

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-00977-PAB-SKC

THOMAS CARRANZA;
JESUS MARTINEZ;
RICHARD BARNUM;
THOMAS LEWIS;
MICHAEL WARD;
COLBY PROPE; and
CHAD HUNTER,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

**DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION FOR FORTHWITH HEARING [ECF 62]**

Defendant Sheriff Steven Reams ("Sheriff"), by and through counsel, Matthew J. Hegarty, Esq., Andrew D. Ringel, Esq., and John F. Peters, Esq., of Hall & Evans, L.L.C., now submits his Response to Plaintiffs' Motion for Forthwith Hearing [ECF 62], as follows:

I. INTRODUCTION

Plaintiffs' Motion for Forthwith Hearing ("Motion") begins with the factually unsupported speculation that Anthony Griego, formerly an inmate at the Weld County Jail ("WCJ"), died of COVID-19. In fact, no determination has yet been made about Mr. Griego's cause of death by the Weld County Coroner or anyone else. Plaintiffs' Motion then offers even more factually unsupported speculation the Sheriff and Weld County

Sheriff's Office ("WCSO") are engaging in willful noncompliance with this Court's narrow Order Granting in Part and Otherwise Denying Plaintiffs' Motion for Preliminary Injunction [ECF 55]. Tellingly, nowhere in the Motion (or in any filing by Plaintiffs to date) have Plaintiffs acknowledged this Court's definition of "medically vulnerable" is much narrower than the one Plaintiffs proposed. In addition, neither at the hearing before this Court, nor in Plaintiffs' Motion, nor at any other time during the course of this litigation have Plaintiffs offer any evidence whatsoever to contradict the Sheriff's and the WCSO's judgment concerning jail operations and consideration of all the different factors beyond only inmate health which this Court recognized the Sheriff and the WCSO must consider in making inmate housing assignments and otherwise implementing this Court's Order. For the reasons set forth below, Plaintiffs are incorrect, no forthwith hearing is required, the Sheriff is in full compliance with this Court's Order, and Plaintiffs' Motion must be denied.

II. RELEVANT BACKGROUND

1. On May 11, 2020, the Court entered the narrow Order [ECF 55], requiring the Sheriff accomplish the following:

a. A certification to the Court of identification of a list of persons identified as "medically vulnerable" according to the Court's narrow definition of that term, along with providing the list to the Court and Plaintiffs and explaining its compilation;

b. "A policy ensuring that, to the maximum extent possible considering the Jail's physical layout, population level, and classification needs, medically vulnerable inmates are 'socially distanced' from other inmates housed in the Jail";

c. “A procedure, as part of the intake of new inmates into the Jail, for medically vulnerable inmates to be single-celled or otherwise socially distanced, to the maximum extent possible considering the Jail’s physical layout and classification needs, while housed in the transition unit”;

d. “A policy of enhanced sanitation procedures in areas where medically vulnerable inmates are housed”;

e. “A plan to obtain a sufficient number or type of masks so that inmates do not need to wear them for more than their intended duration or so that inmates may be able to clean them”; and

f. “A policy providing for increased monitoring of medically vulnerable inmates for symptoms of COVID-19”.

[ECF 55 at 38-39]. By its terms this Court’s Order expires August 9, 2020. [ECF 55 at 39].

2. On May 18, 2020, the Sheriff submitted his Notice of Complete Compliance with this Court’s Order, setting forth (a) comprehensive explanations as to the endeavors of the Sheriff and the WCSO to analyze what the Court required from all applicable angles, (b) the responsive policies, procedures, and plans the Sheriff and WCSO developed, and (c) the increased financial and operational costs which the WCSO has incurred, is incurring, and will incur in connection with efforts to combat COVID-19 (and, by extension, in connection with compliance with ECF 55). [See ECF 60 to 60-14].

3. The Motion expressly concedes the sufficiency of the Sheriff’s policies and procedures respecting (d) enhanced sanitation for medically vulnerable inmates and respecting (e) masks for inmates. [See ECF 62 at 2].

4. The Motion, by omission, also concedes the sufficiency of the Sheriff's policies and procedures respecting (f) enhanced medical monitoring for medically vulnerable inmates for symptoms of COVID-19. [See *generally* ECF 62].

5. In contrast, the Motion claims (without attaching any evidentiary submission) the Sheriff's substantial compliance efforts are deficient in connection with three and only three areas, namely (a) the procedures utilized to identify medically vulnerable inmates, (b) the policy for social distancing and housing of medically vulnerable inmates in general population units within the WCJ, and (c) the policy for social distancing and housing of medically vulnerable inmates in intake units within the WCJ. [See *generally* ECF 62].

6. Six days after the Motion was filed, Plaintiffs submitted a "Notice of Submission of Supplemental Support to Plaintiffs' Motion for Forthwith Hearing" to which was attached the First Supplemental Declaration of Carlos Franco-Paredes, Plaintiffs' expert witness, in purported support of entitlement to a forthwith hearing. [See ECF 63 and ECF 63-1].

7. The Sheriff provided a lengthy analysis and assessment as to the limits on his ability to provide social distancing in housing medically vulnerable inmates in both general population and intake, and how he and the WCSO arrived at the policies presented to this Court on these issues. [See ECF 60-8 ¶¶ 14-17 (general population), ¶¶ 18-21 (intake)].

8. Plaintiffs' Motion presents no evidence from any jail or correctional expert to contradict or call into question the Sheriff's and the WCSO's perspective. [ECF 62].

III. STANDARD OF REVIEW

Neither any Local Rule within this District, nor any Civil Practice Standard of this Court, nor any Tenth Circuit opinion, governs requests for a forthwith hearing. And given

the broad scope of the Sheriff's compliance efforts as detailed in ECF 60 and its exhibits, the Sheriff disagrees the Motion properly invokes this Court's inherent authority to effect compliance with its Order, whether generally speaking or specifically in the context of ***United States v. United Mine Workers of Am.***, 330 U.S. 258 (1947) (plurality). ***United Mine Workers*** does not apply here because the primary concern of the Supreme Court of the United States there was confirming the District Court could enforce willful violations of its own orders via the criminal contempt power, the use of which isn't warranted here. Thus, the Sheriff construes the Motion as seeking modification of this Court's Order.¹

Cases are scant as to the applicable standard when a party seeks to modify a preliminary injunction (in contrast to a temporary restraining order, permanent injunction, or consent decree), but they appear to indicate the party seeking modification bears the burden at a minimum to show existence of changed circumstances, although it is unclear whether this burden is sourced in Fed.R.Civ.P. 60(b), the Court's inherent authority, or some other principle. *E.g.*, ***Verlo v. Martinez***, 820 F.3d 1113, 1126 n.4 (10th Cir. 2016); *cf.* ***David C. v. Leavitt***, 242 F.3d 1206, 1210-11 (10th Cir. 2001); ***Rossi Ventures, Inc. v. Pasquini***, 2012 U.S. Dist. LEXIS 168925, at *17-18 (D. Colo. Nov. 28, 2012).

IV. ARGUMENT

For several reasons, Plaintiffs failed to carry their burden to show good cause for or changed circumstances requiring a hearing or any modification of this Court's Order.

¹ *But cf.* MSK Civ. Prac. Std. 7.3(f). In addition, the Court's lack of reaction to Plaintiffs' Motion from its filing through the date of the Sheriff's Response indicates the Court does not concur with the notion that an expedited hearing is necessary or proper from the face of Plaintiffs' filings. [*Cf.* ECF 23, ECF 27, ECF 33].

