UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

M.C. et al., on behalf of themselves and all similarly situated individuals,

Plaintiffs,

v.

JEFFERSON COUNTY, NEW YORK, et al.,

Defendants.

Case No. 6:22-cv-190 (DNH/ML)

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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New York, New York

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PRELIMINARY STATEMENT

In the months since filing this lawsuit, Plaintiffs have presented a wealth of evidence confirming what was obvious from the start: that the Jefferson County Correctional Facility has inflicted grievous harm on members of the class, and that it continues doing so to this day.

Almost a dozen class members have attested that the jail ended their prescribed treatment with medication for opioid use disorder ("MOUD"), triggering severe and ongoing withdrawal. And Plaintiffs' medical expert has delineated in painstaking detail the life-threatening risks of relapse and overdose that class members now face as a result, both now and in the longer term.

In the face of Plaintiffs' evidence, Defendants offer virtually nothing. They decline—even now—to offer any expert evidence of their own. And they do not specifically dispute any class member's account of suffering.

What opposition Defendants do mount falls flat. Their half-hearted claim that the jail does not *currently* deny prescribed MOUD is demonstrably false. Their attempt to diminish the agonizing symptoms of withdrawal is astounding in its indifference. And their eleventh-hour scramble to offer treatment to a handful of class members, while continuing to ignore the rest, does not alter the unassailable conclusion that Defendants will continue their cruel and unlawful practice of denying prescribed treatment to the class unless this Court stops them.

The Constitution and the Americans with Disabilities Act ("ADA") entitle class members, in the fight for their lives, to more. Plaintiffs have met their burden for the preliminary injunctive relief they seek, and the Court should grant this motion.

ARGUMENT

I. Defendants Continue to Expose Class Members to Life-Threatening Harm.

Closing their eyes to the record, Defendants contend the class faces no irreparable harm because the jail does not force class members to withdraw from MOUD. *See* Defs.' Opp'n to

Pls.' Mot. Prelim. Inj. ("Class PI Opp'n") at 4. But Defendants are wrong, as the substantial—and mounting—evidence in this case lays bare.

First, though Defendants now concede that forcing MOUD withdrawal causes irreparable harm, they deny the jail maintains any such practice for class members entering its custody. *Id.* at 3–4. Yet ample record evidence shows otherwise. Almost a *dozen* class members have attested that the jail ended their treatment in recent months, often in the face of repeated and desperate pleas for help. *See, e.g.*, T.G. Decl. ¶¶ 8–12, ECF No. 2-5; M.S.C. Decl. ¶¶ 13–17, ECF No. 8; R.G. Decl. ¶¶ 11–12, ECF No. 9; S.G. Decl. ¶¶ 11–15, ECF No. 10; J.C. Decl. ¶¶ 7–9, ECF No. 33; J.M. Decl. ¶¶ 8–12, ECF No. 34; M.L. Decl. ¶ 13, ECF No. 35; P.M. Decl. ¶¶ 9–10, ECF No. 36; R.D. Decl. ¶¶ 11–12, ECF No. 37; S.C. Decl. ¶¶ 10–12, ECF No. 38; T.P. Decl. ¶¶ 4–5, ECF No. 50. Tellingly, Defendants do not specifically dispute the jail has not provided access to MOUD to any of these individuals.

Ignoring this evidence of the jail's longstanding practice, Defendants claim the jail's *current* practice is not to deny prescribed MOUD to newly entering class members. Class PI Opp'n at 4. But that claim, too, is demonstrably false. Defendants have continued to remove class members from their prescribed MOUD. *See, e.g.*, T.P. Decl. ¶¶ 4–5 (describing forced withdrawal from prescribed MOUD *within the past month*). In fact, Defendants do not even pretend that a *single* class member in the jail's custody is receiving their prescribed buprenorphine treatment. *See, e.g.*, T.P. Decl. ¶¶ 3–5; R.D. Suppl. Decl. ¶¶ 1–4, ECF No. 52. And the jail's eleventh-hour offer of treatment to a handful of class members, while continuing to deny treatment to the rest, does not change the bottom line: that class members entering the jail still face the prospect of a dangerous lapse in their prescribed MOUD.

