

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)
)
v.) No. 1:18cr111
)
JULIAN PAUL ASSANGE,)
)
Defendant.)

**FOURTH SUPPLEMENTAL DECLARATION IN SUPPORT OF
REQUEST FOR EXTRADITION OF JULIAN PAUL ASSANGE**

I, Gordon D. Kromberg, declare and state:

1. I have made four previous declarations and one affidavit in support of the request for extradition of Julian Paul Assange, and incorporate here the description of my background and qualifications that I included in those previous declarations. *See* Gordon D. Kromberg, Declaration in Support of Request for Extradition of Julian Paul Assange ¶¶ 1-4 (Jan. 17, 2020) (hereafter, “First Declaration”); Gordon D. Kromberg, Supplemental Declaration in Support of Request for Extradition of Julian Paul Assange ¶¶ 1-3 (Feb. 19, 2020) (hereafter, “Second Declaration”); Gordon D. Kromberg, Second Supplemental Declaration in Support of Request for Extradition of Julian Paul Assange ¶ 1 (Mar. 12, 2020) (hereafter, “Third Declaration”); Gordon D. Kromberg, Third Supplemental Declaration in Support of Request for Extradition of Julian Paul Assange (Mar. 24, 2020)¹ (hereafter, “Fourth Declaration”); and Affidavit in Support of Request for

¹ The Third Supplemental Declaration bears the mistaken date of March 12, 2020.

Extradition of Julian Paul Assange on Second Superseding Indictment ¶¶ 2-3 (July 14, 2020) (hereafter, "Affidavit in Support of Second Superseding Indictment").

2. I make this declaration for the limited purpose of providing additional information relevant to several objections to the U.S. request for his extradition, that Assange has made in the evidence most recently served on his behalf. The statements in this declaration are based on my experience, training, and research, as well as information provided to me by other members of the United States Department of Justice and other federal agencies.

3. This declaration does not respond to every assertion or allegation made in the defense case. Rather, it focuses on responding to statements served on Assange's behalf in July 2020, particularly related to the William G. Truesdale Adult Detention Center ("ADC") in Alexandria, Virginia, and the United States Bureau of Prisons ("BOP"). This declaration also clarifies the law regarding the definition of "national defense information" in the United States for purposes of Section 793 of Title 18 of the United States Code. If I have not addressed in this declaration a matter raised by Assange, it should not be regarded as an acceptance of the accuracy or truthfulness of such matter.

I. The ADC Will Safely House Assange Pretrial

4. As detailed in the First Declaration, see ¶¶ 80-91, it is likely that Assange will be housed at the ADC, in Alexandria, Virginia. In his affidavit (dated June 20, 2020), Joel Sickler claims that Assange will be placed in solitary confinement and unable to have visitors. *See* Sickler Aff. ¶¶ 8 and 9. Mr. Sickler makes the general allegation that U.S. prisons at all levels, including state facilities such as the ADC, are overcrowded, understaffed, and are ill-equipped to deal with

the COVID-19 pandemic. *See id.* ¶¶ 10, 11, 28-38. At least as to the ADC and BOP facilities, Mr. Sickler is mistaken.

A. The ADC Has Adequate Health Care Resources and COVID Protocols

5. The ADC can handle Assange's physical and mental health needs. As an initial matter, the ADC is not overcrowded, as Mr. Sickler implies. Based on the single-bunking of inmates, the total capacity of the facility is 300 male inmates and 40 female inmates. Although the ADC has double-bunked inmates, it has not done so in the recent past. Over the last 12 months, the ADC has housed an average of 240 male inmates and 20 female inmates.

6. The ADC will provide Assange with quality mental health care. Mental health treatment at the ADC is provided by contract with the Alexandria Community Services Board. One clinical supervisor, ten full-time therapists, and one part time therapist are assigned to the ADC. The staff is comprised of six licensed clinical social workers ("LCSWs"), two licensed professional counselors ("LPCs"), one licensed clinical psychologist, and three Masters-level therapists who are nearing eligibility for licensure as licensed professional counselors. In addition, the ADC employs a psychiatrist who provides 20 hours of psychiatric services per week.

7. Under normal circumstances, all therapists would work during weekday business hours, and one therapist would work a partial day on Saturdays. Due to COVID-19, the clinical supervisor and half of the therapists currently are at the jail daily, with the other half of the therapists available to provide telemedicine. After-hours services are available and are provided by the Alexandria CSB Emergency Services team. This team consists of LCSWs and LPCs. While at the ADC, Assange could be seen by an outside mental health professional, subject to approval

by the USMS. Mental health treatment is available to all inmates, regardless of where they are housed within the ADC.

8. On occasion, federal prisoners at the ADC are transferred to other BOP facilities. Based upon my experience and discussions with the USMS, these transfers are *not* made because the ADC is unable to handle prisoners' mental health needs. Rather, they are made because a federal judge has ordered that the inmate receive an evaluation to determine whether such inmate is competent to stand trial, or because the inmate has a serious health condition that requires specialized health care in a hospital setting.

9. The ADC employs detailed and rigorous COVID-19 protocols. *See* Exhibit A to this Declaration. Among other things, all inmates are issued a cloth mask, which they must wear any time they are out of their cells, and the temperatures of all inmates are taken on a daily basis. The protocols are updated on a regular basis to reflect current best practices. According to the USMS, only one inmate at the ADC has tested positive for COVID-19. That inmate was a new arrestee. Staff placed the arrestee in quarantine, and the arrestee subsequently tested negative and was released.

B. Assange Will Be Able to See Visitors, Meet With His Attorneys, and Participate in Programs at the ADC

10. As I discussed in the First Declaration (at ¶ 83), the ADC does not use “solitary confinement.” It is possible, but not certain, that Assange could be placed in administrative segregation, which is the most restrictive form of custody at the ADC. *Id.* ¶ 85. Even in administrative segregation, Assange would be able to communicate with other inmates through the doors and windows of his cell. Assange would be confined to his cell for no more than 22 hours per day, and have access to ADC programs as well as the day-room, law library, and other locations

within the ADC as his and the facility's schedules permitted. It is possible that Assange would receive pretrial Special Administrative Measures ("SAMs"). Even if Assange does receive pretrial SAMs, he would not be held in solitary confinement, and he would have access to other parts of the ADC.

11. Due to COVID-19, there are currently no in-person visits at the ADC. Any physical visits must be approved by the Chief of the ADC. Nevertheless, prisoners are able to meet with visitors virtually. Prisoners can have two virtual visits per week (during non-COVID times, they could have two in-person visits per week). Prisoners also are able to meet with their attorneys virtually. There are no limitations on attorney virtual visits, except that attorneys must reserve time slots. The imposition of pretrial SAMs would not impact Assange's ability to meet with his lawyers (either virtually or in-person, depending on circumstances).

II. The BOP Will House Assange Safely and Humanely, and Provide Him with Due Process

12. In his affidavit, Mr. Sickler claims that the BOP will be unable to ensure Assange's safety and meet his physical and mental health care needs. In particular, Mr. Sickler alleges that BOP facilities are overcrowded and unable to provide for inmates' mental and physical well-being. Mr. Sickler also alleges that the BOP will improperly restrict his ability to communicate with his family and attorneys, and violate his due process rights through the use of Communication Management Units ("CMUs") or the imposition of SAMs. Finally, Mr. Sickler claims that the BOP is unable either to prevent inmates from contracting COVID-19, or treat inmates who have the virus. Mr. Sickler's affidavit is inaccurate. On the contrary, and as detailed below, the BOP is a professional organization that treats its prisoners consistent with the law in the United States, and will make reasonable efforts to meet Assange's physical and mental health care needs.

A. The BOP Provides Inmates With Quality Health Care

13. As an initial matter, Mr. Sickler's statistics regarding inmate population and staffing at BOP facilities appear to be out of date. *See* Sickler Aff. ¶ 10 (citing statistics from December 31, 2019). The most recent available statistics are from June 30, 2020. *See* Federal Bureau of Prisons Program Fact Sheet, *available at* https://www.bop.gov/about/statistics/docs/program_fact_sheet_202008.pdf (last visited Sep. 1, 2020). According to the fact sheet, the BOP ended fiscal year 2019 with 4,484 fewer inmates than the prior year, marking the sixth consecutive year of decreases in the inmate population. The fact sheet does acknowledge that the BOP "remains crowded in high, medium, and low security facilities." *Id.* The relative crowding information referenced on the BOP's Fact Sheet is based on the rated capacity. The rated capacity measurement facilitates the BOP's ability to manage and distribute its inmate population on an equitable and rational basis in accord with capacity computation formulas, security considerations, and institution needs. Further, rated capacity is not necessarily the same as any institution's design or operating capacity. It is an objective measurement of inmate housing space, without regard to items such as institution age, location, or infrastructure.

14. Although these facilities are crowded according to one of the BOP's metrics, this metric alone is not reflective of the overall safety and security of the BOP's facilities. To maintain safe and secure facilities, the BOP uses a combination of tools, including staffing, inmate population management, security and custody levels, medical and mental health care levels, treatment programs, education and vocational training, and work programs.

15. Mr. Sickler also makes reference to the inmate/staff and inmate/correctional officer ratios. Relying on these ratios alone has limited utility. The BOP staffs its facilities according to a variety of factors, including security level, inmate population, and facility programs and capabilities. These variations are not captured in the overall ratios.

16. Turning to the ratios themselves, across BOP, the inmate/staff ratio is 3.8 to 1, and the inmate/correctional officer ratio is 8.0 to 1. *Id.* The BOP regards all staff, with a few exceptions, as law enforcement regardless of their actual discipline. These staff members are engaged in the supervision and management of offenders and receive the same training as correctional officers.

B. The BOP Will Meet Assange's Healthcare Needs

17. The BOP meets the health care needs of the inmate population in a variety of ways. Emergency/urgent health care is available 24 hours a day by on-site or community medical staff. All BOP staff are trained to provide first-aid, CPR, AED, and treatment of opioid overdose with naloxone. Less urgent acute medical conditions are triaged and scheduled at appropriate times. Health care staff make daily rounds in segregation units ("Special Housing Units") to triage requests for care.

18. Similar to health insurance plans, the BOP has a defined scope of services which determines the care provided to inmates in its custody. Medically necessary care is provided to all inmates. Elective health care which may improve quality of life is assessed on a case-by-case basis through a process called utilization review. Health care with limited medical value or expressly for the inmate's convenience is not routinely approved. "Extraordinary" care must be approved by the BOP medical director. Inmates with chronic conditions are seen by a physician at least once

every 12 months, or more frequently as clinically indicated, either by a physician or advance practice provider such as a nurse practitioner or physician's assistant.

19. The BOP also uses a medical classification system to identify inmates with different levels of medical and mental health needs, based on the complexity or risk of the condition or the frequency of services required. Institutions are also assigned a Care Level based upon on-site and community capabilities for providing health care. Inmates are designated to specific institutions to align their care level with the care level of the facility. Care Level 1 includes inmates who are essentially healthy or who have medical conditions that are stable and easily treated or controlled. At the other end of the spectrum are Care Level 4 inmates, with more advanced health care needs, who are housed at BOP medical centers for treatment such as 24-hour nursing care, dialysis, cancer treatments, and organ transplant services. These BOP medical centers have contracts with local health care systems of national and international renown, who provide advanced health care services to the inmate population consistent within established standards of care.