A. The Procedures Used to Identify Medically Vulnerable Inmates Are Compliant

This Court's Order requiring the Sheriff to identify a list of "medically vulnerable" inmates per the Court's narrow definition, along with providing the list to the Court and Plaintiffs and explaining its compilation, stated verbatim:

[O]n or before May 18, 2020, at 5:00 p.m., defendant shall certify to the Court that he has compiled a list of those persons ("medically vulnerable inmates") currently held at the Weld County Jail who have one or more of the following conditions: are 65 years and older, have chronic lung disease or moderate to severe asthma, have serious heart conditions, are immunocompromised, have severe obesity, have diabetes, have chronic kidney disease and undergoing dialysis, or have liver disease. Defendant shall provide to the Court and plaintiffs a list of medically vulnerable inmates by inmate number, identifying for each what risk categories the inmate has and explaining what process he used to identify medically vulnerable inmates. [ECF 55 at 37-38].

As part of his Notice of Complete Compliance, the Sheriff disclosed to the Court the screening tool WCJ medical staff and augmented nursing staff used on May 13, 2020, to perform a facility-wide screening of inmates to ascertain whether they were "medically vulnerable" under this Court's limited criteria. [See ECF 60-4; see also ECF 60-1 ¶¶ 11-14]. This screening tool tracks this Court's indicated risk category criteria for medically vulnerable inmates, using the criteria in the Order. [Compare ECF 55 at 37-38 with ECF 60-4]. What's more, the roster by inmate number and risk category the Sheriff provided to this Court also tracks the Court's criteria. [Compare ECF 55 at 37-38 with ECF 60-5]. And further, the Sheriff's evidence indicated this tool would be in use with respect to new arrestees admitted to the intake units on a going-forward basis. [ECF 60-1 ¶ 12].

Despite the Sheriff carrying out this Court's expectation thoroughly, Plaintiffs assert his efforts are lacking and fewer than all "medically vulnerable" inmates, as defined by the Court, are being identified. But Plaintiffs provided the Court no evidence this is occurring

apart from speculation. Instead, it turns out rather than having a problem with the Sheriff's compliance efforts, what Plaintiffs really take issue with is the scope of the Court's Order narrowly defining "medically vulnerable." It is notable Plaintiffs' stated concern with the Sheriff's screening tool [see ECF 62 at 8] appears to be the Sheriff did not ask about specific medical conditions, which Plaintiffs proposed yet this Court specifically rejected in narrowly defining "medically vulnerable." [*Compare* ECF 1 at 26 (Plaintiffs' proposed definition of "medically vulnerable," including several specific medical conditions), *with* ECF 55 at 30 (this Court's narrower definition of "medically vulnerable")]. Plaintiffs had an opportunity to convince this Court a broader definition was appropriate, but the Court did not agree and adopted a narrower definition. Also, the context of the medical screening of all WCJ inmates clearly concerned medical vulnerability to COVID-19 and all inmates unquestionably would have known this reality. [See ECF 60-1 ¶ 18]. Plaintiffs haven't presented the Court with any quantum of changed circumstances sufficing to show the Order should be modified as to identifying the "medically vulnerable" inmate population within the WCJ or that any hearing concerning this issue before this Court is necessary.

B. The Policy Concerning Social Distancing and Housing of Medically Vulnerable Inmates in General Population Units Within the WCJ Is Compliant

This Court's Order requiring the Sheriff to adopt a policy for social distancing and housing medically vulnerable inmates in WCJ general population units stated verbatim:

A policy ensuring that, to the maximum extent possible considering the Jail's physical layout, population level, and classification needs, medically vulnerable inmates are "socially distanced" from other inmates housed in the Jail. If social distancing is effectively impossible for some or all of the medically vulnerable inmates in the Jail, such policy may be supplemented by housing medically vulnerable inmates together in one or more pods. [ECF 55 at 38].

The Court's Order also credited, positively, the practice of "cohorting" and the use of "family groupings or staggering release of individual cells". [ECF 55 at 10-11, 24, 31 n.17].

With his Notice of Complete Compliance, the Sheriff provided a comprehensive plan to ensure social distancing of medically vulnerable inmates to the maximum extent possible in general population given all other factors the Court expressly authorized the Sheriff to consider. The Sheriff did not state, without more, it was effectively impossible to ensure social distancing of all medically vulnerable inmates (nor did the Sheriff cite inconvenience to WCSO staff), but listed many specific and concrete reasons why this policy offered the maximum social distancing feasible. [See ECF 60-8 at 4-9.] The Sheriff also gave information, which Plaintiffs haven't challenged and so presumably won't, as to the precautionary need to keep a number of housing units unencumbered for intake units for new arrestees and for isolation units. [See ECF 60-8 ¶ 16(j)]. Further, the Sheriff's decision not to house medically vulnerable inmates in a unit consisting only of medically vulnerable inmates is supported by Carlos Franco-Paredes, who **agrees** this could be counterproductive. [ECF 63-1 at 3-4]. And as for the mere existence of unused cells in the WCJ, the Sheriff testified at the April 30, 2020, hearing as to common-sense reasons behind this, having nothing to do with deliberate indifference to those the Court considers medically vulnerable—but to account for the WCJ's physical layout, the WCJ's population level, and all of the WCJ's various classification factors. [See ECF 60-8 ¶ 16(c).]

Once again, rather than having a problem with the Sheriff's compliance efforts, what Plaintiffs really fault is the Court and the scope of its Order allowing the Sheriff to account for many other important factors affecting the WCJ's physical layout, population

level, and its various classification needs, while still trying to prioritize social distancing of medically vulnerable inmates “to the maximum extent possible” in general population, i.e., given all other factors the Court believed important enough to permit in its Order. Notably, the Court declined to require in its Order any testing protocol. [See ECF 55 at 33]. Simply, Plaintiffs haven’t presented evidence of changed circumstances to show the Order should be modified as to efforts to socially distance “medically vulnerable” inmates in general population to the maximum extent possible considering the WCJ’s physical layout, population level, and classification needs or that any hearing on this issue is necessary.

C. The Procedure Concerning Social Distancing and Housing of Medically Vulnerable Inmates in Intake Units Within the WCJ Is Compliant

This Court’s Order requiring the Sheriff to adopt a policy for social distancing and housing of medically vulnerable inmates in intake units within the WCJ, stated verbatim:

A procedure, as part of the intake of new inmates into the Jail, for medically vulnerable inmates to be single-celled or otherwise socially distanced, to the maximum extent possible considering the Jail’s physical layout and classification needs, while housed in the transition unit. [ECF 55 at 38].

With his Notice of Complete Compliance, the Sheriff provided a comprehensive plan to ensure social distancing of medically vulnerable inmates to the maximum extent possible in intake/transition units, given the other factors the Court expressly authorized the Sheriff to consider. [ECF 60-8 at 10-11]. In particular, the procedure specifically prioritizes housing “medically vulnerable” inmates admitted to WCJ’s intake/transition units in a cell by themselves, alone, and away from other inmates, so Plaintiffs’ conclusory assertion the policy does not do so is incorrect. [ECF 60-8 ¶ 19]. The sole exception to this approach is only if it is “not possible” and only “due to the WCJ’s physical layout,

population level, and classification needs”—straight from this Court’s Order—and even then, no more than two “medically vulnerable” inmates can be in the same cell together in intake, which still helps ensure social distancing in the intake cells given what the Sheriff testified were the intake unit cell dimensions. [See ECF 60-8 ¶ 19]. And the need to set aside three housing units for intake units, to ensure enough general population housing for new arrestees who come out of intake units, is due to the flow rate of new inmates into the WCJ which the Sheriff cannot control. WCJ population growth since April 30, 2020, proves the Sheriff was right. [See Turner 4th Suppl. Decl., attached as **Exh. I**, ¶¶ 42-44].

