***Seth v. McDonough*, No. 20-cv-1028-PX**
Plaintiffs' Letter Brief
June 19, 2020

Dear Judge Xinis,

Nearly two months after this lawsuit was filed, the Jail's most significant deficiencies persist.[1] Detainees are not screened for symptoms of COVID-19. Medical care is delayed, if provided at all. Medical isolation cells are once again covered in feces, urine, and mucus. Social distancing is not enforced, and detainees are routinely crowded together in small spaces. Multiple detainees who tested positive for COVID-19 at the end of May repeatedly reported their symptoms, but they were not isolated or assessed. Instead, they remained in their cells with cellmates, used phones inches away from other detainees, and crowded into the Jail's small courtroom.

In response to this Court's Order (Doc. 85), Defendant McDonough submitted plans to address certain critical deficiencies in its conditions that accelerate the risk of infection, serious illness, and death from COVID-19. *See* Doc. 88, Doc. 95. Even if implemented, these plans have significant deficiencies. *See* Ex. B, Rottnek Decl. ¶¶ 19-45; Ex. C, Meyer Decl. ¶¶ 28-37. But, as described below, these plans exist only in the abstract; they are not implemented in practice.

Despite ample opportunities to improve them, the Jail's conditions still violate the Eighth and Fourteenth Amendments. Accordingly, this Court should convert its Temporary Restraining Order into a Preliminary Injunction. *See generally* Ex. DD, Opinion (Doc. 100), *Banks v. Booth*, 20-cv-849-CKK (D.D.C. June 18, 2020) (granting preliminary injunction in similar circumstances).

Symptom Screening and Contact Tracing. Defendant has assured this Court that detainees are regularly screened for COVID-19 symptoms and promptly isolated when those symptoms appear. But detainees consistently report that the Jail is not screening detainees for symptoms. Many detainees report that they are never asked any questions about symptoms at all. Ex. R, Corbette Decl. ¶ 5-6; Ex. P, Diantignac Decl. ¶ 49; Ex. BB, Lanaux Decl. ¶¶ 2-3. Detainees who have been asked questions about symptoms describe highly general questions, such as whether the detainee has experienced "flu symptoms," or simply, "You good?" *See, e.g.*, Ex. Q, Diaz-Cantillano Decl. ¶ 23; Ex. BB, Lanaux Decl. ¶ 3; Ex. G, Decl. 19 ¶ 9; Ex. K, Decl. 32 ¶ 23; Ex. M, Decl. 34 ¶ 18.

Detainees who report COVID-19 symptoms are routinely ignored. For example, although Defendant contends that the six detainees who tested positive for COVID-19 at the end of May were all asymptomatic, Doc. 95 at 2, this is not true. Of the five COVID-positive detainees reached by Plaintiffs' counsel, all experienced symptoms of COVID-19—and one is still sick. *See* Ex. Z, Watts Decl. ¶¶ 4, 10-11 (cough, body aches); Ex. R, Corbette Decl. ¶ 3 (severe headache, sore throat, cough); Ex. V, D.H. McGee Decl. ¶¶ 5-7, 22 (vomiting, coughing, aches, chills); Ex. AA, Gaines Decl. ¶¶ 8, 19-21 (documenting interview with one COVID-positive detainee who had headaches and a cough an another who lost his sense of taste and smell). Two of the five repeatedly communicated those symptoms to Jail staff, but they were not isolated or promptly assessed. *See* Ex. V, D.H. McGee Decl. ¶¶ 9-12 ("I told the COs I was coughing and I would put money in for the sick call form, but they never came . . . It took them about a week after I told the COs I was having symptoms for anyone to send me to medical. Once I got to medical, I wasn't tested. They threw me right back into the cell . . . . with my cellmate."); *see also* Ex. R, Corbette Decl. ¶¶ 3, 7-11, 17-18; Ex. W, A.R. McGee Decl. ¶¶ 4-6. Three of the five did not know that their symptoms

[1] This filing focuses on the most central deficiencies, but Plaintiffs' evidence documents additional relevant issues. For reference, excerpts from Plaintiffs' new evidence are grouped by category in the chart attached as Ex. A. This brief does not incorporate Defendant's discovery, which Plaintiffs received after 12 pm today.

were related to COVID-19. Ex. AA, Gaines Decl. ¶ 8 (describing two detainees); Ex. Z, Watts Decl. ¶ 11.

