

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

BROOKE WHORELY, *et al.*,

Plaintiffs,

v.

Case No. 3:20-cv-255

RALPH S. NORTHAM, *et al.*,

Defendants.

PLAINTIFFS' SECOND NOTICE OF SUBSTANTIAL NON-COMPLIANCE

Since the beginning of the COVID-19 pandemic, the Virginia Department of Corrections (“VDOC”) has reported 3,542 total positive cases of COVID-19 among its incarcerated population, and as of today, there are 682 active cases on-site and an additional 21 cases in hospitals. So far, 23 incarcerated people in VDOC custody have died. These numbers have doubled since our First Notice of Substantial Non-Compliance on June 24, 2020.

On May 12, 2020, the Court dismissed the above-captioned matter while retaining jurisdiction to enforce the Stipulated Settlement Agreement (“Settlement”). Plaintiffs entered into this settlement quickly to ensure that Defendants implemented measures to facilitate the release of individuals incarcerated in compliance with the Early Review Program passed by the legislature and through use of the Governor’s pardon power, and to ensure adequate precautions at VDOC facilities for the incarcerated population who remained.

Due to deficiencies in VDOC’s compliance with the Settlement and in accordance with the procedures outlined therein, Plaintiffs sent Defendants their first Notice of Substantial Non-Compliance on June 24. On July 10, counsel met and conferred on issues in the Notice. We reached an agreement on a number of issues, including a weekly schedule for document and investigation requests and productions. On July 14, with the assistance of Judge Novak, Defendants further agreed to review a minimum of 60 people per week for release under the Early Release Program and to provide an affidavit from the warden of each facility promising compliance with the Settlement.

Unfortunately, and notwithstanding a reduction in cases in June, infection rates at VDOC facilities have now begun to soar. Despite these rapidly rising infection rates, Defendants have failed to identify additional staff or resources that can be dedicated to expediting the review of high-risk individuals eligible for the Early Release Program. The bottleneck in their review process continues, as the approval rate steadily declines with each passing week. As a result, many individuals who may have serious medical conditions and are otherwise eligible for the Early

Release Program remain incarcerated, while VDOC prioritizes review of individuals who have served the greatest percentage of their time, such that they will be released in short order anyway.

Defendants' responses to concerns raised by Plaintiffs regarding the threat of COVID-19 in specific facilities has also been deficient. Through our enforcement efforts, Plaintiffs have identified multiple compliance concerns at various VDOC facilities, including at Deerfield Correctional Center and other facilities that have had active outbreaks. We have brought those concerns to the Defendants. And despite cursory assurances that procedures are being followed and Defendants are taking all necessary precautions, the virus continues to spread unabated and incarcerated people continue to die.

According to VDOC's website, there are currently 466 active cases among those incarcerated in Deerfield Correctional, and 35 additional cases among staff members. A total of 724 people incarcerated there have tested positive. Nine people have died, so far. This is not the only outbreak occurring in VDOC facilities, and if their procedures remain unchanged, there will be more.

Plaintiffs' History of Raising Concerns Regarding Deerfield Compliance

Plaintiffs first raised concerns regarding compliance with the Settlement at Deerfield Correctional on July 15, when we informed Defendants of a report that "staff frequently pull down or remove their masks when speaking." Defendants responded on July 22 by saying they required additional detailed information, but that "wardens have been directed to ensure mask compliance, and VDOC administrators are performing 'spot checks'" to ensure compliance.

In direct response to the request for more specific information, Plaintiffs sent Defendants a declaration from James H. Dillingham III, an individual incarcerated at Deerfield, on July 29. Additionally, Joshua Moseley, an individual incarcerated at Deerfield, filed concerns regarding the facility's compliance directly with the Court on July 28. We summarized the concerns raised by these two individuals in an email to Defendants' counsel, stating:

- a. We ask that you investigate and respond to the concerns raised by Joshua Moseley in his filing with the Court (ECF No. 33). Specifically, we note the following alleged deficiencies related to the settlement agreement: (1) inadequate access to clean water, which would prevent compliance with the hygiene and sanitation requirements in paragraph 3(f) of the settlement; (2) the inability to maintain adequate social distancing within the facility, specifically the overcrowding of the facility and double occupancy use of single occupancy cells; and (3) individual reports meeting all requirements for early release, but does not appear to have been reviewed.
- b. In addition to the filing from Joshua Moseley, we have been contacted by several individuals also incarcerated in Deerfield, raising similar concerns. We have attached a declaration from James H. Dillingham, III, who states, among other concerns, that: (1) his COVID-like symptoms have been dismissed as allergies, (2) correctional staff, including nurses, are not wearing masks, (3) he has been told Deerfield does not intend to release

anyone pursuant to the Early Release Plan, and (4) he is unable to maintain social distance in his housing unit.

On August 11, Defendants sent a response to several investigation requests, including those above. *See* Exhibit E, pp. 8-9. On August 12, Defendants provided additional information regarding the concerns raised above in a separate letter. *See* Exhibit F. In summary, these two responses pass on information from the Warden of the facility that assures compliance with the general Settlement terms. The responses describe some measures that have been taken to permit social distancing, and state that spot checks regarding staff compliance with masks are being conducted and deficiencies addressed.

On August 12, Plaintiffs sent Defendants an additional declaration from an individual incarcerated at Deerfield noting deficiencies at the facility. We noted:

14. Deerfield – Please see the attached declaration from an individual incarcerated at Deerfield which raises some new concerns and reiterates others raised by the previous two individuals incarcerated at Deerfield. Please investigate the allegations in the declaration and provide us with any documentation of the investigation and of any findings that the allegations are substantiated or not, and of the steps that are being taken to rectify these conditions. These allegations include (a) the inability to maintain adequate social distancing in a geriatric unit; (b) soap is not always available in the dispensers in the bathrooms; (c) incarcerated individuals have to beg for hand sanitizer to be replaced; (d) correctional staff, including nurses, are not wearing masks; (e) approximately 40 individuals were transferred out of Deerfield within the past month or so. In addition to investigating the specific conditions described in the declaration, please also provide us with any and all documentation regarding transfers of individuals out of Deerfield from July through to present.

Plaintiffs re-sent this declaration to Defendants on September 16. To date, we have received no further response regarding the concerns raised in these declarations.

On September 9, Plaintiffs sent the below request to Defendants regarding reports of the outbreak at Deerfield:

19. Deerfield – We have received multiple reports of a severe outbreak at Deerfield Correctional Facility. Please provide us with (a) the most current testing data available for this facility, including the date(s) of testing, (b) Deerfield's plans for containing and treating those affected by this outbreak. We are particularly concerned about, and interested in any documents addressing plans to handle this outbreak in, the geriatric unit in this facility. As an item (c), One of our volunteers has also had difficulty reaching James H. Dillingham, III, whose concerns regarding his insufficient access to medical treatment we shared with you on July 28. We would appreciate any updates you can provide on his status or condition, and any assistance you can provide in ensuring our request for a legal call with him is fulfilled.

Defendants responded on September 16, describing the separation measures being taken throughout the facility, but with no response to the specific plans to handle the outbreak in the geriatric unit. See Exhibit G.

Unfortunately, it is apparent from the current outbreak that the measures described in the August 11 and August 12 responses were either insufficient or not actually occurring. Defendants failed to give adequate consideration to the serious concerns raised by Mr. Dillingham and Mr. Mosley. It is unclear whether the declaration sent on August 12 was ever considered, due to the lack of response to the concerns raised therein. Since raising these concerns, Plaintiffs have received no additional documentation demonstrating Deerfield's compliance with the Settlement beyond the affidavit from Deerfield Warden Tammy Williams. See Exhibit H.

Deficiencies in Deerfield's Compliance with the Settlement

By way of this Notice, we are providing two new affidavits, one from Mr. Dillingham, and another from Mr. Askia Asmar, who is also incarcerated at Deerfield. See Exhibits C and A, respectively. We are also providing Mr. Dillingham's initial declaration, dated July 22, and the declaration from another individual incarcerated at Deerfield, dated August 5, which was first sent to Defendants on August 12.¹ See Exhibits B and D. These men describe medical conditions putting them at significant risk for COVID-19, as well as several other conditions that violate the Settlement and pose a substantial risk to the individuals incarcerated at Deerfield. Defendants' cursory assurances that precautions are being taken are inadequate given the conditions described in these declarations.

