IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

CHRISTINE M. FINNIGAN, Plaintiff, v. JAMES MENDRICK, *et al.*, Defendants.	)	Civil Action No. 1:21-cv-00341 Hon. Steven C. Seeger Mag. Sheila M. Finnegan

REPLY IN SUPPORT OF PLAINTIFF'S
EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION

In response to Plaintiff Christine Finnigan's request to continue her life-saving addiction treatment in the DuPage County Correctional Facility ("DuPage County Jail," "Jail"), Defendants (Sheriff James Mendrick and Chief of the Corrections Bureau Anthony Romanelli) suggest a "wait-and-see" approach in an effort to mask their unconstitutional and discriminatory policies and practices. Defendants do not contest evidence that this waiting period could last fourteen days after Ms. Finnigan's Jail admission; that she will be forced into involuntary methadone withdrawal during this period; or that daily methadone is physician-prescribed and medically necessary to treat her opioid use disorder ("OUD"). Defendants submit no evidence that they have a policy to ensure timely provision of medication for addiction treatment ("MAT") to an incoming detainee when, as here, the individual has an OUD diagnosis and physician's prescription, or that they have *ever* provided any detainee with MAT, particularly in the early days of incarceration before the Jail's evaluation, when withdrawal will start.

Defendants' Response brief confirms that Ms. Finnigan will be subjected to Defendants' de facto Mandatory Withdrawal Policy—at least for the days or weeks until her intake evaluation is completed and likely throughout her 30-day incarceration—and that she will experience immediate and long-term health consequences that are irreparable and devastating. The Court should grant preliminary relief to prevent Defendants from applying this policy to Ms. Finnigan, and to require that they continue her methadone treatment.

I. EVEN THE EARLY RECORD IN THIS CASE SHOWS THAT DEFENDANTS HAVE A DE FACTO MANDATORY WITHDRAWAL POLICY.

Tellingly, Defendants do not contest that the Jail has historically refused to allow persons to continue MAT while incarcerated. *See generally* Defs' Resp. Br., Dkt. 34. Instead, Defendants contend that it is proper to wait until after Ms. Finnigan's arrival at the Jail to determine her treatment, including possibly "a separate course of treatment." *Id.* at 6–7. Defendants' position is

contrary to the Illinois Jail Standards' general treatment of prescription medications, which requires that when a detainee possesses prescription medication at the time of admission to a county jail, medical staff shall verify the identification and proper use of the medication "as soon as possible" and "no later than the time interval specified for administration of the medication," and requires that "[m]edications shall be administered as prescribed." Ill. Admin. Code tit. 20, § 701.40(j)(1)–(2). The Jail Standards are in accord with the opinion of Ms. Finnigan's expert in correctional medical care, *see* Supplemental Declaration of Ross MacDonald, MD ("MacDonald Supp. Decl.) ¶ 7, in that they direct county jails to continue detainees' medications as prescribed by physicians in the community so that not one dose is missed. *See also* Declaration of Edmond Hayes ("Hayes Decl.") Dkt. 25 ¶ 7 (explaining that detainees at the jail where he works are screened for MAT within hours of arrival).

In Ms. Finnigan's case, however, Defendants insist upon waiting for an in-person medical evaluation by their own staff *after* her Jail admission—which they confirm could take up to *fourteen days*. Declaration of Rebekah Joab ("Joab Decl.") Dkt. 20 ¶ 9 and Exhibit 2 thereto; Supplemental Declaration of Joseph Longley ("Longley Supp. Decl.") Dkt. 38 ¶ 4. This period of forced withdrawal goes against the weight of the medical evidence and will cause Ms. Finnigan unnecessary pain and suffering. Declaration of Ross MacDonald, MD ("MacDonald Decl.") Dkt. 28 ¶ 26. [redacted]

Defendants' concession that they will not continue Ms. Finnigan's methadone treatment upon arrival and will wait up to fourteen days to evaluate her proves that they have a de facto Mandatory Withdrawal Policy that will harm Ms. Finnigan. The current record supporting the existence of the de facto Mandatory Withdrawal policy is as follows:

1. The Jail has a historical practice of denying MAT to incarcerated persons. *See* Exhibit 3 to Joab Decl. at 6–7 (July 26, 2018 *Chicago Tribune* article reporting on DuPage County Jail policy for almost all detainees to go through detox, except pregnant women). At least two people have died as a result. *Id.*; Declaration of Louis Lamoureux, Dkt. 23.

