

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

EDWARD BANKS, *et al.*,

Plaintiffs-Petitioners,

v.

QUINCY BOOTH, *et al.*,

Defendants-Respondents.

No. 1:20-cv-00849 (CKK)

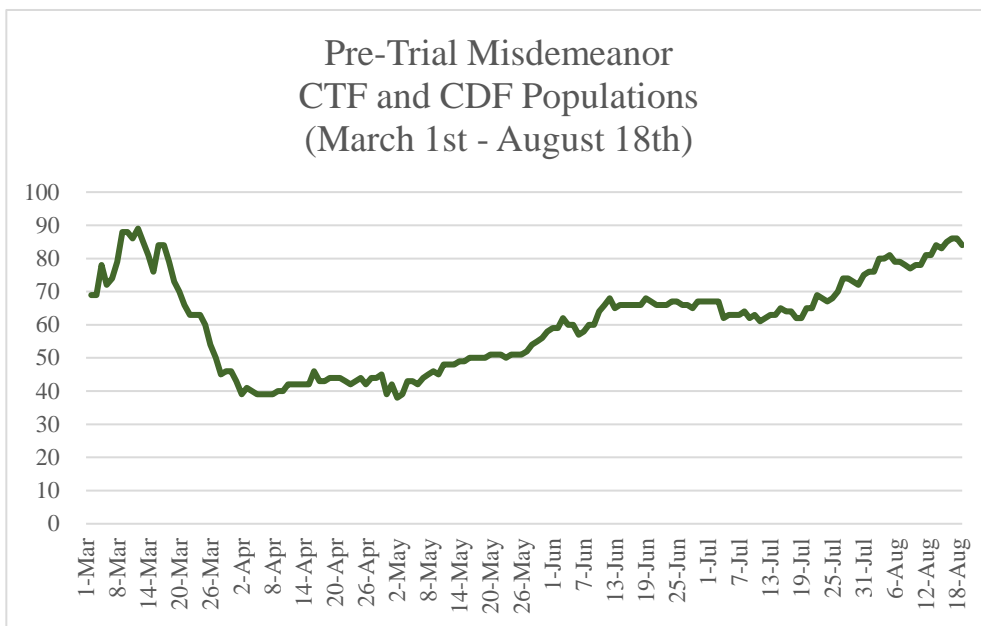
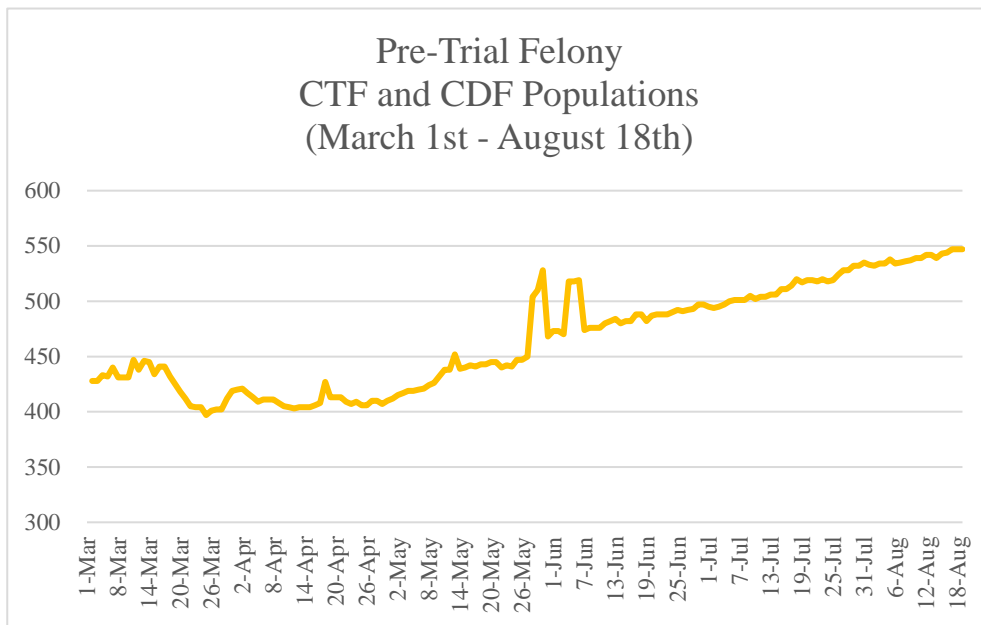
PLAINTIFFS' RESPONSE TO THE UNITED STATES' REPORTS

The Court's preliminary injunction directed both the United States and 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." Dkt. No. 99. The United States submitted an update to the Court including two declarations from officials at the United States Marshals Service ("USMS") and the United States Parole Commission ("USPC"). Dkt. Nos. 103-1 and 103-2.