Plaintiffs hereby identify the following areas of substantial non-compliance with the Settlement occurring at Deerfield Correctional:

1. Failure to Prioritize Grievances Alleging Delay in Medical Assessment or Treatment Related to COVID-19

The Settlement requires Defendants to

prioritize for review any grievances alleging delay in medical assessment or treatment related to COVID-19, as well as any grievances regarding failure to abide by COVID-19-related policies and protocols, such as deficiencies in personal protective equipment ("PPE"), sanitation, or access to personal hygiene or cleaning supplies . . . For purposes of this agreement, "grievance" includes both informal complaints and regular grievances. If an inmate complains of symptoms related to COVID-19, a supervisor should meet with the inmate immediately to initiate the process of referring the inmate to a medical provider for screening.

Defendants have repeatedly requested that incarcerated people file grievances and make specific complaints about their treatment. The inadequate medical attention demonstrated in the attached

¹ To maintain this individual's confidentiality, we will refer to this declaration as "The August 5th Declaration."

declarations shows that the grievance process is not sufficiently addressing the serious medical concerns of those incarcerated at Deerfield.

a. Mr. Dillingham

Prison staff did not allow Mr. Dillingham to go to medical the first time he experienced possible COVID-19 symptoms. He had to file a grievance, after which a nurse and doctor treated him for “a low grade fever and allergies,” and prescribed Benadryl and Sudafed. Ex. B. ¶ 10.

On or about August 17, Mr. Dillingham began to suffer from tightening of his chest and breathing difficulties. He was only prescribed Tylenol despite his history of respiratory and cardiac issues, including plans to surgically implant a heart monitor. Ex. C ¶ 3. Two weeks later, Mr. Dillingham was

suffering chest pains, difficulty breathing and increased heart rate. I took a nitroglycerin which had been prescribed to me. I lost consciousness and fell to the floor. I was told my blood pressure fell to 67 over 41. Approximately two hours later, I was at Southampton County Hospital.

Ex. C ¶ 7. Mr. Dillingham’s previously voiced concerns about COVID-19 safety were unfortunately borne out when he tested positive for COVID-19 at the hospital. Despite Mr. Dillingham’s earlier grievances and his fragile medical condition, upon returning to Deerfield he

was placed in solitary confinement where I remained until on or about September 13th. Twenty minutes after my arrival, I was rushed to medical with breathing difficulty. I was given Pedialyte.

In solitary, I had no access to clean clothes and bedding was changed after a week in the cell. There was no hand sanitizer and I had to request soap and toilet paper which was brought to me.

Ex. C ¶¶ 10, 12. After a few days in a segregated housing cell, Mr. Dillingham began to have trouble breathing again. He could not alert prison staff because the cell had a soundproof door. By chance, a nurse walked by and saw him lying on the floor. She treated him with decongestant and expectorant. Ex. C ¶ 13. Treatment did not improve once Mr. Dillingham left solitary confinement. In his new unit, designated as a COVID-19 “Red Zone,” he reports that

Many are too ill to move out of bed and only on or about September 14 did nurses start checking their temperatures and oxygen after some of us complained that those who are bedridden were being ignored.

Ex. C ¶ 26.

b. Mr. Asmar

Mr. Asmar suffers from terminal liver and lung cancer and is supposed to receive monthly chemotherapy at MCV hospital. He also has diabetes, hepatitis C, and high blood pressure. He did not receive chemotherapy at his August appointment because prison staff forgot to schedule his preliminary MRI/CT scan. He tested positive for COVID-19 after being housed with COVID-19 positive individuals upon returning from the hospital.

Mr. Asmar has done as requested and gone through the proper channels before.

I have done approximately 15 medical request forms. Medical refuses to give me any information about my medical appointments with MCV. On June 11, I asked to see a doctor because of extreme pain in my area where cancer had been removed from my liver. I was told to speak to MCV. That is the typical response, I have learned to distrust the medical staff here. I am usually told to contact MCV which of course I cannot do.

Ex. A ¶ 13. Prison staff have not responded to his requests and continue to inadequately address Mr. Asmar's COVID-19- and cancer-related concerns. Since contracting COVID-19, Mr. Asmar has begun experiencing "sweats, diarrhea, and body aches. I am extremely tired. They have given me aspirin. They check my temperature twice daily." Ex. A ¶ 16. He is also frightened that he will miss his medical appointments for cancer treatment this month as well because he is COVID-19 positive. Ex. A ¶ 19.

Despite both Mr. Dillingham and Mr. Asmar attempting to navigate the grievance process to access adequate medical care, both individuals have fallen ill with COVID-19, and fear their conditions will worsen. Based on this failure to appropriately prioritize their medical grievances and provide them with necessary treatment in response to those grievances, Defendants are failing to meet their obligations under the Settlement.

2. Failure to Restrict Movement of Staff and Transfer of Inmates

The Settlement requires that Defendants

continue to restrict the movement of staff from facility-to-facility and building-to-building within facilities, to the greatest extent possible, to minimize the risk of virus transmission by staff. Defendants shall also continue to restrict the transfer of inmates from facility-to-facility unless necessary to transport an inmate for security reasons and/or a pending court appearance.

The August 5th declaration describes Defendants' continued non-compliance with these requirements:

Correctional staff move within the same building between two pods. Nurses move from building to building within the facility. On July 23, 2020, staff from all over Deerfield came to our pod for a shakedown. This took about four hours during which we had to stay outside while the staff looked through all our stuff.

Ex. D ¶ 16. The declaration also noted that “approximately 40 individuals were moved from Deerfield within the last month or so.” Ex. D ¶ 17. In Mr. Dillingham’s second declaration, dated September 18, Mr. Dillingham even recounted how, despite the ongoing pandemic, prison staff allowed 12 outsiders into Deerfield for a tour:

I believe this latest COVID outbreak may be the result of a tour of outsiders given at Deerfield on or about August 14 because about ten days later many of us started getting sick . . . [t]he tour was of approximately twelve people from outside the facility, accompanied by Capt. Clark and another officer.

Ex. C ¶¶ 15-16. Prison staff initially denied to Mr. Dillingham’s son that any tour occurred, but later told him that “the tour was for potential employees and would not happen again.” Ex. C ¶ 17.

Prison staff also continue to mix COVID-19 positive and negative individuals. *See* Ex. C, ¶ 31 (“[t]hey just move people back and forth intermingling the COVID positive with the COVID negative”); Ex. A ¶ 19 (“[t]hey have moved us back and forth, mingling positive patients with negative which has exacerbated the conditions here.”) Mr. Asmar’s personal experience shows the disastrous consequences of this practice. Mr. Asmar tested negative upon returning from his hospital visit but was housed with COVID-19 positive individuals. He contracted COVID-19 as a result. Ex. A ¶ 9-12.

Based on these sworn accounts, Defendants are failing to adequately restrict movement of staff and the incarcerated population within the facility, likely contributing to the outbreak there.

3. Failure to Take Sufficient Hygiene and Sanitation Measures

The Settlement provides that Defendants will

continue providing all inmates with enhanced access to showers and handwashing opportunities, as well as providing up to two bars of soap per week, free of charge. In accordance with their existing COVID-19 sanitation plan, Defendants shall also continue to require high interval sanitation of all equipment of common usage at all facilities, such as tables and chairs, telephones, video screens, gym equipment, bathrooms, vending machines, microwaves, laundry machines, keyboards, remote controls, and doors. Defendants also agree to continue providing access to cleaning supplies for each housing area, including in quantities sufficient for each inmate to clean and disinfect the floor and all surfaces of their housing unit or cell.

Defendants fall short of these requirements as well. According to the August 5th Declaration,

I occasionally have access to a sink a soap for handwashing. I am provided one bar of soap per week. Soap is not regularly changed in the dispensers in the bathrooms. It is not always available.