As before, rather than take issue with the Sheriff’s compliance efforts, particularly on terms the Sheriff articulated in a framework expressly approved by this Court’s Order, Plaintiffs really take issue with the scope of the Court’s Order allowing the Sheriff to plan for many other important factors including the WCJ’s physical layout, population level, and its various classification needs, while still attempting to prioritize social distancing of medically vulnerable inmates “to the maximum extent possible” in intake units. The Court, however, believed these other factors important enough to make allowance for them in its Order and again declined to include in its Order any testing protocol. [See ECF 55 at 33-34]. Plaintiffs haven’t presented evidence of changed circumstances to show the Order should be modified as to efforts to socially distance “medically vulnerable” inmates in intake units to the maximum extent possible considering the WCJ’s physical layout, population level, and classification needs or that any hearing on this issue is necessary.

D. Dr. Franco-Paredes’ First Supplemental Declaration Does Not Change Any of the Above Conclusions, and the Sheriff, His Office, and the WCJ Have Gone Above and Beyond What Is Required of Them

No other putative factual support for the Motion was offered besides the Franco-Paredes First Supplemental Declaration, ECF 63-1.² In any event, the new Declaration is insufficient to prevail upon the Court to hold a forthwith hearing, for several reasons.

First, as previously indicated, given the Court pointedly declined to order any COVID-19 testing protocol as a component of its Order or what it required the Sheriff to do, all purported statements within ECF 63-1 concerning recommendations as to testing can be disregarded as being well outside the narrow scope of what the Court ordered.

Second, the Declaration is factually incorrect as to the status of Weld County within Colorado's COVID-19 infection continuum, as it relies on outdated information concerning the rate of infection of all persons then residing within a given county such that Weld County no longer can be considered a hotspot.³

Third, Dr. Franco-Paredes disregards the CDC's own protocol which allows for cohorting and imposes upon the Sheriff not only a standard well in excess of what the United States Constitution requires, but also in excess of what the CDC recommends.⁴

² Further, the Court must disregard any argument or shift in strategy in Plaintiffs' Reply to this Response presenting such factual information for the first time, unless the Court also permits the Sheriff a surreply. *E.g.*, ***Menge v. AT&T, Inc.***, 2013 U.S. Dist. LEXIS 20008, at *2 (D. Colo. Feb. 13, 2013) (Brimmer, C.J.) ("Granting leave to file a surreply is part of the 'supervision of litigation' and thus falls within the discretion of the district court. However, the Court's discretion is limited insofar as it may not deny the non-movant's motion to file a surreply unless it disregards any new arguments in the moving party's reply."). In addition, allowing Plaintiffs to again metastasize their requested relief on Reply will represent yet another effort by Plaintiffs to "shift[] over the course of this case" the relief they seek, which is improper. [See ECF 55 at 30 n.16].

³ See, *e.g.*, <https://www.denverpost.com/2020/06/08/denver-coronavirus-deaths-infection-rates/> (last visited June 10, 2020).

⁴ The Sheriff continues to maintain CDC guidance is neither binding nor controlling in this case. [See ECF 26 at 27-28].

Fourth, Dr. Franco-Paredes' musings about screening tools to identify "medically vulnerable" inmates must be disregarded because they well exceed the narrow scope of what the Court ordered as to the Sheriff's efforts to identify medically vulnerable inmates.

Fifth, with all respect to Dr. Franco-Paredes, he has no knowledge or experience relevant to operating a jail or other correctional facility as he admitted during the hearing on April 30, 2020, so his opinion about single-celling "medically vulnerable" inmates in intake with no exception must be tempered by other legitimate jail-management concerns, of which the Court expressly authorized consideration. Further, the WCSO already prioritizes single-celling "medically vulnerable" inmates in intake. Dr. Franco-Paredes's opinion thus exceeds the narrow scope of what the Court ordered and fails to account for outside pressures on the Sheriff and the WCJ in terms of an increase in WCJ population which the Sheriff cannot control despite pleas to local law enforcement to limit arrests, along with the range of classification factors the Court ordered the Sheriff could consider but which apparently were lost on Dr. Franco-Paredes. Fundamentally, both Plaintiffs and Dr. Franco-Parades analyze this Court's Order and the Sheriff's compliance only through lenses of medicine and public health. The lens this Court's Order actually used, though, was broader and included the Sheriff's need to operate the WCJ and all considerations relevant to its operation. Plaintiffs never even attempted to offer anyone with any jail or correctional management experience to provide evidence to this Court contradicting the Sheriff's well-informed and well-supported approach. The Sheriff's jail management perspective presented in this case, including in his most recent Declaration establishing his compliance with this Court's Order, remains entirely uncontested by Plaintiffs.

Sixth, and with due respect to Dr. Franco-Paredes, who has not run a jail, his recommendation to single-cell “medically vulnerable” inmates in general population and not allow double-celling, unless they were cleared through testing at least twice in a week, likewise well exceed this Court’s narrow Order and fail to account for outside pressures on the Sheriff and the WCJ, for the range of classification factors the Court ordered the Sheriff could consider which apparently were discounted or ignored by Dr. Franco-Paredes. [See ECF 60-8 at 4-9; see also **Exh. I** ¶ 20].

In the interest of transparency, the Sheriff now informs the Court of the result of his Office’s efforts to exceed the scope of the Court’s Order. Although this Court’s Order required no testing protocol be adopted or any testing conducted, the WCSO believed it prudent to make as many efforts as possible to get as many COVID-19 testing kits as possible to deliver as rapid of results as possible. Such efforts included several contacts with TKHC, WCHD, CDOC, and CDPHE in April 2020 and May 2020 to attempt to obtain tests. However, the WCSO had to conserve testing supplies for inmates in intake, and for reasons beyond the WCSO’s control as to which the WCSO won’t speculate, rapid-result COVID-19 testing kits were not available to the WCSO until early June 2020. The WCJ finally obtained, in the first week of June 2020, a batch of testing kits in a number sufficient to test every inmate then housed in the WCJ. From June 3-4, 2020, the WCJ administered a COVID-19 test to 392 of 396 inmates then housed in WCJ general population housing units (four inmates willfully refused the test), with plans to wait to test the inmates then within intake/transition units until they had been in intake for the prescribed amount of time (on advice of WCHD). [See **Exh. I** ¶¶ 31-36].

Test results were returned on Monday, June 8, 2020, revealing: more than 94% of WCJ general population inmates tested negative for COVID-19, including Plaintiff Jesus Martinez (the only Plaintiff housed in the WCJ at testing time); both inmates already on COVID-19 isolation protocol tested positive, meaning they remained on medical isolation; 22 other current inmates tested positive, all of whom were male; four of these inmates were part of the “medically vulnerable” inmate population; these inmates were spread out amongst almost all general population housing units, which essentially maintained their “family unit” status since early April 2020 with its associated limit on inmate movement; these inmates were spread out amongst all classification levels in the WCJ; and all 23 “other inmates” who tested positive were asymptomatic. [See **Exh. I** ¶ 37].

