IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al*. *

Plaintiffs, *

v. * Civil Action No. ELH 94-2541

LAWRENCE HOGAN, *et al*. *

Defendants. *

* * * * * * * * * * * *

DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR RELIEF FROM RISK OF INJURY AND DEATH FROM COVID-19

Lawrence J. Hogan, Governor ("Governor") of the State of Maryland, Robert L. Green, Secretary ("Secretary") of the Department of Public Safety and Correctional Services ("the Department"), and Michael Resnick, Commissioner ("Commissioner") of the Division of Pretrial Detention and Services ("DPDS"), through their attorneys, Brian E. Frosh, Attorney General of Maryland, and Laura Mullally, Assistant Attorney General, respond, pursuant to Fed. R. Civ. P. 7(b)(1), and Local Rule 105.1, to Plaintiffs' Supplemental Motion, ECF No. 652 – 652-5, and state:

I. INTRODUCTION

This emergency motion arises out of the world-wide COVID-19 pandemic, and the threat of harm that this novel virus poses to pretrial detainees at the Baltimore City Booking and Intake Center ("BCBIC"). Plaintiffs seek an order from this Court allowing for the release of pretrial detainees from BCBIC based upon the threat of the pandemic, without

regard to the nature of each detainee's pending charges, criminal history, failures to appear, home environment, ties to the community, threat to public safety or their amenability to pretrial supervision or home detention. The Supreme Court has not yet determined that a release of pretrial detainees is a remedy for a violation of rights under §1983. *See Cameron v. Bouchard*, case no. 2:20-cv-10949 (E.D. Mich. May 21, 2020) at p. 67.[1] In their motion, Plaintiffs do not specify whom they wish the Court to release, why they seek the release of any specific detainee, or what conditions of release they expect the Court to impose. There is no acknowledgement of the risk to public safety. Essentially, what this motion asks is for the Court to disregard the many prior case-appropriate decisions made by State court judicial officers concerning the release of pretrial detainees, even though those courts have had the opportunity to conduct hearings, accept the recommendations of counsel for state and defense, and receive investigations conducted by the Pretrial Release Services Program ("PRSP"). The motion fails to acknowledge that the Baltimore City District and Circuit Courts have considered over 500 requests for bail and other forms of release filed by criminal defendants since March 13, 2020. This Court should deny the relief sought because it is overbroad, non-specific, and in many cases, would override or countermand the sound judgment of State judicial officers, who have considered, and will continue to consider petitions for release filed by detainees through counsel.

II. THE STATUTORY AND RULE-BASED AUTHORITY OF THE DEFENDANTS, THE COURTS, AND COUNSEL FOR STATE AND DEFENSE IN EFFECTUATING THE RELEASE OF PRETRIAL DETAINEES

[1] Plaintiffs have included this opinion as Exhibit A in their Note, dated May 26, 2020, ECF No. 654-1.

Plaintiffs accuse the Defendants of failing to take "effective steps" to address the threat of COVID-19 at BCBIC. ECF No. 651-1 at 1. This claim fails to acknowledge the extensive and well-documented changes that the Defendants have implemented, consistent with the recommendations of the Centers for Disease Control and Prevention ("CDC"), the Maryland Department of Health ("DOH"), the *Duvall* medical monitor, Dr. Michael Puisis, and Sharon Baucom M.D., the Director of Clinical Services for the Department.[2]

A. THE ROLE OF THE *DUVALL* DEFENDANTS IN RESPONDING TO THE COVID-19 PANDEMIC

The population of pretrial detainees is driven by the number of arrests made in Baltimore City, and the number of detention orders issued, or bails set by judicial officers. A list of daily bookings since March 13, 2020, along a list of arrestees who were released by a court commissioner without bond, or released after posting bond is attached as Exhibit A. Bookings appear to be roughly commensurate with releases. The Commissioner has no authority to release a detainee from pretrial detention, or to review or countermand the decision of a judicial officer setting the terms of release or detention.

The Commissioner is "in charge" of DPDS.[3] He reports to the Secretary, who reports to the Governor. *See* Md. Code Ann. Corr. Servs. ("CS") §§5-201(c)(1), 3-201(a),

[2] On a conference call on April 10, 2020, Plaintiffs had the opportunity to question BCBIC Warden Frederick Abello, along with Zakaria Shaikh, the Chief of Health Strategy and Operations, and Sharon Baucom M.D., Director of Clinical Services for the Department. Many of the factual assertions made in this paper and its attachments have been conveyed previously to counsel for the plaintiff class.

[3] DPDS has three component parts: the PRSP, the Baltimore City Detention Center, and a centralized booking facility, BCBIC. CS §5-201(b). BCBIC holds nearly all detainees that comprise the *Duvall* plaintiff class.

(b) (LexisNexis 2014). Unlike the Governor or the Secretary, who possess some authority to release sentenced inmates through pardons, paroles, administrative releases, commutations, compassionate releases, and mandatory supervisory releases,[4] the Commissioner has no ability to reduce the population of pretrial detainees. He must accept those committed to his custody by judicial order. Since March 13, 2020, the Governor and the Secretary have released 117 prison inmates from the Division of Correction ("DOC") on early mandatory supervision, 144 on regular mandatory supervision, and approved the early parole of 48 inmates.

In contrast, the power of the Commissioner "does not limit or supersede the authority of a court to determine the conditions of pretrial release." CS §5-201(d). The Commissioner supervises "a pretrial detention facility for inmates committed or transferred to the custody of the Commissioner." *Id*., at §5-401(b). The Commissioner's power to make decisions concerning release is limited to the performance of his pretrial release duties, or the placement of eligible detainees on home detention. CS §5-301(a), (b).[5] The Commissioner, through the PRSP, and the Home Detention Unit ("HDU"), has actively

[4] The Maryland General Assembly granted certain powers to the Governor and the Secretary governing the release of sentenced inmates, or the reduction of a term of confinement through the application of diminution credits. *See* CS §§7-301 (parole); 7-301.1 (administrative release); 7-309 (medical parole); 7-501 (conditional release); 7-601 – 7-603 (pardons, commutations, and conditional pardons); 3-701 – 3-711 (diminution of confinement credits). The *Duvall* Defendants do not have corresponding powers applicable to pretrial detainees.

[5] Detainees and prison inmates are eligible for home detention according to terms established by the General Assembly. *See* CS §3-401 – 3-415; 5-201(c). On March 13, 2020, the number of BCBIC detainees on the PRSP caseload was 878. On May 27, 2020, the number of detainees on PRSP increased by 75% to 1538. *See* Declaration of Robert Weisengoff, attached hereto as Exhibit B.

participated in investigations, and State court hearings[6] in order to place eligible detainees on pretrial release or home detention. Exhibit B. Since March 13, 2020, the Department has placed 386 additional detainees and inmates its home detention program. While the district and circuit courts cannot order the Commissioner to place a detainee on home detention, those courts can permit home detention through a private monitoring service. Exhibit B. In spite of the statutory limitations on the Commissioner's power, he has engaged in daily telephone calls with supervisors in the State's Attorney's Office and the OPD that focus on facilitating release of pretrial detainees.

B. The Role of the Courts in Setting Conditions for Pretrial Release

For the most part, releasing additional detainees pending trial remains within the sound discretion of the State courts. The framework for decisions governing pretrial release is established by the Maryland Rules of Criminal Procedure. *See* Md. Rules 4-201(a) (a judicial officer[7] may release a defendant on personal recognizance, if the judicial officer finds that there is no probable cause for any of the charges); 4-216(c) (a defendant is entitled to consideration for release by a judicial officer); 4-216(d) (a defendant who is charged with certain felonies oron extradition may be released by judge solely); 4-216.1(b)(1)(B) (noting that the Rule is construed to permit the release of a defendant

[6] The Commissioner has supplied hardware and software to the courts, the detainees, and counsel for the State and the defense to enable bail reviews, bail re-reviews, and habeas corpus petitions to be heard via business skype, and to permit detainees to communicate privately with their attorneys throughout the process. Exhibit B.

[7] "Judicial officer" is defined by Md. Rule 4-102(f) as either a "judge or a District Court Commissioner."

pending trial except upon a finding by a judicial officer that the accused is reasonably likely to fail to appear, or poses a danger to the victim, another person, or the community); 4-201.1(b)(1), (2) (requiring a judicial officer to make decisions based upon individualized factual considerations, and requiring the judicial officer to impose the least onerous conditions of release that will reasonably insure the appearance of the defendant, and the safety of others); 4-216.1(d) (setting forth required and special conditions for release, including electronic monitoring or pretrial supervision, imposed by a judicial officer); 4-216.1(e)(1)(A), (B) (noting that imposition of special conditions of release on financial terms by a judicial officer may not be imposed solely because the defendant is financially incapable of meeting that condition, to punish the defendant, or placate public opinion, or to protect others, or prevent crime); 4-216.1(f) (in determining whether to release a defendant, a judicial officer may consider recommendations of the PRSP, the nature or circumstances of the offense charged, the defendant's juvenile and criminal history, the defendant's prior record of appearance at court, the safety of the victim, other individuals or the community, the defendant's family ties, employment history, financial resources, reputation, character, mental condition and length of residence in the community and the State, and any information or recommendation presented by the State's Attorney or the defendant or his attorney); 4-216.2 (a defendant denied pretrial release by a court commissioner is entitled to immediate presentation to the District Court for review of the commissioner's pretrial release order). Since the outbreak of the pandemic, the "judges of Maryland's trial courts" have been ordered by Chief Judge Barbera on April 14, 2023 to

take the risk of COVID-19 infection into account when considering issues of "detention, incarceration and release."

C. THE ROLES OF THE STATE'S ATTORNEY AND COUNSEL FOR THE DEFENDANT

The State's Attorney has the duty to prosecute all cases in which the State may be interested, and is vested with "broad official discretion to institute and prosecute criminal causes." *State v. Aquilla*, 18 Md. App. 487, 493 (1973); *see also* Md. Code Ann. Crim. Proc. ("CP") §15-102 (LexisNexis 2008) (the State's attorney shall "prosecute and defend on the part of the State all cases in which the State may be interested"); *see also* Constitution of Maryland, Art. V, §7 (creating the office of the State's Attorney). The State's Attorney may assign to her subordinate attorneys "the performance, subject to this discretion and control, of the duties required of [her] by law with respect to the institution and prosecution of criminal actions." *Aquilla*, 18 Md. App. at 494. The State's Attorney has the authority to file charges by way of information in the District Court, review statements of charges filed by arresting officers, dispose of a case by entering a *nolle prosequi*, or place any case on the inactive docket. *See* Md. Rules 4-211(b), (c); 4-247; 4-248.

The State's Attorney has declared that she will not pursue charges against misdemeanants for whom there is no mandatory arrest requirement, and who are taken into custody based upon the discretion of the arresting officer. The State's Attorney has declined to release similarly charged misdemeanants who were already in detention. As a result, the number of arrests in Baltimore have dropped, and is nearly equivalent with the numbers of releases. Exhibit A. The Defendants, working with the State's Attorney, have

released all BCBIC inmates who are serving a sentence of 90 days or less, or who are obligated to serve their sentences on weekends. The Commissioner also has daily phone calls with the State's Attorney and the OPD to facilitate any additional releases agreed upon by those parties.

A defendant has the right to an attorney, and is advised of his right to counsel at the earliest state of the proceedings. Md. Rule 4-213(a), 4-213.1, 4-214. It is the policy of the State to implement the "constitutional guarantees of counsel in the representation of indigent individuals" in the criminal courts of the State through the Office of the Public Defender ("OPD"). CP §16-201(1) - (3). The OPD represents an indigent defendant in a proceeding where the defendant is accused of a serious crime, or a criminal proceeding "in which an attorney is constitutionally required to be present prior to the presentment being made before a commissioner or a judge." CP §16-204(b)(1)(i), (ii). The State's Attorney and the OPD have been provided with the list of pretrial detainees who are at increased risk for COVID-19 complications, due to their age and co-morbidities. Using that list, and working with the courts and the PRSP, the OPD has filed approximately 859 petitions for release in both District and Circuit Court. *See* Exhibit A. At Circuit Court 41% of all hearings resulted in release on recognizance or placement on private home detention.