20. With regard to staffing, individual institutions maintain a multidisciplinary complement of full-time health services staff. Currently, the medical disciplines of physicians, pharmacists, advanced practice providers and nurses are filled at 90% across the agency. Full-time Regional and Central Office clinical staff supplement the institution staff and provide additional services through telepsychiatry, telehealth or periodic on-site visits. Institutions also contract with local civilian health care providers and health systems for additional services either on site at the correctional facility or in the community.

21. The BOP's Care 2 and 3 facilities are accredited by the Accreditation Association for Ambulatory Health Care ("AAAHHC"), and the BOP's Care 4 facilities (medical centers) are

accredited by The Joint Commission. The AAAHC and The Joint Commission are national health care accreditation organizations. In addition, all BOP institutions are also accredited by the American Correctional Association, which applies both health care standards and correctional standards.

C. The BOP Has Made Improvements to Its Mental Health Treatment Programs Since the *Cunningham* Lawsuit Was Filed

22. Mr. Sickler relies on the lawsuit of *Cunningham v. Bureau of Prisons*, Case No. 1:12-cv-01570-RPM (D. Colo.), to claim that mental health treatment at the ADX is deficient. I draw the Court's attention to the Declaration of Dr. Alison Leukefeld, that was recently served by the United States, and that addressed many of Mr. Sickler's claims regarding BOP's mental health treatment. I also draw the Court's attention to paragraphs 16 through 19 of my Second Declaration, in which I described a number of improvements to BOP mental health treatment, and policies at the ADX.

23. Many of the improvements outlined in my Second Declaration and in Dr. Leukefeld's declaration were put in place following the initiation of the *Cunningham* lawsuit referenced by Mr. Sickler. The BOP denied the allegations in the *Cunningham* litigation, and the issue of liability was never litigated. The BOP never conceded that the policies and initiatives contained within the Settlement Agreement were required by the U.S. Constitution; it asserted that those initiatives far exceed what the Constitution requires. In any event, the BOP undertook an innovative approach to address the criticisms raised by the *Cunningham* plaintiffs.

24. The parties agreed to a settlement subject to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(c)(2), with dismissal under the theory set forth in *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994), which gives the district court

limited jurisdiction to enforce the settlement as provided in the agreement. *See* Exhibit B to this Declaration. The settlement provided for a three-year presumptive term, with a four-year “hard stop” and the ability for the BOP to move to partially or completely terminate the obligations with the Plaintiffs’ consent after two years. The Plaintiffs and the BOP each selected an expert to monitor the settlement. The experts undertook a maximum of three site visits per year. The monitoring was limited to the ADX and the Secure STAGES program at the United States Penitentiary, High Security, in Florence, Colorado. The Special Security Unit program was excluded from oversight by the monitors, although a United States Magistrate Judge was permitted to enter the unit on several occasions, and report any concerns to the monitors. The first visit, or base-line visit, by the monitors occurred the week of January 30, 2017. The last visit by the monitors occurred the week of January 20, 2020.

25. Under the settlement agreement, the BOP retained the ability to change its policies and to make decisions concerning mental health diagnoses, assignment of mental health care levels, and appropriate care for all inmates. The agreement contained significant meet and confer requirements before the plaintiffs could attempt to enforce any terms of the agreement, and allowed for the Court hold the BOP in contempt, if necessary. This never occurred. Likewise, no monetary damages were paid to the named plaintiff-inmates.

26. The presumptive term of the agreement was three years. The plaintiff-inmates had the burden to move for a one-time, one-year extension. The agreement also allowed the BOP to move for termination, in whole or in part, after two years with the plaintiffs’ consent. The plaintiffs never sought an extension, and the BOP did not move for early termination.

27. In sum, the BOP addressed the plaintiffs' criticisms through a transparent, collaborative process. As outlined in my declaration and that of Dr. Leukefeld, the BOP developed a range of progressive policies and procedures to improve and enhance mental health programs and services. The BOP also transferred of a number of prisoners from ADX. The negotiated terms of the *Cunningham* settlement had and continue to have a direct and positive impact on the safety and wellbeing of BOP staff, inmates, and the general public. As a result, mental health care at the ADX has improved through early detection of mental health issues, as well as more effective treatment, management, and stabilization.

D. Assange Will Be Able to Participate in Programs and Socialize with Others If He is Housed at the ADX

28. Mr. Sickler claims that if Assange is sent to the Administrative Maximum Security Prison ("ADX"), he will effectively live the remainder of his life in isolation. As I stated in the First Declaration, *see* ¶¶ 183-88, sentencing in the United States is driven by a variety of factors, notably including the United States Sentencing Guidelines. Similarly, prison designations are made by the BOP, which takes into account a number of different factors, including but not limited to, the length of a defendant's sentence. In short, sentencing and facility designations are difficult to predict, and, as a result, it is purely speculative to conclude that Assange would receive a life sentence and/or be designated to the ADX.

29. The philosophy of the BOP is to house all inmates in the least restrictive environment, appropriate for that inmate, in order to allow for work and self-improvement opportunities to assist in reentry efforts. The ADX is the most secure prison in the federal system. It is designed to safely house the BOP's most violent, predatory, and escape-prone inmates, in an environment providing each inmate an opportunity to demonstrate improved behavior, and the

ability and motivation to eventually reintegrate into the open population at a different facility. The unique security and control procedures implemented to control these inmates are designed to enhance the safety of staff, inmates, and visitors. Of the approximately 129,000 inmates in the BOP's custody, just over 300 are currently housed at the ADX (which has a maximum capacity of 490); in other words, the ADX houses less than one quarter of one percent of the BOP's inmate population. Through regular, careful, case reviews, the BOP ensures that the ADX is used only for those individuals for whom its security and controls are necessary.

30. All inmates at the ADX are single-celled. The sizes of the cells range from 75 to 87 square feet. The cells in six of the nine housing units (B, C, D, E, F, and G units) are approximately 87 square feet, which does not include the inner sallyport area of the cell, which is 17 square feet. Each cell has a solid outer door and an inner grill. The wall next to the door for each cell also has an approximately 12-by-48 inch window. Each cell solid outer door has an approximately 5-by-18 inch window, which looks out on to the housing unit range. Each cell also has a 5-by-38 inch window that looks outside, providing the inmate with natural lighting, as well as a shower in the cell. The cells in the remaining 3 units (H, J, and K units), have approximately 75.5 square feet of living space and do not have an inner sallyport or a shower. Each cell has a solid outer door, with a 5-by-18 inch window, which looks out on to the range. Each cell also has a 5-by-38 inch window that looks outside, providing the inmate with natural lighting.

31. Each cell at the ADX has a light, which the inmate may turn on and off as needed. These lights have three settings (dim, medium, and bright). The inmate controls the setting of the lights from inside his cell and can turn the light completely off. The inmate is required to turn the light on when staff are interacting with him at the front of his cell. Each cell has a bed with a

mattress and bedding, a sink, a desk, a shelf, and a chair. Inmates may have certain personal items in their cells, such as photographs, reading materials, and legal papers.

32. With the exception of inmates in disciplinary segregation, each ADX inmate has a 13" television in his cell, which generally provides channels for closed circuit institutional programming (recreation, education, religious services, and psychology), broadcast channels, radio stations, and digital music channels. One of the television channels that is utilized to provide bulletins to the inmates also shows the date and time. The televisions and select broadcast channels are paid for through profits from inmate commissary or canteen purchases.

33. Even if Assange is to be housed at the ADX, he would have ample opportunity to participate in programs and socialize with inmates and members of the public. ADX Inmates are provided with access to both indoor and outdoor recreation, with the amount of time varying by unit, as explained below. When inmates go to outside recreation, they have access to sunlight and fresh air. Generally, the areas contain pull-up and dip bars, and inmates can play with handballs and soccer balls. Inmates may request instruction in aerobic exercise from ADX Recreation staff. Inmates have access to psychology programming (individual and group sessions), educational programming (group and individual), wellness programs, weekly leisure games via the ADX closed circuit television system, weekend "brain teaser" games, arts and crafts, a weekly movie program, and special holiday activities.

34. Contrary to the assertions in Mr. Sickler's affidavit, there is no contradiction between close controls and the provision of basic amenities and life-enhancing programs. Inmates housed at the ADX may subscribe to periodicals; may borrow leisure reading materials from the institution's library; may take GED, Adult Continuing Education, and correspondence classes;

may paint, draw, or crochet; may participate in a weekly bingo game; and may participate in art, essay, and poetry contests. Inmates may make purchases from the commissary, including food items, toiletries, pens, paper, and religious items.

35. From February 1, 2020, through August 15, 2020, 222 inmates at the ADX participated in some type of group or individual programming. The following are examples of the group programs available at the ADX:

- 7 Habits for Highly Effective People (taught in English and Spanish)
- Threshold
- How to Draw
- Managing Diabetes
- Five Love Languages
- GED Testing, Tutoring, Lectures
- Wellness Recovery Action Planning
- Positive Psychology for the Long Term Incarcerated
- Release Preparation Programming
- Money Smart
- Victim Impact

36. The ADX also has a robust creative arts program, which is known as “CAP.” The CAP is designed to expose participants to a variety of different artistic methods, ideologies, and entrepreneurial techniques that can better prepare them for re-entry. The CAP also centers on teaching inmates to develop a stronger work ethic through channeling their “artist spirit.” There are three unique phases to the program—CAP History, a CAP Exploratory phase, and CAP

Business. Some of the educational material used is on loan through the National Gallery of Art in Washington, D.C. In an attempt to better prepare for life on the outside for creative individuals, the CAP also teaches inmates the business side of the creative industries.

37. Inmates at the ADX are encouraged to engage with family and friends in the community through social visits, correspondence, and telephone calls. All inmates are ordinarily given the opportunity to have up to five in-person social visits per month, unless they are subject to some sort of visitation restriction. These visits are non-contact and have been temporarily suspended due to the COVID-19 pandemic. Inmates may also make social telephone calls, the number of which depends on the inmate's housing unit, as described below. Inmates may send and receive legal and social correspondence, unless there is some sort of restriction on their correspondence privileges.

38. Inmates at the ADX are encouraged to engage with staff. The Warden, Associate Wardens, Captain, and Department Heads perform weekly rounds in each unit for the opportunity to visit with inmates. Correctional Officers perform regular 30-minute rounds throughout all three shifts on a daily basis. A member of an inmate's Unit Team visits the inmates every day. Inmates receive regular visits from medical staff, education staff, religious services staff, and psychology staff when they perform their rounds, and upon request if needed. Medical staff visit each unit daily. In addition, inmates have the ability to communicate with one another in several ways—they can and do speak to their neighbors in the cells next to, above or below them and may speak to one another during out-of-cell recreation.

39. The ADX currently operates five distinct housing programs: the Control Unit Program; the Special Security Unit ("SSU") Program; the General Population and Step-Down

Program; the Reentry Preparation Unit; and the High Security Adult Alternative Housing Program.² Each of these programs is detailed below. As explained below, each unit seeks to balance safety and security while meeting the BOP's goal of placing inmates in the least restrictive environment possible.

1. Control Unit

40. The Control Unit houses the most dangerous, violent, disruptive and assaultive inmates in the BOP's custody. The Control Unit Program provides housing for inmates who are unable to function in a less restrictive environment without posing a threat to others or the institution. This unit typically houses inmates who have assaulted or killed staff or other inmates or who have escaped or attempted escape from another institution.