On learning this, the WCSO swiftly took several precautions that day: re-instituting total lockdown for the WCJ pending results of another testing round, as the total lockdown in place the entire month of April 2020 was slightly lifted; removing positive inmates from general population and placing them in medical isolation units, per previously identified protocols [see ECF 26-1, ECF 60-8]; quarantining all housing units from which positive inmates were taken, per previously identified protocols [see ECF 26-1, ECF 60-8]; began developing plans for more WCJ food services staff to assume duties relating to food service, and for female inmates and deputies to assume laundry duties; and calendaring June 22, 2020, as the next date to test every single inmate in WCJ general population given both the renewed lockdown and the quarantine protocol for all units which had inmates test positive. [See **Exh. I** ¶ 38]. However, for several good reasons, the WCSO cannot test all WCJ inmates daily and is constantly reacting. [See *id.* ¶¶ 39-41].

Finally, the WCJ has implemented a number of additional measures since May 11, 2020, which likewise well exceed the scope of the Court's Order. [See generally **Exh. I**].

V. CONCLUSION

In conclusion, Plaintiffs are trying to move the goalposts on the Sheriff and the WCSO, whose efforts at compliance cannot be described as anything less than robust, and the Court should not countenance Plaintiffs' attempt.⁵ Thus, for all these reasons along with the Notice of Complete Compliance with this Court's Preliminary Injunction and its attachments [ECF 60], Defendant Sheriff Steven Reams requests this Court enter an Order: denying Plaintiffs' Motion for Forthwith Hearing; concluding the Sheriff along with the WCSO and WCJ complied completely with the terms of this Court's Order dated May 11, 2020, and entering all other and further relief as this Court deems just and appropriate.

Dated and respectfully submitted this 11th day of June, 2020.

s/ Matthew J. Hegarty
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ATTORNEYS FOR DEFENDANT

⁵ The Sheriff chose not to appeal because he and his staff have complied with this Court's May 11, 2020, Order, but the Sheriff nevertheless reserves the right to appeal any modification of it or any order concluding the Sheriff has not complied. *E.g.*, **Wilson v. Williams**, ___ F.3d ___, 2020 U.S. App. LEXIS 18087 (6th Cir. June 9, 2020) (concluding district court abused its discretion in entering preliminary injunction in COVID-19 case).

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 11th day of June, 2020, a true and correct copy of the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR FORTHWITH HEARING [ECF 62]** was electronically filed with the Clerk of Court which will send notification of such filing to the following email addresses:

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EXHIBIT I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-00977-PAB-SKC

THOMAS CARRANZA;
JESUS MARTINEZ;
RICHARD BARNUM;
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MICHAEL WARD;
COLBY PROPEL; and
CHAD HUNTER,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

FOURTH SUPPLEMENTAL DECLARATION OF CAPTAIN MATTHEW TURNER

I, Captain Matthew Turner, being of lawful age and duly sworn under penalty of perjury pursuant to 28 U.S.C. § 1746, and for my Fourth Supplemental Declaration in the above-captioned case (“Declaration”), hereby declare as follows:

1. I have personal knowledge of the matters in this Declaration.
2. I currently serve as the Jail Captain for the Weld County Jail (“WCJ”) in the County of Weld, State of Colorado. I have served in this position for six months.
3. Before beginning my tenure as the WCSO Jail Captain on January 1, 2020, I was employed with the Weld County Sheriff’s Office (“WCSO”) for eight (8) prior years and served in many positions: Corrections Officer (what is now called Detentions Deputy) and separately earned my Peace Officer Standards Training (“POST”) certification; Public

Information Officer Corporal; Detentions Division Shift Sergeant; Civil Unit Sergeant in charge of civil service processors, animal control, and victim advocates; and Detentions Division Lieutenant. Of my eight years working for the WCSO, I have spent a total of 5.5 years working in the WCJ.

4. I also earned an Associate of Arts degree in education from Front Range Community College in 2011 with a future goal to attain a Bachelor of Science in Criminal Justice from the University of Northern Colorado.

5. I am individually familiar with the protocols and processes the WCSO as a whole generated, implemented, and refined in response to the global, national, and local public health threat posed by the novel coronavirus (“COVID-19”) from February 27, 2020, through today, because I was personally involved in generating, implementing, refining, and approving all protocols and processes in consultation with a team of WCSO staff, local public health officials, and other relevant persons and entities.

6. All protocols and processes outlined in Sheriff Steven Reams’ Declaration dated April 13, 2020, remain in effect today. All protocols and processes outlined in my Supplemental Declaration dated April 24, 2020, also remain in effect today. All protocols and processes outlined in my Second Supplemental Declaration dated May 18, 2020, also remain in effect today. All protocols and processes outlined in the Declaration of Undersheriff Donnie Patch dated May 18, 2020, also remain in effect today. All protocols and processes outlined in Sheriff Steven Reams’ Supplemental Declaration dated May 18, 2020, also remain in effect today, specifically including but not limited to the enhanced measures relating to inmates identified as “medically vulnerable” as defined by the Court.

Throughout this Declaration, the term “medically vulnerable” refers only to the Court’s narrower definition. Based on the continuance of prior measures previously articulated to this Court, the information contained in this Fourth Supplemental Declaration must be understood and reviewed in the context of these other measures previously described and set forth in detail in the prior Declarations submitted to this Court.

7. I am further individually familiar with further protocols and processes the WCSO as a whole generated, implemented, and refined from March 1, 2020, to date—in continued consultation with WCJ’s medical services vendor Turn Key Health Clinics (“TKHC”), with WCJ’s food services vendor Aramark, and with various Weld County departments such as the Weld County Health Department (“WCHD”), all of which the WCSO has consulted extensively—but about which the Court has not yet been informed. These further protocols and processes, set forth in more detail below, were implemented with the express intent of the WCJ to ensure, to the maximum extent possible, the health and safety of each inmate and detainee (collectively “inmates”) housed in the WCJ.

ADDITIONAL STEPS WCSO TOOK TO COMBAT COVID-19 WITH RESPECT TO MEDICAL CARE AND MEDICAL MONITORING MEASURES WITHIN THE WCJ, IN CONSULTATION WITH TKHC, FROM MARCH 24, 2020, TO PRESENT

8. On March 24, 2020, more than a week before the WCJ went on lockdown, WCJ medical staff, with the support and consultation of WCSO, began a Vitamin D supplement regimen for all inmates identified as “Chronic Care” per TKHC guidelines which indicated a potential causal protective role for Vitamin D in decreasing respiratory disease risk.

9. This Vitamin D supplement regimen for “Chronic Care” inmates remains in place today.

10. Almost all of the inmates which TKHC previously identified as “Chronic Care” (except, e.g., pregnant inmates) also ended up being identified as medically vulnerable.

11. Also, the further screening tools developed to identify inmates as medically vulnerable (both in intake housing and in general population housing), as detailed in my May 18, 2020, Second Supplemental Declaration, are still in use today and will be used for the rest of the pandemic. [See ECF 60-1 at 2-3 ¶ 6, 4 ¶¶ 11-12].

12. In addition, on May 14, 2020, after meeting with WCSO staff to flesh out the contours of our compliance efforts in connection with the Court’s May 11, 2020 Order, I began working with WCJ medical staff to ensure they checked medically vulnerable inmates four (4) times daily. [See **Exh. I-1**]. The medical monitoring protocol I understand to be set forth in the Sheriff’s Supplemental Declaration dated May 18, 2020, has been in place on or before 5:00 PM May 21, 2020, remains in use today, and will be used for the rest of the pandemic. [See ECF 60-8 at 17-20 ¶¶ 30-31].

13. Further, Dustin Owens, WCJ’s Health Services Administrator, implemented several measures on May 19-20, 2020, related to medical monitoring including: an audit of all WCJ inmates identified as medically vulnerable per the above-referenced screening tools to confirm the claimed condition matched CDC guidelines and added them to the medically vulnerable list to be checked four times daily; and an update to WCJ’s COVID-19 screening tool implemented as part of the booking process, including all CDC criteria, and if a patient (inmate) met the criteria, it was noted on the form and four-times-daily checks scheduled, and if such patient subsequently went on quarantine or medical isolation, related tasks could be scheduled. [See **Exh. I-2**].