III. STEPS TAKEN BY THE DEFENDANTS TO REDUCE THE IMPACT OF COVID-19 INFECTION

Since the declaration of the pandemic, the Defendants in consultation with Drs. Puisis, and Baucom, and consistent with Centers for Disease Control ("CDC") and DOH

guidelines, and applicable law, have implemented policies and practices designed to prevent or limit the spread of the virus.

A. HOUSING OF BCBIC DETAINEES

BCBIC consists mostly of general population housing units, for males and females, located in three towers of the building at 300 East Madison Street. *See* Diagram of BCBIC, attached hereto as Exhibit C. Double bunks are placed 5'6" apart. *See* Declaration of Warden Frederick Abello, attached hereto as Exhibit D. BCBIC also has specialized housing units for quarantined detainees, consisting of a detoxification unit, a mental health unit, a unit for detainees in intake, and a housing unit for detainee workers, those over 65, and detainees with co-morbidities.[8] Consistent with the recommendation of Dr. Puisis, the Defendants have created an additional quarantine or isolation housing area in 4 North, A and B. Exhibit D.

The 4 North A unit is an isolation area comprised of cells, and used for symptomatic male detainees. A medical provider determines whether or not the detainee should be placed in the unit, and whether or not the detainee should have a cellmate. Exhibit D. Medical contractors are designated to work on the unit, and make rounds 24 hours per day. A detainee's temperature is taken and recorded twice per day. Exhibit D. Detainees are kept on the unit for 14 days, unless a medical provider determines that it is safe to release the detainee to the general population. Exhibit D. If outside or emergency hospitalization

[8] Most of hese specialized housing units are comprised of cells in a unit where medical and mental health care providers are available to treat the symptoms exhibited by detainees.

is necessary, the detainee is taken to a local hospital. *See* Declaration of Commissioner Michael Resnick, attached hereto as Exhibit E.

The 4 North B unit is comprised of cells, and designated for quarantined intakes. Since March, 2020, those male arrestees who are not released by a judicial officer within the first few days of detention are kept in the quarantine cells for 14 days.[9] Exhibit D. There are five states of quarantine. Exhibit D.

Male detainees with jobs within BCBIC, along with males over the age of 65, or males with co-morbidities are housed in Unit 3 South B. Exhibit D. The temperatures of these detainees are taken twice per day, and each detainee is asked a set of questions, approved by the CDC, concerning the detainee's health or symptoms. Exhibit D.

On May 27, 2020 BCBIC had a total of 17 detainees who are positive for COVID-19. Exhibit E. Most of these detainees are housed in 4 North A. Exhibit E. There are no positives amongst the females.

A Health Monitoring Facility ("HMF") at 531 East Madison Street is opening on Monday, June 1, 2020 to detain those that are positive for COVID-19. Exhibit E. This facility is a 30 bed convalescent unit for sick detainees who do not need hospitalization. Exhibit E. The HMF was created by DPDS based upon the recommendation of Dr. Puisis, that the COVID-positive detainees be moved to a separate building. The COVID-positive detainees will be moved there on June 1, 2020. The patients will be masked, and medical and correctional staff will wear masks, gowns, gloves and plastic face shields.

[9] Prior to the arrival of COVID-19, detainees in intake were kept in quarantine until their tuberculosis test results were returned after 3 days.

Additionally, the Metropolitan Transition Center ("MTC") Hospital, a licensed hospital facility, has been designated to hold detainees who are positive for COVID-19 and are seriously mentally ill, require a greater level of security, have disabilities, or are on a medication treatment program. Exhibit E. The MTC Hospital has 4 single negative pressure cells available to detainees who should be placed there.

B. PERSONAL PROTECTIVE EQUIPMENT ("PPE")

BCBIC has issued PPE to all detainees and staff. In March, 2020, the Maryland Correctional Enterprises ("MCE") began manufacturing masks, gowns, face shields and non-alcoholic sanitizer. As of May 27, 2020, MCE had manufactured 3,388 gowns, 27,620 blue face masks, 44,682 gray face masks, 36,200 face shields, and 24,330 bottles of hand sanitizer masks, gowns, face shields and sanitizer. By the end of March, 2020, every arrestee and detainee had a mask, and by mid-April, 2020, hand sanitizer was available in the common areas of every dormitory. By May 29, 2020, every detainee and inmate in the Department will have two masks. Additionally, arresting police officers who enter BCBIC are issued a mask if they do not arrive wearing one. Arresting officers must have their temperature checked and respond to questions regarding their health prior to entry into BCBIC.

C. SIGNAGE AND EDUCATION, SANITATION, AND RESTRICTIONS ON MOVEMENTS FOR DETAINEES AND STAFF

Signage, which has been approved by the Department's medical director, has been placed in housing units and common areas since mid-March. Examples of signage are attached as Exhibits 1 – 8 to the Declaration of Frederick Abello, Exhibit D. Education of

detainees and staff concerning the risk of transmission of COVID-19 has been implemented by the medical contractor's infectious disease coordinators. *See* Declaration of Zakaria Shaikh, attached hereto as Exhibit F.

Although staff roll calls were suspended in March, 2020 to reduce the risk of COVID-19 infection, they were replaced by roving roll calls, so that staff on all three shifts could be educated on new developments arising from the spread of COVID-19 infection. Exhibit D. Recently, staff roll calls have begun again, with enforced social distancing during the roll call. Exhibit D.

Sanitation in the housing units is performed by detainee workers, and occurs twice per shift. Exhibit D. All hard surfaces in the common areas, showers, and bathrooms are cleaned with a germicide solution. Exhibit D. Cell sanitation is performed by its occupants, or by detainee workers between occupancies. Exhibit D. As noted above, the detainee workers are housed with one another in Unit 3 South B. The Department has engaged an outside contractor to perform deep cleanings of BCBIC, which have occurred twice since the declaration of the state of emergency, on March 29, and April 23, 2020. Exhibit D. Detainee workers and contractors wear masks and gloves during the performance of their duties.

Every detainee is issued a towel and three bars of soap. Exhibit D. Additional soap and shampoo is available every Tuesday and Friday at BCBIC. The Secretary has declared that every detainee have access to soap, shampoo and cleaner. Towels are washed by detainee workers in washing machines on the housing units. Exhibit D. Laundry detergent and bleach is available. Exhibit D.

The Secretary has ordered that detainees move from their assigned locations only when necessary to reduce any potential spread of COVID-19. *See* Declaration of Assistant Secretary Gary McLhinney, attached hereto as Exhibit G. Hospital transports, non-elective medical treatments, such as chemotherapy, movement of detainees from intake into the general population, or from the general population into a specialized quarantine or isolation housing unit have continued. Transportation to the courts has ceased. Most outside medical appointments, and visits to in-house dentists have been suspended, unless there is an emergency. Transports to the DOH for evaluations as to competency and criminal responsibility have ceased. Exhibits D, G.

D. TESTING

Obtaining test kits for COVID-19 has been difficult both nationwide and locally. In *Seth v. McDonough*, case number 8:20-cv-01028-PX, ECF No. 84, at 27 (D. Md. May 21, 2020), this Court acknowledged the difficulties in obtaining and performing COVID-19 tests. Although Dr. Puisis has made recommendations for universal testing, CDC recommendations do not include universal testing of all inmates at any facility. *See* Declaration of Sharon Baucom, M.D., attached hereto as Exhibit H. Following CDC guidelines, priorities for testing have been assigned by Dr. Baucom to subpopulations at greater risk for infection and complications. Exhibit H.

Prior to the onset of universal testing at BCBIC, testing decisions have been made by medical providers, based upon factors such as presenting symptoms, or the detainee's ability to advocate for himself. Exhibit E. Only 1,000 test kits have been distributed to the Department by the DOH. Exhibit H. More test kits have been provided by a private

laboratory. Exhibit F. Prior to the obtaining of test kits, BCBIC sent symptomatic detainees to an outside hospital, which would decide whether or not to test the detainee. The Department is looking into procuring rapid COVID-19 tests, which can be used prior to the transport of any detainee. Exhibit F. The Secretary has instituted universal testing of employees, contractors and detainees in the Jessup region, where the outbreak has been more significant than in BCBIC. Exhibit F. When that testing is completed, the testing teams will move to the Baltimore region, with a priority of universal testing at BCBIC. Exhibit F.

IV. ARGUMENT

A. THE PRISONER LITIGATION REFORM ACT

The Prison Litigation Reform Act (PLRA) 42 U.S.C. § 1997e(a) provides: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Exhaustion is mandatory. *Ross v*. *Blake*, 136 S. Ct. 1850, 1856-58 (2016); *Jones v*. *Bock*, 549 U.S. 199, 219 (2007). The purpose of exhaustion is to: 1) allow a prison to address complaints about the program it administers before being subjected to suit; 2) reduce litigation to the extent complaints are satisfactorily resolved; and 3) prepare a useful record in the event of litigation. *Jones*, 549 U.S. at 219. *Ross* held that "the PLRA's text suggests no limits on an inmate's obligation to exhaust irrespective of any 'special circumstances.'" *Id*. at 1856. In so holding, the Supreme Court reaffirmed that "all inmates must now exhaust all available

remedies: 'Exhaustion is no longer left to the discretion of the district court.'" *Id*. at 1858 (quoting *Woodford v*. *Ngo*, 126 S. Ct. 2378, 2382 (2006)).

As *Valentine v*. *Collier*, 956 F. 3d 797, 804 (5th Cir.), cert. denied ___ S. Ct. ___, 2020 WL 2497541 (2020) notes:

> This exhaustion obligation is mandatory—there are no "futility or other [judicially created] exceptions [to the] statutory exhaustion requirements ...." *Booth v*. *Churner*, 532 U.S. 731, 741 n.6, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001). So long as the State's administrative procedure grants "authority to take *some* action in response to a complaint," that procedure is considered "available," even if it cannot provide "the remedial action an inmate demands." *Id*. at 736, 121 S.Ct. 1819 (emphasis added); *see also id*. at 739, 121 S.Ct. 1819 ("Congress meant to require procedural exhaustion regardless of the fit between a prisoner's prayer for relief and the administrative remedies possible.").

Further, in *Ross v*. *Blake*, the Supreme Court identified three circumstances in which an administrative remedy is unavailable. First, an administrative procedure is unavailable when, despite what regulations or guidance materials may promise, it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates. 136 S. Ct. at 1859. Second, "an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use. In this situation, some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it." *Id*. The third circumstance arises when "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id*. at 1860. This case does not implicate any of the scenario envisioned by the Supreme Court in *Ross*.

Nor has Congress carved out an exception under the PLRA to exempt from the exhaustion requirement an inmate's claim that he is housed under an emergency conditions.

In this case, no member of the plaintiff class at BCBIC has exhausted available administrative remedies, which is mandated prior to filing suit pursuant to the Prison Litigation Reform Act, even during the emergency COVID-19 crisis. *Nellson v. Barnhardt,* 2020 WL 1890670 at *5 (D. Colo. 2020); *see also* Declaration of Kelvin L. Harris, attached hereto as Exhibit I.