Ex. D ¶ 8. This individual disturbingly noted that he must “beg” for hand sanitizer to be replenished twice weekly. Ex. D ¶ 10. Further, the hand sanitizer is not alcohol based. *Id.* Although both the

August 5th Declaration and Mr. Dillingham noted that prison staff laundered bed linens twice weekly, Mr. Dillingham indicated that this only began on June 22. Ex. B ¶ 17.

Further, all three men report that social distancing is impossible in their pods. *See* Ex. D ¶ 2; Ex. B ¶ 2; Ex. A ¶ 3.

Mr. Dillingham described the conditions in his segregated housing cell as of early September, where he was sent after testing positive for COVID-19 upon returning from the hospital to be treated for chest pains, difficulty breathing, and increased heart rate:

I returned to Deerfield and was placed in solitary confinement where I remained until on or about September 13th. Twenty minutes after my arrival, I was rushed to medical with breathing difficulty. I was given Pedialyte.

Solitary confinement is in an insect-infested, filthy building away from the other buildings. I was alone in my cell which has a toilet and shower. There are eight other COVID positive individuals in solitary who do not have access to a shower.

In solitary, I had no access to clean clothes and bedding was changed after a week in the cell. There was no hand sanitizer and I had to request soap and water which was brought to me.

There is a soundproof door on the solitary cell and nobody could hear me if I had a medical emergency. On or about two days into solitary, I was on the floor struggling to breathe. By chance, Nurse Wyche was walking past and saw me on the floor. She gave me some decongestants and expectorant, not prescribed, and returned again at midnight and 4 AM again. On or about three days later, the decongestant and expectorant were prescribed.

Staff forgot to bring my meals on the first day. Meals were brought sporadically. I usually got two meals a day but they were usually not edible. They neglected my dietary restrictions. The food I purchased was never brought to me.

Ex. C ¶¶ 10-14.

Based on these sworn accounts, Deerfield is failing to meet the hygiene and sanitation obligations under the settlement.

4. Failure to Post Appropriate Signage and Updates

The Settlement requires Defendants to

continue to educate inmates on the COVID-19 pandemic by providing information about the pandemic, symptoms, virus transmission, and how to protect oneself from the virus. VDOC staff shall continue to post signage and information in common areas that provide (1) general updates and information about the COVID-19 pandemic; (2) information on how inmates can protect themselves from contracting COVID-19; and (3) instructions on

how to properly wash hands. Among other locations, signage must be posted in every housing area.

According to the August 5th declaration, as of that date the declarant had “received no communications or education regarding COVID from prison staff.” Ex. D ¶ 4. In his most recent declaration, Mr. Dillingham described how these deficiencies persisted:

It was not until August 18 that placards (for social distancing) wre [sic] placed on the floor every 4-6 feet.

It was not until on or about August 16 that announcements about wearing masks began.

It was not until on or about August 17 that COVID informational posters were put up on the walls throughout the facility.

Ex. C ¶¶ 18-20. Notably, Mr. Dillingham’s assertions contradict Defendants’ responses from August 11, in which they asserted that “markers have been placed on the floors in the dayrooms to maintain safe social distancing” and “[s]ocial distancing posters and memoranda are posted in the housing units and other common areas.”

Based on these sworn statements, Defendants are failing to post proper signage and updates to ensure the incarcerated population is best able to curtail spread of COVID-19.

5. Failure to Ensure that Prison Staff Wear Proper PPE

The Settlement requires that Defendants will

continue to ensure that all correctional staff are informed about the types of PPE required to perform the various staff functions; the proper donning, removing, and disposal of PPE; the appropriate receptacles for disposal of PPE; and an explanation of the related rationale.

Mr. Dillingham first raised concerns about prison staff use of PPE in his July 22 declaration. These deficiencies have persisted into August despite Defendants’ assurances that “wardens have been directed to ensure mask compliance.” The August 5th declaration describes how “[c]orrectional staff do not wear face masks regularly and nobody wears gloves. Nurses are not wearing masks.” Ex. D ¶ 15. And according to Mr. Dillingham, announcements about wearing masks only began on August 16. Ex. C ¶ 19. Despite Defendants’ late July contention that “spot checks” are occurring, they appear to be inadequate to ensure compliance with their settlement obligations.

6. Failure to Provide Confidential Attorney Communications

The Settlement requires that Defendants will

continue to ensure that inmates, including those in medical isolation or quarantine, will be provided the opportunity to conduct confidential legal calls, at no cost to the inmate, through the inmate telephone system, and shall continue to require that the facility disable the automatic recording system to ensure that the legal call is not recorded.

While Mr. Dillingham was in isolation, prison staff denied him the opportunity to contact a volunteer attorney working with Plaintiffs' counsel: "[o]n or about September 9, I requested to contact Ms. Larkin and Lt. Morgan refused to allow me to make a phone call." Ex. C ¶ 23. Plaintiffs also raised their difficulties and delays scheduling calls with Mr. Dillingham in their September 9 investigation request regarding Deerfield. Based on these difficulties, which are troublingly not isolated to Deerfield, Defendants are not complying with their obligations to ensure access to confidential legal calls, which remain vital to Plaintiffs' ability to determine what is occurring in VDOC facilities.

Most significantly of all these deficiencies is that both Mr. Dillingham and Mr. Asmar describe indifference to their medical conditions and treatment. Mr. Dillingham repeatedly attempted to bring attention to his condition; his concerns were dismissed until he passed out and had to be taken to the hospital. Mr. Asmar suffers from terminal cancer; he both missed his most recent chemotherapy appointment and contracted COVID due to the prison's incompetent response. Nonetheless, Plaintiffs' concerns regarding insufficient medical care were dismissed as inaccurate in July. Perhaps if the concerns raised by Plaintiffs in July and August led to more serious considerations of the deficiencies in Deerfield's response, rather than a recitation of the inadequate measures it was taking, the current outbreak could have been greatly reduced, or even prevented entirely.

The Need for Additional Resources and Assistance

Plaintiffs strongly urge Defendants to allocate additional resources, staffing, and outside assistance to address the burgeoning infection rate at Deerfield and other facilities. It is clear that VDOC's current infection control measures are either inadequate or are simply not being followed, jeopardizing the safety of thousands of people in their custody. Bringing in outside expertise in infection control in carceral settings, along with additional oversight and on-the-ground management by the Department, may be necessary to stem the current crisis.

Additionally, the lack of staff capable of prioritizing the review of individuals eligible for the Early Release Program means that hundreds of vulnerable individuals are still simply stuck in the bottleneck, unable to get released. Allocating more staff to expedite the review and release of individuals with serious medical concerns could very well prevent needless deaths.

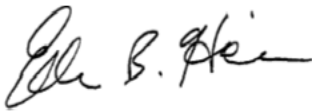
Finally, the Settlement requires that "Plaintiffs' counsel shall have reasonable access to the documents and information necessary to properly evaluate whether Defendants are complying with the provisions of this Agreement." Given the urgency of this pandemic and dire consequences for incarcerated individuals, we are simply not getting access to information quickly enough to remedy violations before they have a disastrous impact on the incarcerated population. Plaintiffs' Counsel also has no means to verify the cursory compliance information provided by VDOC, or to access any information in a timelier manner. As noted above, we have had difficulties and delays even connecting via telephone with incarcerated individuals who have reached out to us regarding settlement deficiencies.

Accordingly, we request the introduction of an independent expert who will have full access to VDOC facilities and documents to evaluate the adequacy of their precautions and safety measures and suggest specific, targeted actions to improve infection control in both individual facilities and across VDOC as a whole.

According to paragraph 5 of the Settlement, Defendants have 5 calendar days to provide a response to this notice, and the parties must confer informally on these issues 5 days after receiving that response. Plaintiffs await Defendants' response and availability to confer no later than September 27, 2020.

Sincerely,

DATE: September 22, 2020

A handwritten signature in black ink, appearing to read "Eden B. Heilman".

