient to establish municipal liability. The Court disagrees.

The Court finds that Plaintiffs are likely to establish municipal liability because the challenged conditions are the actions of a policy maker and because Defendants have exhibited deliberate indifference.

First, the challenged conditions represent the policies and procedures approved of by Defendant Booth, the final policy maker at DOC facilities. *See Triplett v. District of Columbia*, 108 F.3d 1450, 1453 (D.C. Cir. 1997) (recognizing director of DOC as final policy maker). Defendant Booth has personally approved plans and policies for addressing COVID-19. *See* ECF No. 40-2 (emergency plan for COVID-19, signed by Defendant Booth); Attachment 2, Ex. 11 (update memorandum from Defendant Booth on COVID-19 procedures). Because a final policy maker was involved in addressing the conditions of the DOC facilities in response to COVID-19, and because this was a matter within his authority, the Court finds that Plaintiffs have established a likelihood of municipal liability. *See Costa*, 2020 WL 2735666, at *14 (finding likelihood of municipal liability where the director of the hospital was personally involved in the hospital's response to COVID-19); *see also Thompson v. District of Columbia*, 832 F.3d 339, 347-48 (D.C. Cir. 2016) (explaining that a "single action can represent municipal policy where the acting official has final policymaking authority over the particular area, or ... particular issue" (internal quotation marks omitted)).

Second, the Court finds that Plaintiffs have established a likelihood of success on the merits of their claim of municipal liability through a showing of deliberate indifference. A municipality is liable where the government failed "to respond to a need (for example, training of employees) in such a manner as to show 'deliberate indifference' to the risk that not addressing the need will result in constitutional violations." *Baker*, 326 F. 3d at 1306-07. The standard for deliberate indifference for purposes of municipal liability is lower than the standard for deliberate inference for purposes of Eighth Amendment violations because a showing of subjective indifference is not required. Rather the plaintiff must show that the government "knew or should have known of the risk of constitutional violations, an objective standard." *Id*. at 1307. For the reasons discussed above, the Court has already found that Defendants' conduct meets this standard of deliberate indifference. *See Supra* III.A.1.b.

Based on both the conduct of a final policy maker and deliberate indifference, the Court finds that Plaintiffs have shown a likelihood of success on the merits of their municipal liability claims for the conditions of their confinement.

d. Exhaustion

Finally, Defendants contend that Plaintiffs cannot show a likelihood of success on the merits of their constitutional claims because Plaintiffs have failed to exhaust their administrative remedies. Pursuant to the Prison Litigation Reform Act ("PLRA"), "[n]o action shall be brought with respect to prison conditions ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a); *Porter v. Nussle*, 534 U.S. 516, 520 (2002) (holding that the PLRA's "exhaustion requirement applies to all prisoners seeking redress for prison circumstances or occurrences").

Defendants contend that Plaintiffs cannot bring their conditions of confinement claims because they have not exhausted the DOC's Inmate Grievance Procedures.

However, Defendants appear to be mistaken. Plaintiff Banks has submitted evidence that he filed an emergency grievance with Defendant Booth on March 24, 2020. *See* Ex. H, ECF No. 89-8. DOC policies require a response to emergency grievances within 72 hours. Ex. G, ECF No. 89-7, 17. However, Plaintiff had not received a response when this lawsuit was filed six days later on March 30, 2020. "[A] prison's failure to timely respond to an inmate's properly filed grievance renders its remedies 'unavailable' under the PLRA." *Robinson v. Superintendent Rockview SCI*, 831 F.3d 148, 153 (3d Cir. 2016); *see also Lineberry v. Fed. Bureau of Prisons*, 923 F. Supp. 2d 284, 293 (D.D.C. 2013) ("If . . . prison officials . . . ignore such a request . . . exhaustion may be excused." (internal quotation marks omitted)).

Because at least one Plaintiff has pursued available administrative remedies through the emergency grievance process, "the plaintiff class has met the filing prerequisite." *Jackson v. District of Columbia*, 254 F.3d 262, 269 (D.C. Cir. 2001) (internal quotation marks omitted). The Court acknowledges that it has not yet ruled on Plaintiffs' Motion to Certify a Class. ECF No. 3. However, the Court finds Plaintiffs' evidence of exhaustion sufficient to show a likelihood of success on the merits of exhaustion.

2. Claims for Release

While the Court finds that Plaintiffs have shown a likelihood of success on their claims for Eighth and Fifth Amendment violations based on the conditions of their confinement, the Court further finds that Plaintiffs have not shown a likelihood of success on the merits of their habeas claims for release. Plaintiffs have failed to show a likelihood of success on the merits of

their habeas claims because, without Court intervention, Defendants have already taken substantial steps to decrease the inmate population at DOC facilities.[4]

In the Court's TRO Order, the Court did not order Defendants to take any actions for the release of inmates. *See* ECF No. 50. Even before the Court issued its TRO Order, the adjudication of individualized petitions for release and the doubling of the maximum number of sentencing credits that a misdemeanant could receive had already led to the release of all but nine inmates convicted of misdemeanors. ECF No. 51, 27.

Since the Court's TRO Order, the population of the DOC facilities has continued to decline. In their oral report, the amici of the Court noted a "significant reduction" in the population of DOC facilities. Attachment 3, 7: 11-16. On March 24, 2020, the total inmate population at DOC facilities was 1,739. Dec. of Aaron Sawyer, ECF No. 80-1, ¶ 7. And, as of June 16, 2020, that population had decreased to 1,260. This reduction represents a population decrease of approximately 28%. *See* Pls.' Mot., ECF No. 70, 1-2 (lauding Arlington County Detention Center for decreasing its inmate population by slightly less than a third).

This reduction has been accomplished through many avenues. As has already been discussed, both the Superior Court for the District of Columbia and the United States District Court for the District of Columbia have adjudicated individual petitions for release relating to the COVID-19 crisis. Additionally, the DOC doubled the maximum number of sentencing credits that a misdemeanant could receive in order to expedite the release of non-dangerous misdemeanants. And, the Metropolitan Police Department and the United States Attorney's

[4] Throughout their briefing, the parties devote considerable space to arguing about whether or not the Prison Litigation Reform Act ("PLRA") applies to Plaintiffs' habeas requests for release. Because the Court concludes that Plaintiffs have not shown a sufficient need for the release of inmates, at this time, the Court does not need to determine whether or not the PLRA would apply to Plaintiffs' habeas claims.

Office have made efforts to classify more offenses as citations not requiring detention. Attachment 3, 49: 1-3.

The United States Marshals Service has also taken steps to reduce the inmate population. As of April 14, 2020, the Marshals Service ceased processing federal arrests through DOC facilities. Dec. of Aaron Sawyer, ECF No. 80-1, ¶ 12. And, in early June 2020, the Marshals Service moved approximately 120 sentenced and designated inmates from DOC facilities to BOP quarantine facilities where they will await transfer to other BOP facilities. *Id*. at ¶¶ 7-9. In addition, the Marshals Service has transferred approximately 15 inmates at high risk for contracting COVID-19 and is working to transfer approximately 20 more high-risk inmates. *Id.* at ¶ 10. The Marshals Service has further collaborated with the United States Attorney's Office for the District of Columbia in an effort to transfer 50-100 inmates who are committed to other institutions but are being temporarily detained in DOC facilities. *Id.* at ¶ 11. The Court commends the Marshals Service's success in moving inmates from DOC facilities particularly given the travel restrictions and other regulations stemming from COVID-19 and their other responsibilities.

Additionally, the United States Parole Commission has made progress in reducing the inmate population at DOC facilities. Starting in mid-March 2020, the Parole Commission has reduced the number of warrants issued for parole and supervised release violations to those posing an imminent risk to public safety. Dec. of Stephen J. Husk, ECF No. 80-3, ¶ 5. And, on April 3, 2020, the Parole Commission began reviewing supervised release violators to consider reducing the prison term imposed for offenders 60 years of age or older who meet certain requirements. *Id.* at ¶ 7. During April 2020, the Parole Commission further individually reviewed each inmate confined on a parole matter and considered them for possible release. *Id.* at ¶ 8.

Throughout the end of May and the beginning of June 2020, the Parole Commission has also been reviewing approximately 90 offenders who have detainers against them to apply heightened scrutiny to see if the detainer may be removed. *Id*. at ¶ 13. These efforts have resulted in the DOC inmate population under the Parole Commission's jurisdiction being reduced from 270 on March 16, 2020 to 121 as of May 21, 2020. *Id*. at ¶ 6.

Plaintiffs complain that the steps that Defendants have taken are too little too late. While the Court agrees that more can yet be accomplished, the Court finds that Defendants have taken concrete steps, dating from before the TRO Order, to reduce the inmate population at DOC facilities. Without Court intervention, the DOC inmate population has already decreased by approximately 28%, and Defendants have indicated steps that will be taken to continue to reduce the population. As such, the Court finds that Plaintiffs are unlikely to prevail on their habeas claims for release.

The Court acknowledges that reducing the inmate population will likely slow the spread of COVID-19. However, in addition to individual inmates who have requested reviews for release, Defendants have already initiated systematic approaches to inmate population reduction without Court intervention. The Court finds it necessary and proper for Defendants to continue updating the Court on their approaches to inmate population reduction and for the Court to continue reviewing those approaches. However, at this time, the Court does not find that additional intervention is warranted on this issue.

For the reasons explained above, the Court finds that Plaintiffs have not established a likelihood of success on their habeas claims for release. The Court DENIES WITHOUT PREJUDICE Plaintiffs' Motion on this ground.

B. Irreparable Harm

Next, the court considers whether or not Plaintiffs have made a showing of irreparable harm on their constitutional claims for conditions of confinement. "[P]erhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Sierra Club v. United States Army Corps of Engineers*, 990 F. Supp. 2d 9, 38 (D.D.C. 2013) (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed.2013)). "[P]roving irreparable injury is a considerable burden, requiring proof that the movant's injury is *certain, great and actual*—not theoretical—and *imminent*, creating a clear and present need for extraordinary equitable relief to prevent harm." *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (citations and internal quotation marks omitted, emphasis in original).

Plaintiffs' theory of irreparable harm rests on the risk of contracting COVID-19 and the resulting health complication. The Court concludes that Plaintiffs' risk of contracting COVID-19 and the resulting complications, including the possibility of death, is the prototypical irreparable harm. *See Harris v. Board of Supervisors, Los Angeles County*, 366 F.3d 754, 766 (9th Cir. 2004) (finding irreparable harm from pain, infection, and possible death due to delayed treatment from the reduction of hospital beds). "Facing requests for preliminary injunctive relief, courts often find a showing of irreparable harm where the movant's health is in imminent danger." *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 20 (D.D.C. 2005) (citing *Wilson v. Group Hosp. & Med. Servs., Inc.*, 791 F. Supp. 309, 314 (D.D.C. 1992) (granting preliminary injunction where cancer patient's "health and future remain[ed] in serious doubt" and insurance would not pay for life-saving treatment)).