This Court has acknowledged that exhaustion applies to cases in which plaintiffs seek relief under §1983. *See Seth*, ECF No. 84 at 15. Moreover, this Court has acknowledged that its power to issue a prison release order is circumscribed by the PLRA, which permits such an order only when issued by a three-judge panel, convened at the request of the court, and only after less intrusive relief has been demonstrated to be insufficient in remedying the constitutional violation. *Seth,* ECF No. 84, at 15-16; *see also* the PLRA, 18 U.S.C. §3626(a)(3), (g)(4).

Pursuant to *Blake v. Ross,* the DPDS maintains a 4-step grievance process to address alleged wrongs arising out of the COVID-19 pandemic. Exhibit I. The plaintiff class at BCBIC has not exhausted administrative remedies. Exhibit I. Plaintiffs do not address the issue of exhaustion. ECF Nos. 645 - 652. Nor have they connected these claims, which arise directly from the novel COVID-19 virus, to any prior exhausted claims in *Duvall*. This case must be dismissed because exhaustion has not even been attempted, much less completed.

B. DELIBERATE INDIFFERENCE UNDER SECTION 1983

Even if Plaintiffs had exhausted their administrative remedies, the emergency motion must fail because the Defendants have not been subjectively, criminally reckless in

their response to the COVID-19 outbreak. The Due Process Clause of the Fourteenth Amendment protects the constitutional rights of pretrial detainees. *Bell v. Wolfish,* 441 U.S. 520, 535 (1979); *see also Hill v. Nicodemus,* 979 F. 2d 987, 991 (4th Cir. 1992). This Court has consistently held that when a pretrial detainee brings a failure to protect claim under the Fourteenth Amendment, the same standards apply as for an Eighth Amendment claim brought by a convicted inmate. *See Perry v. Barnes,* case no. PWG-16-705, 2019 WL 1040454 D. Md. March 3, 2019) (collecting cases). In order to state failure to protect claims, Plaintiffs must allege that the Defendants acted with "deliberate indifference to a substantial risk of serious harm to [them]." *Danser v. Stansberry,* 772 F. 340, 346-47 (4th Cir. 2014). In a claim for denial of medical care a prisoner must allege facts from which a trier of fact could find that the defendants' acts or failures to act amounted to deliberate indifference to a serious medical need. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

The objective component of this test requires that the Plaintiffs demonstrate the existence of a serious medical condition. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992); *Estelle*, 429 U.S. at 105; *Shakka v. Smith*, 71 F.3d 162, 166 (4th Cir. 1995). The right to medical treatment is "limited to that which may be provided upon a reasonable cost and time basis and the essential test is one of medical necessity and not simply that which may be considered merely desirable." *Bowring v. Godwin*, 551 F.2d 44, 47-48 (4th Cir. 1977). "'[S]ociety does not expect that prisoners will have unqualified access to health care'" *Shakka*, 71 F.3d at 166 (quoting *Hudson*, 503 U.S. at 9). It is the necessity of medical treatment, not its desirability, which is determinative. *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981) (describing balancing test for need for psychiatric care).

The subjective component of related to a denial of medical care requires a showing that the Defendants acted with deliberate indifference. *Wilson v. Seiter*, 501 U.S. 294, 303 (1991). Deliberate indifference occurs when a defendant "knows of and disregards an excessive risk to inmate health or safety; the [defendant] must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). No deliberate indifference occurs when prison administrators take multiple, informed steps to protect inmates and staff. *Valentine,* 956 F. 3d at 802. In addition, the Fourth Circuit has acknowledged:

> Deliberate indifference is a very high standard—a showing of mere negligence will not meet it. . . . [T]he Constitution is designed to deal with deprivations of rights, not errors in judgments, even though such errors may have unfortunate consequences. . . . To lower this threshold would thrust federal courts into the daily practices of local police departments.

Grayson v. Peed, 195 F.3d 692, 695-96 (4th Cir. 1999).

In the rapidly evolving and unfamiliar landscape of the COVID-19 pandemic, the concept of deliberate indifference may be equally fluid. *White by White v. Chambliss*, 112 F.3d 731, 737 (4th Cir. 1997) ("A claim of deliberate indifference . . . implies at a minimum that defendants were plainly placed on notice of a danger and chose to ignore the danger notwithstanding the notice."). Hindsight is not enough. "The law cannot demand that officers be mind readers." *Grayson*, 195 F.3d at 695. The facts illustrate that the Defendants have responded quickly and reasonably to the myriad of challenges presented by the pandemic to the plaintiff class.

Equally important, a plaintiff's disagreement with a prescribed course of treatment does not establish deliberate indifference and therefore does not state a claim. *Peterson v. Davis*, 551 F. Supp. 137, 146 (D. Md. 1982,) *aff'd,* 729 F.2d 1453 (4th Cir. 1984). Working with available resources, the Defendants have created and implemented policies and procedures designed to combat the risk of COVID-19. The difficulties in obtaining testing kits is a nationwide issue, one that cannot be resolved solely through the efforts of the Defendants, although they have taken timely steps to resolve the crisis on multiple fronts. On this issue, *Valentine*, 956 F. 3d at 801, states:

> The "incidence of diseases or infections, standing alone," do not "imply unconstitutional confinement conditions, since any densely populated residence may be subject to outbreaks." *Shepherd v. Dallas Cty.*, 591 F.3d 445, 454 (5th Cir. 2009). Instead, the plaintiff must show a denial of "basic human needs." *Ibid*. "Deliberate indifference is an extremely high standard to meet." *Cadena v. El Paso Cty.*, 946 F.3d 717, 728 (5th Cir. 2020).

The Eighth Amendment proscribes conditions that result in an "unnecessary and wanton" infliction of pain, including practices that are "totally without penological justification." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981) (*quoting Gregg v. Georgia*, 428 U.S. 153, 173 & 183 (1976)). Furthermore, actual injury must have occurred because of the Eighth Amendment deprivation in order to merit constitutional consideration as a civil rights cause of action. *Strickler v. Waters*, 989 F.2d 1375, 1381 (4th Cir. 1993).

Plaintiff has not produced evidence of a serious or significant physical or emotional injury resulting from the alleged conditions. *See, Strickler v. Waters,* 989 F.2d 1375, 1381(4th Cir. 1993) ("to withstand summary judgment on an Eighth Amendment challenge to prison conditions a plaintiff must produce evidence of a serious or significant physical

or emotional injury resulting from the challenged conditions."). There is no evidence to support that any member of the plaintiff class suffered injury as a result of the alleged conditions during the relevant time frame. The efforts by corrections officials are reasonable and do not rise to a deliberate indifference to the safety of the Plaintiffs.

Finally, this Court recently acknowledged that to combat the onslaught of COVID-19, Governor Hogan has used "the emergency powers granted to him by the state legislature, has issued a series of executive orders designed to slow the spread of the disease and to protect the health of Maryland residents. In so doing he has consulted and relied on the advice of acknowledged public health professionals." *Antietam Battlefield KOA, et al, v Lawrence J. Hogan, et al.,* Civil No. CCB-20-1130, at p.1. Indeed, a highly qualified team of public health officials informed Governor Hogan's responses in a variety of areas. See *Antietam Battlefield KOA, et al*., Defendants' Exhibit 26-2, Declaration of Clifford S. Mitchell, MS, MD, MPH, at para. 26. Dr. Mitchell was actively involved in planning and implementing strategies for state agencies, including the concerns of the Department of Public Safety and Correctional Services, as to "to testing strategies, safe practices, containment and mitigation strategies in congregate housing settings, and safe re-opening strategies and plans." *Id*., at para. 4.

V. CONCLUSION

The Defendants respectfully request that this Court deny relief to the plaintiff class.

Respectfully submitted,

BRIAN E. FROSH

Attorney General of Maryland

/s/

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*	*	
Plaintiffs	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.*	*	
Defendants	*	

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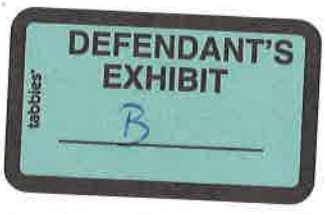
DECLARATION OF ROBERT WEISENGOFF

I, Robert Weisengoff, serve as Executive Director of the Pretrial Release Services Program ("PRSP"). I have held the position of Executive Director since 1999. My business address is 100 N. Calvert Street, Suite 508, Baltimore, MD 21202. I am over the age of 18 years, and make this declaration under penalties of perjury.

1. The PRSP is a component part of the Division of Pretrial Detention and Services ("DPDS"). *See* Md. Code Ann. Corr. Servs. §5-201(b)(1) (LexisNexis 2017).
2. The role of the PRSP is to make recommendations to a judicial officer[1] who is considering whether to release an arrested detainee.[2] *See* Md. Rule 4-216.1(f) (in determining whether to release an arrestee, a judicial officer may consider recommendations of the PRSP, the nature or circumstances of the offense charged,

[1] "Judicial officer" is defined by Md. Rule 4-102(f) as "a judge or District Court commissioner."
[2] A defendant is entitled to consideration for release before verdict by a judicial officer.[2] Md. Rule 4-216(c).



the arrestee's juvenile and criminal history, the arrestee's prior record of appearance at court, the safety of the victim, other individuals or the community, the arrestee's family ties, employment history, financial resources, reputation, character, mental condition and length of residence in the community and the State, and any information or recommendation presented by the State's Attorney or the arrestee or his attorney).

3. Since the March 5, 2020 declaration of a state of emergency by Governor Lawrence J. Hogan arising from the outbreak of the COVID-19 virus, the PRSP has participated in an increased number of bail review, bail re-review, and habeas corpus petition hearings. Detainees with pending violations of probation have used the habeas corpus process. The PRSP participates in all circuit court bail review, bail re-review, and habeas corpus petitions, and in some district court bail review and re-review petitions.

4. At the same time, judicial officers have conducted bail reviews and re-reviews without seeking a recommendation from the PRSP. The PRSP keeps statistics only for cases in which it is asked by the courts to participate.

5. I have kept statistics regarding the uptick in bail and habeas considerations, and the PRSP caseload. On March 13, 2020, the PRSP caseload was 878 defendants. On May 27, 2020, the PRSP is supervising 1,538 on defendants. This is an increase in the caseload of 75%. Before March 13, 2020, the PRSP was asked to make recommendations in an average of 15 habeas corpus petitions or bail re-reviews per week. Between March 13, and May 1, 2020, the PRSP was asked to make

recommendations in a total of 852 bail re-review or habeas corpus hearings before the Circuit Court for Baltimore City. The Circuit Court has conducted on an average of 77 hearings per week between the dates of March 13 – April 12, 2020. The Circuit Court conducted over 100 hearings per week between April 13 – May 1, 2020. These numbers do not include last-minute, "add on" cases, or arrests arising from circuit court warrants.

6. Based upon my conversations with District Court Chief Judge Barbara Baer Waxman, the District Court has entertained over 500 requests for bail reviews and re-reviews, culminating in approximately 120 releases. The PRSP has not participated in those hearings.

7. The Office of the Public Defender ("OPD") has filed petitions for bail re-reviews and habeas corpus on behalf of their clients who may be more vulnerable to COVID-19 complications. The DPDS has provided a list of medically vulnerable detainees to the OPD and the Baltimore State's Attorney's Office.

8. Hearings at Circuit Court are conducted remotely by 5 judges;[3] hearings at the district court are conducted remotely by Judge Waxman. The DPDS has provided the courts, counsel and the detainees with software and equipment to permit remote consideration of the petitions, and to allow private attorney-client conferences by the defense during the hearings.

[3] Judges Melissa Phinn, Philip Jackson, Althea Handy, and Dorsey are conducting hearings at circuit court. Judge Barbara Baer Waxman is conducting hearings at the district court.

9. From May 1 – May 26, 2020, the Circuit Court entertained 359 hearings for release. That court released 62 defendants on their own recognizance, and approved 88 defendants for placement on private home detention. As a result, 41% of the Circuit Court hearings resulted in an outright release, or approval for home detention.