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Exhibit A

DECLARATION OF ASKIA ASMAR

I, Askia Asmar, make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief

1. My name is Askia Asmar. I am 67 years old, and competent to give testimony. I am currently incarcerated at Deerfield Correctional Center. My Offender ID number is 105967.
2. I have been at Deerfield since March 2018. Prior to that I was in Henrico County. I was sentenced to 6 years; however, a judge took off 6 months of my sentence because I turned in a handcuff key that I recovered which had been copied by an inmate.
3. I reside in a dormitory style unit; with bunk beds, approximately 3 – 4 feet apart. It is not possible to stay 6 feet from each other. This is a geriatric unit; all of are over 50 and many have serious underlying medical conditions. My health is very poor as I have terminal cancer so I do my best to stay away from people.
4. My mandatory release date is August 2021; however I have recently been told I have a parole date of 12/16/20.
5. I suffer from liver and lung cancer; I have diabetes, HepC, and high blood pressure. I take several medications and Ensure three times daily.
6. I receive chemotherapy for my cancer; I have been told this is palliative. I receive chemo once every 28 days at MCV Hospital
7. On August 31, I went for chemo and the nurse asked me why I did not come in for my MRI/CT on August 28. I was not made aware of that appointment. It is imperative that I receive the MRI/CT prior to chemo so medical staff knows how to proceed and how much chemo to give me. The nurse rescheduled the MRI/CT and my next chemo. I do not know if prison staff will comply this time.
8. When I came back from the hospital, I should have been quarantined for 14 days but they only quarantined me for 4 days.
9. I was COVID tested on or about September 1 and again on or about September 8. I was not told the results. But on September 11, I was told that I was being moved to another building and I was moved. Others from my pod were moved on September 10, but I was not on that list, although I should have been. The unit manager's list and the nurse's list were different;

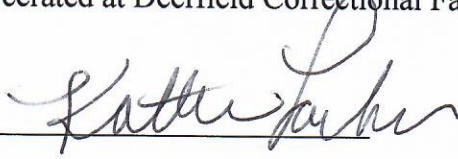
I was moved on September 11 when the nurse asked why I had not been moved because I was COVID negative and should have been removed from the COVID positive individuals.

10. Two people from my building died in September and two in the building I was moved to on September 11 also died; prison staff is blaming their deaths on other medical conditions, but I am sure it is COVID.
11. Germicide was available in my former building; however in the building I was moved into, I had to ask for germicide.
12. I was tested again after being moved and told yesterday that I am COVID positive. So I have been moved again from a Yellow Zone building that I was sent to on September 11 to a Red Zone. I am now back in Red Zone with others who have tested COVID positive. They moved about seven others back to a Red Zone. There are about 90 people in this Red Zone pod.
13. I have done approximately 15 medical request forms. Medical refuses to give me any information about my medical appointments with MCV. On June 11, I asked to see a doctor because of extreme pain in the area where cancer had been removed from my liver. I was told to speak to MCV. That is the typical response. I have learned to distrust the medical staff here. I am usually told to contact MCV which of course I cannot do.
14. I sent an inmate request form 6/29/2020 to the warden regarding a COVID release; I received a response stating that I had been provided information in April about the COVID procedures.
15. Dr. Harris asked me if anyone in my family could read and write and told me to get my family to do a petition and that medical doesn't decide who gets released.
16. Since the weekend, I am experiencing sweats, diarrhea, and body aches. I am extremely tired. They have given me aspirin. They check my temperature twice daily.
17. Mr. Joe Morrison sent a letter on June 1 to Ms. Williams the warden, on my behalf because of my terminal illness. Ms. Williams forwarded it to me which is the source of my information.
18. I am incarcerated for a non-violent offense. I have a niece who is a nurse who is willing and able to take me in to live with her in Richmond. I have provided Ms. Larkin with her name, address and telephone number.

19. I am extremely frightened that I will miss my medical appointments for cancer treatment this month because I am COVID positive. The medical staff here has been neglectful of my cancer and is incompetent in handling COVID within the facility. They have moved us back and forth, mingling positive patients with negative which has exacerbated the conditions here. I can only pray. That's all I have.

I, Kathleen Larkin, reviewed this agreement with Askia Asmar, and received his verbal assent to all of its terms on September 16, 2020 at approximately 1:20pm during a telephone call while he was incarcerated at Deerfield Correctional Facility.

Signed: _____



Date: _____

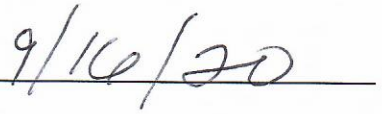


Exhibit B

DECLARATION OF JAMES H. DILLINGHAM, III

I, James H. Dillingham, III, make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief

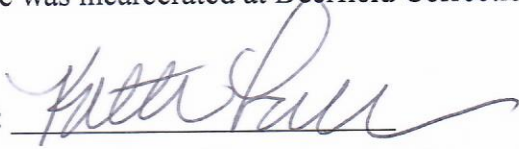
1. My name is James H. Dillingham, III. I am 52 years old, and competent to give testimony. I am currently incarcerated at Deerfield Correctional Center. My Offender ID number is 1410474.
2. I have been at Deerfield since 2014. I reside in a dormitory style unit; with bunk beds, approximately 3 – 4 feet apart. It is not possible to stay 6 feet from each other. This is a geriatric unit; all of us are over 50 years old.
3. I have a history of cardiac and respiratory health issues. Cardiac and/or respiratory syncope events are increasing in frequency. I have been prescribed nitroglycerin and a heart monitor; however I still have not received the heart monitor. On or about early July I was told I would be scheduled for a surgically implanted heart monitor by the end of the week. Now I am being told it will be scheduled over the next few months.
4. I suffer from various digestive diseases, including diverticular disease, duodenitis disease, and gastroesophageal reflux disease.
5. My liver has a lobular contour suggesting cirrhosis. I have osteoarthritis in my neck, cervical and lumbar regions of my spine; it was been described as gross abnormalities.
6. I have applied for a COVID conditional pardon. The chief physician at Deerfield has told me that they will not release anyone early due to medical concerns. He stated "we aren't letting anyone go".
7. COVID information was posted on the walls, but it not updated; most of my knowledge of COVID comes from outside, including family members, and information they provide to me from internet searches. I have attempted to educate my fellow inmates by posting information on my personal white board, which was confiscated because of that.
8. I was tested for COVID on April 22, 2020. I received a negative result approximately 2 - 3 weeks later.
9. My housing has not changed due to COVID. I know some have tested positive for COVID; I think about 80 tested positive in April and I believe about 20 or more after that. They were moved from my building but I do not know to where.

10. I have experienced some possible covid symptoms, including upper respiratory symptoms and a fever. I filed a grievance because I was not allowed to go to medical. As a result, a nurse was sent to me, who told me I had a low grade fever and allergies. I was given Benadryl and Sudafed. I saw a doctor who continues to treat me for what has been deemed allergies.
11. I am allowed to shower/bathe anytime up to 11pm each day. I am given one small size soap every 3 – 4 days.
12. I have been told there are over 100 people being housed in the gymnasium which is attached to the main administrative building. Some say there are 200 men. They are sleeping on cots on the gym floor. Anyone who goes out for any reason from the dormitories is housed in the gymnasium for two weeks. I am told that persons going in or out are not always being COVID tested before they are put back into the dormitory; or before they are sent out. There is no quarantining and no social distancing.
13. Common items are cleaned by inmates about four times daily. I am not sure what is being used to clean, some sort of pink chemicals that are watered down.
14. I am provided with cleaning products for my housing area, but I do not know what the products are; the same as what is used for the common items.
15. I have two cloth masks. Today, just before my phone call with Kathleen Larkin, I was given two disposable masks. I wear a mask except when sleeping, eating or drinking.
16. I have access to clean clothing every day.
17. Recently I have been given two sheets and one pillow case each week. Bedding was not being laundered twice weekly until after my phone conversation with Kathleen Larkin on June 22, 2020. Now it is being laundered twice weekly.
18. Correctional staff wear face masks but remove them to talk in the pod; they do not wear masks in the booth. Nurses are not wearing masks.
19. Correctional staff move from building to building at the facility and some have been transferred to Sussex.
20. On or about June 2020, approximately twenty individuals were moved out of my building. I do not know but I think they were sent to St. Brides.
21. I am very concerned about my health and the lack of medical attention I am receiving. The inability to social distance is a major concern. I have seen nobody released pursuant

to the COVID Early Release Plan and I do not believe Deerfield is following the early release plan. I have been told that they do not intend to release anyone early.

