

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.

*

PLAINTIFFS' STATUS REPORT REGARDING COVID-19

Pursuant to the Court's order (ECF 684), Plaintiffs file this status report regarding conditions at BCBIC in light of COVID-19.

INTRODUCTION

"The Baltimore City Central Booking and Intake Center has confirmed 55 new cases of coronavirus — the largest weekly increase at the facility since April, according to numbers from the Maryland Department of Health." Phillip Jackson, *Baltimore City jail sees its largest jump in coronavirus cases among staff and inmates in four months*, Baltimore Sun, August 14, 2020 (Fathi decl. Exh. 10). Notwithstanding this alarming development, Defendants' inertia and passive approach to the pandemic continue. Defendants have apparently not fully complied with the Court's orders; disregard guidelines promulgated by the Centers for Disease Control and Prevention (CDC); and fail to take basic steps to reduce the risk of sickness and death to detainees, staff, and the community.

Increasing number of infections – and missing and unreliable data

On July 20, Defendants reported 34 staff members, 17 contractor staff, and 93 detainees had tested positive for COVID-19. ECF 681 at 2. The most recent figures provided by Defendants

are 91 staff members and 139 detainees; no information was provided for contractor staff. Fathi decl. Exh. 12.

However, the numbers reported by Defendants are of questionable accuracy and are certainly incomplete. While Defendants' counsel provide, on most weekdays, updates to Plaintiffs, these updates are often missing critical information on infection rates and population. *See, e.g.*, Fathi decl. Exh. 9 ("I did not get a covid-positive update from the clients today"); Exh. 14 ("I did not receive an update on covid 19 infections"); Exh. 5 ("Information received today for detainees only"); Exh. 15 ("I did not receive a BCBIC census today"). And careless errors are not uncommon. *See* Fathi decl. Exh. 12 (two different census documents produced, both dated August 26).

In particular, Defendants are unable to reliably provide information on the number of contractor employees who have tested positive. *See* Fathi decl. Exh. 6 ("no information of [sic] positives for BCBIC contractual staff"); Exh. 3 ("I am having trouble getting that information, as I have stated before"). This information is particularly critical because (1) the great majority of these people are employees of the contract health care providers, whose jobs bring them into close proximity with sick and otherwise vulnerable detainees; and (2) unlike detainees, contractor employees enter and leave the facility every day, and are thus a vector for transmission between the Jail and the community.

In addition, as Plaintiffs have repeatedly pointed out (*see* ECF 673 at 2 n.1; ECF 682 at 1), the infection numbers reported by Defendants' counsel are consistently lower than those publicly reported on the DPSCS website for the same date. To cite yet another example, on August 21, 2020, counsel reported 89 staff testing positive, while the website reported 109. *See* Fathi decl. Exh. 1, 2.

Without consistent, complete, and accurate data, it is obviously impossible for Plaintiffs or the Court to meaningfully monitor Defendants' response to the pandemic. The Court should require Defendants to provide such data.¹

Continuing elevated jail population – and no response by Defendants

The Jail's population continues to hover around 700, with multiple housing units at or near 100% of capacity – thus creating the ideal environment for transmission of the virus. *See* Fathi decl. Exh. 4. The August 21 population of 699 represents an increase of 26% from the May 1 population of 555 (*see* ECF 673 at 3), and a significant increase from the count of 659 reported by Defendants on July 20 (*see* ECF at 681 at 2).

New guidance from the CDC recommends that correctional officials consider “diverting new intakes to other facilities with available capacity, and encouraging alternatives to incarceration and other decompression strategies where allowable.”² However, Defendants have once again confirmed that “[t]here are no new steps undertaken by the Duvall defendants to reduce the BCBIC population.” ECF 673-2 at 12; Fathi decl. Exh. 11 at 3.

Defendants' apparent failure to comply fully with the Court's orders

More than a month ago, this Court ordered that “custody staff in close contact with detainees should be tested for COVID-19 on a weekly basis.” ECF 684. It appears that Defendants

¹ Defendants' claim that “[t]he rate of covid-19 infection amongst the plaintiff class [is] 2.67%” (ECF 687 at 2) is completely baseless. Defendants' affiant states that this figure was calculated “by dividing a given population of 605 detainees by 135, the cumulative number of infections.” ECF 687-1 at 2 (elsewhere in the same filing, Defendants state that the cumulative number of infections is 139. ECF 687 at 2). But 135 infections among 605 detainees constitutes an infection rate of **22.31%** - not 2.67%.