41. Referral to the unit is outlined in Program Statement 5212.07, Control Unit Program, and is reviewed by the BOP's Regional Director in the region in which the inmate is housed. If the Regional Director concurs with the placement, the referral is submitted to the Regional Director of the North Central region, where the ADX is located. The Regional Director then designates a hearing administrator to conduct a hearing to review the placement referral. A mental health evaluation is a required component of the referrals to the Control Unit, and medical, psychological, and psychiatric concerns are considered during the review. Findings from the mental health evaluations, along with the full clinical record, are reviewed by the Central Office level by the Psychology Services Branch. The decision of the hearing administrator is then

² The ADX no longer operates a Special Housing Unit ("SHU") for inmates in administrative detention status.

submitted to the Executive Panel (consisting of the North Central Regional Director, and Assistant Director of the Correctional Programs Division) for final review and placement.

42. Inmates placed in the Control Unit are given a specific term of time that they will serve in the Control Unit. Inmates placed in the Control Unit are reviewed within four weeks of initial placement. Subsequent reviews are conducted on a monthly basis by the unit team, while the Executive Panel reviews each inmate's status and placement on a quarterly basis. Credit for time served is granted depending on their adjustment and readiness for release from the Control Unit.

43. Inmates housed in the Control Unit receive a minimum of seven hours of out-of-cell exercise per week and can participate in educational and psychological programming via the closed circuit televisions within their cells. Inmates receive psychology services and medical services on the same basis as inmates housed in other units at ADX. The inmates consume their meals in their cells. The inmates receive two monthly social telephone calls and may receive up to five social visits per month.

2. Special Security Unit ("SSU") Program

44. The Special Security Unit Program is designed for inmates who are subject to SAMs, which are restrictions on communications imposed by the Attorney General. *See* 28 C.F.R. §§ 501.2, 501.3. Inmates with SAMs are placed in the Special Security Unit (H Unit). As detailed in my First Declaration, see ¶¶ 95-99, a SAM may be imposed to prevent the disclosure of classified information that would pose a threat to national security if disclosed or to protect against acts of terrorism and violence. A SAM may include placing an inmate in administrative detention and restricting social visits, mail privileges, phone calls, and access to other inmates and to the

media. Inmates housed in the SSU are reviewed annually by the Attorney General to determine if the SAM status should be renewed or modified. The Attorney General's review includes an assessment of information provided by the prosecuting United States Attorney's Office and federal law enforcement officials.

45. The inmates incarcerated in H Unit have the opportunity to participate in a three-phase Special Security Unit Program (SSU Program), designed especially for SAM inmates. The purpose of the SSU Program is to confine inmates with SAMs under close controls, while providing them opportunities to demonstrate progressively responsible behavior and participate in programs in a safe, secure environment. The SSU Program balances the interests of providing inmates with programming opportunities and increased privileges with the interests of ensuring institutional and national security. The success of the inmate's participation in the SSU Program provides information that can be considered in the evaluation of whether SAMs continue to be necessary, or whether the inmate's communications can be monitored in a manner that will not compromise national or institutional security interests.

46. The inmates housed in the SSU receive a minimum of 10 hours of out-of-cell exercise per week. Generally, the inmates recreate individually in secure single recreation areas. The inmates consume their meals in their cells. The inmates receive up to four monthly social telephone calls and may receive up to five social visits.

- Phase 1. During the baseline phase of the program, an inmate may be permitted two non-legal telephone calls per month, access to a commissary list and art and hobby craft items, and escorted shower time on the inmate's range—the common area outside of a cell—three times each week.

- Phase 2. Depending upon the inmate's adjustment, he can move into Phase 2 after approximately 12 months. In Phase 2 of the Program, an inmate may be permitted three non-legal telephone calls per month and access to an expanded commissary list and additional art and hobby craft items. The inmate is allowed to be out of his cell without an escort five times each week.
- Phase 3. Placement into Phase 3 typically requires a modification of the SAMs to allow inmates to have physical contact with one another. Inmates in Phase 3 are allowed to be out on the range together in groups of up to four. An inmate in Phase 3 gains the ability to be in physical contact with other inmates in the range area outside his cell, seven days a week. Phase 3 inmates spend one-and-a-half hours per day on the range with up to three other inmates, none of whom are escorted by BOP staff. The inmates in Phase 3 eat one meal together and engage in recreational activities, including watching television, reading and playing cards. Phase 3 inmates may shower at any time they are on the range. In addition, Phase 3 inmates continue to have access to the expanded art and hobby craft list and a further expanded commissary list.

3. General Population and Step-Down Unit Program

47. The ADX has a General Population and Step-Down Unit Program that provides inmates with incentives to adhere to the standards of conduct associated with a maximum security custody program. As these inmates demonstrate good conduct and positive institutional adjustment, they may progress from the General Population Units (C, D, E, F, and G) to the Intermediate (J/A), Transitional (which

is currently located at USP Florence, adjacent to the ADX on the complex), and Pre-Transfer Units (also located at USP Florence). Inmates who are successful in the Pre-Transfer Unit may be transferred to a different BOP facility. Inmates at the ADX are encouraged to engage with family and friends in the community through social visits (currently suspended), correspondence, and telephone calls. There is no numeric limit on the number of legal visits and calls they may receive, although in-person visits currently are suspended. The other privileges afforded to the inmates are determined by their housing unit assignments in this layered program.

48. Ordinarily, the minimum time period to complete the program is 36 months. The minimum stay is ordinarily 12 months in a general population unit, six months in the intermediate program, six months in the transitional program, and 12 months in the pre-transfer program. There is no minimum or maximum time period for completion of the program.

49. General Population inmates have access to the programming and opportunities described above, including a television set in each cell. These inmates receive at least 10.5 hours of out-of-cell recreation per week (alternating between indoor and outdoor). Meals are provided to the inmates in their cells. General Population inmates are permitted to have four 15-minute social phone calls per month.

50. Inmates in the Intermediate Step receive 20.5 hours of out-of-cell recreation per week, split between out-of-cell recreation on the range and outdoor recreation. The inmates are assigned to one of four groups, with as many as eight inmates in a group. The inmates have indoor and outdoor recreation out of their cells with inmates in their assigned group. Meals are provided to the inmates by groups, with each group allowed out of their cells one at a time to come to the

front of the range, receive their meals, and then return to their cells while unrestrained. The inmates eat their meals in their cells. The inmates are unrestrained when out of their cells on the range. The inmates receive six 15-minute social telephone calls per month. Shower stalls are located on the range, and the inmates may shower any time they are out on the range. Inmates in this unit also have access to TruLincs, the BOP's email program for inmates, to communicate electronically with staff and a limited number of approved contacts outside in the community.

51. The Transitional and Pre-Transfer Units are located at USP Florence, in Bravo-A Unit. Each cell in Bravo-A Unit has approximately 80 square feet area of living space and does not have a sally port or a shower. Each cell has a solid outer door. Each cell's solid outer door has a window which looks out on to the range. Each cell also has a window that looks outside, providing the inmate with natural lighting. The inmates are assigned to a group. The inmates consume their meals on the range with the other inmates in their assigned group. Showers are located on the ranges, and inmates may shower at any time they are on the range. The inmates in these units receive a minimum of 30.5 and 35.5 hours of out-of-cell recreation per week, respectively. The inmates' out-of-cell recreation includes recreation in the unit and in the outdoor group recreation area. The inmates receive eight and ten 15-minute social telephone calls per month, respectively. Inmates in these steps also have access to TruLincs, the BOP's email program for inmates, to communicate electronically with staff and a limited number of approved contacts outside in the community.

4. The Release Preparation Program

52. The Release Preparation Program is designed to assist inmates in their transition from a restrictive housing environment to less secure housing, a Residential Reentry Center, or

facilitate successful reintegration into their communities upon release. The Release Preparation Program utilizes a system of less-restrictive housing to provide inmates with incentives to adhere to standards of conduct associated with the ADX. Specifically, the Release Preparation Program operates similar to a Privilege Incentive Program, providing an inmate in the program with increased incentives/privileges as he progresses toward the end of his sentence. The progression of an inmate in the Release Preparation Program is based on his remaining sentence length. The incentives/privileges an inmate earns in the program are based on his program participation. The Release Preparation Program, which is physically located in K/A-Unit, was activated on September 28, 2017.

53. Generally, the profile of an inmate appropriate for the Release Preparation Program depicts an individual who has demonstrated he can function in a less-secure unit in the ADX, but may be unable to complete the ADX General Population and Step-Down Program prior to his release. To be eligible for consideration for placement in the program, the inmate ordinarily must (1) be within 36 months of release from confinement; (2) have no detainers or active warrants; (3) be actively participating in and complete programs recommended by the Unit Team; (4) show positive behavior and respectful conduct towards staff and other inmates; and (5) show positive overall institution adjustment to include, but not limited to, personal hygiene and cell sanitation. Exceptions can be made on a case-by-case basis.

54. Inmates in the Release Preparation Program receive 20.5 hours of out-of-cell recreation per week, split between out-of-cell recreation on the range and outdoor recreation. The inmates are assigned to one of four groups, with as many as eight inmates in a group. The inmates have indoor and outdoor recreation out of their cells with inmates in their assigned group. The

inmates in the Release Preparation Program are offered a minimum of 18.5 hours of out-of-cell programming per week. Meals are provided to the inmates by groups, with each group allowed out of their cells one at a time, to come to the front of the range, receive their meals, and then return to their cells while unrestrained. The Unit Manager schedules one group per week to eat all three meals on the range. The other groups, when not assigned to eat their meals on the range, eat their meals in their cells. The inmates are unrestrained when out of their cells on the range. The inmates receive five 15-minute social telephone calls per month. Shower stalls are located on the range, and the inmates may shower any time they are out on the range. Inmates in this unit also have access to TruLincs, the BOP's email program for inmates.

5. High Security Adult Alternative Housing Program

55. The High Security Adult Alternative Housing Program is designed for inmates who have generally demonstrated that they can function in a less-secure environment within the ADX without posing a risk to institutional security and good order, but whose security and/or safety needs prohibit them from advancing through the Step-Down Unit Program. This program reflects the BOP's core values (correctional excellence, respect, and integrity) through a continual review of the operating procedures to determine if gradual modification is necessary, first and foremost to reflect sound security practices, and only then to safely expand inmate access to programming opportunities. This program permits close controls while providing basic amenities and life enhancing programs that allow inmates to engage socially with one another.

56. The inmates in this program are assigned to one of four groups of up to eight inmates. The unit has an enclosed common area with recreation equipment and leisure materials. These inmates receive a minimum of 24 hours of out-of-cell recreation per week. The inmates

recreate with other inmates in their assigned group on the range, or outdoors, on a large recreation yard. The inmates consume their meals in their cells. The inmates are unrestrained when out of their cells. The inmates receive four 15-minute social telephone calls per month and may receive up to five social visits per month (currently suspended). Inmates in this unit also have access to TruLincs, the BOP's email program for inmates, to communicate electronically with staff and a limited number of approved contacts outside in the community. Shower stalls are located on the range. The inmates may shower anytime they are out on the range.