I, Kathleen Larkin, reviewed this agreement with James H. Dillingham, III, and received his verbal assent to all of its terms on July 22, 2020 at approximately 3:30pm via telephone call while he was incarcerated at Deerfield Correctional Facility.

Signed: _____



Date: _____

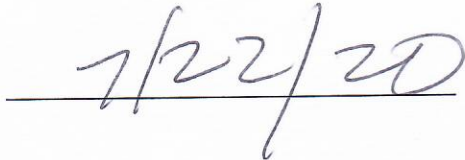


Exhibit C

DECLARATION OF JAMES H. DILLINGHAM, III

I, James H. Dillingham, III, make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief

1. My name is James H. Dillingham, III. I am 51 years old, and competent to give testimony. I am currently incarcerated at Deerfield Correctional Center. My Offender ID number is 1410474
2. I have been at Deerfield since 2014.
3. I have a history of cardiac and respiratory health issues. On or about July 2020 I was told I would be scheduled for a surgically implanted heart monitor by the end of the week. Then I was told it would be scheduled over the next few months. I suffer from digestive diseases including diverticular disease, duodenitis, and gastroesophageal reflux disease.
4. My liver has a lobular contour suggesting cirrhosis. I have osteoarthritis throughout my spine.
5. I was told my bloodwork indicated a vitamin B deficiency, low red cells and hemoglobin. Last month I was told my bloodwork is fine and no further testing is needed. I was told I needed a colonoscopy; last month I was told no further testing. There has been nothing further on the heart monitor either. On or about August 15, Dr. Harris told me that I will have no further testing or medications.
6. On or about August 17, I was approached by the Assistant Warden who was patrolling my pod. I had tightening of my chest and breathing difficulties. Tylenol was prescribed.
7. On or about September 2, I was suffering chest pains, difficulty breathing and increased heart rate. I took a nitroglycerin which had been prescribed to me. I lost consciousness and fell to the floor. I was told my blood pressure fell to 67 over 41. Approximately two hours later, I was at Southampton County Hospital.
8. While at the hospital, I was in ICU. I received a number of blood tests and an ultrasound of my heart. Ms. Trina, NP, told me they wanted to do a catheterization on my heart, but I refused unless I saw a doctor. At no time did I see a doctor. I saw nurses and an ultrasound technician.
9. I was discharged on or about September 4; that same day, another individual from Deerfield who was also at the hospital died. His name is Mr. Cole and he was in the re-entry program. A second inmate also died at that hospital, but I do not know the date. He is Mr. Otis.

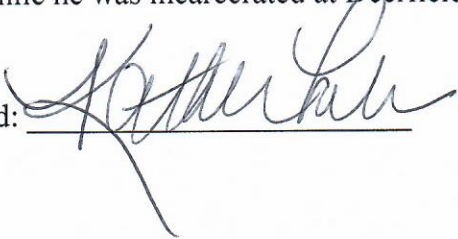
10. I tested positive for COVID while at the hospital. I returned to Deerfield and was placed in solitary confinement where I remained until on or about September 13th. Twenty minutes after my arrival, I was rushed to medical with breathing difficulty. I was given Pedialyte.
11. Solitary confinement is in an insect-infested, filthy building away from the other buildings. I was alone in my cell which has a toilet and shower. There are eight other COVID positive individuals in solitary who do not have access to a shower.
12. In solitary, I had no access to clean clothes and bedding was changed after a week in the cell. There was no hand sanitizer and I had to request soap and toilet paper which was brought to me.
13. There is a soundproof door on the solitary cell and nobody could hear me if I had a medical emergency. On or about two days into solitary, I was on the floor struggling to breathe. By chance, Nurse Wyche was walking past and saw me on the floor. She gave me some decongestants and expectorant, not prescribed, and returned again at midnight and 4am again. On or about three days later, the decongestant and expectorant were prescribed.
14. Staff forgot to bring me meals on the first day. Meals were brought sporadically. I usually got two meals a day but they were usually not edible. They neglected my dietary restrictions. The food I had purchased was never brought to me.
15. I believe this latest COVID outbreak may be the result of a tour of outsiders given at Deerfield on or about August 14 because about ten days later many of us started getting sick including Mr. Cole, who, I believe, Dr. Harris refused to medically treat. My symptoms included sore throat, headache and chills.
16. The tour was of approximately twelve people from outside the facility, accompanied by Capt. Clark and another officer.
17. My son contacted Rose Durbin to inquire why a tour was being conducted during a pandemic. She originally denied the tour. When faced with evidence she told my son that the tour was for potential employees and would not happen again.
18. It was not until August 18, that placards (for social distancing) were placed on the floor every 4-6 feet.
19. It was not until on or about August 16 that announcements about wearing masks began.
20. It was not until on or about August 17 that COVID informational posters were put up on the walls throughout the facility.

21. Recreation equipment has been shared between two pods; it is unclear how or when the equipment is cleaned.
22. On or about August 23, the prison staff declared our 1100 building a Zone Red, and told us a virus was going around, but said it was not COVID. Then they changed it to Yellow on the same day.
23. On or about September 9, I requested to contact Ms. Larkin and Lt. Morgan refused to allow me to make a phone call.
24. On or about September 14, I was moved out of solitary confinement to 1000 Pod which is Red Zone. There are about 90 of us, all COVID positive.
25. We have to stand in line every 2 – 3 hours for temperature and oxygen checks. The nurses write it all down, by bed number so some of the names are incorrect. Some have died but their belongings are still on their beds.
26. Many are too ill to move out of bed and only on or about September 14 did nurses start checking their temperatures and oxygen after some of us complained that those who are bedridden were being ignored.
27. I believe 1000, 1100 and 1200 are all Zone Red. I am unsure about 500 and 600. They keep moving people around, mingling sick and well, increasing the COVID positive population.
28. National Guard is on site today, testing only those who have not tested positive in the last 90 days.
29. The current procedure is that they are moving COVID positive out of red zone back to general population after 14 days, without further testing.
30. Among the people I personally know, Mr. Garcia died about three weeks ago and his belongings are still at his bunk. This month the aforementioned Mr. Cole and Mr. Otis died at the hospital. Mr. Offutt died on September 11th; he was to be released in about four months. Mr. Ballard, an older gentleman, also in re-entry, died at the hospital this week. There are many others in other pods who have died.
31. I believe that many more will die from COVID at Deerfield because of the incompetent handling of the pandemic and the lack of attention to our medical conditions. There seems to be a callous disregard for us by many and a conscious disregard by others whose job it is to care for us medically. The facility is getting worse. Conditions are inhumane. There is no plan or ability to fight COVID here. They just move people back and forth intermingling the

COVID positive with the COVID negative. They have given up and we are dying as a result, including many in the re-entry program with minimal time left to serve on their sentences.

I, Kathleen Larkin, reviewed this agreement with James H. Dillingham, III, and received his verbal assent to all of its terms on September 16, 2020 at approximately 2:30pm via telephone call while he was incarcerated at Deerfield Correctional Facility.

Signed: _____

A handwritten signature in dark ink, appearing to read "Kathleen Larkin", written over a horizontal line.

Date: _____

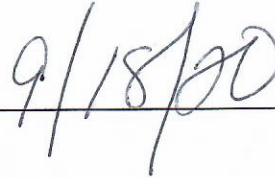
A handwritten date "9/18/20" in dark ink, written over a horizontal line.