Defendants do not appear to contest that the risk of contracting COVID-19 constitutes irreparable harm. Instead, Defendants contend that Plaintiffs cannot establish irreparable harm "given that the considerable efforts of DOC are working to slow and prevent the spread of COVID-19 in its facilities." D.C. Defs.' Opp'n, ECF No. 82, 37. Defendants further argue that "the three plaintiffs have failed to show that they are facing any risk of imminent harm themselves" as each Plaintiff has not submitted an individualized declaration of potential risk. *Id.*

The Court disagrees. Plaintiffs have submitted evidence that "people living and working in DC DOC facilities remain at risk of serious harm due to COVID-19 infection." Dec. of Jaimie Meyer, ECF No. 70-2, ¶ 3. While the Court lauds the progress Defendants have made, such progress is not sufficient to negate Plaintiffs' risk of harm from contracting COVID-19. This risk of harm applies to Plaintiffs as COVID-19 is an infectious disease which spreads quickly and fatally in congregate settings, such as DOC facilities. "The risk posed by infectious diseases in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected." Dec. of Jaimie Meyer, ECF No. 5-2, ¶ 9. As inmates at DOC facilities, this increased risk of exposure, contraction, and harm applies to Plaintiffs. The fact that the increased risk is widespread among inmates at DOC facilities does nothing to reduce Plaintiffs' potential for irreparable harm.

Defendants, as well as society at large, are facing an unprecedented challenge. The risks of contracting COVID-19 are very real for those both inside and outside DOC facilities. However, Plaintiffs have produced evidence that inadequate precautionary measures at DOC facilities have increased their risk of contracting COVID-19 and facing serious health consequences, including death. Given the gravity of Plaintiffs' asserted injury, as well as the

permanence of death, the Court finds that Plaintiffs have satisfied the requirement of facing irreparable harm unless injunctive relief is granted.

C. The Balance of Hardships and the Public Interest

The Court moves to the final factors to be considered in granting a temporary restraining order—the balance of the equities and the public interest. In this case, where the government is a party to the suit, the harm to Defendants and the public interest merge and "are one and the same, because the government's interest *is* the public interest." *Pursuing America's Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (emphasis in original). The Court finds that the public interest weighs in favor of granting injunctive relief on Plaintiffs' constitutional claims for the conditions of their confinement.

First, the Court notes that Plaintiffs have established a likelihood that they will prevail on the merits of their due process and Eighth Amendment claims. And, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (internal quotation marks omitted). There is no harm to the Government when a court prevents unlawful practices.

Additionally, granting injunctive relief which lessens the risk that Plaintiffs will contract COVID-19 is in the public interest because it supports public health. No man's health is an island. If Plaintiffs contract COVID-19, they risk infecting others inside the DOC facilities. Plaintiffs also risk infecting DOC staff members who work inside DOC facilities but also live in the community, thus increasing the number of people vulnerable to infection in the community at large. Additionally, if Plaintiffs contract COVID-19 and experience complications, "they will be transported to community hospitals— thereby using scarce community resources (ER beds, general hospital beds, ICU beds)." Dec. of Marc Stern, ECF No. 1-1, ¶ 13. As such, ordering

Defendants to take precautions to lower the risk of infections for Plaintiffs also benefits the public.

Defendants argue that imposing injunctive relief will disrupt efforts already underway to address the COVID-19 crisis. Defendants contend that injunctive relief would impose an undue burden which would divert time and resources from the precautions already being undertaken.

However, the Court finds that the relief which will be granted, to be detailed below, is narrowly tailored and does not impose an undue burden on Defendants. The Court begins by noting that the D.C. Circuit "has rejected any distinction between a mandatory and prohibitory injunction." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016). Declarations by DOC officials claim that Defendants are already complying with much of the requested relief. *See, e.g.*, Dec. of Lennard Johnson, ECF No. 82-1, ¶ 6 (social distancing enforced); ¶ 8 (clean linens and clothing for inmates); ¶ 10 (availability of free legal calls); Dec. of Beth Jordon, ECF No. 82-2, ¶ 4 (description of practices in isolation units); ¶ 5 (quarantine and isolation standards); ¶¶ 8-9 (enhanced sick call process); ¶ 10 (testing). The Court's Order simply ensures that the precautions are being taken consistently and effectively. Moreover, the Court does not order Defendants to take precautions that are not already being undertaken by much of the population. In lessening the number of inmates infected with COVID-19, Defendants actually lessen the healthcare burden that they will be facing in the weeks and months to come.

Defendants further argue that ordering injunctive relief will impose on the broad discretion of the executive in operating correctional institutions. The Court acknowledges the public interest in permitting the government discretion to carry out its authorized functions. However, "[c]ourts 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. The D.C. Circuit has previously authorized injunctive relief against correctional facilities, even where the injunctive relief imposes a particular set of conditions. *See Campbell v. McGruder*, 580 F.2d 521, 551-52 (D.C. Cir. 1978) (finding specific conditions not unduly intrusive because there was "no alternative if the rights of pretrial detainees are to be respected"). And, other courts have also found that the balance of the equities favors injunctive relief to ensure that inmates are adequately protected from the threat of COVID-19. *See Seth v. McDonough*, Case No. 20-cv-1028, 2020 WL 2571168 (D. Md. May 21, 2020) (granting injunctive relief requiring correctional facility to take actions on testing, PPE, training, education, supervision, and medical care due to COVID-19); *Cameron v. Bouchard*, Case No. 20-10949, 2020 WL 1929876 (E.D. Mich. April 17, 2020) (injunctive order mandating correctional facility take certain steps involving sanitation, PPE, and medical care in response to COVID-19); *Mays v. Dart*, Case No. 20-C-2134, 2020 WL 1987007 (N.D. Ill. April 27, 2020) (granting injunctive relief ordering correctional facility to conduct specific testing, enforce social distancing, provide specified sanitation materials, and more).

For the foregoing reasons, the Court finds that the balance of the equities and the public interest weigh in favor of granting injunctive relief.

D. Specific Relief Granted

While the Court has concluded that, on the current factual record, Plaintiffs are entitled to some injunctive relief, the Court is not granting the totality of the relief requested.

First, the Court does not order the release of any inmates. However, the Court does ORDER the United States to provide the Court with a detailed plan for the review and possible further reduction of DOC inmates under their supervision/care by JULY 1, 2020. The Court

further ORDERS the United States Parole Commission to provide the Court with a detailed plan for the review and possible further reduction of DOC inmates under their supervision/care by JULY 1, 2020.

As to the conditions of Plaintiffs' confinement, the Court ORDERS the following.

First, the Court ORDERS that Defendants implement a medical care system on general population units that ensures inmates receive attention from a medical provider within 24 hours of reporting health issues. If this system continues to use sick call slips, Defendants shall ensure that inmates have consistent and immediate access to such sick call slips and that said slips are collected at regular intervals. Defendants shall provide the Court with details of their enhanced medical care system by JUNE 29, 2020.

Second, the Court ORDERS that Defendants comply with District of Columbia and Centers for Disease Control regulations on social distancing in DOC facilities. Defendants shall address challenges which have prevented the implementation of social distancing including but not limited to lack of education and staffing shortages. Defendants shall provide the Court an update on their improvements to enforcing social distancing by JUNE 29, 2020.

Third, Defendants shall continue the services of their newly-contracted environmental health and safety vendor. Defendants shall further continue their contract to provide COVID-19 cleaning services on the secure and non-secure sides of the DOC facility, including the common areas of all housing units. Defendants shall further continue their efforts to hire a registered sanitarian. Defendants shall ensure that inmates have access to the necessary materials to clean their cells, including cleaning solutions which protect against COVID-19 and adequate cleaning textiles and tools. Defendants shall further ensure that DOC staff and inmates are informed of and trained on the proper techniques for mixing and preparing cleaning solutions as necessary.

Defendants shall provide the Court an update on their improvements to sanitation by JUNE 29, 2020.

Fourth, Defendants shall ensure that conditions in isolation units are non-punitive. This includes ensuring reliable and regular access to legal calls, personal telephone calls, daily showers, and clean clothing and clean linens to all inmates on isolation status. Defendants shall provide the Court an update on their improvements to conditions in isolation cells by JUNE 29, 2020.

Fifth, Defendants shall ensure that all inmates have access to confidential, unmonitored legal calls of a duration sufficient to discuss legal matters. Insofar as inmates' access to confidential, unmonitored legal calls is reliant on the use of new technology, Defendants shall swiftly implement the use of such technology. Defendants shall provide the Court an update on their improvements to the legal call system by JUNE 29, 2020.

Finally, the Court notes that Defendants have increased testing for COVID-19, now testing any resident to be transferred to Saint Elizabeths Hospital or to a federal correctional facility. Defendants also test any cell mate of an inmate who tests positive and all new residents upon intake. Defendants continue to test those inmates who report positive for COVID-19 symptoms. The Court ORDERS that Defendants continue implementing this increased testing. The Court further ORDERS that Defendants update the Court on any changes to the testing protocol at DOC facilities, including the further testing of asymptomatic inmates.

After the Court has received the ordered updates, the Court shall schedule a further hearing to discuss next steps and the continued role of the amici of the Court.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' [70] Amended Motion for a Preliminary Injunction is GRANTED IN PART AND DENIED IN PART. Plaintiffs have demonstrated a likelihood of success on the merits, irreparable harm, and that the balance of the hardships and the public interest weigh in their favor for their constitutional claims involving the conditions of their confinement. Accordingly, Plaintiffs are entitled to the injunctive relief which is detailed above. However, the Court finds that some of the relief requested by Plaintiffs, such as the immediate release of inmates and the appointment of a downsizing expert, is inappropriate at this time on the current factual record.

An appropriate Order accompanies this Memorandum Opinion.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

INDEX TO EXHIBITS

Ex. 1

Number of Cells Housing One Inmate and Two Inmates at the Central Detention Facility
March 15 - April 13, 2020
Based on Department of Corrections Data

	3/15/2020	3/16/2020	3/17/2020	3/18/2020	3/19/2020	3/20/2020	3/21/2020	3/22/2020	3/23/2020	3/24/2020	3/25/2020	3/26/2020	3/27/2020	3/28/2020	3/29/2020	3/30/2020	3/31/2020
Cells Housing One Inmate	462	467	449	445	447	502	507	512	520	452	457	458	451	466	467	474	467
Cells Housing Two Inmates	412	408	413	406	396	362	354	350	346	370	358	353	351	339	339	334	333
Total Population	1290	1287	1276	1260	1242	1229	1218	1215	1215	1195	1176	1167	1156	1147	1148	1146	1136
Percentage Inmates Single Celled	36%	36%	35%	35%	36%	41%	42%	42%	43%	38%	39%	39%	39%	41%	41%	41%	41%
Percentage Inmates Double Celled	64%	63%	65%	64%	64%	59%	58%	58%	57%	62%	61%	60%	61%	59%	59%	58%	59%

	4/1/2020	4/2/2020	4/3/2020	4/4/2020	4/5/2020	4/6/2020	4/7/2020	4/8/2020	4/9/2020	4/10/2020	4/11/2020	4/12/2020	4/13/2020
Cells Housing One Inmate	470	472	458	464	478	478	475	478	469	452	455	452	452
Cells Housing Two Inmates	326	317	318	312	308	306	300	297	299	301	292	293	293
Total Population	1125	1109	1097	1091	1093	1093	1078	1075	1071	1058	1042	1041	1041
Percentage Inmates Single Celled	42%	43%	42%	43%	44%	44%	44%	44%	44%	43%	44%	43%	43%
Percentage Inmates Double Celled	58%	57%	58%	57%	56%	56%	56%	55%	56%	57%	56%	56%	56%