2. As recently as 2018, Jail medical staff publicly expressed aversion towards methadone treatment, labeling it (incorrectly) "another form of addiction." Joab Decl. ¶ 8 and Exhibit 3 thereto at 7. Neither Defendants nor anyone at the Jail has publicly disavowed this stance.

3. The Jail has not agreed to provide Ms. Finnigan her daily methadone, despite having the information needed for a decision since at least January 25, 2021.[1] Counsel for Ms. Finnigan provided the Jail additional records from her opioid treatment program ("OTP") on February 12, 2021, yet Defendants have said they will not decide on her access to methadone until they have evaluated her in person. Second Supplemental Declaration of Joseph Longley ("Longley Second Supp. Decl.") ¶ 10 and Exhibit 1 thereto. Defendants now challenge—without the support

[1] *Compare* MacDonald Decl. ¶ 42 ("With confirmation from an individual's prescribing physician and confirmation of their diagnosis, medication and dosage, the jail clinical service should be able to commit to a default plan of continuing methadone barring a specific and unusual reason not to, as identified on clinical examination."), *with* Exhibit 2 to Declaration of Joseph Longley ("Longley Decl.") Dkt. 30 (January 16, 2021 letter from Bobby Buonauro Clinic ("BBC") describing Ms. Finnigan's OUD diagnosis, history of methadone treatment and need to continue treatment during her incarceration), Longley Decl. ¶ 4 (attesting to providing the BBC letter to counsel for Defendant Mendrick on January 19, 2021) *and id.* ¶ 11 (attesting to providing BBC medical record confirming physician's diagnosis and dosage to defense counsel on January 25, 2021).

of a medical expert—the legitimacy of Ms. Finnigan's diagnosis based on its age.[2]

4. Defendants refuse to continue Ms. Finnigan's methadone treatment until "a complete history has been accomplished and a physical face to face evaluation has taken place." Exhibit 4 to Longley Decl. at 2–3 (January 29, 11:34 AM Email from Lisa Smith). But the Jail should continue her methadone treatment absent "extraordinary circumstances," which are "unusual." MacDonald Decl. ¶¶ 41–42; [redacted]; Ill. Admin. Code tit. 20, § 701.40(j)(1)–(2) (providing that county jails should administer detainees' medication as prescribed and verify detainees' prescriptions as soon as possible so they do not miss any doses).

5. In response to a request for comment about this case from WBEZ, Defendant Mendrick's spokesperson stated that the Jail might not conduct Ms. Finnigan's medical evaluation for up to fourteen days. Longley Supp. Decl. ¶ 4 and Attachment 1 thereto. This confirms the Jail's own public reporting. Joab Decl. ¶ 9 and Exhibit 2 thereto. During this waiting period, the Jail will not continue Ms. Finnigan's methadone treatment, and she will be forced into withdrawal. Defendants point to no evidence to the contrary.

6. The Jail expressly will not allow Ms. Finnigan to bring her methadone into the Jail. Longley Second Supp. Decl. ¶ 3. Yet it has failed to arrange the continuation of her methadone by working with her OTP to either have them administer methadone during her incarceration or arrange for its receipt at a nearby OTP. *See* Hayes Decl. ¶ 7 (describing his facility's practice of transporting detainees to a nearby methadone clinic to receive one week's worth of methadone medication that was then stored at the jail); *compare* Exhibit 5 to Longley Decl. *with* Declaration

[2] The Response brief incorrectly states that Ms. Finnigan's August 2019 OUD diagnosis is from "more than two (2) years ago," Resp. Br. at 3 n. 1; it was one and a half years ago. But the length of time that has passed since her diagnosis is irrelevant, as Ms. Finnigan's OUD diagnosis is for a chronic disease. MacDonald Supp. Decl. ¶ 2. Moreover, her OTP updates her diagnosis and treatment plan every 90 days. Supplemental Declaration of Robert Reeves, M.D. ("Reeves Supp. Decl.") ¶¶ 5–6.

of Mark A. Parrino ("Parrino Decl.") Dkt. 37 ¶¶ 9–12.[3]

7. Ms. Finnigan asked Defendant Mendrick if the Jail allows incarcerated persons to continue MAT. Declaration of Christine Finnigan ("Finnigan Decl.") Dkt. 22 ¶¶ 21–22 and Exhibit 2 thereto. In response, he described the Jail's "full detox" program and counseling and said he was looking into injectable buprenorphine in the future, but did not answer her question about MAT continuation now. *Id.*

8. There is zero mention of methadone treatment on the DuPage County Sheriff's Office website or in its 2019 Annual Report, despite references to other opioid-related programs, such as drug counseling, substance abuse classes, and injectable naltrexone (i.e., Vivitrol). Joab Decl. ¶¶ 3–7 and Exhibits 1 and 2 thereto.