Exhibit D

DECLARATION OF [REDACTED]

I, [REDACTED] make the following declaration based on my personal knowledge and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief

1. My name is [REDACTED] I am 59 years old, and competent to give testimony. I am currently incarcerated at Deerfield Correctional Center. My Offender ID number is [REDACTED]
2. I have been at Deerfield since [REDACTED] Prior to that, I was housed at [REDACTED] since my arrest on [REDACTED] I reside in a dormitory style pod unit; with bunk beds, approximately 18 inches apart. It is not possible to stay 6 feet from each other. This is a geriatric unit; all of us are over 50 years old. There are 99 men in my pod.
3. I have high blood pressure and high cholesterol; I am taking two prescriptions: Lipitor and Losartin.
4. I have received no communications or education regarding COVID from prison staff. There is some information about COVID posted on the walls.
5. A counselor in our building tested positive for COVID in April. Thereafter, everyone in my pod was tested for COVID in April, 2020. Nobody in my pod was positive. Results were received April 23, 2020. 83 inmates who were positive within Deerfield were housed in the gym.
6. My housing has not changed due to COVID. We have not been tested since the April testing.
7. I have experienced some possible COVID symptoms, including shortness of breath. This was in early April. I told a nurse and was given oxygen treatment.
8. I am allowed to shower/bathe every day. I occasionally have access to a sink and soap for handwashing. I am provided one bar of soap per week. Soap is not regularly changed in the dispensers in the bathrooms. It is not always available.
9. Common items are cleaned by inmates about three times daily but this is not monitored. As of yesterday, the cleaning product being used is a pink colored cleaner that they call germicide. I have no clue what is in it.
10. Hand sanitizer is replenished twice weekly. We have to beg for it. It is not alcohol based.

11. If I request, I am provided with a spray bottle to clean. I have no clue what the cleaning product is but it is created in the chemicals room. It's the pink liquid they call germicide.
12. I was given two disposable masks last month. We were told that was a one time deal. They are no longer available. I have two cloth sneeze guards; one is taken to be cleaned every night. We are supposed to wear masks in the day area, but not everyone is doing this.
13. I have access to clean clothing every day. You can wash your clothing with cold water; or you can send it out. Most don't like to send it out because it smells like chemicals when it is returned.
14. Bedding is getting washed every other day.
15. Correctional staff do not wear face masks regularly and nobody wears gloves. Nurses are not wearing masks.
16. Correctional staff move within the same building between two pods. Nurses move from building to building within the facility. On July 23, 2020, staff from all over Deerfield came to our pod for a shakedown. This took about four hours during which we had to stay outside while the staff looked through all of our stuff.
17. I estimate approximately forty individuals were moved from Deerfield within the last month or so. I do not know for certain but they may have been moved to St. Bride's.
18. I believe I am eligible for early release. On May 12, 2020, I along with others, did what we were instructed to do which was fill out a form regarding early release. I was not eligible at that time, but would be eligible on May 19, 2020. However, I was then told that I could not resubmit the early release request until a new executive order came out. On June 1, 2020 I resubmitted but I have heard nothing on this.
19. I am very concerned about my health and the health of everyone here. I am concerned because staff do not wear masks. I am concerned because of my lack of access to hand sanitizers and inability to socially distance. I have been in the re-entry program for two and a half years and have met all the requirements. I have serious, chronic underlying medical conditions: high blood pressure and high cholesterol.

I, Kathleen Larkin, reviewed this agreement with [REDACTED] and received his verbal assent to all of its terms on August 5, 2020 at approximately 2pm via telephone call while he was incarcerated at Deerfield Correctional Facility.

Signed: _____

Date: _____

8/5/20

Exhibit E



III. Requests of July 28, 2020

10. Deerfield –

a. We ask that you investigate and respond to the concerns raised by Joshua Moseley in his filing with the Court (ECF No. 33). Specifically, we note the following alleged deficiencies related to the settlement agreement: (1) inadequate access to clean water, which would prevent compliance with the hygiene and sanitation requirements in paragraph 3(f) of the settlement; (2) the inability to maintain adequate social distancing within the facility, specifically the overcrowding of the facility and double occupancy use of single occupancy cells; and (3) individual reports meeting all requirements for early release, but does not appear to have been reviewed.

b. In addition to the filing from Joshua Moseley, we have been contacted by several individuals also incarcerated in Deerfield, raising similar concerns. We have attached a declaration from James H. Dillingham, III, who states, among other concerns, that: (1) his COVID-like symptoms have been dismissed as allergies, (2) correctional staff, including nurses, are not wearing masks, (3) he has been told Deerfield does not intend to release anyone pursuant to the Early Release Plan, and (4) he is unable to maintain social distance in his housing unit.

Response: The warden has been collecting information for a comprehensive response to this inquiry. Here is the information gathered to date:

1. The 2019 Annual Drinking Water Quality Report for Deerfield reported no violations, and no contaminants were detected at a level higher than the maximum contaminant level (MCL) set by the EPA. This report corresponded to a monitoring period from January 1, 2015 through December 31, 2019. Based on this continuous monitoring and testing, the water at Deerfield is potable and safe for consumption and use.
2. The total bed capacity at Deerfield Men's Work Center is 216. At present, there are 140 offenders assigned to this facility. The facility is operating well under capacity, and social distancing is encouraged and enforced. In terms of maximizing social distancing at both Deerfield Men's Work Center and Deerfield Correctional Center, the following precautions have been implemented:
 - Some offenders have been authorized to keep their medications rather than receive them through the usual pill line, in order to promote distancing by cutting down on the number of individuals who are required to stand in line.
 - Each housing unit has separate recreation, and separate recreation equipment is "assigned" to each housing unit to prevent cross-contamination. Equipment is cleaned and disinfected after each recreation event.
 - All classes and congregate religious activities remain cancelled to minimize contact between offenders.
 - Social distancing posters and memoranda are posted in the housing units and other common areas.
 - Offenders have been instructed to sleep head-to-toe on their bunks, and not to sit on anyone else's bed.
 - Offenders eat their meals in the housing units and do not share utensils, cups, containers, or trays.
 - Markers have been placed on the floors in the dayrooms to maintain safe social distancing.
3. With respect to the number of inmates from Deerfield who have been approved for Early Release, I will provide that information under separate cover.
4. As specific to Offender Dillingham, I asked the medical department to consult his records to ensure that he was being appropriately monitored. Although I am not presently authorized to share his confidential medical information, I can verify that he has been seen by the medical department on 17 occasions since March 3, 2020. He was also scheduled for an appointment today, August 11. The medical department assessed him for possible risk factors relative to COVID-19, and determined that he was not at high risk of an adverse outcome if he were to contract the virus.

Exhibit F



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Mark R. Herring
Attorney General

202 North 9th Street
Richmond, Virginia 23219
(804) 786-2071
Fax (804) 786-1991
Virginia Relay Services
800-828-1120
7-1-1

August 12, 2020

Dear Eden:

As a follow-up to my earlier responses, I am providing the following information in response to your various requests for documents. I am also including supplemental information to my letter of August 11, 2020, regarding your requests for investigation.

I. Requests for Documents

Email of July 15, 2020:

New documents - Any new memoranda or guidance regarding COVID-19 that has been issued since your July 1 production.

Response: I am producing the following memoranda, which were issued since my previous response of August 5, 2020:

- Memorandum, "COVID-19 Inmates & Staff Awareness Communications – Edition 6: Hygiene, Sanitation and Disinfection"
- "How to Clean & Disinfect: A Quick Guide"
- "How to Clean & Disinfect: A Quick Guide" (Spanish)
- "Hygiene, Sanitation and Disinfection: Keep Our Workplace Safe!"
- "Hygiene, Sanitation and Disinfection: Keep Our Workplace Safe!" (Spanish)
- Memorandum, "COVID-19—Pandemic Response Guidance, Version 14"
- VADOC COVID-19 Response Guidance, v.14 (8/10/20)
- Memorandum, "Telemedicine Equipment Authorization"
- Memorandum, "COVID-19 Zone Movement"
- Memorandum, "SuperPak 2020"
- SuperPak Notice to Offenders
- SuperPak Notice to Family and Friends

- COVID-19 Bulletin #9
- Memorandum, “COVID-19 Medical Epidemic/Pandemic Sanitation Plan Version 9”
- VDOC Medical Epidemic/Pandemic Sanitation Plan, Version 9
- Memorandum, “Cumulative COVID-19 Questions Answers (through 08/05/20)
- VADOC Division of Operations: Cumulative COVID-19 Questions/Answers (through 08/05/2020)

Email of July 29, 2020:

Warden Affidavits: Since my letter of August 5, 2020, I received the following signed affidavits, which I am including with this response:

- Affidavit of Thomas Meyer, Warden of State Farm Enterprise Unit
- Affidavit of Dana Ratliffe-Walker, Warden of Dillwyn Correctional Center
- Affidavit of David Call, Warden of Nottoway Correctional Center

Email of August 5, 2020:

Weekly ERP numbers –We are struggling to understand the discrepancy between total numbers week to week. As we noted last week, there was a 21-person discrepancy between the sum of approvals and denials and the total reviewed reported number. We noted on the status report from this week, the totals of approvals/denials reported do add up correctly to the total reviewed, but we remain unclear as to how these numbers relate to previous weeks. If it was a simple 21-person adding error, the total reviewed this week should be 1,041, but instead you reported a total of 1,032 and a 19-person discrepancy. There seem to be two people missing, from this account, in addition to the unaccounted-for difference in totals. Please explain what went wrong with the reported numbers. It is important to us that we are receiving an accurate number of the total number of applicants reviewed. If the only way to do so is to provide us with lists of approved, denied, and otherwise-released individuals, we would agree to keep any individuals’ names & identifying information confidential.