Ex. 2

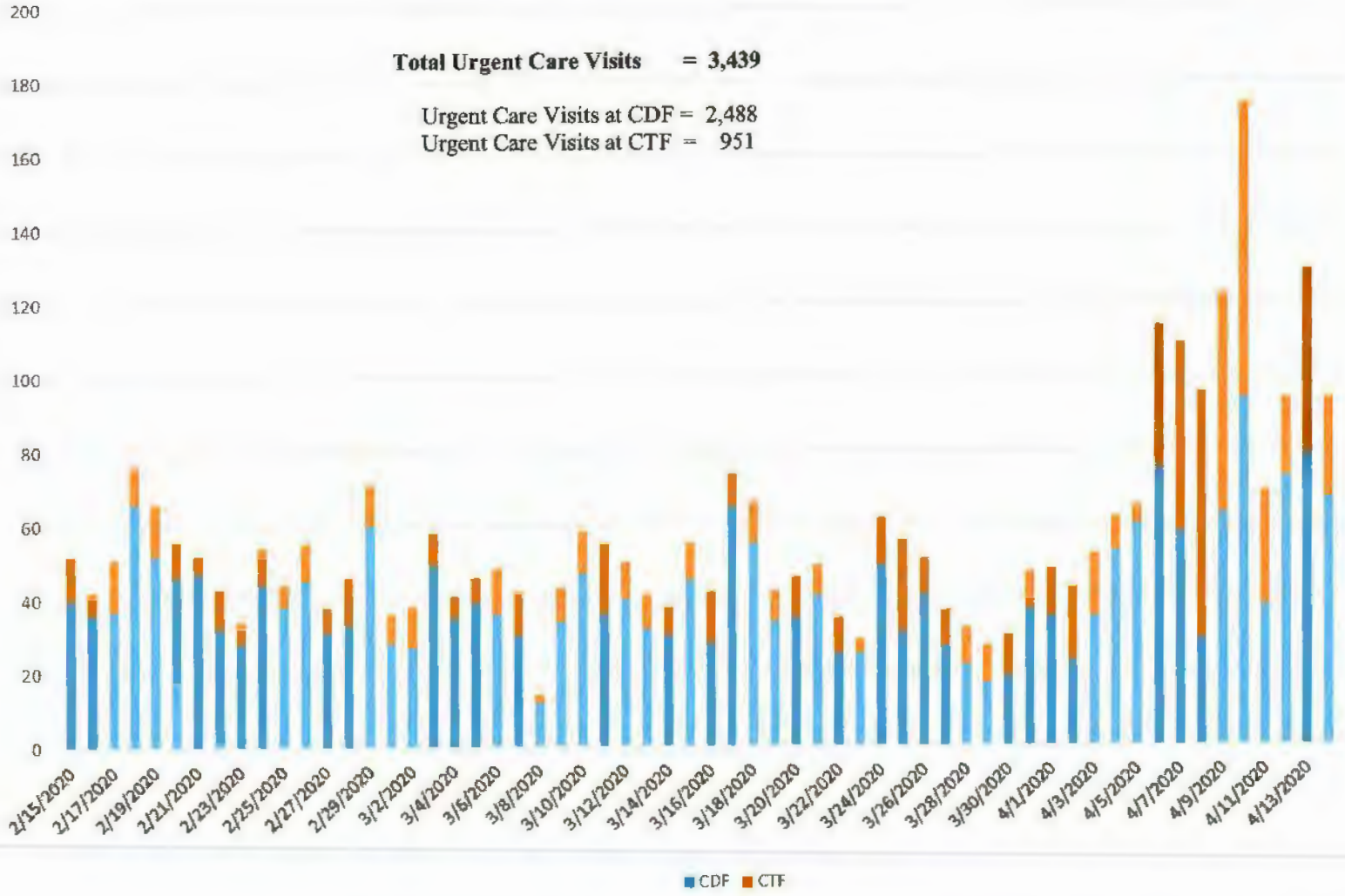
Number of Cells Housing One Inmate and Two Inmates at the Correctional Treatment Facility
March 15 - April 13, 2020
Based on Department of Corrections Data

	3/15/2020	3/16/2020	3/17/2020	3/18/2020	3/19/2020	3/20/2020	3/21/2020	3/22/2020	3/23/2020	3/24/2020	3/25/2020	3/26/2020	3/27/2020	3/28/2020	3/29/2020	3/30/2020	3/31/2020
Cells Housing One Inmate	306	395	391	391	390	384	389	389	383	372	372	352	349	339	344	342	346
Cells Housing Two Inmates	82	83	78	75	74	72	68	69	67	72	72	79	71	72	69	69	65
Total Population	575	561	547	541	538	528	525	527	517	516	516	510	491	483	482	480	476
Percentage Inmates Single Celled	69%	70%	71%	72%	72%	73%	74%	74%	74%	72%	72%	69%	71%	70%	71%	71%	73%
Percentage Inmates Double Celled	29%	30%	29%	28%	28%	27%	26%	26%	26%	28%	28%	31%	29%	30%	29%	29%	27%

	4/1/2020	4/2/2020	4/3/2020	4/4/2020	4/5/2020	4/6/2020	4/7/2020	4/8/2020	4/9/2020	4/10/2020	4/11/2020	4/12/2020	4/13/2020
Cells Housing One Inmate	349	349	342	330	332	332	324	307	303	315	360	375	379
Cells Housing Two Inmates	62	55	53	47	46	46	47	54	53	47	20	13	11
Total Population	473	459	448	424	424	424	418	415	409	409	400	401	401
Percentage Inmates Single Celled	74%	76%	76%	78%	78%	78%	78%	74%	74%	77%	90%	94%	95%
Percentage Inmates Double Celled	26%	24%	24%	22%	22%	22%	22%	26%	26%	23%	10%	6%	5%

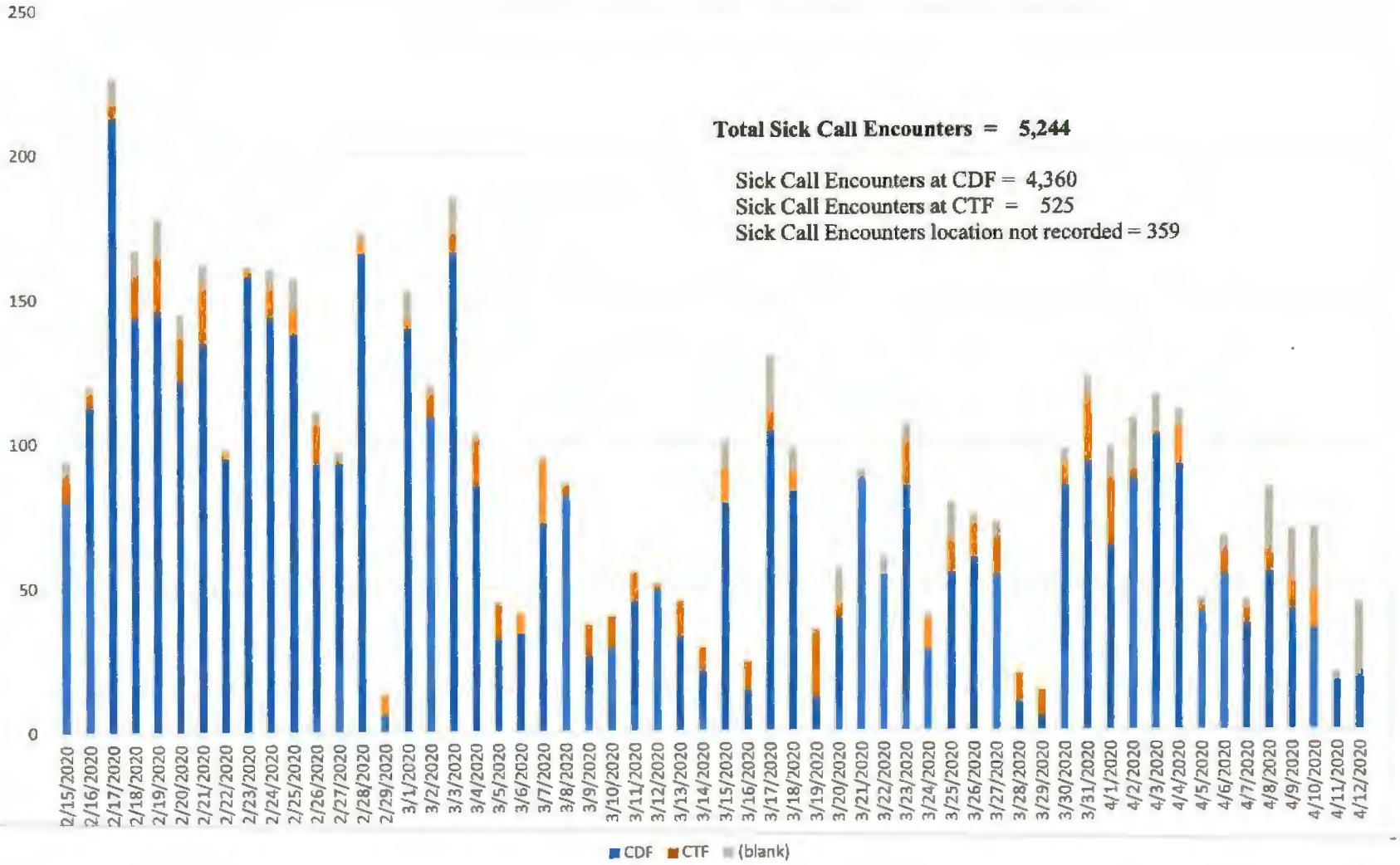
Ex. 3

Urgent Care Visits at CDF And CTF, by Day
February 15 - April 15, 2020
Based on Unity Health Care Data