² Centers for Disease Control and Prevention, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities” (updated July 22, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

are not in compliance with this order. Fathi decl. Exh. 8 (August 14 email stating that employees were tested “the week of August 3, 2020,” and that “[t]he next scheduled testing for BCBIC employees is September 3, 2020”).³ The Court should order Defendants to comply with its July 21 order by a date certain.

The Court also ordered that “each detainee should be provided with two masks.” ECF 684. Defendants’ I.B. 20-01, effective August 6, 2020 and titled “Issuance of Face Mask Upon Intake (COVID-19 Protocol),” provides that “[e]very detainee committed to the facility, **MUST** be issued **TWO** face masks” (emphasis in original). Fathi decl. Exh. 7. However, this document does not address replacement of face masks that wear out, or become lost, damaged, or destroyed, during the detainee’s stay in the facility, and therefore does not fully implement the Court’s order that “each detainee should be provided with two masks.” The Court should order that Defendants modify I.B. 20-01 to ensure that each detainee has two masks throughout his or her stay at the Jail.

Limited testing

Defendants currently require that employees of their health care contractors be tested monthly. Fathi decl. Exh. 11 at 4. As noted above, the Court has ordered that “custody staff in close contact with detainees should be tested for COVID-19 on a weekly basis.” ECF 684. There is no rational basis to distinguish custody staff from health care contractor staff – indeed, the latter are far more likely to interact regularly with sick or otherwise vulnerable detainees. The Court should require weekly testing of all health care contractor staff.⁴

³ Defendants more recently stated that “In August so far, State employees having contact with detainees have been tested on Monday-Tuesday of each week.” Fathi decl. Exh. 11 at 4. But despite multiple requests, Defendants have failed to confirm that *each* individual staff member covered by the Court’s order is being consistently tested weekly. *Id.* at 1.

⁴ “Because staff move between the facility and the community daily, the risks of introducing infection into the facility from the community and/or bringing infection from the facility back into the community is ongoing.” Centers for Disease Control and Prevention, “Interim

Recently updated guidance from the CDC states that “[t]esting is recommended for all close contacts of persons with [COVID-19] infection.”⁵ However, it appears that Defendants do not intend to comply with Dr. Puisis’ recommendation that “[a]ll detainees living in housing units where a positive case has been identified should be tested weekly until all detainees test negative” (ECF 662-13 at 2). ECF 673-2 at 9; Fathi decl. Exh. 11 at 3 (Question 3).⁶

Lack of social distancing

The CDC has emphasized that “[a]lthough social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. People who have been infected with [COVID-19] but do not have symptoms can still spread the infection, making social distancing even more important.”⁷

Although the increasing detainee population has resulted in several housing units being at 100% of capacity, thus making social distancing even more critically important, there has been no change in Defendants’ ongoing inaction on social distancing. Defendants continue to house two or more persons whose COVID-19 status is undetermined in the same cell, and are taking no new steps to end this practice. ECF 673-2 at 9, 13; Fathi decl. Exh. 11 at 3 (Question 5).

Considerations for SARS-CoV-2 Testing in Correctional and Detention Facilities” (updated August 10, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html>

⁵ Centers for Disease Control and Prevention, “Interim Considerations for SARS-CoV-2 Testing in Correctional and Detention Facilities” (updated August 10, 2020), *supra* n. 4 (footnote omitted).

⁶ In response to a question regarding Dr. Puisis’ recommendation, Defendants cite a draft policy titled “Draft Interim Guidance for Testing and Contact Identification [sic]/Contact Tracing of Inmates in DPSCS” (Fathi decl. Exh. 11 at 3; Exh. 13 (filed under seal at Defendants’ request)). This draft policy does not address Dr. Puisis’ recommendation.

⁷ Centers for Disease Control and Prevention, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities” (updated July 22, 2020), *supra* n. 2.