14. Also, since the beginning of the COVID-19 pandemic, all TKHC personnel who work at WCJ have been required to wear masks and submit to temperature screenings to the same extent as Detentions Division personnel.

ADDITIONAL STEPS WCSO TOOK TO COMBAT COVID-19 WITH RESPECT TO SOCIAL DISTANCING MEASURES WITHIN THE WCJ, IN CONSULTATION WITH VARIOUS PUBLIC AGENCIES, FROM MAY 11, 2020, TO PRESENT

15. On May 18, 2020, upon prior request of the WCSO, staff of the Weld County Department of Buildings & Grounds (“B+G”) came to the WCJ to assist with taping off spots in each housing unit to help inmates housed in the WCJ ascertain the appropriate social distance of six feet and make the best choices possible in maintaining the proper social distance when out of their cells, with enhanced consideration for inmates identified as medically vulnerable as defined by the Court. [See **Exh. I-3**].

16. That day, using a significant supply of thick black gaffers tape, B+G staff placed “X” marks in the WCJ as follows: on the floor, every six feet where inmates would need to stand for meals, medications, and other similar purposes; on phones which were six feet from other phones (thus indicating phones which were not marked should not be used); and on seats which were six feet from other seats in each day area (thus indicating seats which were not marked should not be used). B+G accomplished this task in as many housing units for which they brought tape, but exhausted their supply of tape and were unable to accomplish this task in every single housing unit that day, although the task was ultimately completed as stated in Paragraph 18 below.

17. Also on May 18, 2020, Detentions Division personnel were instructed that, to the extent any of them were working in a housing unit lacking tape markings, they should

assist inmates with the social distancing determination by approximating six-foot gaps between inmates using best judgment, directing inmates to social distance using these gaps, and strongly encouraging inmates to abide by such directives. [Exh. I-3].

18. On May 29, 2020, having obtained a new supply of the thick black gaffers tape just the previous day, B+G staff returned to the WCJ to complete the taping task, and within a few hours completed their taping task. [See Exh. I-4].

19. It is important to note that under normal circumstances, this measure of tape placement would not be used due to safety and security concerns with inmates removing the tape and using it for a variety of unauthorized purposes. [See Exh. I-3]. Despite this understandable limitation on using tape, the WCSO decided tape was the only available option to supplement the existing social distancing directives being given on a regular basis to all inmates housed within the WCJ. [E.g., ECF 41-1 at 3 ¶ 10, 7-8 ¶ 29.]

20. Also, the protocols implemented to ensure maximum social distancing for medically vulnerable inmates, which I understand are stated in the Sheriff's Supplemental Declaration dated May 18, 2020, have been in place on or before 5:00 PM May 21, 2020, continue to be used today, and will be used for the rest of the pandemic. [See ECF 60-8 at 4-11 ¶¶ 15-17, 19-21]. To clarify, to the maximum extent possible given the physical limitations of the WCJ and its physical layout, population level, and factors such as inmate gender and age, classification needs, and other classification-type special circumstances, Detentions Division deputies endeavor to house no more than two medically vulnerable inmates in a cell together unless no other alternative is available to them.

**ADDITIONAL STEPS WCSO TOOK TO COMBAT COVID-19 WITH
RESPECT TO PERSONAL PROTECTIVE EQUIPMENT MEASURES WITHIN
THE WCJ FROM MAY 11, 2020, TO PRESENT**

21. On May 19, 2020, after WCSO staff meetings the prior week to flesh out the contours of our compliance efforts in connection with the Court’s May 11, 2020 Order, all “medically vulnerable” inmates were given two new N95 masks (per the WCJ’s standing order), all other inmates were given two cloth masks (as received from one of the two private vendors with which WCSO placed orders for them), and all other masks then in use by inmates were confiscated for safety and security reasons. [See **Exh. I-5**].

22. The cloth masks are intended to be washed regularly, and the N95 masks are intended to be changed out every 72 hours. [See **Exh. I-5**].

23. All Detentions Division personnel were instructed to reiterate to all inmates that they all must wear their masks at all times when out of their cells. [See **Exh. I-5**].

24. In addition, the protocols which the WCJ implemented to ensure a steady supply of personal protective equipment for all inmates housed in the WCJ, which I understand to be set forth in the Sheriff’s Supplemental Declaration dated May 18, 2020, have been in place on or before 5:00 PM May 21, 2020, continue to be utilized today, and will be utilized for the rest of the pandemic. [See ECF 60-8 at 15-17 ¶¶ 27-28].

**ADDITIONAL STEPS WCSO TOOK TO COMBAT COVID-19 WITH
RESPECT TO INMATE SANITATION MEASURES WITHIN THE WCJ
FROM MAY 11, 2020, TO PRESENT**

25. On May 15, 2020, after WCSO staff meetings earlier in the week to flesh out the contours of our compliance efforts in connection with the Court’s May 11, 2020 Order, B&G delivered fifty (50) additional spray bottles filled with HALT to the WCJ to supplement

the HALT spray bottles already present in the housing units, with the intent to ensure four (4) bottles in each unit to increase inmates' ability to clean common areas, toilets, sinks, door handles, and other commonly used areas in the WCJ. [See **Exh. I-6**].

26. On May 18, 2020, Detentions Division personnel were notified that enhanced cleaning was synonymous with the B&G taping project identified above, given parameters for physical locations of medically vulnerable inmates when out of their cells are clearly marked and the areas to sanitize consequently being better ascertained. [See **Exh. I-3**].

27. The inmates who "are unable to" sanitize "as a result of a medical or mental health condition" include inmates identified as medically vulnerable. If the inmates who are out refuse to sanitize as directed to by the Detentions Divisions deputy or are unable to do so as a result of a medical or mental health condition, the Detentions Divisions deputy assumes this duty once the inmates are locked down to ensure sanitization occurs, by prior to "medically vulnerable" inmates entering any common area, spraying HALT disinfectant spray on all surfaces in the common area open for use by "medically vulnerable" inmates allowing 10 minutes of contact time for disinfection to occur before "medically vulnerable" inmates enter, and the deputy must pay special attention to areas to be used by medically vulnerable inmates. [See ECF 60-8 at 11-12 ¶ 23].

28. In addition, the other protocols which the WCJ implemented in connection with enhanced sanitation for medically vulnerable inmates, which I understand to be set forth in the Sheriff's Supplemental Declaration dated May 18, 2020, have been in place on or before 5:00 PM May 21, 2020, continue to be utilized today, and will be utilized for the rest of the pandemic. [See ECF 60-8 at 11-15 ¶¶ 23-25].

ADDITIONAL STEPS WCSO TOOK TO COMBAT COVID-19 WITH RESPECT TO FOOD SERVICE MEASURES WITHIN THE WCJ FROM MAY 11, 2020, TO PRESENT

29. On May 11, 2020, B&G increased the WCJ garbage schedule to twice weekly, due to continued use of Styrofoam trays and not plastic trays. The disposal needs of the WCJ have increased 200% due to Aramark's COVID-19 response.

30. Also, since the beginning of the COVID-19 pandemic, Aramark personnel who work at WCJ have been required to wear masks and submit to temperature screenings to the same extent as Detentions Division personnel.