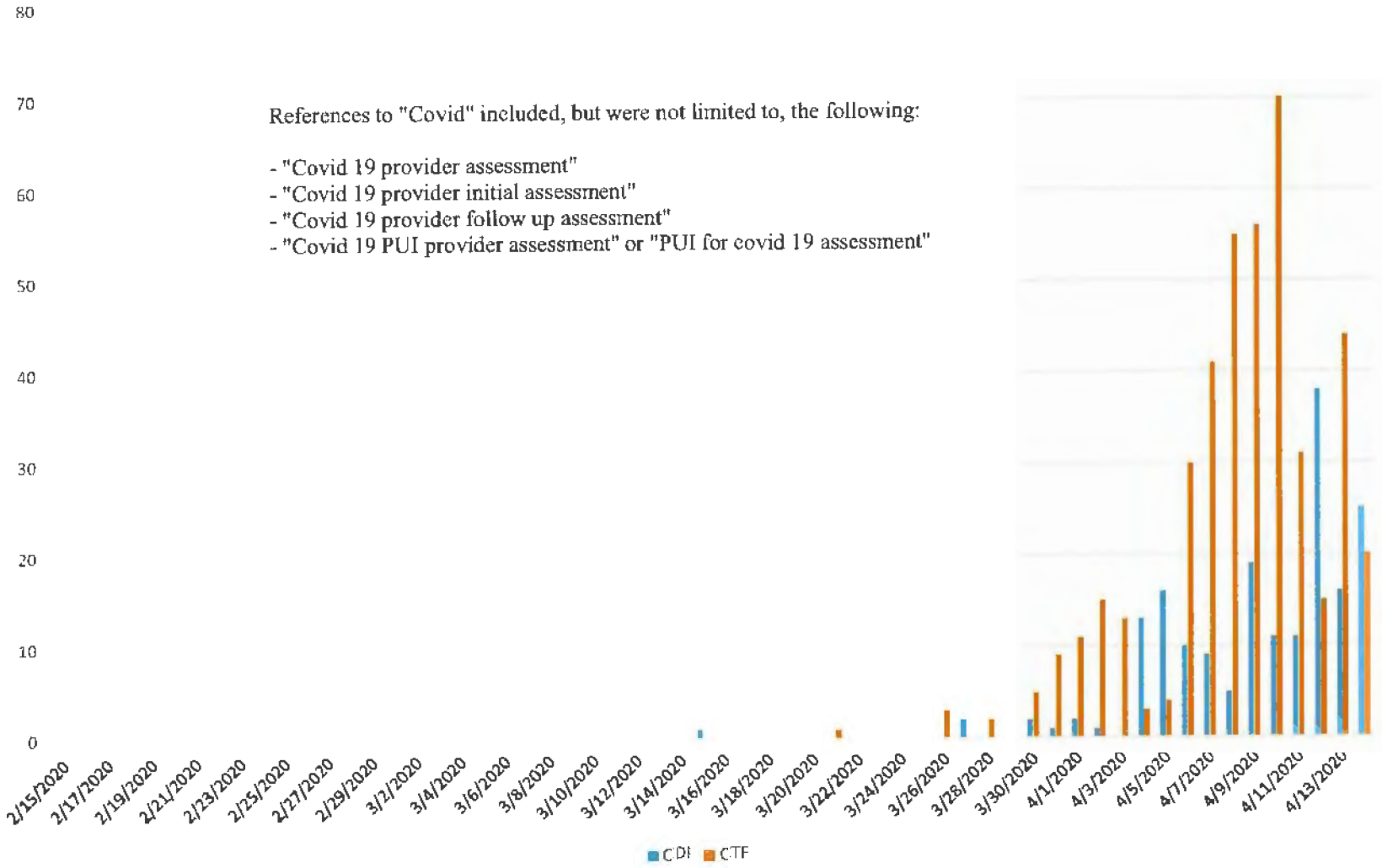
Ex. 4

Sick Call Requests and Encounters, by Day
February 15 - April 12, 2020
Based on Unity Health Care Data



Ex. 5

Urgent Care Medical Encounters With Clinical Summary Descriptions
Including The Word "Covid," by Day
February 15 - April 15, 2020
Based on Unity Health Care Data



Ex. 6

Johnson, Lennard (DOC)

From: Blackmon, Keena (DOC)
Sent: Friday, April 03, 2020 9:28 PM
To: DOC CDF Mailing List; DOCHQMailingList
Subject: EFFECTIVE SATURDAY, APRIL 4, 2020: Medical Stay-In-Place

DOC
THE DEPARTMENT OF CORRECTIONS

Medical Stay-In-Place

Saturday, April 4, 2020 – Your health and safety is extremely important to us. Together, everyone needs to play their part in helping to flatten the curve. To mitigate the possible spread of coronavirus (COVID-19) through DC Department of Corrections (DC DOC) facilities, the Department will implement a medical stay-in-place, **effective immediately**, which will further limit movement of residents and help "flatten the curve", as we anticipate the pandemic's peak in the next several weeks.

During the medical stay in place, the following activities will occur:

- Residents will largely be restricted to their cells with the exception of a modified recreation schedule, where groups no larger than five are out at any one time, and practice social distancing of six feet to the fullest extent possible;
- All non-urgent medical visits will be re-scheduled to minimize movement. To the extent possible medical care will be provided on the unit;
- Commissary will continue once a week as scheduled;
- Laundry will continue once a week as scheduled;
- Out of cell time of 30 minutes each day for phone calls, showers, and cell wipe down;
- Parole Commission and Video Court Hearings would continue;
- Medical escorts will continue for matters that cannot be handled on the unit;
- Disciplinary hearings will continue as scheduled;
- Culinary and Environmental details will continue as scheduled;
- Mail services will continue as scheduled;

- Stop all group activities and minimize the number of residents participating in recreation on tier (no more than 10 at a time);
- Cease all movement between facilities unless in an emergency situation;
- Cease all video visitation; and
- Cease all visits with attorneys unless actively in trial for the same reason listed above.

These changes are for the health and safety of our workforce, residents, and contractors.

Please continue to utilize health and safety precautions to help keep our DOC facilities, staff, and residents safe and healthy. Follow the guidance below on how to reduce your risk of infection and slow its spread.

- Thoroughly wash your hands for at least 20 seconds.
- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth
- Sanitize your equipment.
- Follow the safety protocols in place at each of the DOC facilities.
- If you are sick, contact your healthcare provider and request sick leave through your supervisor.

Thank you for your continued commitment to serving our city and our neighbors.

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

Ex. 7

Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

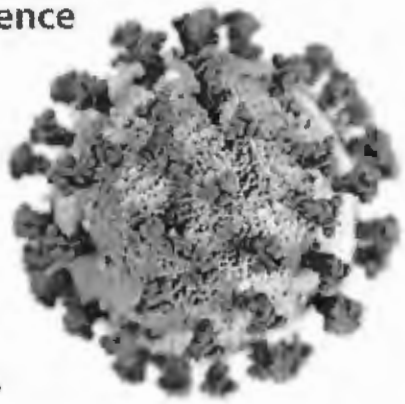
This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: https://www.cdc.gov/coronavirus/2019-ncov/index.html.

This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

In this guidance

Who is the intended audience for this guidance?



This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.

This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.

Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19.
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing healthcare infection control and clinical care of COVID-19 cases as well as close contacts of cases in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- √ Operational and communications preparations for COVID-19
- √ Enhanced cleaning/disinfecting and hygiene practices
- √ Social distancing strategies to increase space between individuals in the facility
- √ How to limit transmission from visitors
- √ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- √ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- √ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- √ Healthcare evaluation for suspected cases, including testing for COVID-19
- √ Clinical care for confirmed and suspected cases
- √ Considerations for persons at higher risk of severe disease from COVID-19

Definitions of Commonly Used Terms

Close contact of a COVID-19 case—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

Cohorting—Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See Quarantine and Medical Isolation sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

Community transmission of COVID-19—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define "local community" in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.

Confirmed vs. Suspected COVID-19 case—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

Incarcerated/detained persons—For the purpose of this document, "incarcerated/detained persons" refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e, detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

Medical Isolation—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance below). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term "medical isolation" to avoid confusion.

Quarantine—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under medical isolation and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

Social Distancing—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this CDC publication.

Staff—In this document, "staff" refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, "staff" does not distinguish between healthcare, custody, and other types of staff including private facility operators.

Symptoms—Symptoms of COVID-19 include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the CDC website for updates on these topics.

Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.

The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on recommended PPE in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of PPE shortages during the COVID-19 pandemic.

COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness**. This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

Communication & Coordination

√ **Develop information-sharing systems with partners.**

- o Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
- o Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.

- Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
- Where possible, put plans in place with other jurisdictions to prevent confirmed and suspected COVID-19 cases and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
- Stay informed about updates to CDC guidance via the CDC COVID-19 website as more information becomes known.

√ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**

- Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See Medical Isolation and Quarantine sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
- Facilities without onsite healthcare capacity should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
- Make a list of possible social distancing strategies that could be implemented as needed at different stages of transmission intensity.
- Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.

√ **Coordinate with local law enforcement and court officials.**

- Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
- Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.

√ **Post signage throughout the facility communicating the following:**

- **For all:** symptoms of COVID-19 and hand hygiene instructions
- **For incarcerated/detained persons:** report symptoms to staff
- **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
- Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

Personnel Practices

√ **Review the sick leave policies of each employer that operates in the facility.**

- Review policies to ensure that they actively encourage staff to stay home when sick.
- If these policies do not encourage staff to stay home when sick, discuss with the contract company.
- Determine which officials will have the authority to send symptomatic staff home.

- √ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
  - o Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
  - o Put systems in place to implement work from home programs (e.g., time tracking, etc.).
- √ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
  - o Allow staff to work from home when possible, within the scope of their duties.
  - o Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
  - o Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
  - o Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.
- √ **Consider offering revised duties to staff who are at** higher risk of severe illness with COVID-19. Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
  - o Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.
- √ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.
- √ **Reference the Occupational Safety and Health Administration website for recommendations regarding worker health.**
- √ **Review** CDC's guidance for businesses and employers to identify any additional strategies the facility can use within its role as an employer.

Operations & Supplies

- √ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
  - o Standard medical supplies for daily clinic needs
  - o Tissues
  - o Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
  - o Hand drying supplies
  - o Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
  - o Cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See PPE section and Table 1 for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
- Sterile viral transport media and sterile swabs to collect nasopharyngeal specimens if COVID-19 testing is indicated

√ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**

- See CDC guidance optimizing PPE supplies.

√ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, CDC recommends cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.

√ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See Hygiene section below for additional detail regarding recommended frequency and protocol for hand washing.)

- Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.

√ **If not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**

√ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See Table 1 for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

Operations

√ **Stay in communication with partners about your facility's current situation.**

- State, local, territorial, and/or tribal health departments
- Other correctional facilities

√ **Communicate with the public about any changes to facility operations, including visitation programs.**

- √ **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**
  - o Strongly consider postponing non-urgent outside medical visits.
  - o If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.
- √ **Implement lawful alternatives to in-person court appearances where permissible.**
- √ **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**
- √ **Limit the number of operational entrances and exits to the facility.**

Cleaning and Disinfecting Practices

- √ **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**
- √ **Adhere to** CDC recommendations for cleaning and disinfection during the COVID-19 response. Monitor these recommendations for updates.
  - o Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
  - o Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
  - o Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
  - o Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.
- √ **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**
- √ **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**

Hygiene

√ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**

√ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis.** Sample signage and other communications materials **are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

- **Practice good cough etiquette:** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
- **Practice good** hand hygiene**:** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
- **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
- **Avoid sharing eating utensils, dishes, and cups.**
- **Avoid non-essential physical contact.**

√ **Provide incarcerated/detained persons and staff no-cost access to:**

- **Soap**—Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
- **Running water, and hand drying machines or disposable paper towels for hand washing**
- **Tissues** and no-touch trash receptacles for disposal

√ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.

√ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

Prevention Practices for Incarcerated/Detained Persons

√ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See Screening section below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see PPE section below).

- **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
  - Require the individual to wear a face mask.
  - Ensure that staff who have direct contact with the symptomatic individual wear recommended PPE.
  - Place the individual under medical isolation (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See Infection Control and Clinical Care sections below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

- **If an individual is a** close contact **of a known COVID-19 case (but has no COVID-19 symptoms):**
  - Quarantine the individual and monitor for symptoms two times per day for 14 days. (See Quarantine section below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

√ **Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

- **Common areas:**
  - Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)
- **Recreation:**
  - Choose recreation spaces where individuals can spread out
  - Stagger time in recreation spaces
  - Restrict recreation space usage to a single housing unit per space (where feasible)
- **Meals:**
  - Stagger meals
  - Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
  - Provide meals inside housing units or cells
- **Group activities:**
  - Limit the size of group activities
  - Increase space between individuals during group activities
  - Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
  - Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out
- **Housing:**
  - If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are cleaned thoroughly if assigned to a new occupant.)
  - Arrange bunks so that individuals sleep head to foot to increase the distance between them
  - Rearrange scheduled movements to minimize mixing of individuals from different housing areas
- **Medical:**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
  - Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

- √ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**
- √ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**
- √ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**
- √ **Provide** up-to-date information about COVID-19 **to incarcerated/detained persons on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Reminders to report COVID-19 symptoms to staff at the first sign of illness
- √ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

Prevention Practices for Staff

- √ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - o In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
  - o Send staff home who do not clear the screening process, and advise them to follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Employers' sick leave policy
  - o **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
  - o **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor CDC guidance on discontinuing home isolation regularly as circumstances evolve rapidly.
  - o **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**
  - o Employees who are close contacts of the case should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

- √ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**
- √ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

Prevention Practices for Visitors

- √ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - o Staff performing temperature checks should wear recommended PPE.
  - o Exclude visitors and volunteers who do not clear the screening process or who decline screening.
- √ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**
- √ **Provide visitors and volunteers with information to prepare them for screening.**
  - o Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
  - o If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
  - o Display signage outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.
- √ **Promote non-contact visits:**
  - o Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
  - o Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
  - o Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.
- √ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**
  - o If moving to virtual visitation, clean electronic surfaces regularly. (See Cleaning guidance below for instructions on cleaning electronic surfaces.)
  - o Inform potential visitors of changes to, or suspension of, visitation programs.
  - o Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
  - o If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.