The beds depicted at Doc. 663-2 at 2 and Doc. 663-3 at 2 have not been moved or repositioned, and accordingly remain less than six feet apart. Asked to state “[a]pproximately how many beds or bunks in [BCBIC] are currently located less than six feet from another bed or bunk,” Defendants have repeatedly declined to answer. Defendants have no plans to create at least six feet of space between beds or bunks. ECF 673-2 at 10, 13; Fathi decl. Exh. 11 at 3-4 (Questions 6, 7).

CONCLUSION

Plaintiffs respectfully request the following relief:

- (1) That the Court continue to require regular status reports on the state of the COVID-19 outbreak at BCBIC;
- (2) That the Court order weekly COVID-19 testing for all health care contractor staff;
- (3) That the Court order Defendants to comply by a date certain with its July 21, 2020 order that “custody staff in close contact with detainees should be tested for COVID-19 on a weekly basis” (ECF 684);
- (4) That the Court order that Defendants modify I.B. 20-01 to ensure that each detainee has two masks throughout his or her stay at the Jail (*see* ECF 684);
- (5) That the Court order Defendants to implement Dr. Puisis’ recommendation that “[a]ll detainees living in housing units where a positive case has been identified should be tested weekly until all detainees test negative” (ECF 662-13 at 2);
- (6) That the Court order Defendants to provide Plaintiffs’ counsel, on each and every non-holiday weekday, with (1) that day’s BCBIC census, in a form substantially similar to that set forth at ECF 673-2 at 7; and (2) the cumulative number of (a) BCBIC detainees, (b)

BCBIC staff, and (c) BCBIC contractor employees who have tested positive for COVID-19;

(7) That the Court order Defendants to promptly file a declaration explaining the recurring and often significant discrepancies between the infection numbers provided by Defendants' counsel and the numbers reported on the DPSCS website; and

(8) That the Court order Defendants to file, within 30 days, a plan for reducing the detainee population at BCBIC, and for increasing the distance between beds and bunks.

Respectfully submitted this 28th day of August 2020.

/s/David C. Fathi

David C. Fathi

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Counsel for Plaintiffs

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Defendants.

*

DECLARATION OF DAVID C. FATHI

I, David C. Fathi, declare:

1. I am one of the counsel for the Plaintiff class in this case. I make this declaration in support of Plaintiffs' Status Report.

2. Attached hereto are true and correct copies of the following materials, identified as numbered exhibits:

- a. **Exhibit 1:** Email from Laura Mullally sent to all counsel (August 21, 2020).
- b. **Exhibit 2:** COVID-19 Case Count Chart from the website of the Maryland Department of Public Safety and Correctional Services (DPSCS) (August 21, 2020).
- c. **Exhibit 3:** Email chain among counsel (August 24, 2020).
- d. **Exhibit 4:** BCBIC census spreadsheet (August 21, 2020).
- e. **Exhibit 5:** Email from Laura Mullally (August 19, 2020).
- f. **Exhibit 6:** Email from Laura Mullally (August 18, 2020).
- g. **Exhibit 7:** BCBIC Information Bulletin "Issuance of Face Mask Upon Intake (COVID-19 Protocol)" (August 6, 2020).

- h. **Exhibit 8:** Email from Laura Mullally (August 14, 2020).
- i. **Exhibit 9:** Email from Laura Mullally (August 10, 2020).
- j. **Exhibit 10:** Baltimore Sun article: Phillip Jackson, “Baltimore City jail sees its largest jump in coronavirus cases among staff and inmates in four months” (August 14, 2020).
- k. **Exhibit 11:** Email chain among counsel (August 27, 2020).
- l. **Exhibit 12:** Email chain among counsel (August 27, 2020).
- m. **Exhibit 13:** “Draft Interim Guidance for Testing and Contact Identification/Contact Tracing of Inmates In DPSCS,” for September 2020, by the Maryland Department of Health (August 27, 2020), filed under seal.
- n. **Exhibit 14:** Email from Laura Mullally (August 4, 2020).
- o. **Exhibit 15:** Email from Laura Mullally (August 24, 2020).

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 28, 2020.