Second, Defendants contend that class members whom the jail has denied agonist MOUD no longer face irreparable harm because they have already been "successfully" withdrawn from their prescribed treatment.[1] Class PI Opp'n at 5. But that astounding claim is flatly belied by the only expert evidence before the Court in this case, *see* Decl. of Richard Rosenthal, M.D. ("Rosenthal Suppl. Decl.") ¶¶ 36–37, ECF No. 32, as well as the testimony of eleven class members, who describe agonizing symptoms they have endured at the jail as a result of being deprived of their prescribed MOUD, *see e.g.*, T.P. Decl. ¶ 6 ("[I]t feels like ants are crawling all over my body . . . [and] I was throwing up blood . . . ."); M.S.C. Decl. ¶ 14 ("I had heart palpitations, muscle spasms throughout my whole body, severe pain in my neck and upper body, tremors, and anxiety."); J.C. Decl. ¶ 11 ("I've thrown up and defecated all over myself and could not eat or sleep"; the withdrawal is "more painful even than when I was literally hit by a truck."); J.M. Decl. ¶ 10 ("[I have] cold sweats . . . so bad that no matter how many layers of clothing I put on I cannot feel warm"); P.M. Decl. ¶ 11 ("[W]ithdrawal is hell on earth; I felt like I was dying and being tortured."). This is the suffering that Defendants deem a "success."

Defendants appear to suggest that the harm of MOUD withdrawal is limited to those acute symptoms suffered in the immediate aftermath of the jail ending class members' prescribed treatment. *See* Class PI Opp'n at 5. But in so suggesting, Defendants misrepresent the scope and severity of forced removal from MOUD. To begin with, the excruciating symptoms of withdrawal can last for weeks, or even months. *See* Rosenthal Suppl. Decl. ¶ 36; *e.g.*, S.C. Decl. ¶¶ 16, 27 (continuing withdrawal symptoms seven months after removal from MOUD); R.D.

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[1] Defendants remain conspicuously silent about how this withdrawal occurred. But the answer is obvious: As described elsewhere in this section, Defendants do not specifically dispute the testimony of eleven class members that it was the jail that forced their MOUD treatment to lapse. *See supra* at 2.

Suppl. Decl. ¶¶ 1, 3 (continuing withdrawal symptoms almost three months after removal). And even after those acute symptoms subside, the harm of forced MOUD withdrawal persists: As Plaintiff's medical expert has confirmed, class members forcibly removed from prescribed MOUD remain at a dramatically heightened risk of overdose and death—especially in a setting like the jail. *See* Rosenthal Suppl. Decl. ¶¶ 38–41, 44. That risk continues after release, when class members are acutely vulnerable to the cravings triggered by the denial of their treatment in jail. *See id.* at ¶ 40 (describing research showing that incarcerated people are *129 times* as likely as members of the general public to die of overdose in the first two weeks following release).[2] Defendants' refusal to reckon with the harm they inflict is thus divorced from the clinical reality of class members' opioid use disorder ("OUD").

Defendants seek to trivialize these harms. J.C, Defendants say, is "only" experiencing symptoms of withdrawal-induced mania. Class PI Opp'n at 5. And J.M., they note, is "merely" suffering opioid cravings.[3] *Id.* Defendants may well discount the abject suffering of people with OUD as unworthy of this Court's intervention. But Defendants' shoulder-shrugging does not diminish the life-threatening harm that class members continue will to face unless the jail restores their prescribed treatment.

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[2] For class members like R.D., who is scheduled to be released on May 16, 2022, the specter of these harms is particularly immediate. *See* R.D. Suppl. Decl. ¶¶ 7–8 ("I just want to get my life back on track; but I am extremely worried that being released from jail without my treatment will lead to my relapsing into heroin use.").