Defendants' silence in the face of this evidence speaks volumes. Defendants offer no facts to rebut the existence of their de facto Mandatory Withdrawal Policy. They point to no instances of actually providing methadone to any person in their custody, and fail to cite a single Jail policy or guidance supporting methadone treatment. Nor have they explained what, if anything, has changed since they publicly endorsed a no-MAT policy to the *Chicago Tribune* in 2018. Exhibit 3 to Joab Decl. ¶ 8.

Defendants' sole evidence is counsel's representation that "they are willing to consider" offering Ms. Finnigan methadone. Resp. Br. at 7. However, Defendants' "willingness to consider"

[3] Mr. Parrino is the president of the American Association for the Treatment of Opioid Dependence. Parrino Decl. ¶ 1. He works with federal regulators and agencies on issues related to oversight of OTPs. *Id.* Mr. Parrino explains that medical providers in jails cannot dispense or administer methadone for OUD without certification to operate as an OTP. *Id.* ¶ 5; *see* 42 C.F.R. Part 8 (SAMHSA regulations regarding operation of OTPs). The DuPage County Jail is not a certified OTP. *See* Declaration of Maggie Filler ("Filler Decl.") ¶ 5 and Exhibit 1 thereto. There are ways to arrange for detainees to continue their prescribed methadone once incarcerated, for example by arranging for the OTP to continue to dispense the medication or for guest dosing at an OTP closer to the Jail, but it is critical that these arrangements be made in advance, with input from the individual's OTP. Parrino Decl. ¶¶ 6–12.

methadone hinges on an unnecessary and far-off medical evaluation by a Jail physician with no known expertise in addiction. Defendants expressly refuse to assure the Court and Ms. Finnigan that they will respect her rights under the Eighth Amendment and the Americans with Disabilities Act ("ADA"), stating: "Defendants' physicians have not yet had any opportunity to make a sound determination whether they will (or intend to) act in a manner which may arguably violate Plaintiff's right to adequate treatment." *Id.* at 4. Their equivocating is untenable.

In sum, the record showing that Defendants will force Ms. Finnigan to withdraw from methadone treatment pursuant to a de facto Mandatory Withdrawal Policy when she enters the Jail on February 25, 2021 is more than adequate to warrant preliminary injunctive relief.

II. PRELIMINARY INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE TO AVOID HARM TO MS. FINNIGAN FROM THE JAIL'S DE FACTO MANDATORY WITHDRAWAL POLICY.

A. Ms. Finnigan is Likely to Succeed on the Merits of Her Claims.

Defendants do not dispute that Ms. Finnigan's OUD is a serious medical need, that they are subjectively aware of the risks of failing to treat OUD and of forced withdrawal, that methadone is an effective treatment for her OUD, or, for purposes of the ADA, that she is a qualified individual with a disability, entitled to be free from discrimination in Jail medical services. Defendants also do not contest that Ms. Finnigan can continue methadone treatment during her incarceration without impacting Jail security. Nor do Defendants point to *any* justification for denying methadone treatment to Jail residents. Because Defendants fail to challenge these factual and legal points, Ms. Finnigan is likely to prevail on the merits.

Defendants claim only that (1) it is too soon for the Court to act, (2) an injunction would purportedly require the Court to "step into the shoes of her medical provider(s)," and (3) Defendants do not make medical decisions at their facility. Resp. Br. at 1–2. As will be explained,

none of these arguments is persuasive.

1. Ms. Finnigan's Request for Relief Is Timely.

Ms. Finnigan will report to the Jail in eight days and be forced into methadone withdrawal. If the Court does not intervene before Ms. Finnigan's admission to the Jail, she will lose any chance to avoid this harm, in violation of Supreme Court precedent making clear that plaintiffs can sue for "future harm" that is "sufficiently imminent." *Helling v. McKinney*, 509 U.S. 25, 33–34 (1993); *Farmer v. Brennan*, 511 U.S. 825, 845 (1994) (injunctions can "prevent a substantial risk of serious injury from ripening into actual harm").