10. Both District and Circuit Courts have accepted guilty pleas from detainees for sentences that involve either "time served," or a suspended sentence with probation pursuant to Md. Rule 4-243.

MAY 27, 2020
Date

Robert Weisengoff

IN THE UNITED STATES DISTRICT COURT
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Defendants	*	

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DECLARATION OF FREDERICK ABELLO

I, Frederick Abello, serve as Warden of the Baltimore City Booking and Intake Center ("BCBIC"). I have held the position of Executive Director since 2018. My business address is 300 East Madison Street, Baltimore, MD 21202. I am over the age of 18 years, and make this declaration under penalties of perjury.

1. BCBIC is a centralized booking facility that handles the booking and detention of pretrial detainees in the City of Baltimore. *See* Md. Code Ann. Corr. Servs. §5-201(b). BCBIC holds the majority of detainees that are a part of the class of plaintiffs in *Duvall v. Hogan.*
2. My office is in the BCBIC building, and I visit areas of the facility on a regular basis. When I visit a housing unit, I have the opportunity to speak with detainees, correctional staff, and the contractual staff that provides medical and psychiatric care. I also visit the booking floor, where arrestees are delivered by police and

sheriffs for booking. I, and my assistant wardens, have been ordered to cover every shift at BCBIC by the Secretary for the duration of the COVID-19 crisis.

3. Beginning on March 5, 2020, the *Duvall* Defendants, consistent with Centers for Disease Control and Prevention ("CDC") guidelines and the recommendations of *Duvall* medical monitor Dr. Michael Puisis, have implemented specific changes and policies aimed at reducing the risk of infection amongst the BCBIC detainees.
4. The Secretary and the Commissioner of Pretrial Detention and Services ("DPDS") have ordered the following changes, to which I, and my staff have complied:
    a. Social visits, attorney contact visits, inmate programs, outside non-emergency medical transports, and court transports have been suspended;
    b. Regular assignments of correctional and contractual staff to specific housing units or other areas is planned for the duration of the COVID-19 outbreak in order to reduce the risk of transmission from unit to unit by staff;
    c. Employees enter the BCBIC building each shift at two designated entrances. Prior to beginning their shift, the temperature of the employee is taken by a member of the medical staff, and a short list of symptom-based questions is asked,[1] based upon recommendations from the Centers for Disease Control

[1] The Initial Screening Questionnaire has been provided to Plaintiffs' counsel, and states: 1) Have you had any of the following **new** symptoms in the last seven days: fever or chills, cough **(either new, or different than your usual cough),** sore throat, shortness of breath, or any other flu-like symptoms (bold face in original)? 2) In the past week, do you know if you have been in close (less than 6 feet), prolonged contact (more than 2-3 minutes) with someone with fever cough, shortness of breath, flu-like symptoms, or a diagnosis of COVID-19? 3) **For congregate care facilities only,** no visitors are allowed. All

and Prevention ("CDC"), and the Maryland Department of Health. The results are recorded. Any employee or visitor who has a temperature of 100.4 degrees or greater is not permitted to enter the building. Signage outside of BCBIC, a copy of which was provided to Plaintiffs on March 30, 2020 reads: CORONAVIRUS DISEASE: STOP If you are sick, do not enter this facility." All infectious disease signage has been approved by the Department of Public Safety and Correctional Services' Chief Medical Officer, Sharon Baucom M.D.;

d. The entrances to BCBIC have a hand sanitizing station for those entering and exiting the building;

e. Signage has been posted in all BCBIC housing units in both Spanish and English. Copies of the signage have been provided to Plaintiffs' counsel on March 30, 2020. The signage, along with applicable fact sheets, were posted in each housing unit in early March. Housing unit signage, which describes the virus's symptoms, and advises detainees how they can reduce the risk of spreading germs, is attached hereto as Exhibits 1-8. Detainees have been orally educated by the medical contractor's infection control coordinator on risk prevention, and advised to remain at a distance of 6 feet from anyone else.

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employees and vendors or contractors on official business must submit to a temperature check. Is Temperature 100.4F [38C] or above (bold face in original)?

f. Correctional staff have been educated about the risks posed by COVID-19 through signage, roving roll calls, and the medical contractor's infection control coordinator. Since the middle of May, 2020, roll calls have been conducted at the Madison Street entrance, with correctional staff standing 6 feet apart on marked spaces. Signage is in place advising social distancing.

g. Housing unit officers have been directed to provide cleaning supplies to any detainee who requests them. Soap and shampoo without cost is provided to detainees on Tuesdays and Fridays. Non-alcoholic hand sanitizer has been placed in every housing unit, and on every floor.

h. Every new arrestee is provided with a mask. As of April 11, 2020, every detainee at BCBIC has been provided with a mask. By the end of May, every detainee should have two masks. Face shields, and gowns have been provided to correctional and medical staff. Medical staff working the booking floor wear masks, plastic face shields, and gowns. Employees have been provided with written instructions and a video on donning personal protective equipment ("PPE"). The PPE and hand sanitizer have been manufactured for the Department's use by the Maryland Correctional Enterprises ("MCE");

i. All elective or routine interactions with dentists and hospital medical providers have been suspended;

j. Transportation vehicles – when used – are subject to a "wipe-down" policy;

k. Older detainees, or detainees with co-morbiditics, have been monitored for updated flu shots;

l. Every detainee, regardless of type of housing, has access to running water, sinks, soap and paper towels. Every detainee is eligible for three bars of soap at a time. At Plaintiffs' counsel's request, the bars of soap were measured to ensure that they are larger than "hotel size." Plaintiffs' counsel were provided with a photo of a soap bar next to a ruler. Germicidal cleaner has been placed on housing units. Detainees are issued a towel at the time of commitment, which is washed and dried in the unit or in an adjacent housing unit by a detainee worker. The washing machines have hot cycles, and both bleach and laundry detergent are available.

m. A deep cleaning of BCBIC was performed by a contractor, SI Restorations, in certain areas of the building on March 29, 2020, April 23, 2020. Detainee workers are assigned to clean common areas, showers, and bathrooms twice per day using germicidal cleaner. Any detainee who wishes to clean his cell or bunk area is provided with cleaning supplies upon request. Correctional officers have been advised to provide any cleaning supplies upon request.

5. Bunk beds in dormitory areas are placed approximately 5' 6" apart. There is insufficient space to place these beds 6 feet or greater apart. To increase distancing, detainees are advised to sleep with their heads opposite the feet of those detainees in adjoining bunks.

6. Pursuant to the recommendation of Dr. Puisis, a 14-day quarantine area has been established for new male intakes prior to their release into the general population. Detainees arrive in the unit with an issued mask. If the detainees in intake are double-celled, they keep the same cellmate throughout the process. Cells are cleaned by detainee workers before a new detainee is assigned. The intake quarantine is in four phases:

   a. Phase I: new detainees housed in double cells in 4 North B Unit. Detainees come out of their cells for 1 hour per shift for recreation (exercise, showers, and phone calls. Detainees are released for recreation on one side of a housing area at a time. The temperatures of detainees are checked twice per day on the A and B shifts. Detainees are required to wear masks. If a detainee is evaluated by medical staff and deemed to be symptomatic, he will be transferred to the 4 North A Unit (COVID-19 precaution housing area). A detainee stays in Phase I for three days.

   b. Phase II: detainees in 4 North B are moved, along with their cellmate, to 3 North A Unit after 3 days. Detainees are kept in 3 North A for an additional 3 days. The precautions are the same as in 4 North B, except that the detainees have two hours of recreation each shift. Detainees continue with the same cellmate that they had on 4 North B.

   c. Phase III: Detainees who show no symptoms of COVID-19 or any other illness are transferred to 3 North B Unit. This is a step-down quarantine unit

for intakes. The same procedures are followed as in Phase II. If the detainee is not symptomatic, he is released to Phase IV after 3 days;

d. Phase IV: non-symptomatic detainees are held in a dormitory setting for 5 days. Those that are not symptomatic are released to the general population at the end of that period.

7. A second quarantine housing unit has been established for detainees with symptoms of illness in 4 North A Unit (COVID-19 precaution housing area). Detainees are moved here upon the written order of a medical provider, and celled according to the recommendation of a physician. These detainees are monitored for symptoms of COVID-19 and other conditions twice per day by medical staff assigned to work that unit, consistent with a COVID-19 medical protocol. The detainee remains in the unit for 14 days, unless a medical provider decides otherwise.

8. A housing unit for male detainee workers and those at greater risk of COVID-19 complications has been established in 3 South B Unit. The list of vulnerable detainees was created by Dr. Isaias Tessema, with the assistance of Dr. Puisis. The temperatures of these detainees are screened twice per day, and they receive other medical monitoring by providers assigned to that unit. Significant observations are noted and reviewed by nursing staff, physicians, and the Chief of Health Strategies and Operations.

May 27, 2020

Frederick Abello, Warden

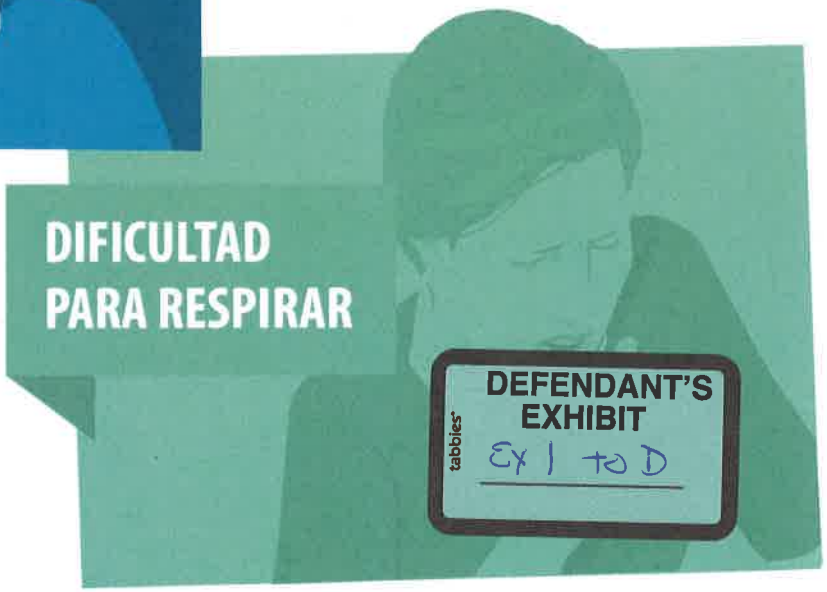
COVID 19
ENFERMEDAD DEL CORONAVIRUS

SÍNTOMAS DE LA ENFERMEDAD DEL CORONAVIRUS 2019

Los pacientes con COVID-19 han presentado enfermedad respiratoria de leve a grave.

Los síntomas* pueden incluir

*Los síntomas pueden aparecer de 2 a 14 días después de la exposición.



Consulte a un médico si presenta síntomas y ha estado en contacto cercano con una persona que se sepa que tiene el COVID-19, o si usted vive o ha estado recientemente en un área en la que haya propagación en curso del COVID-19.

CDC

Para obtener más información: **www.cdc.gov/COVID19-es**

CS 315252-B 03/04/2020

COVID 19 CORONAVIRUS DISEASE

SYMPTOMS OF CORONAVIRUS DISEASE 2019

Patients with COVID-19 have experienced mild to severe respiratory illness.

Symptoms* can include

*Symptoms may appear 2-14 days after exposure.

Seek medical advice if you develop symptoms, and have been in close contact with a person known to have COVID-19 or if you live in or have recently been in an area with ongoing spread of COVID-19.

CDC

For more information: **www.cdc.gov/COVID19-symptoms**

CS 315252-A 03/03/2020

COVID 19 CORONAVIRUS DISEASE

Share Facts About COVID-19

Know the facts about coronavirus disease 2019 (COVID-19) and help stop the spread of rumors.