E. The BOP Will Afford Assange Due Process

1. Placement in a CMU Does Not Violate Due Process and Will Not Unduly Restrict Assange's Communications

57. As stated in my First Declaration, ¶¶ 103-05, it is possible that Assange may be placed in a Communications Management Unit ("CMU").³ A CMU is a separate housing unit within another facility. Inmates are placed in a CMU because of safety and security concerns arising from their use of a communications device or communications they have made during the commission of their crime or while incarcerated. The designation to a CMU process is outlined in detail in BOP Program Statement 5214.02, Communications Management Units, attached as Exhibit C to this Declaration. As detailed in my First Declaration, *see* ¶ 105, and the BOP Program Statement, inmates are provided notice and an opportunity to be heard on the issue of designation to a CMU.

58. Contrary to Mr. Sickler's suggestion, inmates in CMUs are not cut off from the outside world. Rather, inmates are afforded the same opportunities to communicate with

³ In his affidavit, Mr. Sickler incorrectly refers to CMUs as "Contact Management Units." ¶ 43.

individuals outside of prison as regular inmates. Their communications may be more extensively monitored, however, or BOP may impose certain limitations, as noted in the BOP Program Statement, to prevent them from engaging in additional criminal conduct. *See* Exhibit C. Likewise, inmates in CMUs are able to participate in the same programs as inmates in the prisons' general populations. According to BOP officials, there are no studies or formal evidence to support Mr. Sickler's claim that inmates in CMUs experience distress or depression from monitoring of their conversations.

2. The Imposition of SAMs Does Not Violate Due Process.

59. Only a tiny fraction of federal inmates are the subject of SAMs. For example, as of September 1, 2020, of the 156,083 inmates in BOP custody, only 47 are under SAMs. Moreover, imposition of SAMs does not violate due process.

60. Contrary to Mr. Sickler's assertions, federal courts have found that the imposition of SAMs comport with due process. As a technical legal matter, the U.S. Supreme Court has held that inmates are not entitled to procedural protections before SAMs are imposed. *See Hewitt v. Helms*, 459 U.S. 460, 468 (1983) (where an inmate represents a security threat, he "must merely receive some notice"). Nevertheless, the Department of Justice has created regulations to ensure that inmates receive notice of the SAMs and an opportunity to contest them.

61. Pursuant to the SAM regulations, the inmate must receive "notification of the restrictions imposed and the basis for these restrictions." 28 C.F.R. § 501.2(b). To contest a SAM, an inmate can use the BOP's four-tiered Administrative Remedy Program, a mechanism that allows inmates to raise grievances in four steps—beginning at the prison level and culminating in a review at the BOP's national Central Office. *See* 28 C.F.R. §§ 542.10–542.19; *see also* 28 C.F.R.

§ 501.3(e) (authorizing inmate to seek review of SAMs through the BOP's administrative remedy program).

62. An inmate can also contest SAMs at the time of their renewal. This process is described in detail in an ADX policy statement.⁴ The policy provides that approximately 120 days prior to the expiration of the SAM, staff will obtain and document any comments and suggestions concerning possible renewal and/or modifications to the SAM from the inmate. Approximately 90 days prior to the expiration of the SAM, the unit team and the supervising law enforcement agency case agent assigned to the inmate's case will meet with the inmate. During this meeting, the inmate may provide information concerning possible renewal and/or modification of the SAM and discuss any other issues concerning the SAM. The information obtained from the meeting with the inmate, along with the inmate's written comments and the memorandum summarizing the discussion with the inmate, will be forwarded through Legal Services, to the Warden, the Department of Justice officials responsible for making decisions concerning the renewal and/or modification of the SAM, including the appropriate United States Attorney's Office, the FBI or other relevant law enforcement agency, and the Office of Enforcement Operations in the criminal division of the United States Department of Justice, for review. The unit team will document the meeting in the Inmate Activity Record, located in the inmate's Central File.

63. This review by Department of Justice personnel, which incorporates information from the inmate, demonstrates that the officials carefully evaluate the specifics of the inmate's

⁴SAM inmates who are not housed at the ADX may make a statement regarding renewal or modification prior to the expiration of their SAM.

situation and critically weigh safety and security concerns in determining whether SAMs were warranted. The multiple, multi-level review processes provide procedural safeguards.

64. An inmate who is subject to a SAM can object outside the formal SAM review procedures. He can give input about his situation during other BOP reviews, including his twice-yearly Program Reviews, a classification review, and Progress Reports. This input can include the inmate requesting a modification of the SAM. For example, if the inmate wants to communicate with a previously un-retained attorney to request representation, the inmate could seek modification of the SAM. Finally, inmates can file a lawsuit in federal court to challenge SAMs.

65. The Tenth Circuit Court of Appeals has confirmed that SAMs do *not* violate due process. It held that a SAMs inmate incarcerated at the ADX had no “constitutionally protected liberty interest in avoiding” the SAMs and no entitlement to procedural due process. *Gowadia v. Stearns*, 596 F. App’x 667, 673-74 (10th Cir. 2014). However, in reaching that conclusion, the Court of Appeals correctly recognized that inmates subject to SAM do receive procedural protections. *Id.*

66. Although the imposition of SAMs ordinarily does not violate procedural due process, a SAM cannot violate an inmate’s substantive rights. For example, it is well established that prisoners retain First Amendment rights. *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). This includes, for example, a right to free-flowing incoming and outgoing mail. *Davis v. Goord*, 320 F.3d 346, 351 (2d Cir. 2003). SAMs that infringe on First Amendment rights of free speech and association may nevertheless be lawful if they are reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

67. Likewise, egregious and inhumane conditions of confinement may constitute “cruel and unusual punishment” in violation of the Eighth Amendment. Prison officials must “provide humane conditions of confinement by ensuring inmates receive the basic necessities of adequate food, clothing, shelter, and medical care and by taking reasonable measures to guarantee the inmates' safety.” *Craig v. Eberly*, 164 F.3d 490, 495 (10th Cir.1998) (citations omitted). To prevail on a SAM claim related to a condition of confinement, the prisoner must show that (1) the condition complained of is sufficiently serious to implicate constitutional protection, and (2) prison officials acted with deliberate indifference to inmate health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citations omitted).⁵

68. Mr. Sickler points to a case in which a district court judge criticized the process surrounding SAMs. He fails to point out, however, that in that very case, the judge ruled *in favor* of the United States. The judge explained that the SAMs at issue were not so restrictive as to give rise to a protected liberty interest. *Yousef v. United States*, No. 12-cv-2585-RPM, 2014 WL 1908711, at *2-5 (D. Colo. May 13, 2014) (explaining why conditions of confinement for an ADX inmate subject to SAMs did not implicate a liberty interest, and concluding “that Yousef has not shown that his conditions of confinement are so atypical and impose such a hardship as to infringe upon the limited liberty left to him under his sentences”). *See also Nicholson v. Brennan*, No. 15-cv-01999, 2017 WL 4337896, at *9 (D. Colo. Sept. 28, 2107) (holding that inmate did not have a

⁵ Although Assange could bring such a claim, courts have previously held that the general conditions of confinement at ADX, while harsh, do not amount to a deprivation of the inmates’ Eighth Amendment rights to be free of cruel and unusual punishment. *Georgacarakos v. Wiley*, Civil Action No. 07-cv-01712-MSK-MEH, 2010 WL 1291833 (D. Colo. Mar. 30, 2010); *see also Sattar v. Gonzales*, Civil Action No. 07-cv-02698-WDM-KLM, 2009 WL 606115 (D. Colo. Mar. 6, 2009).

liberty interest in avoiding the conditions imposed by SAMs). Later, the judge explicitly rejected Yousef’s argument “that the SAMs renewal process is essentially a sham designed to impose SAMs on Yousef in perpetuity.” *Yousef v. United States*, No. 12-cv-2585-RPM, 2014 WL 2892251, at *2-3 (D. Colo. June 26, 2014) (denying inmate’s motion for relief from judgment).

69. Courts subject SAMs to meaningful review. For example, in *Mohammed v. Holder*, Civil Action No. 07-cv-02697-MSK-BNB, 2011 WL 4501959 (D. Colo. Sep. 29, 2011), a district court ruled that the government was not entitled to summary judgment on a claim that it was unreasonably limiting the defendant’s mail and communications. The inmate—and the court—pointed out that the Warden at ADX had recommended that the defendant be permitted to communicate with persons outside of his immediate family.

70. Mr. Sickler also claims that the imposition of SAMs, and the requirement that Assange’s attorneys agree to abide by them, will hinder Assange’s ability to mount a defense. At this point, whether SAMs would, in fact, be imposed on Assange at the ADC (or the BOP) is, of course, mere speculation. Nevertheless, the attorney affirmation requirement helps to protect national security and public safety. Incarceration provides no guarantee that a SAMs inmate will refrain from engaging in criminal conduct. *See, e.g., United States v. Salameh*, 152 F.3d 88, 107-08 (1998) (an incarcerated terrorist transmitted coded telephone messages to his co-conspirators); *United States v. Rahman*, 189 F.3d 88, 105-06 (1999) (a convicted terrorist provided guidance from prison to his followers for future terrorist attacks). Moreover, in at least one instance, an attorney violated SAMs to help her incarcerated client communicate with fellow terrorists. Lynn Stewart was convicted for smuggling statements from her client, the notorious “Blind Sheikh” Omar Abdel Rahman, to Egyptian jihadists. *United States v. Stewart*, 590 F.3d 93, 165 (2d Cir. 2009). Stewart

was not, as Mr. Sickler suggests, merely “revealing her client’s statements to the press.” Sickler Aff. ¶¶ 43.

71. Requiring attorneys to acknowledge the imposition of SAMs and abide by them properly protects national security and public safety. As the Second Circuit found in upholding Stewart’s criminal conviction, “[w]e have no basis upon which to entertain a doubt as to the authority of the Attorney General of the United States to ensure that reasonable measures [SAMs] are designed and implemented in an attempt to prevent imprisoned criminals who are considered dangerous despite their incarceration from engaging in or facilitating further acts of criminality from their prison cells.” *United States v. Stewart*, 590 F.3d at 111-12. The attorney affirmation requirement also helps to ensure that SAMs inmates communicate confidentially only with attorneys who are apprised of the SAMs prohibition on disseminating the inmates’ communications to third parties.

72. Mr. Sickler also misrepresents the situation with regard to attorneys who represent SAMs inmates. The affirmation, which simply confirms that counsel acknowledge and promise to abide by the terms of the SAMs, does not block the access of inmates to counsel or the courts; neither does it hinder attorneys from providing full and fair representation to inmates. Recently, for example, SAMs inmate Dzhokhar Tsarnaev, the convicted Boston marathon bomber, succeeded in overturning his death sentence through the representation of his large legal team, all of whom executed affirmations of the SAMs and had access to their client. *See United States v. Tsarnaev*, No. 16-6001, -- F.3d --, 2020 WL 43815878 (1st Cir. July 31, 2020). In short, there is no evidence to justify Mr. Sickler’s unsupported contention that “most lawyers” are “frightened” of SAMs, or that their ability to represent their clients is compromised.

F. The BOP Has Protocols in Place to Protect Inmates from COVID-19.

73. The BOP has protocols in place to protect inmates from COVID-19. Starting in January 2020, the BOP implemented its Pandemic Influenza contingency plan. The BOP continues to revise and update its action plan in response to the COVID-19 pandemic, and in response to the latest guidance from experts at the World Health Organization (“WHO”), the Centers for Disease Control and Prevention (“CDC”) and the Office of Personnel Management (“OPM”).