If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

√ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

Operations

√ **Implement alternate work arrangements deemed feasible in the** Operational Preparedness **section.**

√ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**

- If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.

√ **If possible, consider quarantining all new intakes for 14 days before they enter the facility's general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.

√ **When possible, arrange lawful alternatives to in-person court appearances.**

√ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**

- Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See Screening section below.)
  - If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
  - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
  - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

√ **Coordinate with state, local, tribal, and/or territorial health departments.**

- When a COVID-19 case is suspected, work with public health to determine action. See Medical Isolation section below.
- When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See Quarantine section below.
- Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See Facilities with Limited Onsite Healthcare Services section.

Hygiene

√ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See above.)

√ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See above.)

Cleaning and Disinfecting Practices

√ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See above.)

√ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time (below).**

Medical Isolation of Confirmed or Suspected COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities with Limited Onsite Healthcare Services, or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.

√ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**

√ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**

- Provide medical care to cases inside the medical isolation space. See Infection Control and Clinical Care sections for additional details.
- Serve meals to cases inside the medical isolation space.
- Exclude the individual from all group activities.
- Assign the isolated individual a dedicated bathroom when possible.

√ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.

√ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** Cohorting should only be practiced if there are no other available options.

- If cohorting is necessary:
  - **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
  - Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
  - Ensure that cohorted cases wear face masks at all times.

√ **In order of preference, individuals under medical isolation should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section above.
- Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements
  (NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

√ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of cases who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

√ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see PPE section below) and should limit their own movement between different parts of the facility to the extent possible.

√ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

√ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:

- o **Cover** their mouth and nose with a tissue when they cough or sneeze
- o **Dispose** of used tissues immediately in the lined trash receptacle
- o **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that hand washing supplies are continually restocked.

√ **Maintain medical isolation until all the following criteria have been met. Monitor the CDC website for updates to these criteria.**

For individuals who will be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

For individuals who will NOT be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

For individuals who had a confirmed positive COVID-19 test but never showed symptoms:

- o At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- o The individual has had no subsequent illness

√ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**

- o If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

Cleaning Spaces where COVID-19 Cases Spent Time

Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the Definitions section for the distinction between confirmed and suspected cases.

- o Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- o Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in Prevention section).

√ **Hard (non-porous) surface cleaning and disinfection**

- o If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- o For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
  - ▪ Consult a list of products that are EPA-approved for use against the virus that causes COVID-19. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
  - ▪ Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
    - 5 tablespoons (1/3rd cup) bleach per gallon of water or
    - 4 teaspoons bleach per quart of water

√ **Soft (porous) surface cleaning and disinfection**

- o For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
  - ▪ If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
  - ▪ Otherwise, use products that are EPA-approved for use against the virus that causes COVID-19 and are suitable for porous surfaces.

√ **Electronics cleaning and disinfection**

- o For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
  - ▪ Follow the manufacturer's instructions for all cleaning and disinfection products.
  - ▪ Consider use of wipeable covers for electronics.
  - ▪ If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on CDC's website.

√ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See PPE section below.)

√ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

√ Laundry from a COVID-19 cases **can be washed with other individuals' laundry.**

- o Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
- o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

√ **Consult** cleaning recommendations above **to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

Quarantining Close Contacts of COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity, or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.

√ **Incarcerated/detained persons who are close contacts of a** confirmed or suspected COVID-19 case **(whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**

- If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.

√ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is considered a close contact if they:**

- Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
- Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

√ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**

- Provide medical evaluation and care inside or near the quarantine space when possible.
- Serve meals inside the quarantine space.
- Exclude the quarantined individual from all group activities.
- Assign the quarantined individual a dedicated bathroom when possible.

√ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually.** Cohorting multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.

- If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under medical isolation immediately.
- If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
- Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- o If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

√ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify social distancing strategies for higher-risk individuals.)

√ **In order of preference, multiple quarantined individuals should be housed:**

- o Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- o Separately, in single cells with solid walls but without solid doors
- o As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- o As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- o As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- o As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section to maintain at least 6 feet of space between individuals housed in the same cell.
- o As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). Employ social distancing strategies related to housing in the Prevention section above to maintain at least 6 feet of space between individuals.
- o Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

√ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see PPE section and Table 1):

- o If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- o If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- o All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- o Asymptomatic individuals under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear face masks.

√ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see PPE section and Table 1).

- o Staff supervising asymptomatic incarcerated/detained persons under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear PPE.

√ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**

- o If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See Medical Isolation section above.)
- o See Screening section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.

√ **If an individual who is part of a quarantined cohort becomes symptomatic:**

- o **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- o **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
- o **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.

√ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**

√ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**

√ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

√ **Laundry from quarantined individuals can be washed with other individuals' laundry.**

- o Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
- o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
- o Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

Management of Incarcerated/Detained Persons with COVID-19 Symptoms

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.

√ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**

√ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See** Medical Isolation **section above.**

√ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on evaluation and testing. See Infection Control and Clinical Care sections below as well.

√ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**

- If the COVID-19 test is positive, continue medical isolation. (See Medical Isolation section above.)
- If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

√ **Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**

- Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
- Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

√ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See Screening section for a procedure to safely perform a temperature check.

√ **Consider additional options to intensify** social distancing within the facility.

Management Strategies for Staff

√ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**

- Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.

√ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**

- See above for definition of a close contact.
- Refer to CDC guidelines for further recommendations regarding home quarantine for staff.

Infection Control

Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.

√ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).

√ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see PPE section).

√ **Refer to PPE section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

Clinical Care of COVID-19 Cases

√ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**

- If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
- The initial medical evaluation should determine whether a symptomatic individual is at higher risk for severe illness from COVID-19. Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.

√ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) and monitor the guidance website regularly for updates to these recommendations.**

√ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing recommended PPE and ensuring that the suspected case is wearing a face mask.**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.

√ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**

√ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**

√ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

√ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's respiratory protection program.
- For PPE training materials and posters, please visit the CDC website on Protecting Healthcare Personnel.

√ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**

√ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences** (see Table 1). **Monitor linked CDC guidelines in Table 1 for updates to recommended PPE.**

√ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**

√ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility** will vary based on the type of contact they have with COVID-19 cases and their contacts (see Table 1). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.**

- **N95 respirator**

See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.

- **Face mask**
- **Eye protection**—goggles or disposable face shield that fully covers the front and sides of the face
- **A single pair of disposable patient examination gloves**

Gloves should be changed if they become torn or heavily contaminated.

- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**
  - If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
  - If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.

√ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**

- **Guidance in the event of a shortage of N95 respirators**
  - Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand.** During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.
- **Guidance in the event of a shortage of face masks**
- **Guidance in the event of a shortage of eye protection**
- **Guidance in the event of a shortage of gowns/coveralls**

Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/ Coveralls
Incarcerated/Detained Persons					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	–	✓	–	–	–
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓
Staff					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	–	Face mask, eye protection, and gloves as local supply and scope of duties allow.			–
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	–	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see CDC infection control guidelines)	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see CDC infection control guidelines)	✓	–	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓

* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

** A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

√ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**

- *Today or in the past 24 hours, have you had any of the following symptoms?*
  - *Fever, felt feverish, or had chills?*
  - *Cough?*
  - *Difficulty breathing?*
- *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*

√ **The following is a protocol to safely check an individual's temperature:**

- Perform hand hygiene
- Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
- Check individual's temperature
- **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be cleaned routinely as recommended by CDC for infection control.
- Remove and discard PPE
- Perform hand hygiene

Ex. 8

Dates and Quantities of Cleaning Supplies and Soap Delivered to the CDF and CTF, by Date
December 31, 2019 - April 13, 2020

Summary	Product							
Date of Delivery	Bar Soap 5oz (100 bars)	Ecolab AB Foam Hand Soap (6, 25 oz)	Ecolab Disinfectant Cleaner (2.5 gallons)	Ecolab E Foam Hand Sanitizer (6,25 oz)	Ecolab Multi-Quat Sanitizer (2.5 gallons)	Ecolab Orange Force (2.5 gallons)	Ecolab Peroxide Multi Surface (2.0 gallons)	Grand Total
12/31/2019	31							31
1/7/2020			2					2
1/8/2020		3	3			3		9
1/10/2020	20							20
1/14/2020	7							7
1/16/2020		8	10	5	5	8		36
1/21/2020	20	1						21
1/22/2020		3	4					7
1/31/2020		4	5	4	3	3		19
2/6/2020	25	10	15					50
2/10/2020			1					1
2/12/2020	7	4	4			4		19
2/19/2020		3	5					8
2/26/2020	20		6	3	3			32
2/27/2020			1		1	1		3
3/4/2020	7	6	5		3	3		24
3/6/2020			31	30	4	3		68
3/9/2020				8				8
3/10/2020		14	16	8	8	8		54
3/12/2020		11	10	3	6	6	7	43
3/13/2020	20							20
3/17/2020	13							13
3/18/2020	6	10	7	12	6	6	9	56
3/19/2020				1				1
3/23/2020	0							0
3/24/2020	2	8	5	11	4	5	6	41
3/25/2020				4				4
3/28/2020				1				1
3/31/2020	12	8	5	10	4	4	6	49
4/3/2020				3				3
4/7/2020	12	2		2				16
4/8/2020	5	8	2	13	2	2	3	35
4/13/2020		5	2	9		2	3	21
Grand Total	**207**	**108**	**139**	**127**	**49**	**58**	**34**	**722**

Ex. 9

ECOLAB
Disinfectant Cleaner 2.0
D1A
D1B
C1A
ECOLAB

Ex. 10

Ex. 11

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS

Office of the Director

MEMORANDUM

TO: All DOC employees and contractors

FROM: Quincy L. Booth, Director

DATE: April 17, 2020

SUBJECT: Reminders and Updated COVID-19 Policies and Procedures

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This memorandum serves as a reminder to all District of Columbia Department of Corrections (DOC) staff and contractors of the agency's COVID-19 policies and procedures, informed by some new guidance from Mayor's Order 2020-06, dated April 15, 2020. It is imperative that the following policies and procedures are enforced and maintained:

1. Social Distancing Measures

    a. Correctional officers must enforce social distancing in DOC's correctional facilities at all times.

    b. There shall be multiple daily announcements over the agency's public address (PA) system reminding staff and residents of social distancing. Specifically, the PA announcement shall remind residents to stay at least six feet apart from each other and not to gather in groups.

    c. Strict limits on the number of persons out of their cells at one time will help with social distancing. In general, only six residents from a unit will be out at one time for out of cell time, plus an occasional two to three cleaning detailees.

d. Group activities, such as classes, shall continue to be suspended for the duration of the emergency period.