FACT 1

Diseases can make anyone sick regardless of their race or ethnicity.

People of Asian descent, including Chinese Americans, are not more likely to get COVID-19 than any other American. Help stop fear by letting people know that being of Asian descent does not increase the chance of getting or spreading COVID-19.

FACT 2

Some people are at increased risk of getting COVID-19.

People who have been in close contact with a person known to have COVID-19 or people who live in or have recently been in an area with ongoing spread are at an increased risk of exposure.

FACT 3

Someone who has completed quarantine or has been released from isolation does not pose a risk of infection to other people.

For up-to-date information, visit CDC's coronavirus disease 2019 web page.

FACT 4

You can help stop COVID-19 by knowing the signs and symptoms:

- Fever
- Cough
- Shortness of breath

Seek medical advice if you

- Develop symptoms

AND

- Have been in close contact with a person known to have COVID-19 or if you live in or have recently been in an area with ongoing spread of COVID-19.

FACT 5

There are simple things you can do to help keep yourself and others healthy.

- Wash your hands often with soap and water for at least 20 seconds, especially after blowing your nose, coughing, or sneezing; going to the bathroom; and before eating or preparing food.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.

For more information: **www.cdc.gov/COVID19**

CDC

DEFENDANT'S EXHIBIT
Ex 3 to D

CS 315446-A 03/06/2020

COVID 19 CORONAVIRUS DISEASE

What you need to know about coronavirus disease 2019 (COVID-19)

What is coronavirus disease 2019 (COVID-19)?

Coronavirus disease 2019 (COVID-19) is a respiratory illness that can spread from person to person. The virus that causes COVID-19 is a novel coronavirus that was first identified during an investigation into an outbreak in Wuhan, China.

Can people in the U.S. get COVID-19?

Yes. COVID-19 is spreading from person to person in parts of the United States. Risk of infection with COVID-19 is higher for people who are close contacts of someone known to have COVID-19, for example healthcare workers, or household members. Other people at higher risk for infection are those who live in or have recently been in an area with ongoing spread of COVID-19. Learn more about places with ongoing spread at https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html#geographic.

Have there been cases of COVID-19 in the U.S.?

Yes. The first case of COVID-19 in the United States was reported on January 21, 2020. The current count of cases of COVID-19 in the United States is available on CDC's webpage at https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html.

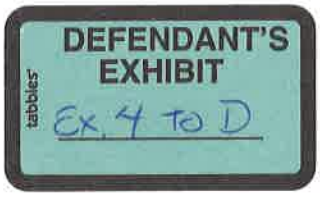
How does COVID-19 spread?

The virus that causes COVID-19 probably emerged from an animal source, but is now spreading from person to person. The virus is thought to spread mainly between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs or sneezes. It also may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads. Learn what is known about the spread of newly emerged coronaviruses at https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html.

What are the symptoms of COVID-19?

Patients with COVID-19 have had mild to severe respiratory illness with symptoms of

- fever
- cough
- shortness of breath



What are severe complications from this virus?

Some patients have pneumonia in both lungs, multi-organ failure and in some cases death.

How can I help protect myself?

People can help protect themselves from respiratory illness with everyday preventive actions.

- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Wash your hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available.

If you are sick, to keep from spreading respiratory illness to others, you should

- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.

What should I do if I recently traveled from an area with ongoing spread of COVID-19?

If you have traveled from an affected area, there may be restrictions on your movements for up to 2 weeks. If you develop symptoms during that period (fever, cough, trouble breathing), seek medical advice. Call the office of your health care provider before you go, and tell them about your travel and your symptoms. They will give you instructions on how to get care without exposing other people to your illness. While sick, avoid contact with people, don't go out and delay any travel to reduce the possibility of spreading illness to others.

Is there a vaccine?

There is currently no vaccine to protect against COVID-19. The best way to prevent infection is to take everyday preventive actions, like avoiding close contact with people who are sick and washing your hands often.

Is there a treatment?

There is no specific antiviral treatment for COVID-19. People with COVID-19 can seek medical care to help relieve symptoms.

CDC

For more information: **www.cdc.gov/COVID19**

CS 314937-A 03/03/2020

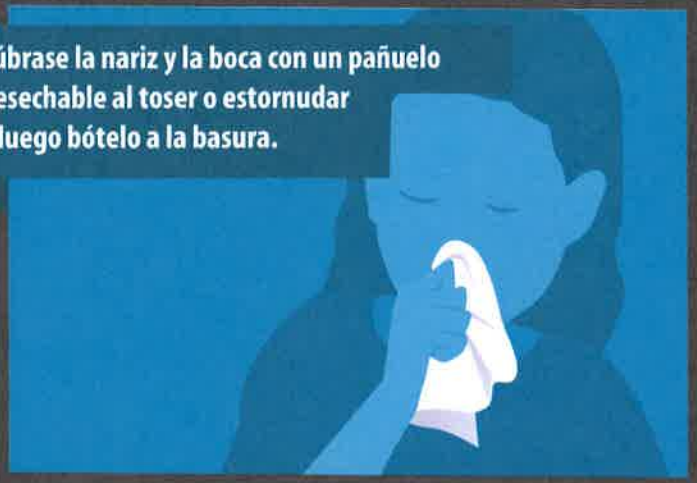
COVID 19
ENFERMEDAD DEL CORONAVIRUS

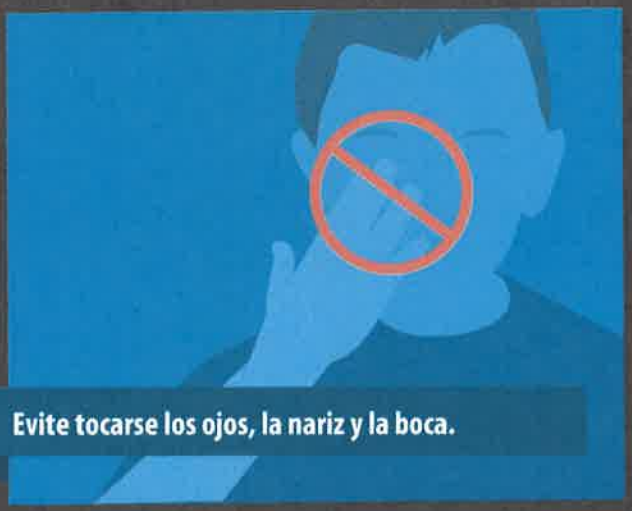
DETENGA LA PROPAGACIÓN DE LOS MICROBIOS

Ayude a prevenir la propagación de virus respiratorios como el nuevo COVID-19.

Evite el contacto cercano con las personas enfermas.

Cúbrase la nariz y la boca con un pañuelo desechable al toser o estornudar y luego bótelo a la basura.





Evite tocarse los ojos, la nariz y la boca.

Limpie y desinfecte los objetos y las superficies que se tocan frecuentemente.

Quédese en casa si está enfermo, excepto para buscar atención médica.

Lávese las manos frecuentemente con agua y jabón por al menos 20 segundos.

CDC

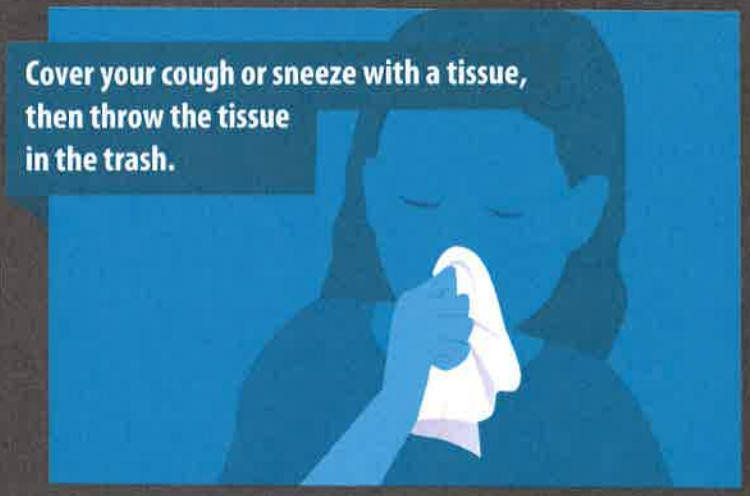
Para obtener más información: www.cdc.gov/COVID19-es

CS314915-B

COVID 19
CORONAVIRUS DISEASE

STOP THE SPREAD OF GERMS

Help prevent the spread of respiratory diseases like COVID-19.



CDC

For more information: www.cdc.gov/COVID19

CS314915-A

¡Detenga los microbios! Lávese las manos

¿CUÁNDO?

- Después de ir al baño.
- Antes, durante y después de preparar alimentos.
- Antes de comer.
- Antes y después de cuidar a alguien que tenga vómitos o diarrea.
- Antes y después de tratar cortaduras o heridas.
- Después de cambiarle los pañales a un niño o limpiarlo después de que haya ido al baño.
- Después de sonarse la nariz, toser o estornudar.
- Después de tocar animales, sus alimentos o sus excrementos.
- Después de manipular alimentos o golosinas para mascotas.
- Después de tocar la basura.

¿CÓMO?

Mójese las manos con agua corriente limpia (tibia o fría), cierre el grifo y enjabónese las manos.

Frótese las manos con el jabón hasta que haga espuma. Asegúrese de frotarse la espuma por el dorso de las manos, entre los dedos y debajo de las uñas.

Restriéguese las manos durante al menos 20 segundos. ¿Necesita algo para medir el tiempo? Tararee dos veces la canción de "Feliz cumpleaños" de principio a fin.

Enjuáguese bien las manos con agua corriente limpia.

Séquese Séquese las manos con una toalla limpia o al aire.

Mantener las manos limpias es una de las cosas más importantes que podemos hacer para detener la propagación de microbios y mantenernos sanos.

LA VIDA ES MEJOR CON LAS MANOS LIMPIAS

www.cdc.gov/lavadodemanos

Este material fue elaborado por los CDC. La campaña La Vida es Mejor con las Manos Limpias es posible gracias a una asociación entre la Fundación de los CDC, GOJO y Staples. El HHS y los CDC no respaldan productos, servicios ni empresas comerciales.

CS310027-A

Stop Germs! Wash Your Hands.

When?

- After using the bathroom
- Before, during, and after preparing food
- Before eating food
- Before and after caring for someone at home who is sick with vomiting or diarrhea
- After changing diapers or cleaning up a child who has used the toilet
- After blowing your nose, coughing, or sneezing
- After touching an animal, animal feed, or animal waste
- After handling pet food or pet treats
- After touching garbage

How?

Wet your hands with clean, running water (warm or cold), turn off the tap, and apply soap.

Lather your hands by rubbing them together with the soap. Be sure to lather the backs of your hands, between your fingers, and under your nails.

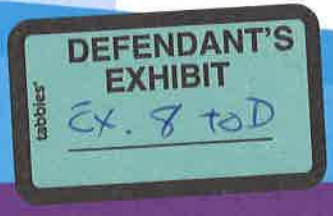
Scrub your hands for at least 20 seconds. Need a timer? Hum the "Happy Birthday" song from beginning to end twice.

Rinse hands well under clean, running water.

Dry hands using a clean towel or air dry them.

Keeping hands clean is one of the most important things we can do to stop the spread of germs and stay healthy.

LIFE IS BETTER WITH CLEAN HANDS



www.cdc.gov/handwashing

CDC

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CS310027-A

IN THE UNITED STATES DISTRICT COURT
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Plaintiffs	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.*	*	
Defendants	*	

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DECLARATION OF MICHAEL RESNICK, ESQ

I, Michael Resnick, am the Commissioner of the Division of Pretrial Detention and Services ("DPDS"). My business address is 521 East Eager Street, Baltimore, MD 21202. I am over the age of 18 years, and make this declaration under penalties of perjury.