/s/David C. Fathi
David C. Fathi

Index of Exhibits to the Declaration of David C. Fathi

Exhibit #	Description
1	Email from Laura Mullally sent to all counsel (August 21, 2020)
2	COVID-19 Case Count Chart from the website of the Maryland Department of Public Safety and Correctional Services (DPSCS) (August 21, 2020)
3	Email chain among counsel (August 24, 2020)
4	BCBIC census spreadsheet (August 21, 2020)
5	Email from Laura Mullally (August 19, 2020)
6	Email from Laura Mullally (August 18, 2020)
7	BCBIC Information Bulletin "Issuance of Face Mask Upon Intake (COVID-19 Protocol)" (August 6, 2020)
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14	Email from Laura Mullally (August 4, 2020)
15	Email from Laura Mullally (August 24, 2020)

EXHIBIT 1

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>

Sent: Friday, August 21, 2020 9:13 AM

To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>

Subject: Fwd: Updated Housing

staff positives: 89

detainee positives: 135

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

EXHIBIT 2

COVID-19 Case Count

Updated: Friday, August 21, 2020

Pursuant to the Governor's order, the Department of Public Safety and Correctional Services (DPSCS) is conducting universal testing at all facilities.

DPSCS is committed to providing accurate data regarding the number of positive COVID-19 cases within the inmate population in its correctional institutions. These numbers are updated weekly on our website.

Department of Public Safety and Correctional Services COVID-19 Cases									
Region	Facility	Staff Tests	Staff Positive	Staff Recovered	Staff Deaths	Inmates Tested	Inmates Positive	Inmates Recovered	Inmate Deaths
Baltimore	BCBIC	703	109	58	1	1,370	135	118	
	BCCC	88	7	4		282	1	-	
	CDF	205	32	31		331	7	6	
	MRDCC	239	33	32		670	16	16	
	MTC	407	65	53		697	37	31	
	YDC	112	5	3		56	5	5	
Eastern	ECI	760	15	5		3,053	5	5	
	EPRU	41	-	-		77	-	-	
Hagerstown	MCI-H	360	3	2		739	6	6	
	MCTC	435	8	8		2,782	15	15	
	RCI	325	2	1		1,721	23	23	1
Jessup	CMCF	113	20	20		321	60	58	2
	DRCF	240	37	35		734	60	59	1
	JCI	779	70	53		1,757	96	92	2
	MCI-J	412	35	35		708	148	148	
	MCI-W	342	55	53		600	27	26	
	PATX	457	60	47		796	39	38	1
	SMPRU	39	3	2		57	-	-	
Western	NBCI	381	3	2		1,259	12	12	
	WCI	486	3	2		1,642	1	1	
Other	Non-residential location	455	33	23		5	2	2	1
Current Total		11,761	598	469	1	19,657	695	661	8

Staff Tests	Staff Positive	Staff Recovered	Staff Deaths	Inmates Tested	Inmates Positive	Inmates Recovered	Inmate Deaths
860	28	10	0	85	6	28	0

EXHIBIT 3

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Monday, August 24, 2020 3:22 PM
To: David Fathi <dfathi@aclu.org>
Cc: Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>
Subject: Re: covid-19 positives

I am having trouble getting that information, as I have stated before.

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

On Mon, Aug 24, 2020 at 2:58 PM David Fathi <dfathi@aclu.org> wrote:
Thank you, Laura. Kindly provide the number of contractor employees testing positive, in addition to state employees.

David C. Fathi*
Director, ACLU National Prison Project
915 15th St. N.W., 7th Floor
Washington, DC 20005
(202) 548-6603
dfathi@aclu.org
@DavidCFathi

*Not admitted in DC; practice limited to federal courts

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Monday, August 24, 2020 2:48 PM
To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>
Subject: covid-19 positives

Counsel:

I did not receive a BCBIC census today.

Cumulative state staff positives: 91
Cumulative detainee positives: 138.