74. On March 1, 2020, the BOP implemented modifications to its normal operations to further lessen the possibility that COVID-19 spreads among staff and inmates. This included taking measures to reasonably limit inmate exposure to other inmates while continuing to allow inmates access to programs and services that are offered under normal operating procedures, such as mental health treatment; coordinating with the United States Marshals Service to significantly decrease the number of prisoners added to facilities during this time; and limit group gatherings while affording inmates access to commissary, laundry, showers, telephone, and TRULINCS or email access.

75. During the intervening months, the BOP has regularly updated its modified operations to limit the spread of COVID-19 amongst staff and inmates. On August 5, 2020, BOP implemented Phase Nine of its Action Plan, which currently governs operations. *See Exhibit D* to this Declaration. The current modified operations plan is an extension of the previous phases. Only limited group gathering is afforded, with attention to social distancing to the extent possible, to facilitate commissary, laundry, showers, telephone, and computer access. Further, BOP has severely limited the movement of inmates and detainees among its facilities, with exceptions for medical treatment and similar exigencies.

76. Every newly admitted inmate is screened for COVID-19 exposure risk factors and symptoms and tested for COVID. Inmates who are asymptomatic and test negative are placed in quarantine. Symptomatic inmates or inmates who test positive are immediately placed in medical isolation until they are cleared by medical staff as meeting CDC criteria for release from isolation. In addition, all staff are screened for symptoms. Staff registering a temperature of 100.4 degrees Fahrenheit or higher are barred from the facility on that basis alone. A staff member with a stuffy or runny nose can be placed on leave by a medical officer.

77. Contractor access to BOP facilities is restricted to only those performing essential services (e.g. medical or mental health care, religious, etc.) or those who perform necessary maintenance on essential systems. All volunteer visits are suspended absent authorization by the Deputy Director of BOP. Any contractor or volunteer who requires access will be screened for symptoms and risk factors.

78. To limit the number of people entering the facility and interacting with inmates, social visits were stopped as of March 13, 2020. To ensure that familial relationships are maintained throughout this disruption, BOP has increased detainees' telephone allowance to 500 minutes per month. On August 31, 2020, the BOP issued a Modification of Coronavirus (COVID-19) Phase Nine Action Plan, applying to social visiting. *See* Exhibit E to this Declaration. Specifically, social visiting in the BOP is projected to resume no later than Saturday, October 3, 2020, in accordance with the guidance issued in the memorandum. Wardens are to begin immediately developing local procedures to reinstate social visiting.

79. Tours of facilities are suspended. All staff and inmates have been and will continue to be issued appropriate face coverings and strongly encouraged to wear the face covering when in public areas when social distancing cannot be achieved.

80. The BOP recognizes that access to legal counsel remains a paramount requirement and seeks accommodate access to the maximum extent reasonably possible under the circumstances. Specifically, legal visits are permitted on a case-by-case basis after the attorney has been screened for infection in accordance with the screening protocols in place for prison staff, contractors, and visitors. Additionally, telephone calls and video conferencing with legal counsel are accommodated to the extent possible as detailed in the BOP's Phase Nine Action Plan. *See* Exhibit D.

81. The BOP has a website dedicated to providing information on the COVID-19 pandemic. *See* <https://www.bop.gov/coronavirus/> (last visited Sep. 1, 2020). The site is updated daily. As of September 1, 2020, the BOP had 127,145 federal inmates in BOP-managed institutions and 13,878 in community-based facilities. The BOP has approximately 36,000 staff members. 1,795 federal inmates and 667 BOP staff have confirmed positive test results for COVID-19, and 10,669 inmates and 929 staff members have tested positive, been isolated, and recovered from the virus. There have been 118 inmate deaths and two staff member deaths attributable to the virus. In sum, the BOP is carefully monitoring COVID-19 and making a serious effort to prevent the virus's spread among its inmate and staff populations.

82. To support his claim that BOP is ill-prepared to handle COVID-19, Mr. Sickler relies on a district court opinion from the Southern District of New York. *See* Sickler Aff. ¶¶ 35-36 (citing *United States v. Stephens*, No. 15-cr-95 (AJN), 2020 WL 1295155 (S.D.N.Y. Mar. 19,

2020)). That case concerned the Metropolitan Correctional Center (“MCC”), a pretrial detention facility in New York. In a more recent case, a judge on the same court denied a defendant’s application for pretrial release. *See United States v. Gumora*, 20-CR-11 (VSB), 2020 WL 1862361 (S.D.N.Y. April 14, 2020). The judge in *Gumora* pointed out that BOP had “developed and implemented a plan to mitigate the impact of COVID-19 on the federal prison population.” *Id.* at *10. The court found that, at least as to the MCC, implementation of the plan “appears to have limited the spread of the virus within the institution.” *Id.* at *11.

III. Definition of National Defense Information


83. Clarification of the law in the United States regarding the definition of information relating to “the national defense”, under Section 793 of Title 18 of the United States Code, may assist the Court. Case law in the United States establishes that, to be national defense information, the documents at issue must satisfy three criteria. First, the documents must generally relate to military matters or related activities of national preparedness. *See Gorin v. United States*, 312 U.S. 19, 28 (1941); *United States v. Rosen*, 445 F. Supp. 2d 602, 620 (E.D. Va. 2006) (“[T]he phrase ‘information relating to the national defense’ has consistently been construed broadly to include information dealing with military matters and more generally with matters relating to United States foreign policy and intelligence capabilities.”). Second, the information must be “closely held” by the U.S. government. *See United States v. Squillacote*, 221 F.3d 542, 579 (4th Cir. 2000) (“[I]nformation made public by the government as well as information never protected by the government is not national defense information.”); *United States v. Morison*, 844 F.2d 1057, 1071-72 (4th Cir. 1988). Third, disclosure of the documents must be potentially damaging to the United States or potentially useful to an enemy of the United States. *See Morison*, 844 F.2d at 1071-72

(approving jury instruction that the prosecution must prove that the information “would be potentially damaging to the United States or might be useful to an enemy of the United States.”).

84. To obtain a conviction, the government must prove those elements to the jury beyond a reasonable doubt. Assange, therefore, will have the opportunity to present evidence, cross-examination, and argument that the United States has failed to prove any or all of those elements.

Conclusion

85. I, Gordon D. Kromberg, an Assistant United States Attorney, attest under penalty of perjury that, on this 3rd day of September 2020, this document is true and accurate to the best of my knowledge, information, and belief.


Gordon D. Kromberg
Assistant United States Attorney
Office of the United States Attorney
Alexandria, Virginia

LIST OF EXHIBITS

EXHIBIT A: Alexandria Sheriff's Office COVID-19 Coronavirus Protocols

EXHIBIT B: *U.S. v. Cunningham*, Addendum to Joint Motion to Approve Settlement

EXHIBIT C: BOP Program Statement Regarding Communication Management Units

EXHIBIT D: BOP COVID-19 Phase Nine Action Plan

EXHIBIT E: Modification to BOP COVID Phase Nine Action Plan

EXHIBIT A



ALEXANDRIA SHERIFF'S OFFICE
COVID-19 CORONAVIRUS PROTOCOLS
UPDATED JULY 24, 2020

STATEMENT OF PURPOSE

The purpose of these temporary policy and procedure modifications is to reduce the spread of the COVID-19 Coronavirus amongst staff, inmates, and the public. They will remain in effect until otherwise directed by the Sheriff.

INDEX

I. POLICY

II. DEFINITIONS

III. PSC COVID-19 SCREENING FOR STAFF AND PUBLIC

- A. Screening procedures for general public entering PSC
- B. Screening procedures for contract employees entering the PSC
- C. Screening procedures for law enforcement officers entering the PSC
- D. Screening procedures for all employees entering the PSC
- E. Screening procedures for staff and non-staff entering the WGTADC

IV. COURTHOUSE COVID-19 PROTOCOLS

- A. Screening procedures for general public at the courthouse
- B. Attorney client meeting procedures
- C. Staff procedures

V. WGTADC COVID-19 PROTOCOLS

- A. Restrictions and temporary protocols
- B. Booking/Intake protocols
- C. Booking/Intake protocols for PUI DUI alcohol related arrests
- D. Medical follow up for a PUI inmate
- E. Protocols for managing symptomatic and non-symptomatic PUI inmates in IRC, 1X and 2E housing units.
- F. Protocols for managing former PUI inmates
- G. Protocols for an inmate with presumptive COVID-19 diagnosis
- H. Transportation of all inmates

- I. Release of PUI inmate from the WGTADC
- J. Warrant Service at WGTADC
- K. Classification Counselor Unit
- L. ACJS

VI. HOSPITAL TRANSPORTS AND DETAILS

- A. Hospital transports and details for inmates
- B. Hospital details for arrestees committed at the hospital

VII. ACJS AND ALTERNATIVE PROGRAMS

- A. Intermittent, weekend reporting, and advanced commitments
- B. ACJS pretrial and local probation

VIII. WGTADC AND PSC COVID-19 CLEANING PROTOCOL

- A. WGTADC cleaning protocols (2001 mill road)
- B. PSC cleaning protocols (2003 mill road)

IX. GENERAL INFORMATION

- A. Staff training
- B. Public notification
- C. Deliveries to PSC
- D. Employee sick leave

I. POLICY

This written order will be considered the policy of the Alexandria Sheriff's Office during the COVID-19 Coronavirus pandemic. This order provides direction to staff on how to reduce the spread of the virus within the William G. Truesdale Adult Detention Center (WGTADC), the Public Safety Center (PSC) and the Alexandria Courthouse with enhanced screening and cleaning measures.

The protocols outlined in this order will dictate how staff within the William G. Truesdale Adult Detention Center, the Public Safety Center, and Alexandria Courthouse will respond to an individual(s) that have been exposed to and/or is currently infected with the COVID-19 Coronavirus.

II. DEFINITIONS

- A. COVID-19 Coronavirus – per the Virginia Department of Health, is an infectious respiratory disease caused by a new (novel) coronavirus that initially emerged in Wuhan Province, China in December of 2019. The illness has ranged from mild symptoms to severe illness and death for confirmed COVID-19 cases. Most patients with confirmed COVID-19 have developed fever (subjective or confirmed) and/or symptoms of acute respiratory illness (e.g., cough, difficulty breathing). There have also been reports of asymptomatic infection with COVID-19.
- B. Public Safety Center (PSC) - The building and grounds that house the Alexandria Sheriff's Administrative Offices, the William G. Truesdale Adult Detention Center (WGTADC), and the Alexandria magistrate's office. The building and grounds are located at 2001 and 2003 Mill Road Alexandria, VA 22314.
- C. Courthouse – Located at 520 King Street Alexandria, Virginia and houses the Circuit, General District, and Juvenile & Domestic Relations Courts for the City of Alexandria, the Clerk of the Court, and Alexandria Court Services Unit.
- D. ASO Screening Questionnaires for COVID-19 Coronavirus – A questionnaire that ASO staff will use to help determine if an arrestee, inmate, staff member, or member of the public has been exposed to or is possibly infected with the COVID-19 Coronavirus.
- E. Person Under Investigation (PUI) – A person under investigation is an individual that has been or potentially exposed to or is possibly infected with the COVID-19 Coronavirus. Due to the high number of COVID-19 Coronavirus cases in the national capital region, any non-staff member or new arrestee entering the PSC and/or WGTADC will be treated as a PUI. Anyone entering the Courthouse who answers “yes” to any questions on the ASO Courthouse Screening Questionnaire will be considered a PUI.