The Jail disregards symptoms even in COVID-positive detainees: two detainees who recently tested positive were transferred back to general population while they were still symptomatic. *See* Ex. AA, Gaines Decl. ¶¶ 24-26. One had a 102-degree fever the day before he was moved. *Id.* ¶ 24. Contact tracing (isolation/quarantine of close contacts of positive cases) is minimal to non-existent. Ex. I, Decl. 30 ¶ 5; Ex. M, Decl. 34 ¶¶ 27-30. Even close contacts of positive cases who are themselves experiencing symptoms are not isolated and struggle to access medical care.[2]

Delays in and Barriers to Medical Care. Protracted delays in (and denials of) medical care remain the norm at the Jail, including for detainees who report symptoms of COVID-19. Detainees regularly submit multiple sick call requests before they receive any response. This process can take weeks, and many requests for medical care are ignored altogether.[3]

As described above, at least two of the six detainees who recently tested COVID-positive reported their symptoms but were not isolated or assessed. *See* Ex. R, Corbette Decl. ¶¶ 3, 7-11, 17-18; Ex. V, D.H. McGee Decl. ¶¶ 9-12; Ex. W, A.R. McGee Decl. ¶¶ 4-6. Likewise, in recent weeks, other detainees have reported symptoms, but have also not been isolated or assessed. *See, e.g.*, Ex. BB, Lanaux Decl. ¶ 4 ("[Two detainees] reported that they actually have symptoms of COVID-19 now. One is having trouble breathing, sneezing, and body aches. The other has been coughing. Although both reported their symptoms, neither of them had been seen by medical staff or isolated.").

Detainees have been denied timely and appropriate care for other dangerous symptoms as well. *See, e.g.*, Ex. BB, Lanaux Decl. ¶¶ 6-19 (describing client Robert Pixley, who was recently rushed into emergency surgery for a perforated ulcer after repeated unsuccessful attempts to get medical attention at the Jail); Ex. F, Decl. 12 ¶¶ 5-8 (detainee who previously tested positive for COVID-19 stating that he continues to have "attack(s)" of "extreme shortness of breath" and has reported them, but "the COs don't do anything" and the nurse "just said, 'what do you want me to do about it?'").[4] Some efforts to get care are met with derision and threats of punishment. *See, e.g.*, Ex. Y, Perry Decl. ¶¶ 4-5 ("I told the morning nurse, Vanessa, that I couldn't breathe and she laughed at me. The daytime nurses call us n-----s."); Ex. R, Corbette Decl. ¶¶ 9-11.

Even in emergencies, the Jail's response in the general housing units is often exceedingly slow, and calls for help are ignored. *See* Ex. K, Decl. 32 ¶ 10-11 ("Maybe two weeks ago, another guy on H8 kept pushing his buzzer and yelling, 'help, help!' But the COs just ignored him. Eventually, one of the other inmates . . . walked over to this guy's door to check on him. And the guy was lying on the ground, unconscious. . . . We found out later that this guy tested positive for COVID-19."); *see also* Ex. R, Corbette Decl. ¶ 14; Ex. L, Decl. 33 ¶ 10-11.

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[2] *See* Ex. H, Decl. 20 ¶ 3 ("One guy . . . has been having breathing problems and throat swelling. Two weeks ago someone left that same cell—cell 204—with Corona. . . . It took about 3 weeks for him to get the sick call after multiple requests.").