Laura Mullally Assistant Attorney General
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Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

EXHIBIT 4

Male intake200 beds			Female Intake 50 beds			Male G/P 358 beds			Female G/P 218 Beds			Date 8/21/2020	
4 North B	98%	1st level	4 Center A	54%		3 Center B	90%		4 Center B	34%			
3 North A	100%	2nd level				3 South A	99%		5 South A	49%			
3 North B	98%	3rd level				3 South B	49%		5 South B	50%			
3 Center A	94%	4th level				4 South A	99%		Total	46%			
Total	98%					4 South B	98%						
						Total	87%						
3CA	47	50	94%			195	200		98%	Male intake		3%	
3CB	45	50	90%			100	218		46%	Female General Pop		54%	
3NA	50	50	100%			313	358		87%	Male General Pop		13%	
3NB	49	50	98%			27	50		54%	Female intake		46%	
3SA	69	70	99%		Worker				occupied				empty
3SB	34	70	49%		Over 55								
4CA	27	50	54%		F intake								
4CB	17	50	34%										
4NA	25	50	50%		M COVID								
4NB	49	50	98%										
4SA	83	84	99%										
4SB	82	84	98%										
5NMH	27	32	84%										
5NSNU	12	18	67%										
5SA	41	84	49%										
5SB	42	84	50%										
Census	699	926	75%										

EXHIBIT 5

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>

Sent: Wednesday, August 19, 2020 2:49 PM

To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>

Subject: covid-19 positives

Information received today for detainees only:
132 cumulative positives

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

EXHIBIT 6

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>

Sent: Tuesday, August 18, 2020 1:32 PM

To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>

Subject: covid-19 positives as of 8-17-20

detainees: 131

BCBIC staff: 84

no information of positives for BCBIC contractual staff.

Laura Mullally Assistant Attorney General

300 East Joppa Road, Suite 1000

Towson, MD 21286

410-339-7562

laura.mullally@maryland.gov

EXHIBIT 7



DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
BALTIMORE CENTRAL BOOKING & INTAKE CENTER

INFORMATION BULLETIN

I.B. No. 20-01

August 6, 2020

SUBJECT: Issuance of Face Mask Upon Intake (COVID-19 Protocol)

Effective **Immediately**, the below is to occur on all three shifts to provide personal protection to all detainees upon intake.

- Every detainee committed to the facility, **MUST** be issued **TWO** face masks.
- The issuance of face masks, must be documented in the logbook and added as property issued to the detainee.

Read in roll call for 20 days.

Dionne Randolph, Assistant Warden

Distribution: Custody Supervisors

EXHIBIT 8

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Friday, August 14, 2020 9:02 AM
To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>
Subject: two mask policy and DRAFT weekly testing schedule

Counsel:

Please see the attached. The Secretary has approved the weekly draft testing schedule.

Testing of employees was conducted the week of June 15, 2020, the week of July 27, 2020, the week of August 3, 2020. The next scheduled testing for BCBIC employees is September 3, 2020. I am trying to ascertain if there will be testing at any other time in August, and I will notify you when I receive that information.

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

EXHIBIT 9

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>

Sent: Monday, August 10, 2020 2:08 PM

To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>

Subject: Fwd: Updated Housing

Housing.

I did not get a covid-positive update from the clients today.

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

EXHIBIT 10

Baltimore City jail sees its largest jump in coronavirus cases among staff and inmates in four months

[Phillip Jackson](#)

Baltimore Sun |

Aug 14, 2020 at 4:33 PM

The Baltimore City Central Booking and Intake Center has confirmed 55 new cases of coronavirus — the largest weekly increase at the facility since April, according to numbers from the Maryland Department of Health.

The figures include 30 new cases among corrections staff and 15 among inmates at Central Booking in the past week, according to data released by the state Wednesday.

A total of 130 inmates and 81 members on the facility's correctional staff have tested positive for the coronavirus since the start of outbreak in Maryland prisons. At the booking facility, a total of 1,145 inmates and 642 correctional staff have been tested for the virus, according to recent numbers from the department.

In April, [the Maryland Department of Public Safety and Correctional Services](#) announced that it has released 2,000 inmates from its jails, prisons and other detention facilities. The vast majority of those released were those awaiting trial.

Prisoner advocacy groups and public defenders have called for widespread testing of inmates and for more access to personal protective equipment for

inmates and staff.

The department has since implemented universal testing in its facilities following Maryland Gov. Larry Hogan's decision to do so after prison advocates and public defenders voiced concerns.

The number of cases reported by the Maryland department of corrections differs from those reported by the state's health department because of a difference in when each publishes its totals, according to Mark Vernarelli, a corrections spokesperson.