As in *Pesce v. Coppinger* and *Smith v. Aroostook County*, the risk that the Jail will discontinue Ms. Finnigan's MAT is sufficiently imminent and grave to warrant injunctive relief. *See* 355 F. Supp. 35 (D. Mass. 2018); 376 F. Supp. 3d 146 (D. Me. 2019), *aff'd* 922 F.3d 41 (1st Cir. 2019). Defendants' attempts to distinguish these two cases are unconvincing. *See* Resp. Br. at 4. Defendants' de facto Mandatory Withdrawal Policy will force Ms. Finnigan into methadone withdrawal until her medical intake evaluation is completed (which could take up to 14 days), and likely longer. *See supra* Section I. None of the statements by Defendants' counsel alleviate this risk; if anything they have made the risk more acute. As in *Smith*, "Defendants have stopped short of telling the Plaintiff that they will provide her with [her prescribed MAT] during her sentence," and "[i]t is no more than a theoretical possibility that the Jail will provide MAT after a medical evaluation of the Plaintiff." 376 F. Supp. at 157.

Defendants catastrophize that ruling on Ms. Finnigan's motion several days in advance of her incarceration will "invite an onslaught of frivolous litigation." Resp. Br. at 2. However, they cite no authority for their novel rule that a preliminary injunction motion filed just before a person enters custody is by nature premature, while one filed after entering custody but before a threatened

harm occurs passes muster.[4] Such a result would be particularly perverse here, as the Defendants are already exhibiting deliberate indifference and failing to reasonably accommodate Ms. Finnigan's OUD, including by taking the practical steps required to ensure access to prescribed methadone in the Jail. *See* Parrino Decl. ¶¶ 5–12. Defendants' refusal to agree to continue Ms. Finnigan's methadone until after medical evaluation virtually guarantees a violation of her rights. Indeed, the default clinical course when a jail takes responsibility for a patient that it knows is being treated with prescription medication is to continue that treatment unless some extraordinary circumstance arises. MacDonald Supp. Decl. ¶ 7; *see also* Ill. Admin. Code tit. 20, § 701.40(j). Even a short delay in deciding about Ms. Finnigan's methadone risks serious consequences to her. MacDonald Supp. Decl. ¶ 7; Parrino Decl. ¶ 14. Yet Defendants have also declined to conduct her medical evaluation before her admission to the Jail. *See* Longley Decl. ¶ 16 *et seq.*[5]

These are current, ongoing misdeeds that Ms. Finnigan rightly asks the Court to correct. *See Perez v. Fenoglio*, 792 F.3d 768, 777–78 (7th Cir. 2015) ("delay in treatment may show deliberate indifference if it exacerbated the inmate's injury or unnecessarily prolonged his pain"); *Arnett v. Webster*, 658 F.3d 742, 753–54 (7th Cir. 2011) (failing to timely provide a community prescribed necessary medication to an incarcerated person because it is not on the prison's

[4] In truth, this argument is much ado about nothing, because Defendants also imply that even a preliminary injunction motion filed the day Ms. Finnigan enters the Jail would be premature until such time as the Jail has conducted its own medical evaluation. Resp. Br. at 8. By that time, Ms. Finnigan will already have suffered irreparable harm. *See also Berke v. Fed. Bureau of Prisons*, No. 12-cv-1347, Dkt. 25 at 159:15–167:20 (D.D.C. Nov. 6, 2012) (ordering prison to investigate whether a video phone system could be installed consistent with security concerns upon request for a reasonable accommodation from a soon-to-be-incarcerated individual); *Jasperson v. Fed. Bureau of Prisons*, 460 F. Supp. 2d 76 (D.D.C. 2006) (granting an injunction in case of a soon-to-be-incarcerated individual challenging a Bureau of Prisons regulation that would affect his custodial status).

[5] Defendants never responded to a request from Ms. Finnigan's counsel to have this evaluation happen pre-incarceration. Longley Decl. ¶ 16 *et seq.* Such an accommodation would avoid gaps in Ms. Finnigan's treatment without burdening Jail medical staff. Defendants offer no evidence or argument to explain their failure to modify their medical intake policy and evaluate Ms. Finnigan before her incarceration. *Bowers v. Dart*, No. 16-cv-2483, 2017 WL 4339799, at *7 (N.D. Ill. Sept. 29, 2017).

formulary may reflect deliberate indifference); *Calhoun v. Ramsey*,[6] No. 00-cv-3307, 2003 WL 1733564, at *11 (N.D. Ill. Mar. 31, 2003) (a "policy or practice which denies an inmate the opportunity to make sure that his medication is available on a timely basis when he is initially taken into custody may reasonably be found to constitute deliberate indifference"); *Woodley v. Baldwin*, No. 18-cv-50050, 2018 WL 3354915, at *8 (N.D. Ill. June 14, 2018), *report and recommendation adopted*, No. 18-cv-50050, 2018 WL 3344593 (N.D. Ill. July 9, 2018) (granting a preliminary injunction for requested accommodation of prescribed vision aids, rather than alternate vision aids that had previously failed him).