[3] *See, e.g.*, Ex. N, Decl. 35 ¶ 15 ("For the sick calls that were answered I had to put in between 3-5 requests. It takes more than a week to get me down to medical and that's only for the ones they answered after I put in multiple requests."). Ex. H, Decl. 20 ¶ 3; Ex. L, Decl. 33 ¶¶ 5-6, 8, 12; Ex. M, Decl. 34 ¶ 16, 19; Ex. U, Kirkland Decl. ¶ 31.

[4] *See also* Ex. CC, Pixley Decl. ¶¶ 3-7 (detainee's mother describing his efforts to get care and hospitalization); Ex. K, Decl. 32 ¶ 12 (stating that his cellmate, who had sickle cell, was throwing up blood but was ignored); Ex. Q, Diaz-Cantillano ¶¶ 14-36 (describing his attempts to get medical attention for black, tarry blood coming from his rectum).

Medical Isolation and Monitoring of Suspected and Confirmed Cases of COVID-19. Detainees placed in medical isolation cells continue to report unsanitary conditions. The cells remain covered in feces, mucus, and urine. *See, e.g.*, Ex. Z, Watts Decl. ¶ 6 ("The isolation cell reeked of urine. . . . There were also feces in the top back corner of the cell and down the corner of the wall. It looked like someone had tried to throw their feces at the security camera."); Ex. Y, Perry Decl. ¶ 6 ("The isolation cell I'm in now has feces everywhere. There's feces on the little camera that's in here. I complained about it and they said, 'Well, do you want to clean it?'").[5]

The Jail does not clean isolation cells between occupants. *See* Ex. Z, Watts Decl. ¶ 5 ("When my test came back positive [for COVID-19], . . . I was put in the medical isolation cell. There was a guy occupying the cell when I arrived in medical. He looked rough; he looked sick and unclean, like he hadn't been able to shower for multiple days. Jail staff opened cell door and let him out, and immediately ushered me into the cell. They did not clean or sanitize the cell in any way. They did not even enter the cell to make sure that it was in OK condition.").[6] However, the Jail does regularly require sick detainees who occupy the isolation cells to clean them before entering or leaving them—even when the previous occupants were COVID-positive. Ex. J, Decl. 31 ¶ 18. Indeed, around the beginning of June, Jail staff asked Quinton Perry, a 60-year-old detainee with COPD and heart failure—both high-risk conditions for COVID-19—to clean all of the isolation cells in which COVID-positive prisoners had been. *See* Ex. Y, Perry Decl. ¶ 8 ("[T]hey told me they would give me extra food from commissary if I would clean all of the medical isolation cells where the people with COVID had been. I did it because the food you get in isolation is cold and it's not a lot."). Unit H-6 (which also holds COVID-positive detainees in isolation) is similarly unsanitary. *See* Ex. AA, Gaines Decl. ¶¶ 10-13 (mold, insects, lack of cleaning); Ex. Z, Watts Decl. ¶¶ 13-15 (same). Detainees placed in isolation still lack access to basic hygiene products, showers, and phone calls. *See* Ex. Z, Watts Decl. ¶ 8; Ex. T, Hill Decl. ¶ 31; Ex. J, Decl. 31 ¶ 12. At least one cell lacks running water. Ex. Y, Perry Decl. ¶ 5.[7]

Detainees in medical isolation cells and H-6 are rarely monitored.[8] When they seek medical attention, there is often a long delay, if anyone comes at all. Ex. Y, Perry Decl. ¶ 11 ("When I feel like I can't breathe, I have to bang on the glass to try to get someone. If they come, it takes at least 15 minutes. But sometimes they just ignore you and they don't even come at all."); Ex. Z, Watts Decl. ¶ 17 (stating that, while in isolation for COVID-19 on H-6, "[W]e would often have to push the call button for the intercom 9 or 10 times [to get an officer's attention]."); *see also* Ez. AA, Gaines Decl. ¶¶ 14-15; Ex. O, Abarca Decl. ¶ 17; Ex. T, Hill Decl. ¶ 17.