Vernarelli said the numbers of cases "fluctuate" often, as they would outside of the prison population, which he said is backed up by "point prevalence testing," which examines tests on inmates during a certain time frame.

Baltimore's Central Booking Facility has the second-highest total of confirmed cases among inmates in the state, behind the Maryland Correctional Institution in Jessup, where 148 inmates have tested positive since the start of the pandemic, according to department numbers.

Breaking News Alerts Newsletter

As it happens

Get updates on the coronavirus pandemic and other news as it happens with our free breaking news email alerts.

The Jessup Correctional Institution, located at a different site, currently has confirmed the second-most cases for correctional staff in its facility for the state at 63 cases.

Across the state, 524 correctional staff members and 672 inmates have

tested positive for the virus, according to the department. Eight inmates have died of complications from COVID-19.

As the department looks to control further spread of the virus, the demand for resources such as protective masks, hand sanitizers and proper protocol for keeping inmates in clean facilities and social distancing measures remains high.

In July, the department [said Maryland had supplied more than 2 million pieces](#) of personal protection equipment to staff and inmates, but advocates and prison union members said that was the bare minimum, as staff and inmates can use up equipment at a fast rate.

The department has issued more than 2.18 million items, including disposable and reusable gowns, gloves, hand sanitizer, surgical masks, face shields and goggles.



Phillip Jackson is a criminal justice reporter at The Baltimore Sun.

Latest Coronavirus

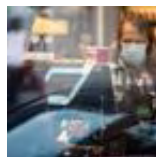




EXHIBIT 11

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Thursday, August 27, 2020 2:10 PM
To: David Fathi <dfathi@aclu.org>
Cc: alexander@lawofficesofelizabethalexander.com; Debra Gardner <gardnerd@publicjustice.org>
Subject: Re: Information request for August 28 status report

David:

The court's order did not require for each and every state employee to be tested. Only those with regular contact with the plaintiff class were ordered to be tested. Pursuant to the court's order, the testing began on 8/3/20-8/4/20 and was repeated each week thereafter.

Laura Mullally Assistant Attorney General
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410-339-7562
laura.mullally@maryland.gov

On Thu, Aug 27, 2020 at 2:02 PM David Fathi <dfathi@aclu.org> wrote:

Thanks very much. My specific question is whether each and every individual state employee is currently being tested at least once per week. And if so, since when has that been the case?

David C. Fathi*

Director, ACLU National Prison Project

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(202) 548-6603

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@DavidCFathi

*Not admitted in DC; practice limited to federal courts

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Thursday, August 27, 2020 12:17 PM
To: David Fathi <dfathi@aclu.org>
Cc: ealexander@lawofficesofelizabethalexander.com; Debra Gardner <gardnerd@publicjustice.org>
Subject: Re: Information request for August 28 status report

David:

I had received additional information after sending you the email on August 15. State employees at BCBIC have been tested on all 3 shifts on M-Tu of each week in August. The September testing dates had been established pursuant to a written schedule that established the first testing date as September 3, 2020. I have shared that schedule with you.

Laura Mullally Assistant Attorney General

300 East Joppa Road, Suite 1000

Towson, MD 21286

410-339-7562

laura.mullally@maryland.gov

On Thu, Aug 27, 2020 at 12:01 PM David Fathi <dfathi@aclu.org> wrote:

Thank you, Laura. One question (my colleagues may have others):

You state below that "In August so far, State employees having contact with detainees have been tested on Monday-Tuesday of each week." In an email dated August 14, you stated that employees were tested "the week of August 3, 2020," and that "The next scheduled testing for BCBIC employees is September 3, 2020."

Can you please explain the apparent discrepancy between these two statements? Is each custody staff person in close contact with detainees currently being tested for COVID-19 each week? If so, when did such weekly testing of all such custody staff begin?

Thanks very much.