The Defendants' manufactured controversy over their access to Ms. Finnigan's medical record changes nothing. Resp. Br. at 3–4. Counsel for Ms. Finnigan provided defense counsel with a detailed letter from Ms. Finnigan's OTP on January 19, 2021. Longley Decl. ¶ 4 and Exhibit 2 thereto. [redacted] Defendants' stall tactics are further

[6] The plaintiff in *Calhoun* attempted to have his medication pre-verified by the Kane County jail prior to his incarceration, but as with Ms. Finnigan, the jail failed to do so. 2003 WL 1733564 at *11. The district court found that evidence that the jail had a "practice of not pre-verifying medications despite an inmate's repeated requests to do so prior to confinement" could constitute deliberate indifference. *Id.*

[7] *Nevertheless*, Ms. Finnigan's counsel sent emails on January 27, 2021 and January 28, 2021 inquiring as to the status of the Jail's consideration of Ms. Finnigan's request, highlighting the information already provided, and asking if further records were needed. Longley Second Supp. Decl. ¶¶ 8–9 and Exhibit 1 thereto. On January 28, 2021, counsel for Ms. Finnigan also provided Defendants with a release form authorizing Jail medical staff to speak with Ms. Finnigan's OTP. Longley Decl. ¶ 14. Counsel for Ms. Finnigan even provided a date and time when Ms. Finnigan's treating physician would be available to answer any questions about Ms. Finnigan's treatment. *Id.* and Exhibit 4 thereto. Jail medical staff declined, stating that they would wait until after obtaining Ms. Finnigan's records. *Id.* ¶ 15 and Exhibit 1 thereto. Yet Jail medical staff did not fax the signed release form to Ms. Finnigan's OTP until February 8, 2021—over a week later. *Id.* ¶ 20. Even then, the Jail failed to communicate an actual records request to the OTP, leaving the OTP unable to determine what information the Jail wanted. Longley Second Supp. Decl. ¶¶ 11–

evidence of deliberate indifference to Ms. Finnigan's serious medical needs and the failure to accommodate her disability.

2. Defendants' Failure to Ensure that Ms. Finnigan Will Receive the Standard of Care Constitutes Deliberate Indifference, and Defendants' Discrimination in Provision of Medical Services Violates the ADA.

Ms. Finnigan has demonstrated, through submissions from her treating OTP, multiple experts, and her own declaration, that methadone is the medically necessary treatment for her OUD. [redacted]

MacDonald Decl. ¶¶ 41, 29.

On this record, Ms. Finnigan is more than likely to succeed on her Eighth Amendment claim. Deliberate indifference may be established where "a risk from a particular course of medical treatment (or lack thereof) is obvious," *Petties v. Carter*, 836 F.3d 722, 729 (7th Cir. 2016), *as amended* (Aug. 25, 2016), where a jail "administers blatantly inappropriate medical treatment," *Perez*, 792 F.3d at 777 (internal quotations omitted), or where, "a particular treatment plan was a substantial departure from accepted professional judgment, practice, or standards[.]" *Campbell v. Kallas*, 936 F.3d 536, 548 (7th Cir. 2019) (internal quotations omitted). In light of the undisputed evidence establishing that prescription methadone is the only medically sound treatment for Ms.

13 and Exhibits 2 and 3 thereto. Counsel for Ms. Finnigan offered to provide additional, relevant OTP records to defense counsel directly upon obtaining a confidentiality order. *Id.* ¶ 13 and Exhibit 3 thereto. Defense counsel initially agreed in principle, then refused. *Id.* ¶¶ 14, 16 and Exhibits 3 and 4 thereto. On February 10, 2021, defense counsel told Ms. Finnigan's counsel for the first time that the information provided two weeks ago was, in their view, inadequate. *Id.* ¶ 15 and Exhibit 3 thereto. Defense counsel represented for the first time that Ms. Finnigan's additional OTP records were not being requested by Defendants, but by "DuPage County Jail's physician, Dr. Martija." *Id.* ¶ 16 and Exhibit 3 thereto. Ms. Finnigan executed a new release specifically including Dr. Martija on February 11, 2021. *Id.* ¶ 18 and Exhibit 3 thereto. On February 12, 2021 defense counsel provided a fax number for the Jail, and Ms. Finnigan's counsel transmitted the additional records. *Id.* ¶ 19 and Exhibit 3 thereto.