2. Resident out of cell time

a. All DOC residents, except those on isolation units, shall he allowed one hour of out of cell time each day.

b. PA announcements shall be made daily to remind DOC staff and residents that out of cell time is one hour per day.

3. Personal Protective Equipment (PPE), COVID-19 and Sick Call Education Training

a. DOC shall conduct PPE refresher courses for its staff during roll call of each shift, until otherwise directed. These courses are and shall continue to be documented by DOC.

b. DOC's medical staff and sick call staff shall visit DOC's housing units to refresh staff and residents on PPE use, COVID-19 prevention and how to suhmit sick call slips for medical visits, until otherwise directed. These visits shall be documented by DOC.

c. All DOC staff shall wear PPE in compliance with Centers for Disease Control guidelines while working in DOC's correctional facilities.

4. Isolation Units

a. All residents housed in isolation units shall be allowed to shower each day.

b. All residents housed in isolation units shall be allowed, each day, free 30-minute legal calls to their attorney of record on an un-secure and non-monitored telephone line. Notably, a "rolling phone" will be transporting to the residents' cells for legal calls.

c. DOC shall provide tablets with entertainment and education content pre-programed and activity packets (pamphlets with education materials) to residents housed on isolation units who feel well enough to use them.

5. Unit Common Area and Cell Cleaning

a. At the beginning of each shift, correctional officers working in DOC housing units shall document the amount of cleaning product and equipment available in the housing unit. Any shortages of cleaning product and equipment shall be documented by the correctional officer on duty and he/she shall notify his/her supervisor of any shortages so that additional cleaning product and the equipment may be ordered for the housing unit.

b. During a resident's out of cell time, correctional officers shall spray towels with cleaning product and provide the resident with the cleaning product sprayed paper towels and dry paper towels to clean his/her cell.

c. During each shift, correctional officers working in housing units shall verify and document that the housing unit's common areas are cleaned in accordance with DOC's cleaning schedules.

d. DOC shall post listings of all cleaning products and equipment available to residents in each housing unit.

e. Cleaning product are diluted appropriately by DOC's environmental team before being provided to the units; there is no need for further dilution.

6. Linen and Laundry Exchanges

a. Each week, DOC shall provide its residents with fresh clothing and undergarments (laundry) and towels and sheets (linens) and collect the residents' used items as part of the agency's laundry and linen exchanges.

b. If a resident refuses to participate in either exchange, he/she will still be provided with fresh laundry and linen, if supplies are available.

7. Contractor and Staff Screening and Hygiene

a. All staff and contractors who enter DOC's facilities (except emergency personnel responding to an emergency) shall continue to undergo a COVID-19 screening, including a temperature check with a contactless infrared thermometer, and answering of brief questions designed to spot early signs of COVID-19 infection.

b. All entrants who fail the COVID-19 screening shall be denied entry to DOC's facilities.

c. All staff responsible for COVID-19 screenings shall be re-trained on the use of contactless infrared thermometers.

d. Non-essential visitors shall continue to be excluded for the duration of the emergency.

e. Following the screening and before starting their tour of duty, entrants shall wash their hands with soap and water for at least twenty seconds to prevent the spread of disease.

f. Staff who have been determined to have recently been in sustained, close contact with another staffer or inmate who tests positive for COVID-19 will be informed, consistent with privacy protections, and directed according to protocol.

8. Access to Legal Calls

a. All residents shall be allowed, each day, free 30-minute legal calls to their attorney of record on a non-secure and un-monitored telephone line.

b. DOC staff shall cooperate to facilitate residents' receipt of incoming calls from their attorney. Specifically, DOC's Case Management team has and will continue to coordinate legal calls between DOC's residents and their attorney.

9. Medical Care

a. DOC staff who observe a resident exhibiting symptoms of COVID-19 shall direct the resident to medical care, and medical staff will determine appropriate next steps for the inmate's health and the health of those nearby.

10. Tablets

a. Inmates may have the tablets in their cells at least for the duration of the Public Health Emergency.

b. To facilitate the sharing of the tablets by residents, all tablets shall be sanitized between use by different residents.

ALSO, PLEASE BE ADVISED:

1. **Single Cells:** DOC is balancing the competing needs to protect residents' mental health and prevent anxiety, self-harm, and suicide with the goal of providing single cells where possible to reduce the spread of COVID-19. Cooperate as directed in facilitating resident moves to make better use of our space as our population decreases.

2. **Medical Reserve Corps Assistance:** You may see new staffers on the units, as DOC is requesting staff augmentation through the Medical Reserve Corps (Corps). Corps members (thirty are being requested) may perform such tasks as assisting with temperature checks for incoming staff and contractors; checking residents' temperatures daily; helping in the medical unit and isolation units; and performing such other duties as may be required. Their valued service will be of great assistance as needs are higher during this challenging time.

3. **Provision of Tablets** Presently, DOC does not have a tablet for every resident. Thus, we are requesting additional tablets to eliminate the need to share, and to enable residents to communicate with their attorneys through the tablets, as well as to enjoy the entertainment, inspirational, and educational offerings that are pre-loaded. Activity packets shall also be provided to residents upon request.

4. **Quarantine of new arrivals.** Be advised that new intakes to the facility are placed in an "enhanced monitoring" for 14 days and should be presumed not to have COVID-19. However, if the new intake develops COVID-19 symptoms during the "enhanced monitoring" period, they will be tested for COVID-19 and moved to a quarantine housing in until the agency receives their test results. If they test positive, they will be housed in an isolation unit for treatment. If they test negative, they will remain in a quarantine unit until they are no longer symptomatic.

5. **Mobile testing:** As mobile testing becomes available, DOC will request its deployment to its facilities to screen staff and residents, per CDC and DOH guidelines.

THIS MEMO SHALL BE READ DURING ROLL CALL DURING THE NEXT SEVEN CONSECUTIVE DAYS AND POSTED ON ALL APPROPRIATE BULLETIN BOARDS.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * * * * * * * * * * * * * * *	)	
EDWARD BANKS, et al.,	)	Civil Action
	)	No. 20-CV-00849
Plaintiffs,	)	
	)	
vs.	)	
	)	
QUINCY L. BOOTH, et al.,	)	Washington, DC
	)	May 11, 2020
Defendants.	)	2:00 p.m.
	)	
* * * * * * * * * * * * * * * * * *	)	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:
(Appearing Telephonically)

ARTHUR B. SPITZER
SCOTT MICHELMAN, ESQ.
AMERICAN CIVIL LIBERTIES UNION OF THE DISTRICT OF COLUMBIA
915 15th Street, Northwest
Second Floor
Washington, DC 20005

STEVEN D. MARCUS, ESQ.
JENNA MARIE COBB, ESQ.
JONATHAN ANDERSON, ESQ.
PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA
633 Indiana Avenue, Northwest
Washington, DC 20004

APPEARANCES, CONT'D:

FOR THE DEFENDANTS: *(Appearing Telephonically)*

ANDREW SAINDON, ESQ.
MICAH IAN BLUMING, ESQ.
PAMELA DISNEY, ESQ.
FERNANDO AMARILLAS, ESQ.
OFFICE OF ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA
441 Fourth Street, Northwest
Sixth Floor
Washington, DC 20001

APPEARING TELEPHONICALLY:

ERIC GLOVER, ESQ.
MICHELLE WILSON, ESQ.
GENERAL COUNSEL
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS
2000 14th Street, Northwest
Washington, DC 20009

GRACE LOPES
MARK JORDAN
(AMICI CURIAE)

REPORTED BY: *(Telephonically)*

LISA EDWARDS, RDR, CRR
Official Court Reporter
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Room 6706
Washington, DC 20001
(202) 354-3269

THE COURT: All right. It's 2:00. This is Judge Kollar-Kotelly. This is in the matter of Banks, et al., versus Booth, et al., 20-CV-849.

I have from the court staff the deputy courtroom clerk, my law clerk and the court reporter.

Somebody has not muted their phone.

I have certain people which I will call on. These will be speakers or potential speakers. They will be the *amici* experts; Plaintiffs, whom they've identified; the Defendants, including the Department of Corrections counsel; as well as the United States.

So let me find out whether -- Ms. Lopes, are you on the phone?

MS. LOPES: Good afternoon. Yes.

THE COURT: Good afternoon.

Mr. Jordan, are you on the phone?

MR. JORDAN: Yes, your Honor. Good afternoon.

THE COURT: Good afternoon.

Mr. Marcus, are you on the line?

MR. MARCUS: Good afternoon, your Honor.

THE COURT: Good afternoon.

Mr. Anderson, are you on the line?

MR. ANDERSON: Yes, your Honor. Good afternoon.

THE COURT: Good afternoon.

Ms. Cobb?

MS. COBB: Yes, your Honor. Good afternoon.

THE COURT: Mr. Perloff?

Maybe's not on the line yet.

Scott Michelman?

He's not on the line yet. I should give him a few moments in case he's muted.

MR. MICHELMAN: I'm sorry. I was on mute, your Honor. This is Mr. Michelman. I was on mute. My apologies.

THE COURT: I know it takes a moment. Thank you for muting.

Mr. Perloff, are you on now or not?

MR. SPITZER: Your Honor, I believe he's listening on the public line.

THE COURT: Okay. Then that's all right.

Mr. Spitzer, are you on?

MR. SPITZER: Yes. I'm here, your Honor.

THE COURT: For the Defendant, Mr. Saindon?

MR. SAINDON: Good afternoon. I'm here.

THE COURT: Good afternoon.

Mr. Amarillas?

MR. AMARILLAS: Yes. I'm here, your Honor. Good afternoon.

THE COURT: Good afternoon.

Mr. Bluming?

MR. BLUMING: Yes. Good afternoon, your Honor.

THE COURT: Good afternoon.

Ms. Disney?

MS. DISNEY: Yes, your Honor. Good afternoon.

THE COURT: Good afternoon.

Mr. Glover?

MR. GLOVER: Yes, your Honor. Good afternoon.

THE COURT: Good afternoon.

Ms. Wilson?

MS. WILSON: Good afternoon. I'm here.

THE COURT: And, Mr. Walker, are you on for the United States?

MR. WALKER: I am on, your Honor. And good afternoon.

THE COURT: Good afternoon.

Somebody just came on. Did somebody come on that I had not called earlier?

What I would ask is we do have a public line that's automatically muted. So anybody who is not going to be on speaker, I'd ask that they be on that, simply so that when everybody comes on and off we don't keep hearing these clicks, particularly if they're not going to speak.

What I would ask is that, other than the principal speakers -- and the principal speakers obviously can refer to somebody else to answer the question, and that's fine;

and I'll remind myself to give you a moment to unmute so we don't have that background jangling noise. So I will call on you.

We are here based on the order that I signed on April 28th, 2020, which was a consent order. And the *amici* were directed to go back to the facilities and to provide an oral report today answering -- there were five questions.

And so I think the way I'm going to do this is I'll state the question and then call on either Ms. Lopes or Mr. Jordan. Just indicate whoever wants to answer it. And once it's been answered, if I have questions, I'll do followup and I'll let the party, since we only have five questions, if there's a followup question that you want to ask, before we move on to the second question.

So let me start with the first question: How are --

MS. LOPES: Your Honor --

THE COURT: Sure. Who is this?

MS. LOPES: This is Grace Lopes.