David C. Fathi*

Director, ACLU National Prison Project

915 15th St. N.W., 7th Floor

Washington, DC 20005

(202) 548-6603

dfathi@aclu.org

@DavidCFathi

*Not admitted in DC; practice limited to federal courts

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>

Sent: Thursday, August 27, 2020 11:34 AM

To: David Fathi <dfathi@aclu.org>

Cc: ealexander@lawofficesofelizabethalexander.com

<ealexander@lawofficesofelizabethalexander.com>; Debra Gardner <gardnerd@publicjustice.org>

Subject: Re: Information request for August 28 status report

Counsel:

In answer to your inquiries, and with reference to David's letter of June 25, 2020, please see below:

1. No change from the defendants' responses of June 29, 2020 and July 17, 2020.
2. Dr. Puisis's recommendations were implemented prior to the July 20, 2020 status report, and plaintiffs were notified of quarantine stages, and intake testing conducted on every detainee twice during the two week quarantine period. See ECF 682-2.
3. Testing of asymptomatic members of the plaintiff class is now conducted through sampling, as set forth in the attached DRAFT Interim Guidance for Testing and Contact Tracing, which was circulated on July 31, 2020. Although this policy is in draft form, the procedures are under implementation.
4. No change from the defendants' response of June 29, 2020 and July 17, 2020.
5. See response to #4 above.
6. See response to #4 above.

7. See response to #4 above.

8. The HMF cumulative census for August to date is 24 detainees. 21 of the patients were from BCBIC, 2 of the patients were from MTC, and 1 patient was from CDF.

9. New policies are attached. You have agreed to keep confidential the draft interim guidance on testing and contract tracing, and to submit it to the court under seal if you wish to use it as an exhibit. This policy is in draft form; it was developed by the Maryland Department of Health for prisons and jails within the Department of Public Safety and Correctional Services. It has not been officially approved; I would note that its pages are not numbered, and there are some spelling or grammatical errors within that need correcting. When the final policy is approved, I will share that with you.

1. The testing of asymptomatic detainees is accomplished through the sampling procedure described in the Draft Interim Guidance for Testing and Contact Tracing policy.

2. The Secretary has ordered the medical, mental health, pharmacy and dental contractors to test their employees once per month. Letters requiring such testing are attached. Additionally, as I shared with you earlier this week, all contractual staff were tested on 8/20/20. 19 of those contractors were positive with 2 positives from Centurion, the mental health provider, and 17 positives from Corizon, the medical provider. As you may have noted the increase from the last time that I reported contractor positives is 2 (previously 17 positive contractors; now 19 contractors).

Finally, while not requested, attached please find the written schedule for State staff testing at BCBIC in September, 2020. In August so far, State employees having contact with detainees have been tested on Monday-Tuesday of each week.

Regards,

Laura Mullally Assistant Attorney General

300 East Joppa Road, Suite 1000

Towson, MD 21286

410-339-7562

laura.mullally@maryland.gov

On Tue, Aug 25, 2020 at 11:55 AM David Fathi <dfathi@aclu.org> wrote:

Laura,

As you know, we are to submit status reports on August 28 regarding COVID-19 at BCBIC. So that we may provide the Court with current information, we request that you provide updated responses to the questions posed in my letter of June 25, 2020 (ECF 672-2 at 9-10, 12-13). Your most recent responses may be found at ECF 682-2 at 13.

In addition, we would be grateful for responses to the following questions:

1. Under what circumstances are asymptomatic detainees tested for COVID-19? Please produce (or if previously produced, identify) all policies addressing this subject.
2. What is BCBIC's practice regarding testing of contractor employees (including employees of the medical and mental health contractors) for COVID-19? What proportion or percentage of contractor employees currently working at BCBIC have been tested for COVID-19? Please produce (or if previously produced, identify) all policies addressing this subject.

We would appreciate responses by the close of business on Thursday, August 27.

Thanks very much.

David C. Fathi*
Director, ACLU National Prison Project
915 15th St. N.W., 7th Floor
Washington, DC 20005
(202) 548-6603
dfathi@aclu.org
@DavidCFathi

*Not admitted in DC; practice limited to federal courts

EXHIBIT 12

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Thursday, August 27, 2020 3:18 PM
To: Debra Gardner (<gardnerd@publicjustice.org> <gardnerd@publicjustice.org>
Cc: David Fathi <dfathi@aclu.org>; Elizabeth Alexander
<ealexander@lawofficesofelizabethalexander.com>
Subject: Re: Updated Housing

Deb:

I have asked Katrina Hall for clarification. It's clear that they are two different documents, each dated 8/26/20. She may be gone for the day, but I should have some clarification for you tomorrow.

