

DISTRICT COURT, COUNTY OF BOULDER, COLORADO 1777 6th St., Boulder, CO 80302 (303) 441-1866	
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant	DATE FILED: April 7, 2021 10:35 AM COURT USE ONLY
Attorney for Boulder County Sheriff's Office BOULDER COUNTY ATTORNEY Kathryn Haywood, #48140 Senior Assistant County Attorney Office of the County Attorney of Boulder County, Colorado P.O. Box 471 Boulder, CO 80306 (303) 441-3190 Fax (303) 441-4794 khaywood@bouldercounty.org	Case Number: 21CR497 Division: 13
Boulder County Sheriff's Office Response to the People's Motion to Reconsider March 23, 2021 Order Regarding Defendant's Motion for Protective Order (D-006)	

The Boulder County Sheriff's Office responds to the People's Motion to Reconsider March 23, 2021 Order Regarding Defendant's Motion for Protective Order (D-006) as follows:

1. Boulder County Sheriff Joe Pelle has charge and custody of the Boulder County Jail ("Jail") and the inmates therein. C.R.S. § 30-10-511. The Boulder County Sheriff's Office ("BCSO") is also responsible for transporting inmates in custody at the Jail to and from other facilities, such as the courthouse and external medical providers when necessary.
2. Neither the BCSO nor the Jail is a party in the above-captioned matter. However, Defendant Alissa is a pretrial inmate in the Jail.
3. The Eighth Amendment, applicable to the Jail via the Fourteenth Amendment's Due Process clause, *see Perry v. Durborow*, 892 F.3d 1116, 1121 (10th Cir. 2018), prohibits cruel and unusual punishment and imposes duties on Jail officials to provide humane conditions of confinement, ensure that inmates receive adequate food, clothing, shelter and medical care, and take reasonable measures to guarantee the safety of inmates. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The Constitution further requires Jail officials to make available to inmates a level of medical care which is reasonably designed to meet the routine and emergency health care needs of inmates. *Ramos v. Lamm*, 639 F.2d 559, 574 (10th Cir. 1980).
4. The Protective Order issued on March 23, 2021 prohibits all law enforcement persons and their agents from contacting or questioning Defendant Alissa, or attempting to do so,

without first obtaining the consent of Defendant Alissa's counsel and providing said counsel reasonable opportunity to be present prior to any contact.

5. Because the Protective Order on its face appears to apply to all law enforcement, and their agents, without limitation, it could be interpreted to prohibit all BCSO staff, including Jail staff such as deputies and medical staff, from contacting Defendant Alissa in any form without first contacting his counsel. As "contact" is not defined in the Protective Order, it may include routine contacts necessary to provide food, clothing, and required transportation to inmates as well as additional contacts necessary to maintain an inmate's safety and provide medical care.
6. The Protective Order on its face appears to prohibit all BCSO staff, including Jail staff, ("any other law enforcement persons, and their agents") from contacting or questioning Defendant Alissa. Accordingly, Jail medical staff, including nurses, a doctor, and a dentist, are prohibited from contacting or questioning Defendant Alissa. Accordingly, medical professionals onsite at the Jail *are*, on the face of the order, subject to the Protective Order's restrictions. However, Jail medical professionals are most readily available to respond and, under the Constitutional obligations outlined above, often must respond to a medical emergency at the Jail. Furthermore, Jail staff may be unable to refer Defendant Alissa to a medical professional without making some form of "contact" with Defendant Alissa.
7. The ability of Jail staff to contact or question Defendant Alissa regarding his basic needs and medical care is critical to the BCSO's ability to fulfill its obligations under the Fourteenth Amendment.
8. The day-to-day operations of the Jail requires that Jail staff be able to contact Defendant Alissa in order to provide his meals, clean clothes, or any prescribed medications. Jail staff may also need to contact Defendant Alissa in order to effectuate his transport to the courthouse. Jail staff frequently make administrative and routine contact with inmates in order to operate the Jail in a constitutional manner. Requiring Jail staff to confer with Defendant Alissa's counsel prior to *any* contact could substantially interfere with the delivery of services designed to provide for and protect Defendant Alissa as constitutionally required.
9. If circumstances suggest that Defendant Alissa faces a substantial risk of serious harm, Jail staff may need to question Defendant Alissa to verify the facts and confirm any inferences of risk. *See Farmer*, 511 U.S. at 843 n.8 (An official "would not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist.").
10. For purposes of providing medical care, the inability of Jail staff to contact or question Defendant Alissa until after conferring with his counsel could delay medical care and result in substantial harm to Defendant Alissa. Despite complying with the terms of the Protective Order, such a delay would expose the BCSO to legal liability under 42 U.S.C. § 1983. *See Mata v. Saiz*, 427 F.3d 745, 754 (10th Cir. 2005) (holding that delay in medical care

“constitutes an Eighth Amendment violation where the plaintiff can show that the delay resulted in substantial harm.”).

11. Jail staff often rely upon inmates’ claims of pain and other descriptions of symptoms in order to identify and provide adequate medical care. Where an inmate complains of severe pain, delaying treatment for even a few hours can constitute “unnecessary and wanton infliction of pain” and subject the BCSO to liability under 42 U.S.C. § 1983. *See Sealock v. Colo.*, 218 F.3d 1205, 1210 (10th Cir. 2000) (“Appellant presented evidence that he suffered from severe chest pain which he reasonable believed was caused by a heart attack. The pain and suffering imposed by Barrett's failure to get him treatment lasted several hours. The Eighth Amendment forbids ‘unnecessary and wanton infliction of pain.’”)(emphasis omitted). Medical emergencies may occur that require Jail staff to provide immediate medical care to Defendant Alissa, which may necessitate contact or questioning in order to administer such care.
12. Neither the BCSO nor Defendant Alissa can predict the nature and extent of any future safety concern or medical emergency. Circumstances could arise that warrant an immediate response by Jail staff, which may require Jail staff to contact or question Defendant Alissa for the purpose of addressing such circumstances. Preventing Jail staff from timely and adequately responding to emergent circumstances would not only jeopardize the BCSO’s ability to comply with constitutional mandates, but also presents an increased risk of harm to Defendant Alissa.
13. Accordingly, the BCSO requests that the Court reconsider its March 23, 2021 Order to permit all Jail staff to perform their necessary duties pursuant to Defendant Alissa’s incarceration at the Boulder County Jail without requiring prior notice to Defendant Alissa’s counsel as many of these duties are time-sensitive and cannot be delayed pursuant to applicable constitutional mandates.

Respectfully submitted,

BOULDER COUNTY ATTORNEY

/s/ Kathryn Haywood

Kathryn Haywood

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system on April 7, 2021, and addressed as follows:

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