Neither the USPC nor the USMS reports are "detailed plan[s]," as required by the Court's order, and the Court should direct these agencies to supply additional information. The need for these plans is particularly acute now that COVID-19 cases continue to be recorded at the jail — an additional resident tested positive on August 18, 2020¹ — and as the jail population increases. On July 1, 2020, when the USPC and USMS submitted their reports, the jail population was 1,259;

¹ The District of Columbia's "Public Safety Agency COVID-19 Case Data" reported on August 18, 2020, that 213 residents have tested positive, an increase from August 17, 2020. *See* District of Columbia, Public Safety Agency COVID-19 Case Data (last accessed August 18, 2020), <https://coronavirus.dc.gov/page/public-safety-agency-covid-19-case-data>.

on August 18, 2020, the population had grown to 1,345. As shown in the two charts below,² because more pretrial residents are admitted daily, and trials are postponed, the jail population will continue to rise. Under these circumstances, it is even more critical for the USPC and USMS to provide, and to follow, plans to reduce the jail population.



² The raw data in the two charts was provided by the Office of the Attorney General in a spreadsheet entitled “Banks_v_Booth Facility Counts by Inmate Status_03.01.2020 to 08.18.2020.xlsx.”

As described below, the USPC and the USMS plans to reduce the population are insufficient both in design and in execution. In light of the increasing jail population, the continued spread of COVID-19, and the potential public health emergency of a concurrent influenza and COVID-19 outbreak, the Court should direct both of these agencies to provide new, detailed plans to decrease the population of the jail.

a. The USPC's plan is insufficient and the USPC has not carried it out.

The USPC's execution of the plan submitted to this Court on July 1, 2020, "to both limit new prisoners placed in the DOC as a result of warrants issued by the Parole Commission and review and release offenders already in custody," Dkt. No. 103-2 ("USPC Decl."), ¶ 3, has left significant gaps, contributing to the population of individuals incarcerated unnecessarily at DOC facilities during the pandemic. *See generally* Ex. A ("Edmondson Decl.").

Despite the USPC's commitment to "limit[] its issuance of new warrants to only offenders who pose an imminent risk to public safety," USPC Decl. ¶ 4(a), since June 1, 2020, at least 154 individuals have been arrested pursuant to USPC warrants. Ex. A, Edmondson Decl. ¶ 4. This has included individuals for whom, according to the USPC's own description of its review policies, warrants should never have issued. *Id.* ¶ 5.

In cases in which there is no longer any pending criminal matter, or a judge has concluded that the defendant poses no risk to public safety, the USPC continues to detain them, despite its stated commitment to "reduce the number of offenders housed at the DOC[.]" *See* USPC Decl. ¶ 4. Currently, at least 28 individuals are being detained indefinitely, with no opportunity to contest their detention, based on warrants alleging new criminal arrests. However, "[e]ach of these people has either had the rearrest matter resolved favorably in court via no-papering, dismissal or acquittal; or though the case remains pending, the Court has already conducted a release inquiry

and determined the person suitable for release.” Ex. A, Edmondson Decl. ¶ 8. In one illustrative case, an individual’s charge for gun possession was no-papered at the outset. *Id.* ¶ 16. No additional violations have been alleged against him; still, he remains detained in DOC facilities by the USPC. *Id.*

Another DOC resident was recently granted compassionate release by a Maryland district court judge. *Id.* ¶ 20. The judge imposed a new sentence of time-served plus seven months of home confinement. *Id.* Still, the resident remained incarcerated due to a USPC detainer. In spite of the district court’s clear intention that he be released from the DOC’s facilities to home confinement under compassionate release, the USPC refused to lift the detainer and sentenced him to an additional thirty-three months of incarceration. *Id.*

Despite the undisputed dangers presented by the pandemic and the acknowledged public health necessity of continuing to decrease the number of people incarcerated by the DOC, the USPC also continues to hold individuals based on technical, or administrative, violations of parole, “such as failing to report for individual supervision or treatment appointments, or failing to notify the supervision officer of a change in residence.” USPC Decl. ¶ 4(e). Categorically, these individuals do not pose a danger to public safety. Nonetheless, in cases in which DOC residents could be safely released to the community, as of July 1, 2020, at least sixteen people were being held on these administrative violations. Ex. A, Edmondson Decl. ¶ 6. In one case, for example, a DOC resident who has documented mental health conditions has been held for five months based on his failure to report for supervision, while the USPC has refused to release him with appropriate conditions and a mental health treatment plan, or even to postpone his revocation hearing until the danger of the pandemic passes. *See id.* ¶ 7.