Finnigan, interrupting her medical treatment constitutes deliberate indifference.[8] But the record shows that it is a near certainty that Defendants will interrupt Ms. Finnigan's prescribed daily methadone treatment. *See supra* Section I; Resp. Br. at 6 (arguing Defendants might order a "separate course of treatment").

Defendants' insistence that Ms. Finnigan's OUD diagnosis might be outdated, Resp. Br. at 3 n. 1, is medically unsound and shows that they are stalling. *See* MacDonald Supp. Decl. ¶¶ 2–3 (stating that there is no legitimate medical need for a de novo evaluation to confirm an OUD diagnosis).[9] There is no medical justification for delaying a decision about Ms. Finnigan's treatment, *id.* ¶¶ 2–7, and it would violate professional medical standards to force Ms. Finnigan to withdraw from methadone or substitute another treatment. MacDonald Decl. ¶¶ [redacted], 26, 41.

Ms. Finnigan has also shown that she is likely to succeed on her ADA claim. As detailed above, Defendants' responses to Ms. Finnigan's efforts to continue her methadone treatment, and failure to present facts to rebut the existence of their de facto Mandatory Withdrawal policy, demonstrate discrimination on the basis of disability. *See* Pl's Br. in Support of Prelim. Inj., Dkt. 27 at 16–22. Defendants' failure to follow the Illinois Jail Standards and the standard medical practice that supports continuing prescription medications in jail shows that they treat people with

[8] For this reason, it is inaccurate to say that Ms. Finnigan is asking the Court to "step into the shoes" of the Jail physician. Resp. Br. at 1. Rather, she is asking that the Court protect her from an *unjustifiable* interruption in her course of medical treatment for OUD. This is proper. *See Fields v. Smith*, 653 F.3d 550, 556 (7th Cir. 2011) (granting preliminary injunction on claim of deliberate indifference to plaintiffs' gender identity disorder where defendants did not produce any evidence that another treatment could be an adequate replacement for the accepted standard of care); *Farnam v. Walker*, 593 F. Supp. 2d 1000, 1006–10, 1014–15 (C.D. Ill. 2009) (granting preliminary injunction because defendants were likely deliberately indifferent in failing to provide medications necessary to meet the standard of care); *Monroe v. Baldwin*, 424 F. Supp. 3d 526, 542–46 (S.D. Ill. 2019), *on reconsideration in part sub nom. Monroe v. Meeks*, No. 18-cv-00156, 2020 WL 1048770 (S.D. Ill. Mar. 4, 2020) (granting preliminary injunction where prison officials failed to meet the standard of care for gender dysphoria).

[9] *See also* Reeves Supp. Decl. ¶¶ 2–4 (describing recent in-person meeting with Ms. Finnigan and review of her current course of treatment).

the disability of OUD differently—indeed, worse—than others. *See* MacDonald Supp. Decl. ¶ 7; Ill. Admin. Code tit. 20, § 701.40(j). Defendants also failed to accommodate Ms. Finnigan's request for a pre-incarceration evaluation, without explaining why this accommodation is unreasonable. *See* Longley Decl. ¶ 16 *et seq.*; *supra* note 5.

3. Defendants Mendrick and Romanelli Control Ms. Finnigan's Access to Treatment and Are Properly Sued for Prospective Relief.

Defendants cannot outsource their constitutional duty to provide for Ms. Finnigan's care. "Contracting out prison medical care does not relieve the State," or here, the Sheriff, "of its constitutional duty to provide adequate medical treatment to those in its custody[.]" *West v. Atkins*, 487 U.S. 42, 56 (1988). Indeed, "the constitutional duty under the Eighth . . . Amendment[] to provide adequate health care rests on the custodian." *Daniel v. Cook Cty*, 833 F.3d 728, 737 (7th Cir. 2016). "[A] government entity cannot shield itself from § 1983 liability by contracting out its duty to provide medical services." *Id.* (internal quotation marks omitted).