[3] Defendants' claim that J.M. has no active prescription is a red herring. J.M.'s prescription lapsed *at the jail*, months after Defendants refused to allow him access to his prescribed treatment. *See* J.M. Decl. ¶ 15 (explaining that "[t]he jail had known since August [2021]," when J.M. was booked into the jail, "that [he] had an active prescription for Suboxone because [he] told them so again and again, but they never let [him] receive the treatment.").

II. Plaintiffs Will Succeed on the Merits.

On the merits, Plaintiffs' claims closely resemble those this Court has already found clearly likely to succeed on several prior occasions. *See* Mem.-Decision & Order, ECF No. 30 (granting preliminary injunction to Plaintiff M.C.); *P.G. v. Jefferson Cnty.*, 5:21-cv-388 (DNH/ML), 2021 WL 4059409, at *4–5 (N.D.N.Y. Sept. 7, 2021) (same for class member P.G.). Defendants' opposition papers offer no grounds for a different result here.

Beyond their verifiably false assertion that the jail does not deny class members access to MOUD, *see supra* Section I, Defendants direct just two narrow arguments at the merits, each of which is easily rejected.

First, Defendants contend Plaintiffs' constitutional claims fail because the Constitution does not entitle class members to their "treatment of . . . choice." Class PI Opp'n at 8 (citing *McKenna v. Wright*, No. 01-cv-6571 (WK), 2002 WL 338375, at *7 (S.D.N.Y. Mar. 4, 2002)). But that argument is misplaced because agonist MOUD is a treatment of necessity, not choice, for class members. *See* Rosenthal Suppl. Decl. ¶ 45 ("[I]t is medically necessary for patients receiving prescribed treatment with agonist MOUD prior to incarceration to have continued access to that treatment while they are incarcerated."). And Defendants do not provide any evidentiary support to suggest otherwise. Unlike the medical care at issue in *McKenna*, whether the jail should abruptly withdraw class members from prescribed MOUD is not reasonably a matter of mere differences in opinion. *Compare McKenna*, 2002 WL 338375, at *6–7 (denying preliminary injunction where multiple physicians, exercising "their medical judgment," determined based on a medical examination that plaintiff's proposed course of treatment "would endanger [his] health rather than improve it"), *with* Rosenthal Suppl. Decl. ¶ 35 ("No physician, acting consistent with prudent professional standards and in a manner reasonably commensurate with modern medical science, would discontinue the administration of agonist MOUD to a

patient in treatment for opioid use disorder . . . ."). Even Defendants acknowledge as much. *See* Class PI Opp'n at 3–4 (conceding that involuntary withdrawal of prescribed MOUD causes irreparable harm). And unlike *Johnson v. Newport Lorillard*, also cited by Defendants, this is decidedly *not* a case in which class members seek discretionary care in the absence of medical necessity. *See* No. 01-cv-9587 (SAS), 2003 WL 169797, at *4 (S.D.N.Y. Jan. 23, 2003) (denying preliminary injunction seeking custom wheelchair where those already provided by defendant jail were "adjusted to the particular needs of [incarcerated individuals]"). Class members need the care that Defendants deny them. *See* Rosenthal Suppl. Decl. ¶ 45.

Second, Defendants contend Plaintiffs' ADA claims fail because "Plaintiffs with OUD are subjected to the same treatment criteria as all other incarcerated individuals." Class PI Opp'n at 10. But even were that true as a factual matter—and it is not, *see supra* Section I—that argument ignores Plaintiffs' failure-to-accommodate theory of discrimination. The ADA does not "demand[] that plaintiffs identify a comparison class of similar situated individuals given preferential treatment." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273 (2d Cir. 2003) (cleaned up). Thus, regardless of how the jail treats people without OUD, Defendants' failure to modify the jail's practices to ensure that class members have meaningful access to their prescribed treatment violates the ADA.