III. PSC COVID-19 SCREENING FOR STAFF AND PUBLIC

A. Screening procedures for general public entering the PSC

- i. Staff will determine the purpose of each person's visit by communicating via the intercom system. If the visit is not for an essential function operating within the PSC, the person will be denied entry. Staff will consult with the watch commander, if needed, to determine what are essential functions within the PSC.
- ii. Staff will observe each person for symptoms of COVID-19 Coronavirus. If they feel a person is symptomatic, they will:
 1. Order the person to exit the front screening post and wait for further communication from staff via the intercom system.
 2. Staff will contact the watch commander and advise them of the situation.
 3. The watch commander will determine if the person will be denied entry into the PSC.
 4. If the watch commander allows a symptomatic person into the PSC, (i.e. they are requesting an EPO from the magistrate etc.) they will:
 - a. Provide the person a surgical mask and gloves
 - b. A deputy will escort them in full PPE to their predetermined location, wait until their business is completed, and ensure they are escorted out by the deputy. The deputy will ensure the individual does not unnecessarily touch anything and takes direct routes.
 5. The watch commander will ensure that the most updated ASO COVID-19 Coronavirus PSC screening form is completed for this person and filed in the watch commander's office.
- iii. If a person does not appear to be symptomatic, they will:
 1. Ensure the most updated ASO COVID-19 Coronavirus PSC screening form questions are answered by the person.
 2. Ensure the person completes a non-invasive body temperature test and record the results.

3. Staff will contact the watch commander, advise them of the persons answers to the screening form questions, their body temperature, and the purpose of their visit.
4. The watch commander will determine if the person will be denied or allowed entry into the PSC.
5. If the watch commander allows the person into the PSC, (i.e. they are requesting an EPO from the magistrate etc.) they will:
 - a. Provide the person a surgical mask and gloves.
 - b. A deputy will escort the person to their predetermined location. The deputy will wear a mask and gloves. If the person indicates they are symptomatic, the deputy will wear full PPE. The deputy wait until the person's business is completed unless their business involves another staff member, and ensure they are escorted out either by a staff member or deputy. The deputy/staff member will ensure the individual does not unnecessarily touch anything and takes direct routes.
6. The watch commander will ensure that the most updated ASO COVID-19 Coronavirus PSC screening form is completed for this person and filed in the watch commander's office.

B. Screening procedures for contract employees entering the PSC

- i. Staff will confirm the contract employee's purpose is to conduct work at the PSC and they are displaying their Sheriff's Office identification.
- ii. Staff will observe all contract employees for symptoms of COVID-19 Coronavirus. If they feel the person is symptomatic, they will:
 1. Order the person to exit the front screening post and wait for further communication from staff via the intercom system.
 2. Staff will contact the watch commander and advise them of the situation.
 3. The watch commander will not allow the contract employee into the PSC. They will contact the contract employee's ASO liaison and all necessary notifications will be made to the contract employee's employer immediately.

4. The watch commander will ensure that the most updated ASO COVID-19 Coronavirus PSC screening form is completed for this person and filed in the watch commander's office.
- iii. If a contract employee does not appear to be symptomatic, staff will:
1. Ensure the most updated ASO COVID-19 Coronavirus PSC screening form questions are answered by the person.
 2. Ensure the person completes a non-invasive body temperature test and record the results.
 3. Staff will contact the watch commander, advise them of the persons answers to the screening form questions and their body temperature.
 4. The watch commander will determine if the contract employee will be permitted into the PSC.
 5. If the watch commander does not allow the contract employee entrance into the PSC, they will contact the contract employee's ASO liaison and all necessary notifications will be made to the contract employee's employer immediately.
 6. If the watch commander allows the contract employee into the PSC, staff will ensure that they have a mask on. If they do not have a mask of their own, staff will provide them with one.
 7. The watch commander will ensure that the most updated ASO COVID-19 Coronavirus PSC screening form is completed for this person and filed in the watch commander's office.

C. Screening procedures for law enforcement officers entering the PSC

- i. Staff will determine the purpose of each law enforcement officers (LEOs) visit by communicating via the intercom system. If the reason for the LEOs visit can be accomplished without the LEO entering the PSC, staff will accommodate them.
- ii. Staff will observe each LEO for symptoms of COVID-19 Coronavirus. If they feel a LEO is symptomatic, they will:

1. Ask the LEO to exit the front screening post and wait for further communication from staff via the intercom system.
 2. Staff will contact the watch commander and advise them of the situation.
 3. The watch commander will communicate with the LEO and the LEOs agency to determine if the LEO will be permitted entry into the PSC.
 4. If the watch commander allows a symptomatic LEO into the PSC, they will:
 - a. Provide the LEO a surgical mask and gloves if they do not have their own PPE.
 - b. A deputy will assist the LEO in full PPE to their predetermined location, wait until their business is completed, and assist them out of the PSC in the most direct manner possible. The deputy will ensure the LEO does not unnecessarily touch anything and takes direct routes.
 5. The watch commander will ensure that the most updated ASO COVID-19 Coronavirus LEO screening form is completed for this person and filed in the watch commander's office.
- iii. If a LEO does not appear to be symptomatic, staff will:
1. Ensure the most updated ASO COVID-19 Coronavirus LEO screening form questions are answered by the person.
 2. Ensure the LEO completes a non-invasive body temperature test and record the results.
 3. Staff will contact the watch commander, advise them of the LEO answers to the screening form questions, their body temperature, and the purpose of their visit.
 4. The watch commander will determine if the LEO will be permitted entry into the PSC.
 5. If the watch commander allows the LEO into the PSC, they will:
 - a. Provide the person a surgical mask and gloves if they do not have their own PPE. Staff will ensure the LEO

is wearing a mask when they enter the PSC.

6. The watch commander will ensure that the most updated ASO COVID-19 Coronavirus LEO screening form is completed for this person and filed in the watch commander's office.

D. Screening procedures for all employees entering the PSC

- i. All employees must do the following before arriving at work:
 1. Take their temperature to ensure it is not above 99 degrees. If your temperature is above 99 degrees, you will remain at home and contact your immediate supervisor.
 2. Regularly review the ASO COVID-19 Employee Screening form. If you answer "yes" to any questions, please consult with your supervisor for further guidance.

E. Screening procedures for staff and non-staff entering the WGTADC

- i. Staff will only allow persons into the WGTADC that are essential to jail operations. Staff can consult with the watch commander, if needed, to determine what essential jail operations are.
- ii. All persons (staff and non-staff) entering the WGTADC will follow these protocols:
 1. Wash their hands by utilizing a restroom in the PSC before entering the WGTADC.
 2. Review the appropriate ASO COVID-19 Screening form with the Control 1 Deputy if they have not done so already. The Control 1 Deputy should be observing individuals for obvious symptoms. If the individual appears symptomatic or has answered "yes" to question(s) on a screening form the watch commander will be contacted to determine if the individual will be permitted into the ADC.
 3. Receive a non-invasive body temperature test to ensure their body temperature is not above 99 degrees. If it is above 99 degrees:
 - a. They will receive and don a surgical mask and non-latex gloves, exit Control 1, have a seat on the benches, and wait for further communication via the intercom system.

- b. If a staff members temperature is at or above 99 degrees contact medical to respond and take their temperature with an under the tongue thermometer. Provide the watch commander with the results.
 - c. The watch commander will determine if they will be denied entry into the WGTADC.
 4. All staff and non-staff are required to wear a mask when entering the WGTADC and while inside of the WGTADC. We will provide masks as needed to staff and non-staff members. Please review this policy to determine what type of masks staff and non-staff are required to wear while inside of the ADC.

IV. COURTHOUSE COVID-19 PROTOCOLS

A. Screening procedures for general public at the courthouse

i. The front screening posts deputies will:

1. Ask every person entering the courthouse the purpose for their visit. If their visit is for a non-essential purpose, entry will be denied.
2. If their visit is for an essential purpose, the deputy will ask them the questions listed on the most updated ASO Courthouse COVID-19 Coronavirus screening form. If the person answers "yes" to any of the questions the person will be directed to remain outside of the courthouse and a supervisor will be consulted for further guidance.
3. Every person entering the courthouse will have their temperatures taken with a no-touch thermometer by activating the thermometer approximately one inch in front of the person's forehead. If a person's temperature reads above 100 degrees Fahrenheit, access into the courthouse will be denied.
4. All persons entering the courthouse are required to wear a mask or face covering that always covers their nose and mouth. Staff will provide masks to all persons entering that do not have one.
5. Any disputes about entry into the courthouse will be decided by the chief judge of the various courts.

B. Attorney client meeting procedures

- i. All attorney client meetings at the courthouse will be done behind glass in the inmate holding area.

C. Staff Procedures

- i. Regularly review the ASO COVID-19 Employee Screening form. If you answer “yes” to any questions, please consult with your supervisor for further guidance.
- ii. At the start of their shift, staff will receive a non-invasive body temperature test to ensure their body temperature is not above 99 degrees. If it is above 99 degrees:
 1. A “Tempadot” test will be taken by the employee. If it still reads over 99 degrees, the employee will be sent home and their supervisor will provide them further instructions.
- iii. All staff at the Courthouse will wear a N95 mask, or surgical mask, or cloth mask and gloves during their work hours. The cloth mask will have no offensive pictures or words and will be approved for use by the bureau commander.

V. **WGTADC COVID-19 PROTOCOLS**

A. Restrictions and temporary protocols:

- i. All inmates are issued a cloth mask and must don the mask when out of their cells or traveling throughout the facility.
- ii. All staff and non-staff must wear a mask inside of the WGTADC. Staff and non-staff not assigned to or conducting direct work in units 2E, 1X, and IRC will wear a N95 mask, or surgical mask, or cloth mask during their work hours. The cloth mask will have no offensive pictures or words and will be approved for use by the bureau commander.

All staff and non-staff assigned to or conducting direct work in units 2E, 1X, and IRC must wear an N95 mask. If staff or non-staff is unable to wear a N95 mask because they failed a fit test, they will be permitted to wear a surgical mask.

- iii. All individuals (staff and non-staff) providing and receiving any items to and from inmates will wear non-latex gloves provided by ASO.
- iv. All inmates’ body temperatures will be taken daily with a no-touch

thermometer by pointing and activating the thermometer approximately one inch in front of the individual's forehead. Any inmate with a temperature at or above 99 degrees will be reported to medical staff and the watch commander immediately.

- v. All tours of the ADC are cancelled.
- vi. All contact visits at the ADC are cancelled until further notice. Professional visits will be conducted by video conferencing in Interview room 4. Any requests for in-person visits can only be approved by the Chief of Security.
- vii. All external programs involving non-ASO staff or contractors will be cancelled until further notice unless approved by the Sheriff. All internal programs involving ASO staff will continue. Any exceptions will be communicated via a written directive from a Chief Deputy or higher.
- viii. All inmate moves and reclassifications will be made on an as needed basis with approval of the watch commander.
- ix. All social visitation is cancelled, inmates will receive an hour of free phone time per week and non-PUI inmates will be permitted a ten-minute video visitation once a week.
- x. Visits to the law library will be permitted for non-PUI inmates only. Only one inmate at a time will be allowed in the law library. Inmates will wear their mask and non-latex gloves. Inmates will leave all materials out when they leave for cleaning. A 3CF unit worker will clean the law library after each use while under the supervision of a deputy. Legal materials can still be requested by inmates in lieu of a visit to the law library.
- xi. All inmates will be reminded to wash their hands frequently throughout the day for at least 20 seconds with newly purchased soap.
- xii. Suspension of all weekend inmates.
- xiii. Suspension of the work release program. If modified work release participants report to the Visitor's Center, they will communicate with staff via the intercom system, and they will not be permitted on the PSC grounds.