Social Distancing and Sanitation. Although detainees remain on lockdown for approximately 23 hours per day,[9] the Jail fails to ensure social distancing during out-of-cell time. Detainees are still crowded together at the phones. *See* Ex. Q, Diaz-Cantillano Decl. ¶ 24 ("When you are using the

[5] *See also* Ex. Q, Diaz-Cantillano Decl. ¶ 19; Ex. J, Decl. 31 ¶ 18; Ex. T, Hill Decl. ¶ 29.
[6] *See also id.* ¶ 7; Ex. Y, Perry Decl. ¶ 9; Ex. J, Decl. 31 ¶ 18.
[7] The cells' punitive conditions also deter many detainees from reporting symptoms for fear of being placed there—further impeding the identification of symptomatic detainees. *See* Ex. O, Abarca Decl. ¶ 13; Ex. X, Nelson Decl. ¶¶ 22-23; Ex, T, Hill Decl. ¶ 21, 35; Ex. P, Diantignac Decl. ¶ 49; *see also* Ex. C, Meyer Decl. ¶ 33.
[8] *See, e.g.*, Ex. T, Hill Decl. ¶ 30; Ex. J, Decl. 31 ¶ 13; Ex. Z, Watts Decl. ¶¶ 16-17; Ex. AA, Gaines Decl. ¶ 18.
[9] *See* Ex. O, Abarca Decl. ¶ 18; Ex. N, Decl. 35 ¶ 3; Ex. R, Corbette Decl. ¶ 19; Ex. F, Decl. 12 ¶ 9; Ex. G, Decl. 19 ¶ 10; Ex. H, Decl. 20 ¶ 4; Ex. J, Decl. 31 ¶ 19; Ex. I, Decl. 30 ¶ 11; Ex. K, Decl. 32 ¶ 25; Ex. L, Decl. 33 ¶ 13; Ex. M, Decl. 34 ¶ 40; Ex. N, Decl. 35 ¶ 3.

phone, it's like when you're on a bus. That's how close you are.").[10] They remain close together during intake process, in the pill line, and during rec time without intervention from Jail staff.[11]. Detainees in the Jail's courtroom sit side by side in the small quarters, and detainees being released routinely spend an hour or more in a small room and hallway with up to ten other people crowded closely together. *See* Ex. R, Corbette Decl. ¶¶ 28-29; Ex. V, D.H. McGee Decl. ¶¶ 20-21.

Cleaning and sanitation also remain deficient. The Jail uses Spray-9, but it is routinely watered down (often by half).[12] Detainees can only access it during their one hour of out-of-cell time,[13] and it is sometimes not available at all.[14] Common surfaces and spaces are not regularly cleaned.[15] Disinfectant wipes are not provided.[16] Cells in which COVID-positive detainees had been are cleaned only by detainees—and with insufficient cleaning supplies. Ex. K, Decl. 32 ¶ 11, 33, 34.