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

On Thu, Aug 27, 2020 at 3:00 PM Debra Gardner (<gardnerd@publicjustice.org> <gardnerd@publicjustice.org> wrote:
Laura:

The attached census is dated 8/26 both on its face and in the file name, but it shows a different census from yesterday's. Can you confirm that this is the correct census for 8/27 and/or send a corrected version?

Thank you.

Deb.

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Thursday, August 27, 2020 2:50 PM
To: Contact <dfathi@aclu.org>; Debra Gardner (<gardnerd@publicjustice.org> <gardnerd@publicjustice.org>; Elizabeth Alexander
<ealexander@lawofficesofelizabethalexander.com>
Subject: Fwd: Updated Housing

See attached census.

covid 19 positives:

state staff: 91

detainees: 139

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

----- Forwarded message -----

From: **Katrina Hall -DPSCS-** <katrina.hall@maryland.gov>
Date: Thu, Aug 27, 2020 at 7:25 AM
Subject: Updated Housing
To: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>, Susan Leatherman -DPSCS- <susan.leatherman@maryland.gov>, Chukwuemeka C. Nkwocha -DPSCS- <chukwuemeka.nkwocha@maryland.gov>
Cc: Frederick T. Abello -DPSCS- <frederick.abello@maryland.gov>, Dionne Randolph -DPSCS- <dionne.randolph@maryland.gov>, James Flood -DPSCS- <james.flood@maryland.gov>, Tyrell Wilson -DPSCS- <tyrell.wilson@maryland.gov>, Natasha Mars -DPSCS- <natasha.leckey@maryland.gov>, Norman D. Hawkins -DPSCS- <norman.hawkins@maryland.gov>, Percy NB Laryea -DPSCS- <percy.laryea@maryland.gov>

Good Morning

--

Sergeant Katrina C. Hall
Correctional Statistic Officer
Baltimore Central Booking and Intake Facility
Division of Pretrial Detention Services
Department of Public Safety and Correctional Services
Central Region
300 East Madison Street
Baltimore, Maryland 21202
<tel:410-545-8102>
[fax:410-545-8289](tel:410-545-8289)
katrina.hall@maryland.gov
Live Laugh Love

DPSCS Mission Statement

"The Department of Public Safety and Correctional Services protects the public, its employees, and detainees and offenders under its supervision."

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THANK YOU FOR YOUR COOPERATION.

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, et al.,

Plaintiff,

v.

LAWRENCE HOGAN, et al.,

Defendant.

*

*

*

*

Case No. ELH-94-2541

NOTICE OF FILING OF DOCUMENT UNDER SEAL

Check one.

☒ Exhibit 13 which is an attachment to the Declaration of David C. Fathi

will be electronically filed under seal within 24 hours of the filing of this Notice.

☐

(title of document)

will be electronically filed under seal within 24 hours of the filing of this Notice.

I certify that at the same time I am filing this Notice, I will serve copies of the document identified above by email.

August 28, 2020

Date



Signature

David C. Fathi, Wash. #24893

Printed Name and Bar Number

915 15th St NW, 7th Fl, Washington, DC 20005

Address

dfathi@aclu.org

Email Address

202-548-6603

Telephone Number

202-393-3941

Fax Number

EXHIBIT 14

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>

Sent: Tuesday, August 4, 2020 3:57 PM

To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>

Subject: Fwd: Housing update

Here is today's housing update. I did not receive an update on covid 19 infections.

Laura Mullally Assistant Attorney General
300 East Joppa Road, Suite 1000
Towson, MD 21286
410-339-7562
laura.mullally@maryland.gov

EXHIBIT 15

From: Laura Mullally -DPSCS- <laura.mullally@maryland.gov>
Sent: Monday, August 24, 2020 2:48 PM
To: David Fathi <dfathi@aclu.org>; Contact <gardnerd@publicjustice.org>; Elizabeth Alexander <ealexander@lawofficesofelizabethalexander.com>
Subject: covid-19 positives

Counsel:

I did not receive a BCBIC census today.

Cumulative state staff positives: 91
Cumulative detainee positives: 138.

Laura Mullally Assistant Attorney General
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