Your Honor, we had some background information that we wanted to provide to the Court and the parties first that we thought would be helpful before we got into Question 1.

THE COURT: Perfect.

MS. LOPES: Some of that background information I

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

THE COURT: That's fine.

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

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

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

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

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

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

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

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

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

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

units.

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

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

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

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

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

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

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

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

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

And we conducted in-depth, structured interviews with the medical director for the contractor who provides health services at both facilities -- that's Unity Healthcare -- the nursing director for Unity Healthcare, which has the responsibility for both facilities; the warden, who has responsibility for both facilities; the deputy warden at the correctional treatment facility; and again, with dozens and correctional officers and some of their supervisors assigned to posts throughout both facilities.

And again, we spoke in smaller groups this time,

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

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

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

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

Defendants. Most recently, this past Saturday afternoon was the most recent installment.

And we'd like to underscore that the Defendants have been extremely cooperative and responsive, again, throughout this stage of the process.

While we expect and will file our written report by May 28th, we would like an opportunity to supplement the information we provide today with respect to the first five questions in light of more recent data we've received from the Defendants as it appears appropriate.

THE COURT: Okay. And can I just ask, the supplement that you were talking about, would you want another oral one or are you going to be supplementing it in written format?

MS. LOPES: In writing. In writing. We can do that in the report.

THE COURT: Okay. That was the question. I'm sorry. Go ahead.

MS. LOPES: Thank you.

And so with all of that in mind, I can turn this over to Mr. Jordan, who at least preliminarily will address what the data shows with respect to testing, and then address the first two questions in the April 28th order.

THE COURT: Mr. Jordan?

MR. JORDAN: Thank you, your Honor.

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

The first positive case of COVID-19 in the DOC facility was confirmed at the CTF on March 25th. The number of cases at the CTF steadily increased until April 5th, when it peaked, and then it began to decline.

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

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

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

There was one quarantine housing unit at that time.

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

The most current data we have is through May 6th. Inmates continue to present the symptoms and continue to be

tested, albeit in smaller numbers than in mid-April.

As of last Thursday at the jail, there was one isolation housing unit and all but two housing units were quarantined, which is a significant difference relative to the last time we reported to the Court.

Unless there are any questions, I am prepared to move to Question No. 1.

THE COURT: No questions from me.

Are there any questions from Plaintiffs' counsel?

MR. MARCUS: Yes, your Honor. This is Steven Marcus.

First, a preliminary question: Ms. Lopes had mentioned the written report. I believe she mentioned it coming in on May 28th. And we have a --

MS. LOPES: May 20th.

MR. MARCUS: Okay. The 20th, then.

MS. LOPES: I misspoke, then. My apologies. The 20th.

MR. MARCUS: Okay. And I had a preliminary question for Mr. Jordan.

You mentioned one resident was transferred from the jail to CTF and then tested positive on May 1st. Do you know why that resident was transferred?

MR. JORDAN: Let me clarify: More than one resident were transferred. But the resident who did test

positive was from the CDF. It was a group of inmates.

And my understanding is that it was a -- I would need to confirm this, but my understanding based on a lot of interviews is it was a cohort of inmates from the CDF who were in a specific program. And there is a program at the CTF called the Young Men Emerging program. And they were transferred from the CDF to that program at the CTF as a group. One of them tested positive.

MR. MARCUS: Thank you.

That was all, your Honor.

THE COURT: Defense counsel, anything you wish to ask?

MR. SAINDON: Nothing right now. Thank you, your Honor.

THE COURT: And from the US, anything from you?

MR. WALKER: No. Thank you, your Honor.

THE COURT: So let's proceed.

I must say that I'm happy to hear that the numbers have gone down. I have a couple of questions about that, but I'll wait. And also, I'm happy the Department of Corrections has continued to be cooperative with the *amici* experts. Obviously, that makes it much better for all of us in terms of being able to get a handle on this.

So let me let you proceed, then. Mr. Jordan, you're starting with Question No. 1. Is that correct?

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

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

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

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

On non-quarantine housing units, the primary method by which inmates are able to access medical care is through the submission of a sick-call request form. Sick-call request forms are maintained by housing unit correctional staff, and inmates must request a form from an officer.

This lack of unimpeded access to forms is an

initial barrier to accessing medical care.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in the Level 1 criteria is shortness of breath, hyperventilation, respiratory distress and COVID symptoms, which are described as headaches, GI symptoms, shortness of breath, cough and fever.

In sum, there are barriers to inmates on non-quarantine housing units submitting sick-call requests. And when those requests are submitted, there are at times delays in both the collection of the sick-call requests and in patients being seen by medical staff.

That is the end of my presentation with Question 1. If there are questions, I could address those now or move to Question 2.

THE COURT: I have a question about the protocol that Unity Healthcare started: When did it go into effect? They put it out May 5th. Is it operational at this point or not?

MR. JORDAN: As far as -- it was issued. I do not know if it's operational.

MS. LOPES: They've reported that it is.

THE COURT: Okay. And that's Ms. Lopes?

MS. LOPES: Yes.

THE COURT: Okay. That's okay. I just want to make sure the comments are ascribed to the right people.

Plaintiffs' counsel, do you have any questions about what has been presented so far?

MR. MARCUS: One question, Mr. Jordan. This is Steven Marcus.

Do you know of any efforts on DOC's part to have medical staff walk the non-quarantine housing units or make periodic visits to non-quarantine housing units?

MR. JORDAN: I am not aware of any efforts. I'm not aware of efforts.

I do know that their efforts on the quarantine and isolation housing units is very staff intensive, as I'll describe in a minute, with respect to what they are doing, especially on the isolation units. There are a lot of hours of medical staff work going to those units. And I don't know if that impacts the non-quarantine units or not, but I do know that they have extended a lot of resources monitoring on those other units.

MR. MARCUS: One brief followup, Mr. Jordan: Were you able to quantify the correctional officer -- the shortage of correctional officers? You mentioned that as one reason why there was impeded access to sick-calls forms. Do you have any quantitative data on that front?

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

On the housing unit level, we routinely observed,

and staff reported, managers reported, that they are currently staffing lower than the levels that they normally staff at because they do not have sufficient staff to staff them at their normal levels. So there are some housing units that would normally have five or even six correctional officers that have three or four correctional officers.

MR. MARCUS: Thank you, Mr. Jordan.

THE COURT: Defense counsel, DC, anything you want to ask?

MR. SAINDON: Thank you, your Honor. Andrew Saindon. A quick question for Mr. Jordan.

You said that at the jail, out of 24 requests, 16 were seen within a day or two of the request. But I didn't catch the next category. What was that number?

MR. JORDAN: Six were seen three to five days after the submission of the form; one was seen eight days after the submission; and in one case, there was no record of the inmate being seen.

MR. SAINDON: That's all I have. Thank you.

THE COURT: Mr. Walker, anything that you want to ask?

MR. WALKER: No, your Honor. Thank you.

THE COURT: One quick question, and you may get to it later: Who gets tested? I know that you indicated that the -- I guess in the jail, in the breakdown, that two were

seen four to five days later who were tested, and it came back positive.

So is it once they're seen that there's a decision by the medical people as to whether to test?

MR. JORDAN: A medical provider -- and the medical providers, Unity's providers, are advanced practitioners. They include doctors, physician's assistants and nurse practitioners. They will make a decision about who to test. And it's based on their assessment of the patients. So it's not only symptoms, but also objective data by all signs and history, exposure. And so a provider has to make that decision.

THE COURT: Okay. Let me let you move on, then, to I guess Question 2.

MR. JORDAN: Question 2. Yes. Thank you, your Honor.

As of May 8th -- I'm going to begin my discussion with isolation units. And as of May 8th, there was one isolation unit at the jail. At the CTF, all inmates in isolation were housed in individual cells in the infirmary.

According to the management of the medical program, the expectation is that inmates in isolation are monitored by nursing staff twice per day and, additionally, by advanced care providers twice per day.

A position called the COVID provider of the day

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

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

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

On 84 percent of the days in our review, the inmates were seen at least two times by a medical provider. On 92 percent of those days, the inmates were seen at least once by a provider.

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

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

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

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

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

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

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

On 7 percent of the days, an inmate did not have his temperature taken. However, in all of those cases, the inmate refused both temperature checks each of those days.

At CTF, we reviewed the health record of eight inmates who spent 112 days on quarantine. On 96 percent of those days, the inmates had two temperature checks; and on 4 percent, they had one temperature check.

In sum, on both isolation and quarantine housing units, medical staff are conducting routine monitoring of inmates to identify those who need urgent care. For inmates in isolation, the level of routine monitoring is very high. It frequently includes multiple visits from both nursing staff and advanced medical providers on a daily basis.

And that concludes my presentation on Question 2.

THE COURT: Okay. When you say "collectively," I take it you're talking about putting all the days together for the -- it's not each inmate, but it's actually all together for -- if you had 14, it's a total amount. Is that correct, just to make sure?

MR. JORDAN: That's correct. So we took a sample of inmates and calculated for each one how many days each individual spent, and then we totaled those. So we really calculated the number of inmate days on isolation.

THE COURT: Okay. Plaintiffs' counsel, any questions?

MR. MARCUS: Yes. Steven Marcus here.

Mr. Jordan, when you said "seen by medical provider" for residents on isolation units, does that include the twice-daily temperature check or is that a separate event you're describing?

MR. JORDAN: That's limited to advanced care providers, so doctors, physician's assistants, nurse practitioners.

MR. MARCUS: Okay. That's my only question.

THE COURT: So nursing would be doing the two times per day and then you'd have these advanced care people, which are separate. So they're seen four times a day?

MR. JORDAN: That's correct. That is the goal. They do not always achieve it, but that is what -- the practice they're trying to implement.

THE COURT: DC, any questions?

MR. SAINDON: Not right now. Thank you, your Honor.

THE COURT: All right. United States, any questions?

MR. WALKER: No, your Honor. Thank you.

THE COURT: Then in terms of No. 3, is that you, Mr. Jordan, or Ms. Lopes?

MS. LOPES: It's me, your Honor.

MR. JORDAN: That is Ms. Lopes.

THE COURT: Okay.

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

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

I'll take each category separately.

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

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

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

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

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

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

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

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

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

MS. LOPES: Okay. A system was very recently established where Defendants worked with their service providers -- and there are different service providers at both facilities -- to create or establish access for legal calls through these 30-minute unmonitored legal calls. Information about how this operates is posted on the DOC website and signage is posted in the housing units. It was first posted, I am told, at the beginning of May. The signage -- the signage is intended to notify inmates and apparently staff about how the system works.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

stressful situation for the staff. They're understaffed. And, you know, there's significant overtime. Staff are tired. And it's a very stressful mix of factors, your Honor.

THE COURT: What I was curious about, you labeled these as disturbances. I take it the records themselves indicate some of the descriptions of what you've indicated were the problems. Is that correct?

MS. LOPES: Yes. Yes. Yes, your Honor.

THE COURT: Okay.

MS. LOPES: Yes.

THE COURT: So, Plaintiffs' counsel, any questions?

MR. MARCUS: Yes. This is Steven Marcus here.

Ms. Lopes, when you observed the case managers in their office during the scheduled legal calls, were case managers wearing PPE as far as you could observe?

MS. LOPES: This all happens -- yes. Yes. Wearing a mask. And I have to look at my notes about the gloves, whether they were wearing gloves. Not wearing a gown, but wearing a mask. Definitely they were wearing a mask. And I'd have to look at my notes.