Response: The numbers I reported last week, and this week as well, were verified by VDOC before I reported them. For the prior status reports, I was adding the reported weekly totals to the previous week’s reported totals, so there is a chance that I mis-added at some point early on in the process, resulting in the two-person discrepancy. I am confident that the numbers that were reported last week, and this week, accurately report the total number of individuals approved, the total number denied, and the total number who made it to the substantive review portion of the process (including the 19 persons who were physically released prior to being approved or denied). I will continue to verify my totals with VDOC before reporting them, to ensure that the numbers being given out are accurate.

15. Facility role in Early Release Program – At the meet and confer on July 10, defendants’ counsel agreed to look for & provide clarifying information on the appropriate role of facilities with respect to the ERP appeal form specifically, and within

the overall early review process. Please provide us with an explanation of anything you have learned, and any associated documentation.

Response: The facility's role in facilitating the Early Release Program is relatively minimal. Where needed, counselors at the facilities are helping potentially eligible offenders gather the information needed to formulate potential Home Plans. When an offender receives notification that they have been denied Early Release under the IERP, the facility makes the appeal forms available to the offender. Upon receipt of the appeal form, the facility unit head reviews the information reported and confirms that the information, as reported, is correct, by consulting CORIS or, if required, other sources of information. If the Warden determines that the inmate meets the basic qualifying criteria for consideration under the IERP, the Warden forwards the appeal form to VDOC headquarters so that the offender will be given a "second look." If the Warden determines that the inmate does not meet the basic qualifying criteria under the IERP, the Warden will so note, and return the appeal form to the offender.

16. ERP Review Range - You have previously stated that VDOC is reviewing applicants according to their release date. For every week going forward, please let us know what the approximate release date range (at least what release month) the reviewers reviewed this week.

Response: The cohort of individuals presently being screened have a release date on or before November 30, 2020.

6. **Local and Regional Jails** – Reviewing your response to this request, we would like to better understand the process for local and regional jails. What criteria are the local and regional jails using to determine "inmates on the list they wish to have released"? Was any guidance issued to these facilities about ERP? If so, please provide it to us. Are individuals who are identified by VDOC as eligible but whom the facility has not identified on their list to be released notified of this status and given the opportunity to appeal the decision? How many people have been released under this route?

Response: The Inmate Early Release Plan, as tailored to the local and regional jails, is available on VDOC's website, and—for your convenience—I am attaching a copy here. Here are the steps as outlined in that plan:

1. Offender Management Services staff will provide the Sheriff or Jail Administrator with a list of inmates held in their facility with a calculated and verified Good Time Release Date. The list will be updated bi-monthly during the period of the emergency.
2. For DOC's consideration of any state responsible inmate in a local facility, the Sheriff or Jail Administrator must provide the required inmate information from on the COVID-19 Department of Corrections Form for Early Release associated with this plan.
3. The Sheriff/Jail Administrator or designee electing to participate in the Early Release Plan will send the COVID-19 Department of Corrections Form for Early Release and a current Exemplary Good Time (EGT)/Judicial Good Time (JGT)/ Class Level Evaluation

830_F4 for identified state responsible inmates to the Director of Offender Management Services.

4. Offender Management Services staff will review the documentation and determine the state responsible inmate's eligibility.
5. Community Release Unit staff will notify the Chief P&P Officer of the supervising district to confirm the state responsible inmate's home plan when feasible.
6. The Chief P&P Officer will ensure the state responsible inmate has a viable home plan. P&P Staff will investigate and if appropriate, approve the plan.
7. Court and Legal staff will coordinate with Community Release Unit staff to set the release date for each approved state responsible inmate.
8. Court and Legal staff will generate a legal update and notify the Community Release Unit and the local correctional facility.
9. Community Release will prepare the release documents, forward the state responsible inmates release documents to the local correctional facility, and make the required notifications of the inmates pending release.
10. Local correctional facility staff will review the release documents with the state responsible inmate, obtain the inmate's signature on these documents, and return the signed release documents to the Community Release Unit.
11. Local correctional facility staff will prepare the state responsible inmate for release.
12. The ultimate eligibility decision regarding whether to release a state responsible inmate held in a local correctional facility in accordance with this plan, will be made by the Director of Corrections or his designee based on all relevant information. A copy of the release decision, pursuant to this plan, will be provided to the local correctional facility.

An appeal route is available for locally-held inmates. As documented in the attached plan, "State responsible inmates held in a local correctional facility must submit their appeal directly to the Sheriff or Jail Administrator addressed to the Director of Corrections using the State Responsible Inmate Appeal for COVID-19 Early Release form associated with this plan. The local correctional facility will document receipt of the form and forward the appropriate documentation to DOC for a determination."

I am obtaining the figure for the total number of inmates held in local jail facilities who have been approved for release under the IERP. The number of inmates who have been physically released are reported on the VDOC website, on a rolling basis. As of today, 210 inmates have been released from local correctional facilities under the IERP.

I have requested copies of any memoranda that may have been provided to local sheriffs or other local jail administrators, relative to the IERP, and if I receive any documentation, it will be provided in a supplemental response.

II. Requests for Investigation

To update my letter of August 11, 2020, and regarding your request for information from Deerfield Correctional Center, the facility has been reviewing inmate appeal forms on an ongoing basis. In an abundance of caution, the facility is reviewing appeal forms submitted by inmates, even if those inmates have not yet received notification of denial under the IERP. Appeal forms for any inmate determined to meet initial eligibility criteria were forwarded to VDOC headquarters for review. The total number of appeals reviewed at the facility-level are as follows:

Deerfield Correctional Center: 161 reviewed (49 determined to meet initial eligibility criteria; 112 determined not to meet initial eligibility criteria)

Deerfield Men's Work Center: 43 reviewed (20 determined to meet initial eligibility criteria; 23 determined not to meet initial eligibility criteria)

Deerfield Men's Work Center 2: 32 reviewed (18 determined to meet initial eligibility criteria; 14 determined not to meet initial eligibility criteria).

With respect to the complaints about staff members not wearing masks, please be advised that, per the Warden, spot checks are being completed on a regular basis. Any instances of non-compliance have been addressed and quickly corrected.

Finally, please be advised that Offender J. Moseley, who submitted the declaration to the Court to request investigation of his reported concerns at Deerfield, has not submitted any form of grievance or informal complaint since 2016. I continue to be concerned that non-party offenders are utilizing our settlement procedures as a substitute for the offender grievance process. VDOC's grievance procedures are designed to allow the institutions to quickly address offender complaints at the facility-level, and take immediate corrective action where needed. By sending their complaints through this forum, rather than institutional channels, I run the risk of being shoehorned into the role of grievance coordinator for the entire agency, for the duration of this settlement agreement.