RECENT TESTING DATA AS TO COVID-19-RELATED STATUS OF WCJ INMATES

31. Further, it is important to provide the Court with additional context to show the efficacy of the WCSO's extensive and comprehensive measures at the WCJ to slow, stop, combat, and further guard against any additional spread of COVID-19 in the WCJ.

32. On May 28, 2020, only four inmates were on COVID-19 medical isolation (two confirmed positive and two suspected positive), and no housing units were on quarantine.

33. Even so, the WCSO, apart from this lawsuit, believed it prudent to make as many efforts as possible to get as many COVID-19 testing kits as possible which delivered as rapid of results as possible. Such efforts included several contacts with TKHC, WCHD, CDOC, and CDPHE in April 2020 and May 2020 to attempt to obtain tests.

34. However, for reasons beyond the WCSO's control as to which the WCSO declines to speculate, rapid-result COVID-19 testing kits were not available to the WCSO until the start of June 2020. Up until the start of June 2020, the WCSO was only able to obtain 130 COVID-19 testing kits which took several days to return results, so the WCSO could not obtain the number of any type of test kit needed to test all inmates yet ensure

ongoing testing for new intakes. After analyzing the issue from all applicable angles, the WCSO determined, in consultation with appropriate medical and public health experts, that prudence dictated the use of the testing kits which it was able to obtain only on inmates who were suspected positive for COVID-19 or confirmed positive for COVID-19 to conserve supplies, until rapid testing was more widely available. It was not until WCSO command staff learned testing of asymptomatic people in the community would occur that the WCSO was able to request test kits directly from the state of Colorado.

35. After more than two months of attempting to obtain a sufficient supply of testing kits for COVID-19, the WCJ finally obtained, during the first week of June 2020, a batch of testing kits in a number sufficient to test every inmate then housed within the WCJ and ensure continued testing of new after more than fourteen consecutive days in intake.

36. From June 3-4, 2020, the WCJ administered a COVID-19 testing kit to 392 of 396 inmates then housed in WCJ general population housing units (four inmates willfully refused the test due to what are believed to be mental health issues on the part of all four), with plans to wait to test the inmates then within intake/transition units until they had been in intake for the prescribed amount of time (on advice of WCHD).

37. The test results were returned to the WCJ on Monday, June 8, 2020. Those results revealed: more than 94% of the inmates then housed in general population units within the WCJ tested negative for COVID-19, including Plaintiff Jesus Martinez (the only named Plaintiff housed in the WCJ at the time of the tests); both of the inmates already on COVID-19 isolation protocol continued to test positive for COVID-19, meaning they had to remain on medical isolation; 23 other inmates tested positive for COVID-19; these

inmates were all male (technically, one was female, but she was released from custody before results came in); four of these inmates were part of the inmate population identified as “medically vulnerable”; these inmates were spread out amongst almost all general population housing units in the WCJ, which have essentially maintained their “family unit” status since early April 2020 with its accompanying limitation on inmate movement; these inmates were spread out amongst all classification levels in the WCJ; and all 23 “other inmates” who tested positive were asymptomatic.

38. On learning this information the WCSO swiftly took the following precautions, also on Monday June 8, 2020: re-instituted total lockdown for the entire WCJ indefinitely, pending another round of testing on June 22, as the total lockdown which was in place the entire month of April 2020 had been slightly lifted; removed the inmates who tested positive from their general population units and placed them into medical isolation units, pursuant to the existing protocols which have been identified for the Court previously [see ECF 26-1, ECF 60-8]; placed on quarantine all housing units from which inmates who tested positive were taken, pursuant to the existing protocols which have been identified for the Court previously [see ECF 26-1, ECF 60-8]; began developing plans to have additional staff of the WCJ’s food services vendor assume more duties relating to food service, and to have female inmates and deputies assume duties relating to laundry; and calendared June 22, 2020, as the next date to test every single inmate in WCJ general population given both the existence of the renewed lockdown and the quarantine protocol for all units which had inmates test positive.

39. On advice from WCHD, the WCSO has developed the following plan to test inmates in the intake/transition units for COVID-19: (a) arrestees will be put into an intake unit when booked in as inmates; (b) when another empty unit is available after undergoing sanitization, such inmates will be moved from intake to a transition unit where they will be observed for symptoms for fourteen days; (c) on the 12th day of observation, the inmates in the transition unit will be administered a COVID-19 test; (d) when the test comes back on the 14th or 15th day, inmates who test negative will be housed in a general population unit, and inmates who test positive will be housed in a medical isolation unit.

40. It is also important to note the following with respect to testing: (a) due to the inevitable time delay between administering the test and obtaining results, testing only gives the WCSO a snapshot in time of the WCJ, and because of this delay the WCSO cannot use it to manage WCJ population in real time but is constantly reacting; (b) there is no known way to identify asymptomatic individuals, and as such there was no feasible way the WCSO could have known these 23 inmates had COVID-19; and (c) because of sporadic presentation of positive test results throughout the WCJ, there is no way to track who may have had contact with positive cases, necessitating the lockdown.

41. Finally, it is very important to note the many specific and concrete reasons why testing every single inmate every single day cannot be accomplished and why the WCSO is doing its best: (a) testing the WCJ daily would require approximately 500 tests each day, or 15,000 tests for the month of June alone, and the WCSO is unable to acquire this extreme volume of tests; (b) since test results are not instant and take two days or more to yield results, we would still be reacting and there is no way to manage COVID-

19 in real time with any type of test; (c) on average, the WCJ experiences an estimated 15-30 releases per day and an estimated 15-30 new bookings per day, yet in order for an inmate to be considered to have acquired COVID-19 at the WCJ, they must be physically present within the WCJ for more than fourteen days, so the WCSO cannot obtain an accurate picture of the outbreak as it pertains to the WCJ; (d) some inmates reoffend and are re-booked in the WCJ multiple times in a short timeframe, and the WCSO could thus be expending multiple tests on one person who is completely asymptomatic; (e) WCSO personnel are trying to run a jail as safely and effectively as possible, they are not epidemiologists (and for that matter neither is Plaintiffs' expert witness); (f) WCHD only counseled WCSO to perform initial source testing and monitor for symptoms and to have a plan to test new intakes, and daily or even weekly tests were not advised to occur by WCHD; (g) given it took two days to test the entirety of WCJ's general population, WCSO simply does not have the personnel to perform daily tests given its current staffing matrix; and (h) most importantly, to the knowledge of the Sheriff and all WCSO personnel, no correctional facility in Colorado is testing its whole population for COVID-19 daily, yet the WCJ is the only jail in Colorado in the knowledge of the Sheriff and the WCSO to test all of its general population inmates at one time during one continuous testing administration.

ADDITIONAL CHALLENGES WCSO FACES IN CONNECTION WITH COMBATING COVID-19 WITH RESPECT TO INMATE POPULATION INCREASES OUTSIDE WCSO CONTROL WITHIN THE WCJ FROM MAY 18, 2020, TO PRESENT

42. From May 18, 2020, to June 9, 2020, an average of 24 new arrestees were booked into the WCJ daily without a correspondingly equal decrease in the number of inmates which were subject to release.

43. On June 11, 2020, the WCJ reached a total of 507 inmates, 51 of which were being held for CDOC.

44. As of June 11, 2020, all WCJ housing units are inmate-occupied, yet even though WCJ inmate numbers are lower than at the start of the pandemic, the WCSO has many more personnel working daily to staff units than the start of the pandemic.

45. I understand the Court already is aware of the Sheriff's Declaration submitted on April 13, 2020, in this case, which detailed for the Court the limits on the physical plant of the WCJ given the statutory and state court judicial requirements under which the Sheriff and his command staff and deputies labor to do their best to keep inmates safe.