MR. MARCUS: Okay.

MS. LOPES: It'll take me a while to access that.

MR. MARCUS: Do you have a sense of how many

residents on the isolation unit or roughly how many residents on isolation units at the jail don't get to shower every day?

MS. LOPES: No. It's frequent enough that both staff and inmates have reported it to us. But no.

MR. MARCUS: And as far as the residents who receive their hour out of cell at 1:00, 2:00, or 3:00 in the morning, are you aware of how frequent that is?

MS. LOPES: It's common. It's recognized as a -- you know, as something that they have to do in order to afford everyone the opportunity to be out of their cell.

MR. MARCUS: Okay. And the rolling phone cart: Did you observe the cart being wiped down between uses or does a staff member push it from cell to cell?

MS. LOPES: A staff member or detail inmates. And I didn't observe the -- with sanitation, but I know that Mr. Jordan did.

MR. JORDAN: I did not observe the sanitation.

I will say that I did have conversations with inmates when I was interviewing them in which they said it was the detail's job, the inmate detail's job, to move the cart from one cell to the next. And they had stated that the detail had been locked down for a prolonged period on the day that we were there, and that therefore other inmates' access to the phone was limited because of that,

because the detail inmate whose job it was to move the phone was locked down. And that created a lot of frustration as well on the unit.

THE COURT: Excuse me. Can I just ask, was there sanitation of the phone between inmates, leaving aside the cart?

MS. LOPES: We just didn't observe it, your Honor. But we have observed it in housing units without the cart. We certainly have observed it, you know, where they had the phones mounted on the walls in the day rooms. We have observed the cleaning of the phones. And the rolling carts, we just didn't observe it and we didn't inquire about it. We certainly can follow up on that.

THE COURT: I would appreciate it.

And what about if they're in the case manager's office? Is there any cleaning of the phone between calls?

MS. LOPES: We'll have to check.

THE COURT: Okay. Sorry, Mr. Marcus. Go ahead.

MR. MARCUS: And I just have one last question.

Are the detail inmates that work on the isolation units -- are those people who are also housed on those units and have tested positive?

MS. LOPES: Yes.

MR. MARCUS: Okay.

MS. LOPES: Yes.

THE COURT: DC, anything? Any questions?

MR. SAINDON: Nothing at this time. Thank you, your Honor.

THE COURT: How about --

MR. GLOVER: Your Honor? Your Honor? This is Eric Glover. I just wanted to clarify one issue that Ms. Lopes brought up.

The agency did provide her with data with regard to emergency calls conducted at the facility about that recent issue over the weekend that she referenced. Those emergency calls were slightly different than the standard 30-minute legal calls that the residents have. However, when Ms. Lopes follows up with staff, I'll explain it clearly. So I just wanted to be very clear.

THE COURT: Okay. And, United States, any questions?

MR. WALKER: No questions from the United States. Thank you, your Honor.

THE COURT: And I guess we're moving to Question 4.

MS. LOPES: That question is: Do DOC residents have access to cleaning materials and cleaning equipment to clean their cells?

Again, they have access at both facilities to cleaning materials and cleaning equipment. Availability is

not uniform from housing unit to housing unit. So some housing units have more cleaning supplies and cleaning materials available than others.

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

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

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

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

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

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

THE COURT: Okay. No. 5.

MS. LOPES: Is the DOC enforcing social distancing?

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

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

situation was when we were there in April. So as a result, at least some housing units are less chaotic.

Again, this has created -- by allowing fewer inmates out at a time, you know, this has given rise to this other problem of the 24-hour recreation schedule because of the difficulty letting -- when you let fewer numbers of inmates out at one time, they can't all during the day get out of their cells to shower and use the phone, et cetera. So the Defendants have expanded to this 24-hour recreation cycle.

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

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

So that's where that stands, your Honor.

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

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

Did you see on this round where residents still were using makeshift rags -- was that less prevalent than

your first visit or about the same?

MS. LOPES: About the same. About the same.

MR. MARCUS: Okay. And that was my only question. I didn't have any questions aside from that.

THE COURT: DC?

MR. SAINDON: Yes, your Honor.

I don't recall, Ms. Lopes. Did you say when the video excerpts -- from what days those were from?

MS. LOPES: I can tell you. Here we go. 4-27, 11:00 a.m. to 11:15 at the CTF. 4-27, 10:00 to 11:00 a.m. at the CTF. 4-27, 8:00 to 9:00 a.m. at the CTF. And 4-27, 7:00 to 8:00 a.m. at the CTF.

MR. SAINDON: Okay. Thank you.

THE COURT: Anybody else from DC? Mr. Glover or anybody?

MR. GLOVER: I don't have anything, Judge. Thank you.

THE COURT: US, any questions?

MR. WALKER: No. Thank you, your Honor.

And my thanks to Ms. Lopes and Mr. Jordan as well.

THE COURT: Yes. Definitely.

I have a couple of overall questions that I'd like to ask. I'm going to direct them to DC first; and then if Ms. Lopes or Mr. Jordan have something to add additionally, that would be helpful. And they're not exactly connected to

these four points.

From DC's perspective, in terms of the legal calls, we're still having a problem, obviously, here. The rolling carts obviously help to some degree. But I don't see how you're doing -- if they're in the presence of their case managers, that's not an unmonitored call. I mean, what they're discussing is what they want to do with their cases, pleas, sentences, other kind of things. Obviously, that's -- nobody should be there.

Are you going to do anything else? If you don't have the complete answer, that's fine. I'm just raising the issue.

MR. GLOVER: Your Honor, this is Eric Glover.

THE COURT: Go ahead.

MR. GLOVER: This is Eric Glover. I don't know if someone was speaking before me.

THE COURT: It doesn't sound like it. Go ahead, Mr. Glover.

MR. GLOVER: Yes, your Honor.

We are looking at adding additional equipment to the facilities to assist with -- or to assist with providing legal calls to the residents.

However, your Honor, it is still a correctional facility. And notwithstanding -- and understanding the Court's concern about case managers or staff being present,

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

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

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

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

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

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

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

MR. GLOVER: Yes, your Honor.

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

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

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

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

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

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

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

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

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

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

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

combination of both. I know that MPD and the US Attorney's Office have started making a more diligent effort to have more offenses be classified with citations. And there has been -- as the Court is well aware, there were multiple bond hearings occurring at the Superior Court where residents have been released as well.

THE COURT: Right. Okay.

What about the Parole Commission? Are they doing anything?

MR. GLOVER: Your Honor, I'd have to -- I'd have to follow up on that.

THE COURT: Mr. Walker, do you know? If you don't know, that's fine. These are questions you weren't expected to know the answer to. But I'm just curious.

MR. WALKER: I don't know that today, your Honor.

THE COURT: Okay. It would be helpful at some point to find out what's happening with the Parole Commission as to whether they have some system in place for going through these, at least the ones where they're being held for technical reasons as opposed to new charges. And I know there have been some issues with the Bureau of Prisons in terms of the receiving group having some concerns, which leads me to my next question.

The last time I asked this question of DC about doing tests prior to people being released or being

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

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

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

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

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

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

The other question that I had for DC is, what's happening with the staffing issues? And I realize that is not a quickie, but as I recall there was some efforts to getting additional staff through some mechanism which -- unfortunately, I don't have it in front of me.

Does anybody want to answer that from DC?

MR. SAINDON: Yes, your Honor.

MR. GLOVER: Go ahead.

MR. SAINDON: Go ahead, Eric.

MR. GLOVER: Mr. Saindon, please proceed.

MR. SAINDON: I want I was going to say, you probably have more recent detail.

We had asked for assistance from Public Health, and they provided some volunteer staffers to assist in the -- doing the screening. And maybe Mr. Glover has details there. But, again, it remains difficult to hire full-time correctional officers because of the time required to train them.

THE COURT: Right.

MR. GLOVER: In addition to that, your Honor, Mr. Saindon is correct. We have reached out to the Medical Reserve Corps, and we received staff from the Corps who have been assisting with screening of residents.

We've also, as regards our staff who took leave pursuant to the COVID pandemic -- we began sending out

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

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

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

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

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

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

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

The armed security you mentioned: Can you just say a little bit more about that? Are those private contractors? Where in the facility would those people be working?

MR. GLOVER: I have yet to follow up with our deputy director with the administration to get more details about that. So I don't have that exact information right now.

MR. MARCUS: Okay.

MR. GLOVER: But it's my understanding they will not be at the facility. They would just be part of doing -- they will not be operating in the facility. Just hospital details.

MR. MARCUS: Okay. And I'm not sure, Mr. Glover, if you or Mr. Saindon would know the answer to this. But do you know if there's capability in the District to test everyone at the jail, the 1300 or so people who remain? Has that conversation happened or have any inquiries been made?

MR. GLOVER: I am not familiar with any facility that has the capability to test all the residents at the DOC facilities. However, we are looking at every opportunity to test as many residents as possible.

MR. MARCUS: Okay.

THE COURT: And my understanding is at least there was some discussion of testing people that were being

released not only into the community, but potentially if they were being transferred someplace else, which might bring the population -- well, testing into the community, so we didn't send somebody out that turns out to be sick going home, who doesn't show -- who is asymptomatic and then goes home.

But also, it might make it easier to move some people out that should be moved out of the facility if the receiving facilities were satisfied that they weren't getting people that potentially were sick. But I'll leave you to have that discussion with the Chief Judge at this point.

Anything else from DC? Anything else you wish to bring up or raise?

MR. SAINDON: This is Andrew Saindon.

No, your Honor. Thank you.

THE COURT: Mr. Walker, is there anything you want to say?

MR. WALKER: No, your Honor. Thank you.

THE COURT: Thank you very much, Ms. Lopes and Mr. Jordan, in terms of going in and going over and checking back with what we had talked about.

And we certainly -- and I appreciate the Department of Corrections being cooperative. The system won't work unless they get the information. And so I

appreciate that.

And I certainly appreciate the help from Ms. Lopes and Mr. Jordan. This has made this case certainly a better case in terms of getting information that everybody can accept that's neutral and that we can work with. So I thank you very much for your time and energy and how careful you are in terms of going through all of this. So I await with interest the written findings.

Do you have any questions of the director or anybody else, Ms. Lopes or Mr. Jordan?

MS. LOPES: No, your Honor.

We will reach back out to counsel for both sides after this and determine whether there are any other areas that they think would be helpful for us to clarify in the final report based on what we've said today. And we anticipate that the final report will supplement today's presentation as well as address the remaining questions.

THE COURT: All right. Thank you very much.

MS. LOPES: Thank you.

THE COURT: Everybody is excused. As I said before, take care of yourselves. Thank you.

MS. LOPES: Thank you, your Honor.

MR. MARCUS: Thank you, Judge.

MR. SAINDON: Thank you, your Honor.

MR. GLOVER: Thank you, your Honor.

MR. WALKER: Thank you, your Honor.

MR. JORDAN: Thank you, your Honor.

(Proceedings concluded.)

CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby certify that the foregoing constitutes a true and accurate transcript of my stenographic notes, and is a full, true, and complete transcript of the proceedings produced to the best of my ability.

Please Note: This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of reporting remotely.

Dated this 11th day of May, 2020.

/s/ Lisa Edwards, RDR, CRR
Official Court Reporter
United States District Court for the
District of Columbia
333 Constitution Avenue, NW, Room 6706
Washington, DC 20001
(202) 354-3269

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