While the USPC touts that the number of individual DOC residents under its jurisdiction “has been substantially reduced,” USPC Decl. ¶ 3, “a significant portion of the reduction from 121 to 93 cited in the Commission’s July 1, 2020 declaration can be credited not to release measures by the Commission, but rather to USMS and BOP *transferring* parole detainees who are serving their already imposed Parole Commission sentences or awaiting Commission decision after a new conviction.” Ex. A, Edmondson Decl. ¶ 18 (emphasis added). Technically, this has had the effect of decreasing the number of DOC residents under USPC jurisdiction; in actuality, these individuals are currently sitting in transfer institutions, such as the private facility in Tallahatchie, Mississippi described below, leaving D.C. residents at continued risk in the ongoing pandemic. *Id.* ¶ 18.

Finally, it is important to note that while the number of people detained for parole violations was 93 on July 1, 2020, that number has subsequently increased. The latest data received from the OAG by undersigned counsel indicates that on August 18, 2020 there were 108 people detained for parole violations at the Jail and CTF.

b. The USMS’s plan has resulted in additional incarceration and the further spread of COVID-19.

The USMS reported that between May 29, 2020 and June 5, 2020, 120 DOC residents were transferred “in route to their designated facilities.” Dkt. No. 103-1 (“USMS Decl.”), at ¶ 5. The USMS previously declared that these residents would first be moved to “staging locations” that would “hold inmates throughout a 14-day quarantine period.” Dkt. No. 80-1, at ¶ 9. The BOP explained that “D.C. Jail staff are responsible for testing the BOP inmates” and that the BOP had provided testing equipment to the jail. Dkt. No. 80-2, at ¶ 7. The BOP assured the Court that it would not transfer a resident without a negative test administered “the morning of the anticipated transfer.” *Id.*

The result of the USMS policy has been the continued heightened risk to COVID-19 for many residents transferred from the DOC. Despite their representation that residents would be held at a staging location for a “14-day quarantine period,” these transferees were held, and many continue to be held, for significantly longer. Two DOC residents — James Guillory and Donell Howard — who were transferred to a staging location report that they are still incarcerated at their quarantine site, a privately-run correctional facility in Tallahatchie, Mississippi. At that facility, some residents are housed in a dormitory, there is no information about social distancing, there are no signs regarding coronavirus, and some staff do not regularly wear masks. Ex. B (“Howard Decl.”), at ¶¶ 10, 23-24, 30-36. Moreover, Mr. Guillory and Mr. Howard were not given a COVID-19 test on the morning of their transfer, in violation of BOP’s stated plan. *See id.* ¶ 3; Ex. C (“Guillory Decl.”), at ¶¶ 4-5. Not surprisingly, there is a severe COVID-19 outbreak at the Tallahatchie facility. *See* Christine Hinkel, *Vermont Inmate in Mississippi Hospitalized with COVID-19*, WCAX, August 11, 2020, <https://www.wcax.com/2020/08/11/vermont-inmate-in-mississippi-hospitalized-with-covid-19/> (reporting that 147 out of 219 Vermont residents in the facility tested positive for COVID-19).

The USMS’s transfer has not only resulted in increased risk of infection for the transferees it has also prolonged their incarceration beyond the point at which they could have been released. Both Mr. Guillory and Mr. Howard are eligible for transition to a halfway house because they are within six months of completing their sentences. *See* Ex. C, Guillory Decl. ¶ 44; Ex. B, Howard Decl. ¶ 21. Both Mr. Guillory and Mr. Howard have asked Tallahatchie staff about their eligibility for transfer to a halfway house, but Tallahatchie staff are unable to process them for this transfer. Ex. C, Guillory Decl. ¶ 44; Ex. B, Howard Decl. ¶ 21. Consequently, any DOC resident who was transferred within six months of completing their sentence has been denied the opportunity for

release from a facility that is now experiencing a severe COVID-19 outbreak. Far from decreasing the incarcerated population, then, the USMS and the BOP's failure to abide by their "14-day quarantine policy" has resulted in the ongoing incarceration of these transferees in limbo at a staging location.

CONCLUSION

As COVID-19 spreads again at the jail, and as the population of the jail rises, it is all the more important that agencies like USPC, with discretion over jail residents, take all the steps they can to maintain the safety of residents and the community alike. The Court should therefore request of USPC and USMS additional reports that spell out in detail their plans to reduce the jail population.

Dated: August 20, 2020
Washington, D.C.

Respectfully submitted,

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