Plan for Medically Vulnerable Detainees. Defendant has now submitted a plan to identify[17] and protect high-risk detainees from COVID-19. *See* Doc. 88 at 4-13. Defendant's plan as written is inadequate in many respects. *See* Ex. B, Rottnek Decl. ¶¶ 19-23. However, even this written plan is not implemented in practice. For example, Defendant's plan described conducting additional symptom checks for high-risk detainees. Doc. 88 at 11. But like other detainees at the Jail, medically vulnerable detainees report that no one has been checking their symptoms at all, and if questions are asked, they are exceedingly general. *See* Ex. J, Decl. 31 ¶ 5; Ex. T, Hill Decl. ¶ 45; Ex. X, Nelson Decl. ¶¶ 22; Ex. K, Decl. 32 ¶ 23. The Jail committed to prioritizing high-risk detainees for medical care. Doc. 88 at 10-11. Yet delays in and denial of care continue—including for the conditions that render these detainees high risk for COVID-19. *See, e.g.*, Ex. K, Decl. 32 ¶ 8 (detainee with severe asthma stating that when he urgently needs his breathing machine, he pushes the buzzer in his cell to call a corrections officer, but "a lot of the time, the COs stay seated behind their desk just talking to one another ignoring me," or "turn the volume of the buzzer down low, so they don't even have to hear me"); Ex. G, Decl. 19 ¶¶ 4, 5 (detainee with asthma and bronchitis stating that he asked to see a doctor for breathing problems on June 5th, but that as of June 12th, he still had not seen one); Ex. J, Decl. 31 ¶ 5 (HIV-positive detainee stating that the Jail failed to obtain his HIV medication when he entered the Jail, so he went days without it); *see also* Ex. Y, Perry Decl. ¶ 13; Ex. P, Diantignac Decl. ¶ 22; Ex. T, Hill Decl. ¶¶ 23-27, 36-37.[18]

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[10] Ex. N, Decl. 35 ¶ 5; Ex. R, Corbette Del. ¶ 21-22; Ex. X, Nelson Decl. ¶ 20; Ex. O, Abarca Decl. ¶ 19; Ex. G, Decl. 19 ¶ 14; Ex. H, Decl. 20 ¶ 7, 8; Ex. K, Decl. 32 ¶ 28; Ex. L, Decl. 33 ¶ 19; Ex. M, Decl. 34 ¶ 23.

[11] *See* Ex. N, Decl. 35 ¶ 3; Ex. G, Decl. 19 ¶ 14; Ex. H, Decl. 20 ¶ 4-5.; Ex. K, Decl. 32 ¶ 4; Ex. L, Decl. 33 ¶ 19.

[12] *See* Ex. G, Decl. 19 ¶ 12; Ex. O, Abarca Decl. ¶ 19; Ex. T, Hill Decl. ¶ 41; Ex. F, Decl. 12 ¶ 12; Ex. I, Decl. 30 ¶ 8; Ex. K, Decl. 32 ¶ 11, 18; Ex. M, Decl. 34 ¶ 33.

[13] Ex. R, Corbette Decl. ¶ 23; Ex. F, Decl. 12 ¶ 12; Ex. G, Decl. 19 ¶ 11, 17; Ex. J, Decl. 31 ¶ 17, 20.

[14] Ex. I, Decl. 30 ¶ 7 ("Every week we run out of cleaning supplies."); Ex. O, Abarca Decl. ¶ 19.

[15] Ex. O, Abarca Decl. ¶ 19; Ex. N, Decl. 35 ¶ 7-9; Ex. T, Hill Decl. ¶¶ 19; Ex. H, Decl. 20 ¶¶ 9, 10, 17; Ex. I, Decl. 30 ¶ 9; Ex. K, Decl. 32 ¶¶ 17, 19.

[16] Ex. N, Decl. 35 ¶ 11; Ex. X, Nelson Decl. ¶ 14; Ex. T, Hill Decl. ¶¶ 19, 40; Ex. G, Decl. 19 ¶ 11.

[17] Plaintiffs do not know whether Defendant has implemented its plan to identify medically vulnerable detainees. Defendant's counsel committed to provide Plaintiffs' counsel with an updated list of high-risk detainees once it is available, but no list has been produced.

[18] The Jail stated that it will single-cell high-risk detainees when possible. Doc. 88 at 12-13. At least some high-risk detainees remain double-celled. *See* Ex. K, Decl. 32 ¶ 23; Ex. M, Decl. 34 ¶ 35. But the Jail has also moved at least one high-risk detainee to a single cell even though the cell worsened his health. At the beginning of June, the Jail moved Quinton Perry, who has COPD and heart failure, to a medical isolation cell where COVID-positive prisoners had been. Ex. Y, Perry Decl. ¶¶ 4-5. Mr. Perry cannot breathe in the cell, which lacks ventilation. *Id.* ¶¶ 10, 19, 20-21. As a result, he now needs breathing treatments that he did not previously require. *Id.* ¶¶ 10.