III. The Equities and Public Interest Strongly Favor an Injunction.

Also baseless is Defendants' claim that affording preliminary injunctive relief to the class would run counter to the public interest. The opposite is true. As this Court has recognized, "[t]he public interest lies with enforcing the Constitution and federal law." *See* Mem.-Decision & Order at 9, ECF No. 30; *see also P.G.*, 2021 WL 4059409, at *5 (citing *Paykina ex rel. E.L. v. Lewin*, 387 F. Supp. 3d 225, 245 (N.D.N.Y. 2019)) (same).

The balance of hardships favors relief for the class, who will benefit immediately and directly from accessing their prescribed, medically necessary treatment. *See* Mem.-Decision & Order at 9, ECF No. 30 (recognizing same with respect to Plaintiff M.C.). And the hardship to Defendants is comparatively minimal: The jail is demonstrably capable of providing the relief class members seek. *See* Class PI Opp'n at 2 (describing jail's current provision of methadone treatment to seven class members). And given newly enacted state legislation that will become effective this October, Defendants soon will be required to afford that relief in any event. *See* N.Y. Correct. Law § 626 (effective Oct. 7, 2022) (requiring correctional facilities, including county jails, to make agonist MOUD available to incarcerated individuals).

Defendants suggest that the Court must defer to the jail on matters of "internal prison operations" absent "an urgently compelling and extraordinary reason." Class PI Opp'n at 10 (quoting *Harper v. Cuomo*, No. 9:21-cv-19 (LEK/ML), 2021 WL 1821362, at *17 (N.D.N.Y. Mar. 1, 2021) (cleaned up)). Precisely such a reason exists here, as class members continue to suffer life-threatening harm from the jail's denial of their prescribed MOUD. And Defendants' claim that they are "best suited for policing" how to treat people with OUD at the jail, *id.*, flies in the face of the evidence confirming Defendants refused to provide virtually *any* MOUD treatment at the jail before this lawsuit was filed, and that they continue even now to refuse medically necessary treatment to many class members, *see supra* Section I. Any deference owed to jail administrators does not require the Court's unquestioning acceptance of an unlawful practice by which the jail routinely exposes incarcerated people to life-threatening denial of medical care. *See Brown v. Plata*, 563 U.S. 493, 511 (2011) ("Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration."); *Pesce v. Coppinger*, 355 F. Supp. 3d 35, 49 (D. Mass. 2018)

(preliminarily enjoining jail to continue methadone treatment despite acknowledging "substantial deference" owed to jail administrators).

The jail is not immune from this Court's intervention simply because it is a jail. *See Brown*, 563 U.S. at 511 ("Courts . . . must not shrink from their obligation to enforce the constitutional rights of all persons, including prisoners.'") (cleaned up). Here, the public interest lies with preventing unlawful and life-threatening harm to the class.

IV. The Preliminary Relief Requested by Plaintiffs Is Appropriately Limited to the Class.

Finally, Defendants' puzzling claim that Plaintiffs seek relief for individuals outside of the class is incorrect and can be rejected.

As the plain wording of their motion papers reflects, Plaintiffs seek preliminary injunctive relief only for the class, the definition of which speaks for itself: all non-pregnant individuals who are or will be detained at the Jefferson County Correctional Facility and had or will have prescriptions for agonist MOUD at the time of entry into Defendants' custody. *See generally* Pls.' Mot. Prelim. Inj., ECF No. 31; Pls.' Mot. Class Certification, ECF No. 2.

To the extent Defendants are attempting to argue that class members "fall out" of the class once Defendants strip them of prescribed MOUD treatment, that argument must fail, because the scope of the class is defined by reference to prescription status at the time of *entry* to the jail, not at some subsequent point in time.

CONCLUSION

For these further reasons, the Court should grant Plaintiffs' motion for a preliminary injunction.

Dated: May 4, 2022
New York, New York

Respectfully submitted,

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