Thus, Defendants are responsible for Ms. Finnigan's care, despite their decision to hire an independent physician to perform her medical screening. *See Jones v. Barber*, No. 17-cv-07879, 2020 WL 1433811, at *5 (N.D. Ill. Mar. 24, 2020) ("the fact that someone else has *primary* responsibility for medical care does not mean that the Sheriff [has] *no* responsibility for medical care.") (emphasis in original); *Miller v. Dart*, No. 14-cv-1407, 2015 WL 6407458, at *3 (N.D. Ill. Oct. 21, 2015) (sheriff "has a non-delegable duty to provide medical care to inmates . . . . and is exclusively charged with the custody and care of the county jail"); *Riley v. Cty. of Cook*, 682 F. Supp. 2d 856, 860 (N.D. Ill. 2010) (sheriff "is exclusively charged with the 'custody and care' of the county jail" under Illinois law); *Brassfield v. Cty. of Cook*, 701 F. Supp. 679, 680 (N.D. Ill. 1988) ("responsibility for the Jail is vested . . . in the Sheriff" under Illinois law).

Furthermore, prospective injunctions against government officials in their official capacity are proper when the defendant named has "'some connection' to the unconstitutional act or . . . conduct complained of," such that he has the power to remedy the harm alleged. *Luckey v. Harris*, 860 F.2d 1012, 1015–16 (11th Cir. 1988) (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)); *accord Doe v. Holcomb*, 883 F.3d 971, 975–76 (7th Cir. 2018). By law, Defendant Mendrick is responsible for the "custody and care of the courthouse and jail," therefore he and the Chief of the Corrections Bureau are properly named in this injunctive action seeking relief from the Jail's de facto methadone withdrawal policy.[10] *See* 55 ILCS 5/3-6017.

Defendants' duty is particularly important where Jail medical staff lack specialized knowledge in the field of MAT.[11] The average correctional health practitioner lacks substantial experience treating patients with MAT including methadone, and would not have the expertise to substitute her professional judgment for that of the treating physician at the patient's OTP. MacDonald Supp. Decl. ¶ 4. Even in the rare case where a jail physician had comparable expertise and felt a different course of treatment was warranted, it would be irresponsible to change the treatment course for a patient only under their care for a short time—especially because changes in the methadone dose would need to be made slowly (typically over months). *Id.* Deflecting the obligation to care for Ms. Finnigan onto a contracted provider who is not a specialist in OUD

[10] The distinction between a suit for prospective relief and one for money damages is part of the reason why *Greeno v. Daley*, 414 F.3d 645, 656 (7th Cir. 2005) does not control here, contrary to Defendants' contention. *See* Resp. Br. at 6 n. 4. Another reason is that the administrator in *Greeno* was a corrections complaint medical examiner, and once he received satisfaction from the medical staff that the prisoner's needs were met, his job was done. *Greeno*, 414 F.3d at 655–56. Not so here, where Defendants are aware that Ms. Finnigan will not receive medically adequate care unless they ensure it is provided. On these facts, Defendants' status as non-medical staff is no defense. *See Perez*, 792 F.3d at 782.

[11] On February 10, defense counsel indicated for the first time that Dr. Alma Martija would be reviewing Ms. Finnigan's records and case. Longley Second Supp. Decl. ¶ 16 and Exhibit 3 thereto. Dr. Martija appears to be a general practitioner who works at the Jail, Stateville Correctional Center, and other facilities that do not operate licensed OTPs, and thus appears not to have MAT expertise. *See* Filler Decl. ¶¶ 6–11; MacDonald Supp. Decl. ¶ 4.

treatment and MAT and suggesting the provider may substitute a "separate course of treatment" for the MAT ordered by Ms. Finnegan's OTP is the picture of deliberate indifference and disability-based discrimination.[12] Resp. Br. at 6.

For these reasons, Ms. Finnigan is likely to prevail on the merits of her claims.

B. The Irreparable Harm Facing Ms. Finnigan Supports a Preliminary Injunction.

Injunctive relief is appropriate in a case such as this, where the harm awaiting Ms. Finnigan cannot be remedied *ex post*. No amount of money can compensate Ms. Finnigan for forcing her into methadone withdrawal and increasing the likelihood of relapse, overdose, and death. Contrary to Defendants' assertions, Resp. Br. at 5, the risk to Ms. Finnigan from their chosen course of conduct is imminent: she will go into forced withdrawal while awaiting an in-person medical evaluation and the logistical arrangements to obtain her methadone from a community-based OTP, *see* Parrino Decl. ¶¶ 4–12, and it is likely that she will be denied her medication for the entirety of her 30-day incarceration.