1. I have been the Commissioner of DPDS since July 20, 2016. Prior to serving as Commissioner, I served as Director of Public Safety for the City of Philadelphia from November, 2011 to December, 2015. I served as Acting Commissioner of the Philadelphia prison system from January – June, 2016. I have a Juris Doctor degree, and have been a member of the Pennsylvania and New Jersey bars since November, 1991.
2. As Commissioner of DPDS, I oversee the Baltimore City Booking and Intake Center ("BCBIC"). BCBIC has 916 beds. Two hundred fifty-eight beds are designated for females, and 658 are designated for males. On May 27, 2020 the

census at BCBIC was 688 detainees with 558 males and 130 females. The population of females is at 50 % 0f capacity.

3. Most of BCBIC houses general population males and females. BCBIC has some specialized housing units, such as a detoxification unit, a mental health unit with a step-down unit for those with mental health vulnerabilities, an ADA housing unit, intake quarantine housing units, a unit that holds detainees with jobs, detainees over 65, and/or those who are medically vulnerable, and a unit for detainees that are symptomatic of illness.

4. The *Duvall v. Hogan* medical monitor, Dr. Michael Puisis, has recommended that detainees who are positive for COVID-19 be moved out of BCBIC to their own housing unit. In response, I have created the Health Monitoring Facility ("HMF") at 531 East Madison Street that is been set up to receive detainees who are positive for COVID-19. The unit is structured as a convalescent unit for sick detainees who do not need hospitalization. Detainees who exhibit signs of serious COVID-19 complications are taken to the hospital.

5. The HMF will open on Monday, June 1, 2020. The HMF is divided into two dormitory-style patient areas that can hold up to 30 detainee patients. Side A can hold 15 detainee patients, including detainees who may require a hospital bed. Side B will hold an additional 15 detainee patients in single-level bunks spaced 6 feet apart. Detainees will sleep alternating head to foot, and be grouped in the unit based upon the date of symptom onset. HMF is also available for use by inmates

at the Maryland Reception Diagnostic Classification Center ("MRDCC"), and the Baltimore City Correctional Center ("BCCC").

6. If there is an overflow of patients in the Baltimore region, the Department of Public Safety and Correctional Services' options are to transfer to the Jessup Correctional Institution Infirmary Annex or the Patuxent Institution for women. These contingencies are fluid in nature, because inmates from other regions may be moved there as well.
7. Sixty correctional staff are assigned to work the unit in three shifts; eight medical employees 4 per 12hours shift, (1 registered nurse, 1 licensed practical nurse, 1 certified nursing assistant, and 1 physician) are also assigned. Mental health and psychological providers will use telehealth to provide services.
8. Patients will be masked, and staff will wear masks, gowns, gloves and plastic face shields.
9. Medically fragile detainees, who require infirmary level care, or who are seriously mentally ill, have physical disabilities, are on a medication-assisted treatment program, or who have a classification level of high security, will be housed in the Metropolitan Transition Center ("MTC") Hospital.
10. The MTC Hospital has the capacity for 10 detainees described in #8 above. The MTC Hospital also has 4 single, negative pressure cells, which can be used for COVID-19 positive detainee patients.
11. On May 27, 2020, BCBIC had 17 detainees who were positive for COVID-19. These detainees are confined together in the COVID-19 precaution housing area,

located at 4 North A Unit. These detainees will be moved to the HMF on Monday, June 1st 2020

12. Attached as Exhibit 1 is the Standard Operating Procedure for the HMF. Attached as Exhibits 2 and 3 are photos of the HMF unit, including photos of hospital beds.

13. Testing of BCBIC detainees has begun. Universal testing at BCBIC is expected to begin in the immediate future. Prior to the onset of universal testing, medical providers have made decisions regarding who to test, based upon symptoms or the detainee's inability to advocate on his behalf. Some detainees in the inmate mental health unit have been tested, and two are positive for COVID-19.

May 28, 2020

Michael Resnick

Recommendations SOP COVID-19 Confirmed /Step down/convalescent Unit

Patients with confirmed positive COVID-19 test upon discharge from hospital or Covid-19 confirmed positive on site at the facility through testing will have the disposition regarding placement determined by the hospitalist /oncall provider/site provider iInmates/detainees who are identified as stable will be admitted to the Covid-19 confirmed step-down ward at JI to continue their medical care/observation/monitoring while maintaining isolation from the general population .

Admission Criteria

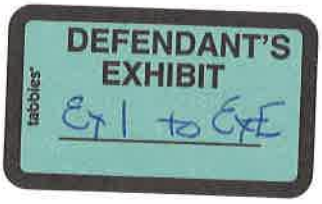
1. COVID-19 positive confirmation documented, AND:
2. Discharge from Hospital/new intake/tested positive within the system, or tested positive related to developed symptoms while in quarantine or isolation via onsite testing Covid-19
3. Medically stable
4. Not hypoxic (>92% O2)
5. Respiratory rate <20
6. Pulse rate<100
7. None of the following- decompensated Liver cirrhosis , CHF, sever COPD
8. Age <65
9. Temperature less than 102.00 F

Acuity scoring

Acuity	Cumulative score	Disposition
Acuity 3	>5	Hospital
Acuity 2	4	MTC Infirmary or JCI Infirmary
acuity 1	<3.5	COVID-19 cohort housing @ JI; PWI (overflow)

Score

	Condition	Score	
1	**Chronic Liver disease with cirrhosis/ Stage 4 CKD/ Congestive Heart Failure/ COPD with pulse ox <92 without O2**	**4**	
2	**Patient on immunomodulatory/AIDS/ Chemotherapy/Steroids**	**3**	
3	**Severe Asthma**	**4**	
4	**Uncontrolled DM A1c >9**	**2**	



5	**age >65 without comorbidities**	**2**	
6	**Controlled DM**	**1**	
7	**HTN SBP>160;DBP>100**	**1**	
8	**BMI>40**	**1**	

Work up: All patient admitted to the unit should receive the following:

1. Education regarding their disease and PPE usage
2. Identification of family contact information
3. Video family visitation
4. Library
5. Commissary
6. Viral signs twice daily to include temperature check- Shifts A & C
7. CBC with differential
8. UA
9. CMP if none from hospital or recent chronic care last 30 days
10. Baseline EKG if 60 and over and none in the last 6months

~~4. Chest X-Ray [mobile], unless hospital discharge.~~

Infectious Control (IC) team

1. Set up virtual rounds via telehealth
2. IC will participate in daily huddles/calls with primary team members caring for COVID-19 positive patients to assist with care, tracking and any necessary coordination for follow up ID consultation.

Mental health

If identified with MI or SMI to follow if any instability; state psychology availability via telehealth for counselling, etc. Psychiatric care via medication management.

Medication

No medications are proven to be effective in the treatment of COVID-19

Pharmacy Consultation regarding the medication listed below, and any other chronic care medications keep on person where possible.

~~o Treating clinicians with ID consultation may choose to administer Hydroxy-chloroquine as a medication for COVID-19 based on emerging early observations but keeping in mind the known adverse side effects including (QT prolongation, bone marrow suppression, neuropathy, and many drug-to drug interactions).~~

~~Hydroxy-chloroquine • Dose: 400mg BID for 1 day; then 200mg PO BID for 4 days~~

~~**Recommendations for NSAIDs in COVID-19 pts**~~

~~• NAIDS no data to support this concern check with correct RXshould be used with caution in patients with COVID-19 infection. In the absence of liver injury or another contraindication, acetaminophen is the preferred antipyretic.~~

Consult recommendations

• Consult guidance for primary teams: use tele medicine should be maximized to cover all consults when possible.

Documentation EPHR/Logs
Updates encounters regarding convalescent period for mild; documentation twice a week
Logs daily regarding temp, symptoms, or symptom progression

In the event that any patient presents with any unstable vital signs including any of the following clinical ailments, notify the Provider and have patient transported off site to hospital.

1. Dyspnea, tachypnea, or hypoxia
2. Radiological signs of lower respiratory tract disease
3. Central nervous system involvement (e.g., encephalopathy, encephalitis)
4. Severe dehydration
5. Acute renal failure
6. Septic shock
7. Exacerbation of underlying chronic disease, including asthma, chronic obstructive pulmonary disease (COPD), chronic hepatic or renal insufficiency, diabetes mellitus, or other cardiovascular conditions

Recommendations for follow-up of COVID-19 positive patients
Discharge Planning: projected dates and CDC guidelines as part of the log; 72 hours prior to release, identify clinical custody team to discuss return to housing mindful of stigma associated with the disease including other inmates fearful of viral contamination.

Discharge Criteria

1. COVID-19 negative test result, AND
2. Afebrile for over one week, AND
3. Asymptomatic over a week since symptom onset date (no cough, headache, sore throat , myalygias etc, AND
4. Clinically stable regarding vital signs and medication compliance.
5. Schedule follow up virtual appointment 2 weeks post release where practicable.

~~Patients do NOT need follow-up COVID-19 testing after a positive result but may need housing separate from the GP to avoid the rare instance that patient might shed the virus several weeks later and will be issued a surgical mask or sneeze guard for containment.~~

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*	*	
Plaintiffs	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.*	*	
Defendants	*	

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DECLARATION OF ZAKARIA SHAIKH, M.P.H, M.B.A.

I, Zakaria Shaikh, have served as the Chief of Health Strategy and Operations ("CHSO") at the Division of Pretrial Detention and Services ("DPDS") since 2018. I have Master's Degrees in Public Health and Business Administration. My business address is 300 East Madison Street, Baltimore, MD 21202. I am over the age of 18 years, and make this declaration under penalties of perjury.

1. My duties as CHSO include measuring and monitoring compliance with the *Duvall v. Hogan* Settlement Agreement.
2. Since the onset of the COVID-19 pandemic, I have assisted in the development and application of policies and procedures designed to reduce the transmission of infection at Baltimore City Booking and Intake Center ("BCBIC"). Whenever possible, the policies and procedures are consistent with recommendations of the Centers for Disease Control and Prevention ("CDC"), the Maryland Department of

Health ("DOH"), and Sharon Baucom M.D., the Department of Public Safety and Correctional Service's ("the Department") Chief Medical Officer.

3. Policies and procedures concerning the monitoring of detainees for signs and symptoms of infection include:

    a. Daily monitoring by the medical staff of detainees who are over the age of 55, and/or who have co-morbidities that increase the risk of infection or complications. The temperatures of these detainees are checked twice per day, and subjective assessments are made of their condition by medical providers and infection control coordinators.

    b. Daily monitoring by the CHSO of measures taken on behalf of at-risk detainees, and testing administered to detainees. Medical summaries written by the medical contractor's infection control coordinator are reviewed by the CHSO on a daily basis.

    c. DPDS nursing staff monitors all sick call requests for influenza-like illnesses ("ILI").

    d. All detainees who have ILI symptoms are isolated and tested for COVID-19.

    e. Previously, testing for COVID-19 was performed on a symptomatic detainee at an outside hospital. The Department has difficulty obtaining an adequate supply of test kits. The Department has obtained the test kits that it currently possesses from the DOH and Bioreference, an outside laboratory.