46. I also understand the Court is aware of the Sheriff's Declaration concerning the fact the Sheriff does not possess any legal authority to modify or revoke these pretrial detainees' bonds which are set by the state court judge presiding over their individual cases, and the fact the Sheriff possesses no legal authority to permit any of these inmates to serve their pretrial period at home or any other detention facility other than the WCJ as any such decision would have to be made by the state court judge.

47. Despite these limitations which are a necessary consequence of Colorado's state court judicial system and criminal justice statutory regime, the WCJ has continued to work to attempt to single-cell inmates who are medically vulnerable as defined by the Court (as well as other inmates if possible), wherever and whenever possible while still maintaining best practices for anti-transmission of communicable disease and addressing all of the custody issues, classification issues, and other specific issues which must be taken into consideration in any housing placement of all inmates in the WCJ.

48. The situation as it existed on April 24, 2020, as detailed in my Supplemental Declaration, is particularly relevant in light of the average housing unit space as detailed above, which even given the passage of almost seven more weeks still is not enough to maintain six feet of distance between all inmates at all times within the WCJ.

49. As of June 11, 2020, the WCJ houses 507 inmates. As previously articulated, the Sheriff lacks the legal authority to release any of the inmates currently detained.

50. In addition, pursuant to state statute, the Sheriff must house certain classes of inmates who are arrested for certain offenses, resulting in the Sheriff having essentially no control over population increases in the WCJ and making it effectively impossible to single-cell most, if not all, of the inmates who are medically vulnerable as defined by the Court (whether in the intake housing units or in general population) given all of the factors for which the Sheriff must account and the Court allowed an accounting.

51. The WCSO and the WCJ have done and continue to do what we are able to do to address all issues related to COVID-19 including inmate separation within the confines of the physical plant of the WCJ and the number of inmates at the WCJ. The WCSO and the WCJ continue to work on these issues every day seeking guidance from all available sources and continuing to refine all applicable policies and protocols based on any new guidance disseminated from any of the many sources relied upon. Every day during this pandemic, I have worked extremely hard to ensure to the best of my ability all inmates at the WCJ, all staff who work there, and all individuals who interact at the WCJ remain as safe as possible based on all the information I know about COVID-19 and its transmission and spread. That has been the mission of the WCJ since the outbreak began

and will continue to be as long as it continues. Finally, as before, the last thing the WCSO desires is to be compelled to adopt measures which completely undermine the effective steps the WCSO has taken to plan for, slow, and further guard against the spread of COVID-19.

I understand the statements written in this Declaration are given under penalty of perjury. All of the foregoing statements are true and correct to the best of my knowledge. Pursuant to 28 U.S.C. § 1746 I declare, under penalty of perjury under the laws of the United States of America, the foregoing is true and correct.

FURTHER DECLARANT SAYETH NAUGHT.

Dated and executed this 11th day of June, 2020.

s/ Matthew Turner
Matthew Turner, Jail Captain,
Weld County Sheriff's Office

EXHIBIT I-1

From: Matthew Turner <mturner@weldgov.com>
Sent: Thursday, May 14, 2020 3:58 PM
To: Dustin Owens
Subject: Medically Vulnerable Checks

Dustin,

Per our discussion earlier, can you please give me your thoughts on the below questions:

1. What would it take to begin doing 4 daily checks on medically vulnerable inmates in our facility?
2. How long would it take to verify the 90 inmates who claim to have conditions that would make them medically vulnerable according to the CDC?
3. What other types of inmates are you assessing daily for COVID 19 purposes?
4. What would you need from Security staff to make this happen?

Thanks,

Captain Matt Turner
Weld County Sheriff's Office
Detentions Division
970-400-2838

"Men wanted for hazardous journey. Small wages, bitter cold, long months of complete darkness, constant danger, safe return doubtful. Honour and recognition in case of success."

-Earnest Shackleton, 4 Burlington St

EXHIBIT I-2

From: Dustin Owens <dowens@weldgov.com>
Sent: Tuesday, May 19, 2020 8:13 PM
To: Matthew Turner
Cc: Matthew Elbe; Marcy Roles-Foos
Subject: MEDICALLY VULNERABLE UPDATE
Attachments: CorEMR - Preview Patient #BOOKING __ COVID-19 SCREENING FORM, Agency_ County, Interviewer_ Title Last, First (2020-05-19 20_10_35) _ v5.5.0.pdf

Capt Turner,

I have completed an audit of all inmates in the facility for verified conditions matching the CDCs guidelines. I have completed an update to the COVID Screening tool, attached. This form was implemented as part of the booking process beginning tonight 5/19.

The update includes all criteria listed by CDC. If a patient meets criteria, it is checked on the form, and 4 times daily checks are scheduled.

Also added was a Disposition section. In this section, if they are placed on Quarantine or Medical Isolation the form will schedule tasks accordingly.

All medically vulnerable inmates in the facility have four times a day checks scheduled to begin on 05/20 at 0430am. The checks will be 0430 1030 1630 2030.

Please let me know if there is anything else you need.

Thank you!!

Dustin Owens, RN CCHP
Health Services Administrator
Weld County North Jail Complex
2110 O Street
Greeley, CO 80631
Office: 970-400-3946
Cell: 402-210-8954
Main: 970-356-4015

COVID-19 SCREENING FORM

JMS ID: 000080
DOB: 04/05/1989
Age: 31
Agency: County

Interviewer: Title Last, First (05/19/2020 2010)

EXHIBIT L-2

Preview Patient #BOOKING

IF PATIENT IS REPORTING POSITIVE SYMPTOMS OR A TEMPERATURE GREATER THAN 100.4, PLEASE NOTIFY SECURITY.

| | |
|--|--|
| DOES THE PATIENT HAVE CHRONIC RESPIRATORY ILLNESS? IF YES PLEASE EXPLAIN | <input type="radio"/> Yes <input type="radio"/> No |
| | <p>Blood Pressure <input type="text"/> sys <input type="text"/> dia</p> <p>Pulse <input type="text"/> beats per min</p> <p>Respirations <input type="text"/> breaths per min</p> <p>Temperature <input type="text"/> F</p> <p>Weight <input type="text"/> lbs</p> <p>Height <input type="text"/> -- -- ▾</p> <p>SPO2 <input type="text"/> %</p> |
| DOES THE PATIENT HAVE ANY OF THE FOLLOWING SYMPTOMS ? | <input type="radio"/> RECENT FEVER (100.4) <input type="radio"/> SHORTNESS OF BREATH <input type="radio"/> COUGH <input type="radio"/> ACHES AND PAINS <input type="radio"/> NASAL CONGESTION <input type="radio"/> RUNNY NOSE <input type="radio"/> SORE THROAT <input type="radio"/> DIARRHEA <input type="radio"/> DENIES |

INITIAL QUESTIONS ONLY

| | |
|--|---|
| DOES THE PATIENT MEET ANY OF THE CDC CRITERIA FOR MEDICALLY VULNERABILITY? | <input type="checkbox"/> 65 YO OR OLDER <input type="checkbox"/> CHRONIC LUNG DISEASE <input type="checkbox"/> ASTHMA - MODERATE TO SEVERE <input type="checkbox"/> CARDIAC CONDITIONS - SERIOUS <input type="checkbox"/> IMMUNOCOMPROMISED <input type="checkbox"/> OBESE - SEVERE (BMI 40+) <input type="checkbox"/> CHRONIC KIDNEY DISEASE <input type="checkbox"/> DIALYSIS <input type="checkbox"/> LIVER DISEASE <input type="checkbox"/> DIABETES |
| DISPOSITION | <input type="radio"/> MEDICAL ISOLATION <input type="radio"/> TRANSITION UNIT <input type="radio"/> QUARANTINE <input type="radio"/> NO CHANGE IN HOUSING |