C. The Public Interest and Balance of Hardships Favor an Injunction.

Defendants cannot reasonably question the public's interest in ensuring that jails provide for the serious medical needs of those in their care:

[12] *See, e.g., Zaya v. Sood*, 836 F.3d 800, 806 (7th Cir. 2016) ("jury can infer conscious disregard of a risk from a defendant's decision to ignore instructions from a specialist"); *Perez*, 792 F.3d at 777 ("Deliberate indifference may occur where a prison official, having knowledge of a significant risk to inmate health or safety, administers 'blatantly inappropriate' medical treatment, acts in a manner contrary to the recommendation of specialists, or delays a prisoner's treatment for non-medical reasons, thereby exacerbating his pain and suffering.") (internal citations omitted); *Gil v. Reed*, 381 F.3d 649, 664 (7th Cir. 2004) (denying summary judgment in light of evidence that prison doctor prescribed medication that specialist warned against); *Jones v. Simek*, 193 F.3d 485, 490–91 (7th Cir. 1999) (evidence prison doctor refused to follow specialist's orders precluded summary judgment); *Estate of Unborn Child of Jawson v. Milwaukee City*, No. 19-cv-1008, 2020 WL 4815809, at *4 (E.D. Wis. Aug. 19, 2020) (failing to provide methadone to pregnant prisoner for five days despite valid order from specialist could amount to deliberate indifference); *Jones v. Aguinaldo*, No. 10-cv-313, 2015 WL 1299284, at *11 (N.D. Ill. Mar. 19, 2015) (failing to refer plaintiff to specialist created a genuine issue of material fact as to deliberate indifference).

> A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society. If government fails to fulfill this obligation, the courts have a responsibility to remedy the resulting Eighth Amendment violation.

Brown v. Plata, 563 U.S. 493, 510–11 (2011). Equally of public interest is the need for correctional facilities to support those using MAT to treat OUD, a disability that has killed thousands of people in Illinois, and to avoid disability discrimination. Additionally, it is not a hardship for Defendants to continue Ms. Finnigan's medically necessary care. *See* Hayes Decl. ¶ 5 (explaining that opioid agonist medication can be safely administered in jails). She is not asking Defendants to operate an OTP; she merely asks that they respect the course of care set by her treating physician. Defendants assert an "absolute legal interest in allowing their physicians to examine Plaintiff prior to determining a proper course for her treatment," Resp. Br. at 2, but this is contrary to standards for correctional care. *See* Ill. Admin. Code tit. 20, § 701.40(j); MacDonald Supp. Decl. ¶ 7.[13]

In sum, both consideration of the public's interest and the balance of equities strongly favor preliminary injunctive relief.

CONCLUSION

For these reasons, and those in the Memorandum of Law, Dkt. 27, the Court should grant Plaintiff's Emergency Motion and issue a Preliminary Injunction requiring Defendants to provide methadone to Ms. Finnigan throughout her incarceration in the DuPage County Jail.

Dated: February 17, 2021

Respectfully submitted,

CHRISTINE FINNIGAN

By her attorneys,

[13] Defendants' reference to litigation costs of future lawsuits not now before the Court, Resp. Br. at 7, is purely speculative. *Cf. Bowers*, 2017 WL 4339799, at *7 (rejecting unsupported assertions that relief would have "ripple effect" on other incarcerated persons and resource allocation).

/s/ Sally Friedman

Sally Friedman*
Rebekah Joab*
LEGAL ACTION CENTER
225 Varick St., 4th Fl.
New York, NY 10014
(212) 243-1313
sfriedman@lac.org
rjoab@lac.org
*Pro hac vice

/s/ Nusrat J. Choudhury

Nusrat J. Choudhury
Camille Bennett
ROGER BALDWIN FOUNDATION OF ACLU, INC.
150 N. Michigan Avenue, Suite 600
Chicago, IL 60601
(312) 207-9740
nchoudhury@aclu-il.org
cbennett@aclu-il.org

/s/ Maggie E. Filler

Maggie E. Filler*
RODERICK AND SOLANGE MACARTHUR JUSTICE CENTER NORTHWESTERN LAW SCHOOL BLUHM LEGAL CLINIC
160 E. Grand Avenue, 6th Floor
Chicago, Illinois 60611
(312) 503-0899
Maggie.filler@macarthurjustice.org
*Pro hac vice

/s/ Joseph Longley

Maria Morris*
Joseph Longley**
AMERICAN CIVIL LIBERTIES UNION NATIONAL PRISON PROJECT
915 15th Street NW Seventh Floor
Washington, DC 20005
(202) 548-6602
mmorris@aclu.org
jlongley@aclu.org
*Pro hac vice
**Pro hac vice; Not admitted in DC; practice limited to federal courts