4. In the second half of May, 2020, the Department began universal testing of inmates, staff and contractual staff in the Jessup region. The Jessup region was selected because it had the greatest number of COVID-19 outbreaks.
5. Two mobile testing teams will move next to the Baltimore Region, and begin the testing of BCBIC detainees.
6. At BCBIC, detainees at the highest risk for COVID-19 infection and complications will be prioritized: those in isolation; detainees over the age of 60; and/or those with co-morbid conditions, or medical fragilities. Testing will then move to the general population of BCBIC.
7. At the recommendation of Dr. Puisis, the DPDS has created a dormitory housing unit outside of the BCBIC building to house detainees who are positive for COVID-19. The unit opens Monday, June 1, 2020. The dormitory includes air conditioning; telephones, and beds that are not double bunked, and are placed at a distance of 6 feet or greater. On-site health care staff has been assigned to work the unit, and will conduct regular monitoring and assessments. Correctional officers will be similarly assigned. The unit has handwashing/sanitizing stations and supplies, and will include CDC and DOH recommended signage.
8. If a high security detainee is positive for COVID-19, he will be held at the Metropolitan Transition Center ("MTC") Hospital. The MTC Hospital will also hold COVID-19 positive detainees who receive methadone, and who are presently detained in BCBIC's disability unit.

May 28, 2020

_____/s/_____
Zakaria Shaikh[1]

[1] Due to teleworking restrictions, the CHSO's signature has been made using the /s/ designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*	*	
Plaintiffs	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.*	*	
Defendants	*	

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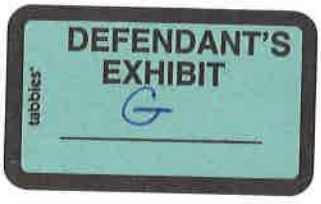
DECLARATION OF GARY W. McLHINNEY

I, Gary W. McLhinney, am the Assistant Secretary of the Department of Public Safety and Correctional Services ("the Department"). I have oversight over the Division of Pretrial Detention and Services ("DPDS"), and have served in this position for the past 18 months. I am over the age of 18 and competent to testify. I make this declaration under the penalties of perjury.

1. In February of 2020, the Department demolished the Men's Detention Center Building, Women's Detention Center, the Jail Annex, and a building that housed juveniles charged with adult offenses. These buildings were formerly a part of the Baltimore City Detention Center, and had been emptied of their respective populations in 2016 - 2017.
2. Members of the *Duvall v. Hogan* plaintiff class had been moved to other institutions, mainly the Baltimore City Booking and Intake Center ("BCBIC").



3. The *Duvall* plaintiffs have requested that detainees who are over the age of 65 and/or who have co-morbidities that make them more vulnerable to infection or COVID-19 complications be transferred to a different jail or prison. ECF No. 652-1 at 4.
4. In March, 2020, the Secretary halted transfers from jail to jail to reduce the risk of the spread of COVID-19. This order was based upon a recommendation of the Centers for Disease Control and Prevention ("CDC"). Court transports also ceased, along with transports from BCBIC to hospitals run by the Maryland Department of Health for the purposes of competency and criminal responsibility. Currently, non-emergency transports are occurring only when necessary, and at the recommendation of Departmental administrators or medical providers.
5. There are no empty buildings within the Department that meet correctional standards for housing any inmates or detainees. Therefore, the Secretary cannot transport the large cohort of BCBIC detainees who are at greater risk for infection or complications for COVID-19 to a new location.
6. The DPDS is opening its Health Monitoring Facility ("HMF") on Monday, June 1, 2020 at 531 East Madison Street, Baltimore, Maryland 21202. The HMF is designed to house 30 detainee patients who are positive for COVID-19. Additional space for detainees that are medically fragile, have disabilities, are on medication-assisted treatment, or who are classified as high security will be held in the Maryland Transition Center Hospital if positive for COVID-19.

May 28, 2020

/s/
Gary W. McLhinney[1]

[1] Due to teleworking restrictions, Assistant Secretary McLhinney's signature has been made using the /s/ designation.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*	*	
Plaintiffs	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.*	*	
Defendants	*	

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DECLARATION

I, Sharon Baucom, M.D., being competent to testify, hereby declare on my personal knowledge as follows:

1. I am the Director of Clinical Services for the Maryland Department of Public Safety & Correctional Services ("DPSCS"). I have held this position since June, 2001. I am a licensed physician.

2. Sound penological practice requires that correctional officials and medical staff be able to assess and prioritize in real time the implementation of reasonable precautions to minimize the impact of COVID-19 on the inmate population and staff based on current and evolving information and resources.

3. Neither medical nor societal standards presently require universal testing for COVID-19. According to generally accepted medical practices, COVID-19 testing is prioritized based upon a patient's illness and particular circumstances. DPSCS through its private health care contractors and in concert with local hospitals provides testing consistent with Centers of Disease Control and Prevention guidelines.

4. Based upon generally accepted medical practices, I have directed that priority for COVID-19 testing should be given to symptomatic individuals who are ≥60 years or have chronic medical conditions and/or an immunocompromised state that may put them at higher risk for poor outcomes (e.g., diabetes, heart failure, cerebrovascular disease, chronic lung disease, chronic kidney disease, cancer, liver disease, and pregnancy). Patients who have had close contact with an infectious case of COVID-19 and if the contact develops symptoms, should be tested for COVID-19 immediately. This follows the Centers of Disease Control and Prevention guidelines.

5. To date DPSCS has received a thousand testing kits from the Maryland Department of Health testing kits for the virus and will be receiving more test kits. These kits are in the process of being dispensed to those DPSCS facilities with the most COVID-19 suspected cases. As more kits are received, they will be made available to the facilities bases upon medical needs.

I have read the above statements, and hereby declare under the penalty of perjury that they are true and correct.

DATE: May , 2020

Sharon L Baucom MD 5/26/20

SHARON BAUCOM, M.D.
Director of Clinical Services
DPSCS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*	*	
Plaintiffs	*	
v.	*	Civil Action No. ELH-94-2541
LAWRENCE HOGAN, *et al.*	*	
Defendants	*	

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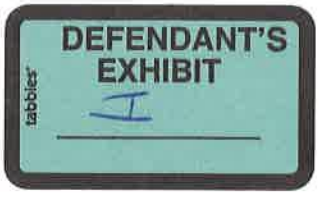
DECLARATION OF KELVIN L. HARRIS

I, Kelvin L. Harris, serve as the Director of Standards, Compliance, and Litigation for the Division of Pretrial Detention and Services. My business address is 521 East Eager Street, Baltimore, MD 21202. I am over the age of 18 years, and make this declaration under penalties of perjury.

1. The DPDS maintains a four-step administrative grievance process, as set for in DPDS Directive 180-1, attached hereto as Exhibit 1. The grievance policy allows detainees to "seek formal administrative decisions or answers to issues or complaints." *See* DPDS Directive 180-1.03, Exhibit 1. A grievance "may be used to address issues regarding conditions of confinement, actions of staff, services received, other residents and/or incidents occurring within or under the authority and control of the [DPDS] that have personally affected the resident making the complaint." *Id.,* at .06.A (1).

4. Step I of the grievance process is for a detainee to complete a grievance form within 15 days of the alleged incident. *See* Directive 180-1.06.C, Exhibit 1; *see also* Attachment A, attached to Exhibit 1. The Step I grievance must be investigated and



responded to within 20 working days of receipt of the grievance. *See* Exhibit 1, DPDS Directive 180-1.06.C (3).

5. A detainee wishing to appeal a Step I grievance shall complete the Step II form. *See* DPDS Directive 180-1.06.G, Exhibit 1; *see also* Attachment B, attached to Exhibit 1. The Step II grievance shall be reviewed by the Resident Grievance Procedure Committee ("RGPC") at an informal hearing. *See* DPDS Directive 180-1.06.G (3), Exhibit 1. The RGPC committee votes on the grievance and possible solution. *Id.,* at G (6). If the RGPC finds the grievance without merit, the detainee is given a written explanation of the committee's decision. *Id.,* at G (7). If the committee finds the grievance to be meritorious, the committee's decision is sent to the warden in writing, and is subject to the warden's review. The warden has the authority to affirm, reverse, or modify the committee's decision. *Id.,* at G (8).

6. Step III permits a detainee to appeal the RGPC's Step II decision. *Id.,* at H(1); *see also* Attachment C, attached to Exhibit 1. The appeal is sent to the Warden of BCBIC, who reviews the grievance, records and decision, and conducts further inquiries if appropriate. The Warden issues a written decision on the Step III appeal. *See* DPDS Directive 180-1.06. H (1), (3), Exhibit 1.

7. The final step allows a detainee to appeal the warden's Step III decision to the Assistant Commissioner of the DPDS by completing a Step IV form, and submitting it to the RGPC. *Id.,* at I(1); *see also* Attachment D, attached to Exhibit 1. The Assistant Commissioner shall schedule a hearing. *Id.,* at I(2). At the conclusion of the hearing,

the Assistant Commissioner submits a written decision, which is final. *See* DPDS Directive 180-1.06.I (3), Exhibit 1.

8. On May 28, 2020, I conducted a search for grievances filed by the *Duvall v. Hogan* plaintiff class, alleging a risk of harm from the COVID-19 virus at the Baltimore City Booking and Intake Center. I can attest that there have been no grievances filed.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

05-28-2020
Date

/Kelvin L. Harris/
Kelvin L. Harris

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
DIVISION OF PRETRIAL DETENTION AND SERVICES

	Pretrial Detention and Services Directive Number: **180-1**
	Program: **Grievances**
	Title: **Adult Resident Grievance Procedures**
	Effective Date: **June 20, 2008**
	Approved by: Howard Ray, Jr., Commissioner

.01 Purpose.

To establish a procedure that provides for an adult resident grievance process within the DPDS.

.02 Scope.

The Division of Pretrial Detention and Services (DPDS)

.03 Policy.

The grievance process is available to DPDS adult residents to provide a standard method by which they may seek formal administrative decisions or answers to issues or complaints.

Only individual residents shall submit grievances or complaints. No petitions or group (more than one signatory) grievances shall be accepted.

.04 Authority/Reference.

MCCS .05J

.05 Definitions.

Departmental Liaison: A staff person from each department, appointed by the Managing Official, designee or individual Department Head of the institution to receive, investigate and respond to the Resident Grievance Office regarding formal resident complaints.

Resident Grievance Procedure Committee: a 3- person panel convened when a resident appeals a first step grievance decision. The panel consists of an assistant warden/programming, the Director of Compliance, and a staff person from the Resident Grievance Office.

Resident Grievance Coordinator: DPDS staff persons responsible for the collection and response to resident grievances and/or complaints. This includes recording the status and disposition of each case.

Departmental Liaison: A staff person from each department, appointed by the managing officer, designee or individual department head of the institution to receive, investigate and respond to Resident Grievance Office staff regarding resident complaints.

Working Days: Consecutive days excluding Saturdays, Sundays, and holidays.

Help Request: A complaint which can be adequately resolved outside of the formal grievance process. These complaints are general in nature and may concern product quality, service delivery, etc.

.06 Responsibility/Procedure.

A. Grievable Issues

1. A grievance may be used to address issues regarding conditions of confinement, actions of staff, services received, other residents and/or incidents occurring within or under the authority and control of the Division of Pretrial Detention and Services that have personally affected the resident making the complaint and for which a remedy may be allowed by the Division.

2. The grievance process may be used no matter what the resident's custody assessment or disciplinary status.

B. Non-grievable Issues

1. Misconduct (Notice of Infraction) reports received through the Department's disciplinary procedure may not be appealed through the grievance process. Misconduct reports may only be appealed through the appeal procedure as the referenced in DPSCS 105-5, C, 1, Disciplinary Procedures.

2. Grievances may not be submitted about matters that are in the course of litigation.

3. Grievances may not be submitted regarding such matters as: terms of court commitment orders; State statues; and court ordered programs.

C. Submission of Grievances

1. All staff shall attempt to resolve institutionally related grievances.

2. If informal resolution (Help Request) is not achieved, the resident may initiate a grievance by completing a *Resident Complaint Form, Step I* (Appendix A) within 15 calendar days from the date on which the incident occurred or on which the resident first learned of the incident, whichever is later. The form shall be completed in full, indicating the nature of the grievance, the details of the incident, the steps taken to attempt an informal resolution, and the remedy sought.