EXHIBIT I-3

Matthew Elbe

From: Matthew Elbe
Sent: Monday, May 18, 2020 4:44 PM
To: DD Deputies; DD Court Services; DD Inmate Services; DD Supervisors
Subject: Housing Unit Protocols Update 05/18/2020
Attachments: Housing Unit Protocols Update 051820.docx

You must confirm via email to your assigned Sergeant that you have read this email and the attached document

Good Afternoon All,

There was some activity in the jail today with B+G staff helping identify some areas where it can be more clear for the inmate population to social distance. Keeping with the mission of "reducing the spread of COVID-19 in the jail for ALL inmates", there have been clear markings with black tape placed in most of the units where meals and medications would typically be distributed. Also, most units received black tape markings on seats at the tables to identify which ones would be at least six feet from the other seats marked with black tape. All of these markings are in place to assist inmates with identifying six foot gaps of space so they can make the best choices possible regarding social distancing with enhanced consideration of those inmates who have been identified as "medically vulnerable".

We are aware that having tape in the units is typically not something that would be authorized, however this is the option we have at this point that we are employing. Please watch for inmates manipulating the tape and redirect that behavior.

Not all the housing units received these markings today due to a shortage of tape. We are anticipating more tape coming in very soon and the remaining housing units will then have similar markings. If you are working in a unit without tape markings, use your best judgment of six foot gaps and strongly encourage inmates to abide with your directives.

Please see the attached document for additional details that will be added to the Housing Unit Protocols document for future reference.

Lieutenant Matt Elbe
Detentions Division
Weld County Sheriff's Office
2110 O Street Greeley, CO 80634
970-400-3817
melbe@weldgov.com



EXHIBIT I-3

Accounting for the Medically Vulnerable

Every unit must have identified, at all times, all medically vulnerable (MV65) inmates in that unit and be able to produce an accurate list of such inmates at any given moment. The identifier for these inmates is found under the "Risk Factor" tab in Spillman with an entry of "MV65".

All inmates identified as medically vulnerable (MV65) shall be strongly encouraged to wear the masks assigned to them by the jail whenever practicable and certainly when outside of their cell in the day area.

To the maximum extent possible considering each unit's physical layout, population level, and classification needs, medically vulnerable (MV65) inmates shall be "socially distanced" from other inmates in the unit. Each medically vulnerable inmate (MV65) shall be single celled or housed in a cell with other medically vulnerable (MV65) inmates if single celling these inmates is not possible due to the physical layout, population level, and classification needs of the unit as a whole.

Medically vulnerable inmates (MV65) must ONLY come out of their cells for time in the day area with other medically vulnerable (MV65) inmates. When in the day area, medically vulnerable (MV65) inmates are to be strongly encouraged to ONLY sit on seats where there is a black "X" marked with tape. If the unit a Deputy is assigned to does not have these markings, then the medically vulnerable (MV65) inmates shall be strongly encouraged to keep a minimum of six feet of distance between themselves at all times.

If an inmate does not socially distance at the direction of the Deputy or refuses to wear their mask when outside of their cell, appropriate documentation in a behavior log describing the refusal by the inmate/s shall be entered.

Enhanced Sanitation Procedures for Medically Vulnerable Inmates

At the end of every groups' time out in the day area, the inmates of that group shall be strongly encouraged to disinfect all hard surfaces (tables, seats, handrails, counter tops, kiosks, etc.) and communal areas/items (water fountain, sinks, sink handles, toilets, toilets handles, shower buttons, soap dispensers, etc.). This is accomplished by allowing the inmates to use the spray bottles containing "Halt" and spray all of these areas/items and let the solution sit on any surfaces or items sprayed for a minimum of ten minutes before the next group comes out. The next group that comes out should wipe down any residual solution still on surfaces/items. This practice is especially important before a group of medically vulnerable (MV65) inmates comes out in the day area and special attention should be paid the tables and seats identified for this population. But, this process must be completed in between each group's time out of their cells.

If the group of inmates who are out refuse to sanitize as directed to by the Deputy or are unable to do so as a result of a medical or mental health condition, the Deputy shall assume this duty once the inmates are locked down to ensure sanitization occurs paying special attention to the areas to be used by medically vulnerable (MV65) inmates. Appropriate documentation in a behavior log describing the refusal by the inmate/s shall be entered. Housing unit Deputies may also use trustys for this sanitization process if there are any assigned to that unit.

EXHIBIT I-4

From: Matthew Elbe <melbe@weldgov.com>
Sent: Thursday, May 28, 2020 2:08 PM
To: Matthew Turner
Cc: Marcy Roles-Foos
Subject: Taping

FYI...B+G will be in tomorrow morning at 0930 to finish the taping in the units they missed last week.

Lieutenant Matt Elbe
Detentions Division
Weld County Sheriff's Office
2110 O Street Greeley, CO 80634
970-400-3817
melbe@weldgov.com



EXHIBIT I-5

From: Marcy Roles-Foos <mroles@weldgov.com>
Sent: Tuesday, May 19, 2020 5:50 PM
To: DD Deputies
Subject: Masks

Troops,

Today all inmates who are flagged as medically vulnerable MV65 inmates were provided with two new N95 masks. All other inmates were provided with two cloth masks. These cloth masks can and should be washed. We will do a one for one replacement on the N95 masks each week for the medically vulnerable MV65 inmates. Same as before, but all inmates should be wearing their masks anytime while outside their cell.

All other surgical and old N95 masks were confiscated from all the inmates.

If you have questions please let me know. Keep up the good work. We have an amazing team and it is a pleasure to work with all of you.

Roles

Get [Outlook for iOS](#)

EXHIBIT I-6

From: Carla Escobar <cescobar@weldgov.com>
Sent: Friday, May 15, 2020 11:39 AM
To: Matthew Turner
Cc: DD Sergeants
Subject: RE: Spray Bottles

Sir,

All spray bottle have been distributed to the housing units.

Carla Escobar
Sergeant
Weld County Sheriff's Office
970-400-2650 office
970-518-1823 cell
cescobar@weldgov.com

From: Matthew Turner <mturner@weldgov.com>
Sent: Friday, May 15, 2020 10:37 AM
To: DD Sergeants <DDSergeants@co.weld.co.us>
Subject: RE: Spray Bottles

Please let me know when this has been completed.

From: Matthew Turner
Sent: Friday, May 15, 2020 9:31 AM
To: DD Sergeants <DDSergeants@co.weld.co.us>
Subject: Spray Bottles

Team,

B&G has delivered 50 spray bottles filled with Halt to the west briefing room to supplement the spray bottles already in the housing units. These are not replacement spray bottles, they are additional spray bottles.

It has been our practice to put 2 spray bottles in every housing unit. The 50 new spray bottles to be distributed to each unit today. Our goal is to have 4 spray bottles available in every housing unit to increase the inmate's ability to clean the common areas, toilets, sinks, door handles, and every other commonly used areas throughout the jail.

Please task a rover with accomplishing this, and communicate with the troops. Please have the troops communicate this to the inmates in the housing units.

Thanks,

Captain Matt Turner

Weld County Sheriff's Office

Detentions Division

970-400-2838

EXHIBIT I-6

"Men wanted for hazardous journey. Small wages, bitter cold, long months of complete darkness, constant danger, safe return doubtful. Honour and recognition in case of success."

-Earnest Shackleton, 4 Burlington St