Mass Test Results and Testing Plan. Between May 19 and 25, the Jail tested 521 of its 525 detainees. Doc. 95 at 2. This round of testing revealed six positive cases of COVID-19. *Id.* The Jail misinterprets these results as evidence of its success. *Id.* at 3. But as Dr. Jaimie Meyer explains, the results more likely reflect the opposite: "Based on Dr. Franco-Paredes's description of the course of the jail's outbreak, the low number of positive testing more likely reflects a widespread outbreak that has peaked and is not validation that the Jail adequately contained the outbreak." Ex. C, Meyer Decl. ¶ 21; *accord* Ex. B, Rottnek Decl. ¶ 43; *see also* Ex. C, Meyer Decl. ¶¶ 15-27.[19]

Separately, although the Jail has committed to continue testing new intakes, "it has not presented any plan to re-test detainees," and it has not "provided any criteria for when a test will be administered to a detainee after intake." Ex. C, Meyer Decl. ¶ 28. "This creates serious vulnerabilities to a new outbreak at the jail." *Id.* "At a bare minimum, there must be a reasonable plan for retesting of some kind over the many months remaining in the course of the pandemic." *Id.* ¶ 36; *accord* Ex. B, Rottnek ¶¶ 37-39. "If mass retesting at regular intervals is not feasible, the Prince George's County Jail will need to develop a clear protocol for testing detainees that is mindful of major blind spots of symptom-based testing strategies." *Id.*

But not only does the Jail lack such a protocol—as described above, it also lacks effective screening measures. Thus, by fall, the Jail will have an effectively new detainee population (given turnover), a second wave of COVID-19 will be rising, *see* Ex. C, Meyer Decl. ¶ 39, and the Jail—if present course continues—will be without an implemented plan to prevent another major outbreak.

The Jail also represents that it does not test its staff. *Id.* ¶ 21. "This is another major blindspot." Ex. C, Meyer Decl. ¶ 37. "When staff are required to self-report symptoms, exclude themselves from work, contact their primary care provider to obtain an order for testing, and then self-report positive test results to their employer, the barriers are often insurmountable." *Id.*

This Court Should Issue a Preliminary Injunction. The deficiencies raised by this Court and the Independent Inspector continue. Defendant's progress to date demonstrates it will not remedy these deficiencies absent oversight. And as Dr. Meyer explains, "[A] renewed wave of COVID-19 infections is nearly certain this fall and predicted to hit at the same time as seasonal influenza, which will be devastating in terms of loss of life and strain on healthcare systems. . . . We need to act now preemptively to prevent catastrophe." Ex. C, Meyer Decl. ¶ 39. Accordingly, Plaintiffs ask this Court to enter a Preliminary Injunction, including appointment of a monitor and any relief this Court deems necessary. To ensure both effective remedies and Defendant's discretion in crafting it, Plaintiffs respectfully request that this Court order the parties to confer to develop appropriate remedies. *See Braggs v. Dunn*, 257 F. Supp.3d, 1171, 1268 (M.D. Ala. 2017) (finding Eighth Amendment violation and ordering parties to "meet to discuss a remedy"); *Benjamin v. Fraser*, 156 F. Supp. 2d 333, 344 (S.D.N.Y. 2001) (noting that when agreement between the parties is incorporated into an order, this "constitutes strong evidence" of compliance with the need-narrowness-intrusiveness requirement").

[19] Both Dr. Meyer and Dr. Rottnek noted that the result could also be the result of testing errors, which are "likely to happen where staff are not receiving adequate training" in how to administer the tests. Ex. B, Rottnek Decl. ¶ 43; Ex. C, Meyer Decl. ¶ 26.

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