3. The grievance shall be investigated and responded to within 20 working days of receipt of the grievance. Instructions for complaint form completion shall be printed on the reverse side of the *Resident Complaint Form, Step I*. The following information shall be included in the complaint:

a. The resident's name, date of submission and housing identifier. The complaint must be submitted in the name under which the resident is committed to the custody of the Commissioner of the DPDS, although a religious name or a name authorized under court order may be included as an alias;

b. The date on which the incident occurred or the date on which the resident became aware of the situation, the name(s) of the staff and/or residents involved in the complaint, a brief, concise description of the incident, and a description of any efforts made to resolve the complaint informally; and the remedy the resident seeks.

4. The completed complaint form shall be submitted to Resident Grievance Office (RGO) staff through the section Resident Council representative, the section officer, or by depositing the completed forms in an institutional mailbox.

5. All allegations of assault by staff on residents shall be immediately referred to the Bureau of Special Operations via the Shift Commander.

D. Receipt of Complaints

1. The RGO staff shall date-stamp each grievance form and log it in within two working days of receipt and review the form to determine if the resident has a grievable and/or non-grievable issue to resolve. A separate log shall be maintained to document complaints (help requests) versus actual grievances. Log information shall include:

a. Name;
b. Number;
c. Housing location;
d. Problem;
e. Problem synopsis;
f. Name of liaison person grievance is referred to (if applicable);
g. Date of the referral;
h. Date information is returned to the grievance officer;
i. Date the response is sent to the resident;
j. Status of the grievance: meritorious, without merit, outside jurisdiction, ongoing, and other; and
k. Release date of the resident if he or she is released prior to resolution of the grievance.

2. If the complaint form is filled out in its entirety, staff shall forward an acknowledgment letter to each resident within two days of receipt.

3. If the complaint form is incomplete, the form shall be returned to the resident with no action taken. Staff shall enclose a letter with the grievance form detailing the reason for the return, and provide the resident with specific instructions to properly complete the grievance. The grievance will be logged in, all possible information will be recorded, and the grievance will be labeled as a **resubmit** in order to maintain date of incident integrity. Unless the grievance is resubmitted within 5 working days, it will be considered administratively dismissed.

180-1

E. Investigation of Grievances Involving Medical Services

1. The RGO shall not review it for merit but shall: copy the grievance form; log in into the tracking system; and forward a copy of the grievance form to the Agency Contract Operations Monitor (ACOM) within 2 working days.

2. Upon receipt of the grievance form, the ACOM shall: copy, log, and forward the grievance form to the appropriate health care provider(s) before the end of the following work day. The ACOM shall provide a carbon copy of the referral to the RGO and shall monitor for a timely response from the health care provider(s).

3. Upon receipt of a medical grievance form, the health care provider shall: investigate the grievance; document findings; and forward a detailed written response to the RGO and ACOM within five working days.

4. The RGO staff upon receipt of a response from a health care provider shall: copy; log the provider response(s) into the tracking system; and ensure that a copy of all related provider responses is forwarded to the resident within 2 working days.

5. Compliance to resolve medical grievances requires that a medical provider response is sent to the resident within10 days of the initial grievance file date.

F. Non-Medical Grievances

1. The RGO staff shall review all grievances other than medical grievances and determine if the grievance can be investigated by the grievance staff via the following methods: directives, post orders, computer records, (both BCJL and MOBS), copies of serious incident reports, logbook reviews, employee or resident interviews, etc. In cases where such investigation would not yield the necessary results, the department liaison will be contacted. The liaison shall be given a copy of the grievance and shall investigate the grievance.

2. Upon completion of the investigation, the departmental liaison shall provide the RGO staff with the results of the findings within 10 days of the receipt of the grievance. The RGO staff shall review the investigation for sufficiency and draft a response to the resident within 5 days of receipt of the response from the liaison.

3. If the resident is released prior to the completion of the investigation process, the grievance will be administratively dismissed except if the grievance deals with monetary reimbursement such as commissary or payroll. In these cases investigation shall be ongoing pending resolution.

G. Appealing the Grievance Decision-Step II

1. A resident wishing to appeal the Step I decision to his or her complaint shall complete a *Motion for Grievance Committee Step II* form (Appendix B) and submit the form to RGO staff as indicated in section A.4 of this directive.

180-1

2. Resident Grievance Procedure Committee (RGPC) meetings are scheduled as needed. Prior to convening an RGPC meeting, the RGO director shall meet with the resident to inform him or her of the procedure that shall be followed during the RGPC meeting.

3. The RGO staff shall schedule the complaint to be reviewed by the RGPC at a hearing. The hearings will be conducted in an informal manner, beginning with the presentation of the grievance by the grievant, followed by testimony of other parties and/or witnesses.

4. The RGPC shall allow committee members to question any of the parties or witnesses concerning their testimony and also allow the grievant or his/her representative to question the parties or witnesses.

5. Following the completion of the testimony, the RGPC shall ask the grievant and his/her representative (if applicable) to leave the hearing room so that the RGPC can deliberate on the grievance and discuss solutions.

6. After discussion, the RGPC shall vote on the matter and possible solutions. The decision is determined by a majority vote by the committee members. The resident shall be brought back into the hearing room and informed of the decision.

7. If the decision of the RGPC is that the grievance is without merit, RGO staff shall send a written explanation of the committee's decision to the resident within 5 working days of the hearing date.

8. If the RGPC finds that the case is meritorious, RGO staff shall put the committee's decision and recommendation for specific relief in writing and send it to the warden within 5 working days of the hearing date. The committee's recommendation is subject to the warden's review. The warden shall review the recommendation and respond to RGO staff within 5 days of its receipt with his or her decision to affirm, reverse, or modify the committee's decision.

H. Grievance Procedure-Step III

1. A resident wishing to appeal the Step II decision to the warden may do so by completing a *Motion to Appeal to the Warden, Step III* form (Appendix C,) and submitting it to RGO staff within 3 working days of the decision rendered in Step II.

2. RGO staff shall forward a copy of the appeal and all attendant paperwork to the warden within 1 working day of receiving the appeal.

3. The warden shall review the grievance, records and the decision, and conduct further inquiries if deemed appropriate. The warden shall submit a written decision on the appeal within 3 working days of receipt of the appeal. RGO staff, the grievant and any parties to the grievance shall receive notification of the warden's decision.

4. A decision from the warden that is not appealed to the next step and determines that the grievance is at least meritorious in part shall direct specific relief to be afforded to the resident. The warden shall direct the appropriate relief and order compliance to his or her order to be carried out and documented within 10 working days (if possible), or as may be otherwise specified in the decision.

I. Appealing the Warden's Decision: Step IV

1. A resident wishing to appeal the Step III decision to the Assistant Commissioner of the Division of Pretrial Detention and Services shall complete n *Motion to Appeal to the Commissioner, Step IV* form and forward it to the RGPC within 3 working days of the resident's receipt of the Step II decision.

2. The Assistant Commissioner shall direct the RGO staff to inform the grievant and other parties of the time, date and place of the hearing.

3. At the conclusion of the hearing, the Assistant Commissioner shall submit a written notice of the decision to the resident and copies to RGO staff, within 20 working days of the hearing. The Assistant Commissioner's decision is final.

4. If the Assistant Commissioner's decision determines that the grievance is at least meritorious in part, he/she shall direct specific relief to be afforded to the resident. The Assistant Commissioner shall order compliance to his/her order to be carried out and documented within 10 working days (if possible), or as may be otherwise specified in the decision.

J. Employee Awareness

1. All staff having direct contact with residents are to be informed of the complaint process to facilitate timely implementation.

2. It is the responsibility of the warden/department head to ensure that records of written acknowledgment of this directive are maintained for all appropriate staff and that copies are forwarded to Facility Compliance staff in a timely manner.

.07 Attachments. A - Resident Grievance Form, Step I (DPDS# 180-1a)

B - Motion for Grievance Committee Step II (DPDS# 180-1b)

C - Motion for Appeal to the Warden Step III (DPDS# 180-1c)

D - Motion for Appeal to the Asst. Commissioner (DPDS# 180-1d)

.08 History. PDSD# 180-1, Inmate Grievance Procedures (11-30-00)

.09 Distribution. A

180-1 Attachment A

Division of Pretrial Detention and Services
Grievance Form

Name: _____ [ ] BCDC Section: _____
[ ] BCBIC

Identification#: _____ Date: _____

The subject of my complaint is:(check **only one**) **See reverse side for instructions**

[ ] 1.Classification
[ ] 2. Programs
[ ] 3.Mail or Packages
[ ] 4.Visits or Telephone Calls
[ ] 5.Property or Clothing
[ ] 6.Payroll
[ ] 7.Medical
[ ] 8.Commissary
[ ] 9.Complaints against staff or others
[ ] 10.Disciplinary Matters
[ ] 11.Dietary
[ ] 12.Maintenance Conditions
[ ] 13.Other_____

Part A: Resident Complaint

Briefly describe your complaint, **including the date of the incident**, the persons involved, and the **remedy** you are seeking.

Remedy:

Signature:

180-1 Attachment B

MOTION FOR GRIEVANCE COMMITTEE

STEP II

NAME:_____ ID #: _____ SECTION: _____

REASON(S) FOR APPEAL :_____

_____

_____

GRIEVANT'S SIGNATURE: _____ DATE: _____

RGP COORDINATOR'S SIGNATURE: _____ DATE: ____

RESPONSE OF THE R.G.C. _____

_____

_____

R.G.C. MEMBERS _____ DATE:_____

_____ DATE:_____

_____ DATE:_____

DATE RETURNED TO GRIEVANT: _____

Check One: [ ] I AGREE WITH THE COMMITTEE'S DECISION

[ ] I DISAGREE WITH THE COMMITTEE'S DECISION

GRIEVANT'S SIGNATURE: _____ DATE:_____

IF YOU ARE UNHAPPY WITH THE GRIEVANCE COMMITTEE'S RESPONSE, YOU HAVE THE RIGHT TO APPEAL TO THE WARDEN. SEE THE RESIDENT GRIEVANCE COORDINATOR.

DPDS - FORM # 38-92b

180-1 Attachment C

MOTION TO APPEAL TO THE WARDEN

STEP III

NAME: _____ ID#: _____ SECTION: _____

REASON(S) FOR APPEAL: _____

_____

_____

_____

GRIEVANT'S SIGNATURE: _____ DATE: _____

RESPONSE OF THE WARDEN: _____

_____

_____

_____

WARDEN'S SIGNATURE: _____ DATE: _____

DATE RETURNED TO GRIEVANT: _____

Check One: [ ] I AGREE WITH THE WARDEN'S DECISION

[ ] I DISAGREE WITH THE WARDEN'S DECISION

GRIEVANT'S SIGNATURE: _____ DATE: _____

IF YOU ARE UNHAPPY WITH THE WARDEN'S RESPONSE YOU HAVE THE RIGHT TO APPEAL TO THE COMMISSIONER. SEE THE RESIDENT GRIEVANCE COORDINATOR.

DPDS - FORM #38-92c

180-1 Attachment D

MOTION FOR APPEAL TO THE ASSISTANT COMMISSIONER

STEP IV

NAME: _____ ID#: _____ SECTION: _____

REASON(S) FOR APPEAL: _____

_____

_____

_____

_____

GRIEVANT'S SIGNATURE: _____ DATE: _____

RESPONSE OF THE ASSITANT COMMISSIONER: _____

_____

_____

_____

_____

_____

_____

_____

SIGNATURE: _____ DATE: _____
(Assistant Commissioner)

DATE RETURNED TO GRIEVANT: _____

DPDS - Form # 38-92d