B. Booking/Intake protocols

- i. All new arrestees will be screened by the arresting officer prior to transport to the WGTADC by completing the most updated ASO Arrestee Intake and Transfer Screening Questionnaire for COVID-19 Coronavirus. The form must be completed before the arresting officer will be allowed into the sally port. The arresting officers will also complete the ASO Sworn LEO COVID-19 screening form prior to entering the sally port. The forms are available outside of the sally port in clear plastic containers.
- ii. All arrestees will be considered as a Person Under Investigation (PUI) and the following protocols will be followed:
 1. All arrestees will be walked into the sally port via door 2 unless extenuating circumstances exist that would require the arrestee and officer to enter the sally port in a vehicle. The watch commander will be notified if a vehicle needs to enter the sally port.
 2. The Control 1 deputy will not allow the arresting officer and the arrestee into the sally port until it is safe to do so and the officer has secured all weapons inside of their vehicle. If they are unable to secure their weapons in their vehicle, they will be permitted to store them in the gun lockers inside of the sally port.
 3. The Control 1 deputy will ask the officer to don a mask and latex gloves prior to entering the sally port. If they do not have either, they will be provided to them when they enter the sally port.
 4. Upon their arrival they will remain in the sally port. The Control 1 deputy will advise the officer to wait for staff. The Control 1 deputy will immediately notify the watch commander.
 5. The Control 1 deputy will notify the magistrate of the new arrest.
 6. A nurse and a pre-designated deputy will come out to the vehicle and conduct the initial assessment/questioning with the arrestee wearing the following personal protective equipment (PPE):
 - a. Goggles and/or protective face mask
 - b. N95 mask
 - c. Disposable medical gown

- d. Two pairs of disposable non-latex gloves.
7. Medical staff, during the initial screening, will determine if the arrestee is a symptomatic or non-symptomatic PUI. The deputy will relay medical staff's determination to the watch commander and IRC sergeant. This information must be obtained prior to the arrestee entering the ADC. If the arrestee is committed, the IRC sergeant will be responsible for placing the yellow tag labeling the inmate as symptomatic on the IRC locator board.
 8. If the arrestee is combative, two SERT deputies wearing their gas masks with a surgical mask on top of the respirator, full protective suit, and two pairs of non-latex gloves, will respond to the sally port with medical staff.
 9. Once inside of the sally port, a surgical mask will be placed on the arrestee.
 10. After the initial assessment, if the arrestee is medically cleared the following will occur:
 - a. The deputy will conduct an initial search of the arrestee consistent with G.O. OPS-01 Search of Persons.
 - b. All property removed from the arrestee will inventoried and placed into a property bag and the bag will be sealed.
 - c. The deputy will contact the magistrate via the telephone in the sally port by calling 703-746-4515 and notify them of the PUI arrestee.
 - d. The deputy, magistrate, and arresting officer will discuss what paperwork is needed to begin the arrest process. Any paperwork that is needed by the magistrate will be slid under door 5 and transported by a deputy to the magistrate.
 - e. A probable cause and commitment hearing will be conducted with the magistrate by video conferencing via the monitor mounted on the wall. If that is not working the iPad located in the sally port will be used. If the iPad is not working the hearings will be conducted in the search area sally port area between doors 5, 6, and 7.

- i. If the arrestee is combative, appropriate actions will be taken to conduct the hearing in a safe manner, to include having the magistrate come into the sally port if needed. If they do enter the sally port, they will wear the appropriate PPE.
- f. If the arrestee is not committed, they will be booked in and fingerprinted inside of the sally port. The arrestee will sign the fingerprint card.
- g. The arrestee will not be permitted to come inside of the ADC. Before the individual is released, medical staff will contact the Alexandria Health Department if they determine it is necessary.
- h. Upon the arrestee's release, they will be provided their property once they have been escorted off the PSC grounds.
- i. All ASO staff, medical staff, and magistrates will remove disposable PPE items inside of the sally port, place them in a bio-hazard bag, and place the bag inside of the bio-hazard box located inside of the sally port.
- j. The sally port will be cleaned before any non-PUI inmate transports enter. If there are multiple PUI arrestees in close frequency, there will not be a need to clean the entire sally port between each arrestee. In those situations, cleaning of essential areas in the sally port will occur on an as needed basis monitored by the watch commander.
- k. If the arrestee is committed the following will occur:
 - i. The inmate will don a surgical mask and non-latex gloves.
 - ii. There will be zero movement called before they enter.
 - iii. Once inside, the one pre-designated deputy or SERT deputies will:
 - 1. If the arrestee is non-symptomatic, they will be moved, in the most direct route possible, to I5 to be changed over.

Once the changeover is complete, the arrestee will be moved to a non-negative pressure cell in IRC, where they will be housed alone. If no IRC cells are available, male inmates will be moved to 2E, where they will be housed alone. Females will only be housed in IRC for their first 15 days. Male inmates will be moved from IRC to the appropriate units to accommodate new female inmates if necessary.

- a. The watch commander determines with the assistance of mental health and medical staff, if available, that the new arrestee is suffering from mental health or behavioral issues or narcotic/alcohol withdrawals, the new arrestee will be housed in IRC. The watch commander will make all necessary inmate moves for this to occur.
2. If the arrestee is symptomatic, they will be placed into a negative pressure cell immediately. If a negative pressure cell is not available, they will be moved to 1X.
- iv. The deputy(s) who escorted the inmate will then remove their disposable PPE inside of the sally port or I5, whichever location is closer, and place it inside of a bio-hazard bag, then into a bio-hazard box.
- v. The inmate's property will be secured inside of the sally port in a locker and not brought into the ADC until 48 hours has passed. Inmate's money will be inventoried in the sally port, placed in a money envelope, then placed in a plastic bag, and then placed in the IRC safe. Any non-essential items should be retained by the arresting officer. All inmate property should be properly inventoried and labeled with the inmate's name before it is stored in the sally port.

- vi. When the inmate is changed into jail clothing, their clothing will be immediately placed into a wash-away bag. The bag will immediately be put into the washing machine in I5. All clean clothes should be inventoried and placed in a property bag and stored as usual.

11. All paperwork generated during the arrest process will be provided to, returned, and remain with the necessary party (i.e. magistrate, booking deputy, arresting officer, arrestee).

12. Multiple new arrests are permitted to be processed in the sally port at the same time. The following procedures will be followed in this situation:

- a. All procedures outlined in section V; subsection B will be followed during the intake procedure.
- b. Entry into the sally port will occur by door 2 only if another arrestee is already being processed inside of the sally port. This will require the Control 1 deputy to communicate this information to the arresting officers.
- c. As the processing of multiple arrestees occur, additional booking staff will assist, and booking will be backfilled by other security deputies.
- d. The arresting officer will be permitted to leave once they have completed their portion of the intake process (obtaining warrants, completed all necessary paperwork etc.). The sally port will be deemed safe by booking staff (i.e. all arrestees in the sally port are sufficiently secured) before the officer exits. **The officers will exit via the door chosen by booking staff.**
- e. Staff will not process multiple PUI arrestees that are heavily symptomatic (high fever, extreme respiratory distress, heavy coughing, etc.) in the sally port. If an arrestee is heavily symptomatic, they should be processed alone OR transported to the hospital if they are need of immediate medical attention.

C. Booking/Intake protocols for a PUI DUI alcohol related arrest

- i. All procedures outlined in section V subsection B of this policy will be adhered to along with the following instructions:
 - 1. If the PUI DUI arrestee is non-symptomatic and cleared

medically, the arresting officer will be permitted to conduct an Intoxilyzer test while wearing the proper PPE. The PUI arrestee will wear gloves and a surgical mask.

2. When the Intoxilyzer test is completed the arresting officer and PUI DUI arrestee will exit back into the sally port and the procedures outlined in section V subsection B will be followed.
3. If the PUI DUI arrestee is obviously symptomatic the Intoxilyzer test will not occur to ensure the arresting officer and staff do not experience prolonged exposure to a symptomatic PUI arrestee.
4. The arresting officer or medics can take the arrestee to the hospital for a blood draw, if the arresting officer chooses to do so.

D. Medical follow up for a PUI inmate

- i. The PUI will undergo a full medical assessment by the medical staff. Medical staff will inform the watch commander of any changes in the inmate's health.
- ii. If the doctor, in consultation with Alexandria Department of Public Health, makes the determination that the inmate is no longer considered a PUI, they will notify the watch commander.
- iii. The inmate will then be classified and moved according to current policies and procedures.
- iv. Cells in IRC, 1X, and 2E are to be decontaminated using the electrostatic sprayer with proper chemicals immediately after the inmate is re-housed and prior to another inmate occupying cells in IRC, 1X, and 2E. If the cell contains other biohazard items such as but not limited to feces, blood, or urine the Chief Deputy of Security and the Chief Deputy of Support Services will be consulted prior to cell cleaning.

E. Protocols for managing symptomatic and non-symptomatic PUI inmates in IRC, 1X and 2E

- i. 2E will be staffed with a deputy inside of the unit when the unit is occupied by inmates.
- ii. 1X and 2E will have 15-minute checks when occupied with inmate(s).

- iii. Inmates who are non-symptomatic will be permitted a 30-minute break three times a week. The break schedule will be developed by the Director of Inmate Services and approved by the Security Division captains.
- iv. Non-symptomatic inmates will clean the areas they occupied after their break. An inmate worker will then clean the area again at the conclusion of the inmate's break. The assigned housing unit deputies will supervise the cleaning.
- v. Non-symptomatic inmates will be permitted to shower during their break. The shower will be disinfected by a deputy with a handheld sprayer. The shower will not be used for at least 20 minutes after being disinfected and dried with an electric fan.
- vi. Inmates will be monitored by medical staff daily.
- vii. Inmates will be provided with items to maintain their hygiene and cleaning supplies to clean their cell.
- viii. Non-symptomatic inmates can be interviewed by classification and mental health via the roll away phone (red phone), the video conferencing system in interview room 1, or in the first-floor phone visitation area. If the first-floor visitation phones are used the recording function will be turned off prior to the interview. Symptomatic inmates will only be interviewed via the roll away phone.
- ix. Inmates will be permitted to use the roll away phone for 30 minutes once every other day.
- x. Inmates will have access to canteen. They will be provided with certain canteen items free of charge weekly. These items will be determined by the inmate programs manager.
- xi. Inmates clothing will be washed in a wash away bag only.
- xii. Deputies assigned to 1X or 2E will wear the following PPE when entering the unit and/or transporting an inmate to and from the unit:
 - 1. Goggles or face shield
 - 2. N95 mask or surgical mask if unable to wear a N95 mask.
 - 3. Disposable medical gown
 - 4. Two pairs of non-latex gloves
- xiii. Multiple deputies can work 2E during a shift. The watch commander will implement this when appropriate.