For individuals who are submitting non-emergency declarations to you and requesting investigation, but who have not submitted any informal complaints or grievances on the issues addressed in their declaration, I would therefore like to discuss the possibility of requiring those offenders to utilize (or at least commence) the institutional grievance process in an attempt to resolve their complaints, prior to bringing them to my attention. I would be available to discuss this request all day Thursday, Friday morning from 9:00 until 11:00, and Friday afternoon from 2:30 until 4:00.

Where noted, I will continue to provide responsive materials as they are received. Please let me know if you have any questions or concerns about my responses to the above.

Sincerely,



Margaret Hoehl O'Shea
Assistant Attorney General
Counsel for Defendants

Exhibit G

From: [O'Shea, Margaret A.](#)
To: [Nicole Tortoriello](#)
Cc: [Eden Heilman](#); [Vishal Agraharkar](#); [Elliott Harding](#)
Subject: RE: Whorley v. Northam - Requests for Additional Investigation/Action - 9/9
Date: Wednesday, September 16, 2020 4:50:44 PM

To respond to your inquiry regarding Deerfield, here is the information that I have been provided:

The entire inmate population at Deerfield was tested on September 1.

Yesterday, the facility re-tested all inmates in the assisted living units (700 and 800), as well as the 900 housing unit and the infirmary. Those tests were done with rapid results testing, and so the results were returned yesterday, with a total of 22 offenders in the assisted living units testing positive (11 from the 700 unit, and 11 from the 800 unit). Those 22 offenders are being cohorted together in unit 800, with the offenders who tested negative yesterday being placed in the 700 unit.

Today, the entire offender population was re-tested, excluding only those offenders who had a recent positive test. The National Guard came in and conducted that testing, which has now concluded. Results should be back shortly, but it was not same-day testing.

All staff were tested today as well.

Deerfield is presently maintaining 4 red zones (the 800, 1000, 1100, and 1200 housing units). The rest are either yellow or green.

All housing units are on modified lockdown status, meaning that the offenders are eating in their housing units and are not allowed to be in contact with offenders in other housing units. They are allowed outside recreation, but when recreation is called, the staff leaves an open yard between the groups that are out, to make sure that they cannot get too close to each other at the fence line. (So all the odd numbered buildings are out, and then when they go in, all the even numbered buildings come out.)

The 1000, 1100, and 1200 housing units are dormitory-style, general population units. Both there, and throughout the facility, they are following the directives of having offenders sleep head-to-toe and constantly wear masks. Social distancing and masking is stressed through periodic verbal announcements to the population. Posters and memoranda to the offender population, emphasizing the importance of hand hygiene, masking, and social distancing, are posted throughout the facility. Offenders have unrestricted access to sinks for hand washing; soap dispensers are regularly refilled and offenders can wash their hands as often as they would like.

Presently, the gymnasium has been designated as a potential "spill over" infirmary area, in the event that there are offenders who require near-constant medical monitoring, but the infirmary beds are all full. The gym has not yet needed to be opened for this purpose.

Medical staff conducts temperature checks on the red zone inmates multiple times over the course of a day.

The administration ordered additional liquids and has made them available to the offender population (such as Gatorade, ensure, and broths) to prevent possible dehydration.

Finally, with respect to Mr. Dillingham, do you have a signed release for him? I am not comfortable disclosing any information about his medical condition (either way) without an authorized release. (Not meaning to be difficult. Just want to comply with the law. If you have one, just forward it along to me.)

If there are any questions I have neglected to respond to, please let me know.

Thanks!

-Margaret

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From: Nicole Tortoriello [mailto:ntortoriello@acluva.org]
Sent: Wednesday, September 09, 2020 8:09 PM
To: O'Shea, Margaret A.
Cc: Eden Heilman; Vishal Agraharkar; Elliott Harding
Subject: Whorley v. Northam - Requests for Additional Investigation/Action - 9/9

Hi Margaret,

Thank you for the responses provided today to our outstanding investigation requests from 8/26. We look forward to receiving the response to the follow-up request from 8/26 as well, and we will

review the responses provided and follow up with any additional conversations.

Below please find our new request for this week. Please provide us with any remedial guidance or communication with that facility and/or any evidence of compliance received.

I am available before 11am or from noon to 2pm tomorrow (9/10) or before 2:30pm on Friday (9/11) to discuss these requests if it would be helpful.

Thank you,
Nicole

9/9 Request

19. **Deerfield** – We have received multiple reports of a severe outbreak at Deerfield Correctional Facility. Please provide us with (a) the most current testing data available for this facility, including the date(s) of testing, (b) Deerfield's plans for containing and treating those affected by this outbreak. We are particularly concerned about, and interested in any documents addressing plans to handle this outbreak in, the geriatric unit in this facility. As an item (c), One of our volunteers has also had difficulty reaching James H. Dillingham, III, whose concerns regarding his insufficient access to medical treatment we shared with you on July 28. We would appreciate any updates you can provide on his status or condition, and any assistance you can provide in ensuring our request for a legal call with him is fulfilled.

Nicole Tortoriello

Pronouns: she/her/hers

The Secular Society Women's Rights Advocacy Counsel

ACLU of Virginia

701 E. Franklin St., Ste 1412

Richmond, VA 23219

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Exhibit H

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

BROOKE WHORLEY, *et al.*,

Plaintiffs,

v.

Case No. 3:20-cv-255

RALPH S. NORTHAM, *et al.*,

Defendants.

AFFIDAVIT

Commonwealth of Virginia, City/County of Southampton County, to-wit:

Tammy B. Williams, first being duly sworn, states as follows:

1. I am currently the Warden for Deerfield Correctional Center, a facility operated by the Virginia Department of Corrections (VDOC).

2. I am aware of the settlement agreement reached between the parties in the matter of *Whorley et al. v. Northam et al.*, Case No. 3:20-cv-255, which was pending in the Federal District Court for the Eastern District of Virginia, Richmond Division.

3. I have received and reviewed a copy of that settlement agreement.

4. I understand the obligations that the settlement agreement poses, which include—but are not limited to—the following:

- a. Attorney Phone Calls.** I understand that, while attorneys are not allowed to physically visit VDOC facilities, it is imperative that offenders be provided with adequate opportunities to conduct confidential attorney-client phone calls. I understand that any request to add an attorney phone number to the automatic block list should be expedited and handled as quickly as possible. I

understand that a request to add an attorney phone number to the block list may be made by an attorney or by an offender. I understand that attorney calls should be of sufficient duration to discuss confidential legal matters. I understand that, if there is difficulty scheduling a legal call using the offender telephone system, my facility should consider alternative means of facilitating that confidential attorney-client communication.

- b. **Grievances.** I understand that my facility should prioritize for review any grievances alleging delay in medical assessment or treatment related to COVID-19, as well as any grievances regarding failure to abide by COVID-19 related policies and protocols.
- c. **Hygiene and Sanitation.** I understand that my facility should continue to provide enhanced access to showers and handwashing, as well as up to two free bars of soap per week. I understand that my facility should continue to require high interval sanitation and access to cleaning supplies.
- d. **Laundry and Clothing.** I understand that offenders should be provided with the opportunity to launder their facemasks on a daily basis. I understand that bed linens should be laundered twice per week. I understand that offenders should have sufficient clean clothing to allow them to change clothes on a daily basis.
- e. **Other Precautionary Measures.** I understand that staff and offenders should continue to wear sneeze guards and/or other appropriate PPE in accordance with VDOC's pandemic response guidelines. I understand the necessity of

limiting the movement of staff and offenders from building-to-building and enforcing social distancing.

- f. **Early Release Plan**. I understand that VDOC is continuing to review offenders for potential early release under the language of the Governor's Budget Amendment, and that the Early Release Plan is being implemented on a continuing basis while the state of emergency remains in effect. I will ensure that my staff members are aware of this ongoing program and instruct them to continue taking appropriate measures (where encompassed by their job duties) to help offenders generate proposed home plans.

5. I understand that the provisions of the Settlement Agreement will remain in effect until terminated by the Court.

Tammy B. Williams

Tammy B. Williams
Affiant

Sworn and subscribed to, before me, a Notary Public, in and for the Commonwealth of Virginia, City/County of Southampton, this 30 day of July, 2020.

Michelle H. Tillett
Notary Public

My commission expires:

5/31/22