- xiv. The deputy stationed in 2E will receive regular breaks and hourly check ins from the confinement sergeant.
- xv. Deputies assigned to IRC will wear the following PPE when conducting rounds, meal service, and inmate transports:
 - 1. Goggles or face shield
 - 2. N95 mask or surgical mask if unable to wear a N95 mask.
 - 3. Disposable medical gown
 - 4. Two pairs of non-latex gloves
- xvi. Deputies will dispose or maintain their PPE in the following manner:
 - 1. Goggles or face shields:
 - a. Will be used for the duration of the shift.
 - b. They will be disinfected immediately with wipes if a deputy has direct physical contact with an inmate.
 - c. They will be disposed of and replaced if they are soiled with any type of bodily fluid.
 - d. They can be disinfected as many times as needed by the deputy during their shift.
 - e. If they are damaged during the shift, they will be disposed of and replaced.
 - f. Goggles will not be disposed of at the end of the shift. They will be disinfected and ready for future use.
 - g. Face shields will be disposed of at the end of the shift.
 - 2. N95 mask:
 - a. Will be used for the duration of the shift.
 - b. They will be disposed of and replaced if they are soiled with any type of bodily fluid.
 - c. If they are damaged during the shift, they will be disposed of and replaced.
 - d. If not being donned, they will be placed in a paper bag maintained by the deputy.
 - e. The masks can be used again after 72 hours has

passed.

3. Disposable medical gown

- a. Will be used for the duration of the shift.
- b. They will be disposed of and replaced if they are soiled with any type of bodily fluid.
- c. If they are damaged during the shift, they will be disposed of and replaced.
- d. They will be disposed of at the end of the shift.

4. Non-Latex Gloves

- a. The deputy will be provided with 20 pairs of gloves per shift.
 - b. Gloves will be changed out when needed to prevent cross contamination of items outside of the housing unit.
 - c. Gloves will always be worn when donning and removing PPE.
- xvii. All disposed of PPE will be placed in a biohazard bag and the bag will be placed in the nearest biohazard box.
- xviii. The location where the PPE is removed will be decontaminated when practical and necessary using the electrostatic sprayer with proper chemicals.
- xix. All inmate meals will be served in disposable trays. The meal cart will be placed outside the unit. A deputy will retrieve the cart and distribute the meals wearing PPE.
- xx. The deputy will place the trays in a trash bag for disposal.
- xxi. All bio-hazard bags will be taken to the nearest bio-hazard box.
- xxii. The cart will be sanitized using industrial strength sanitizer wipes.
- xxiii. Movement will be restricted in and out of 1X and 2E.
- xxiv. The management of the inmates in IRC, 1X, and 2E will be monitored at least every 12 hours by the Director of Inmate Services and the Security Division captains.

- xxv. Inmates who are symptomatic when they arrive or develop symptoms while they are here will have to be symptom free without the aid of medicine for 72 hours, for their 15-day quarantine to begin. Medical staff will determine if an inmate will be classified as symptomatic and they will advise the watch commander.

Inmates that show no symptoms for 15 days in IRC, 1X or 2E will be moved to 1EF (male) or 1A (female) after medical clearance, consultation with the health department (if determined necessary by medical staff), and approval from classification and the watch commander.

F. Protocols for managing former PUI inmates

- i. Inmates no longer considered a PUI will be housed in 1EF or 2F (male), and 1A (female) for 15 days, after their initial 15 days of monitoring in IRC, 1X or 2E. Only Administrative Segregation male inmates will be housed in 2F.
- ii. A deputy will be inside of the 1EF housing unit twenty-four hours a day providing direct and constant supervision of the inmates. 2F and 1A will be supervised as current policy dictates or as directed by the Chief of Security.
- iii. These inmates will not be rehoused to general population until they receive final medical clearance.
- iv. The management of the inmates in 1EF, 2F, and 1A housing units will be monitored at least every 12 hours by the Director of Inmate Services and the Security Division captains.
- v. Any further modifications to the 1EF, 2F, and 1A units will only be approved by the Chief of Security.

G. Protocols for an inmate with presumptive COVID-19 diagnosis

- i. The watch commander will be notified immediately.
- ii. Medical staff is to be notified immediately of the PUI inmate and will arrange to have all inmates in this unit screened for possible exposure.
- iii. Any deputy(s) assigned to the housing unit in which the PUI inmate was discovered will:
 - 1. Be relieved of duty by the watch commander.

2. They will don their N95 mask, gloves, and leave the PSC.
3. The deputy will then contact the HR director for further guidance.
- iv. If an inmate tests positive for COVID-19, they are to remain medically isolated and monitored daily. The inmate should wear a mask and after a 14-day symptom free period the inmate can be tested again for presence of the virus. The inmate is to remain isolated and masked until the inmate tests negative 3 days in a row.
- v. The housing unit in which the inmate is in will be locked down and placed in a medical quarantine status for 15 days.
- vi. If any inmates in the housing unit leave their cell, they will have a surgical/cloth mask and non-latex gloves on.
- vii. Deputies assigned to that unit will don the following PPE for the duration of their shift:
 1. Goggles and or a protective face shield
 2. N95 mask or surgical mask if they are unable to wear a N95 mask
 3. Disposable medical gown or disposal Tyvek suit
 4. Two pairs of non-latex gloves
- viii. The watch commander will arrange the decontamination of the unit and items that leave the unit.
- ix. The watch commander will immediately notify their division commander.
- x. All meals will be served in Styrofoam trays during the 15-day medical quarantine.
- xi. The watch commander and medical staff will then contact the Alexandria Health Department 24/7 emergency number to determine if any other actions need to be taken.
- xii. The Director of Inmate Services and Security Division Commanders will monitor this unit at least every 12 hours for staff and inmate wellbeing.

H. Transportation of all inmates

- i. All transports of inmates (PUI and non-PUI) will be done by sworn non-security and support services staff, except for the United States Marshalls transport. This is to reduce the risk of security and

support services staff being exposed to COVID-19 and introducing it into the ADC.

- ii. Any individual transported from a correctional facility, jail, medical facility, mental health facility, or courthouse that has any confirmed COVID-19 cases will be treated as a PUI. To ensure staff is aware of which facilities these are, the following will occur:
 1. It is assumed that all medical facilities (hospitals, doctor's offices etc.) and mental health facilities have COVID-19 positive patients.
 2. The captains of Security will maintain a list of all correctional facilities or jails in our region with confirmed COVID-19 cases and regularly share this information with staff and Records staff.
 3. Records staff will always have an updated list of all correctional facilities or jails in our region with confirmed COVID-19 cases.
 4. Records staff will note on any transport orders, court lists, etc. if the inmate is coming from or going to a PUI facility.
- iii. Before a transport occurs, security staff will bring the inmate(s) into the search area between doors 5,6, and 7, so the transporting deputy can conduct a search of the inmate(s). The transporting staff will not enter the ADC.
- iv. All inmates being transported will wear a mask regardless if they are a PUI or non-PUI inmate.
- v. Transportation of PUI inmates will only occur if court ordered. The inmate will wear a surgical/cloth mask and non-latex gloves. All deputies involved in the transport will wear PPE. Transportation of PUI and non PUI inmates together will be avoided if possible. If not possible, ensure they are placed apart from each other in the transport vehicles.
- vi. If a symptomatic PUI inmate needs to be transported to the hospital they will be transported by ambulance. All deputies involved in the transport will wear PPE.
- vii. Any Sheriff's Office vehicle used to transport a PUI inmate will be disinfected by wiping down all surfaces with the "Sani-Cloths" germicidal disposable wipes. The electrostatic sprayer can be used in lieu of wipes to disinfect the caged portion of the vehicle.

- viii. If the sally port is occupied with a PUI, and a non-PUI inmate transport arrives at the ADC the following will occur:
 - 1. When a transporting deputy arrives outside of gate 1 with a non-PUI inmate, the Control 1 deputy will instruct the deputy to drive around to gate 13.
 - 2. After the transport vehicle enters gate 13, the gate will be secured.
 - 3. The deputy will secure their firearm, magazines, OC spray, tasers, expandable batons, knives, etc. in the trunk of their vehicle.
 - 4. The deputy will wait with the inmate outside door 12.
 - 5. Once the security deputy arrives at door 12, they will allow the PUI-inmate inside. The non-security deputy will wait outside of door 12.
 - 6. A search of the inmate consistent with G.O. OPS-01 Search of Persons will be conducted in the loading dock area. (a chair, plastic property bags, and handheld magnetometer have been placed in the loading dock area. If the inmate has any non-criminal contraband items i.e. tobacco products, lighter, and or matches these items will be placed in the designated safe located in the loading dock area.)
 - 7. Once the search is completed the transporting deputy will be permitted to leave. The security deputy will then walk through door 10 with the inmate, where medical will take the inmate's temperature. The security deputy will then escort the inmate to I5 where the inmate will wash their hands and change into a new jumpsuit before returning to their housing unit.
 - ix. If the sally port is not occupied with a PUI arrest/transport the arresting or transporting officers will remain in the sally port and medical staff will take the inmates temperature with a no-touch thermometer by pointing and activating the thermometer approximately one inch in front of the individual's forehead.
 - x. Inmates will wash their hands in I5 and change into a new jumpsuit before returning to their housing unit.
- I. Release of PUI inmate from the WGTADC
- i. If a symptomatic PUI inmate makes bond or is scheduled to be

released, the watch commander will ensure that medical staff notifies the Alexandria Public Health Department at 571-259-8548 for guidance before releasing them. If the PUI inmate is not symptomatic, the Alexandria Health Department does not need to be contacted.

- ii. The watch commander will then ensure that all proper PPE is donned by the inmate and staff during the release process, minimize the inmate's movement, and arrange for all areas the inmate was housed in and traveled to be immediately disinfected.

J. Warrant Service at the WGTADC

- i. If an inmate has an active warrant and the ASO warrant unit is not available to serve it, a booking deputy will:
 1. Notify the watch commander.
 2. Execute the warrant and follow all proper booking procedures.
 3. Notify APD that a warrant has been served by calling 703-746-4444 and request for an APD officer to contact the executing booking deputy, via the telephone.
 4. The booking deputy will provide the officer with all the information needed so that the officer can complete the police report and all other APD related paperwork.
- ii. When persons arrive at the PSC with an active warrant, ASO staff will:
 1. Notify the watch commander.
 2. Complete an ASO COVID-19 New Arrestee Screening Form and follow all procedures outlined in section V, subsections B and C of this policy.
 3. Contact APD and have them provide ASO staff the warrant.
 4. Execute the warrant and follow all proper booking procedures.
 5. Notify APD that a warrant has been served by calling 703-746-4444 and request for an APD officer to contact the executing booking deputy, via the telephone.

6. The booking deputy will provide the officer with all the information needed so that they can complete the police report and all other APD related paperwork.
- iii. If an arresting officer arrives within the sally port with an arrestee that has a commitment order ASO staff will:
 1. Follow all procedures outlined in Section V, subsections B or C of this policy.
 2. If the arrestee is medically cleared to come into the facility, ASO staff will take all paperwork from the arresting officer. The arresting officer will not need to come into the ADC.

K. Classification Counselor Unit

- i. Classifications initial intake interviews for non-symptomatic PUI inmates will take place via the roll away phone (red phone), the video conferencing system in interview room 1, or in the first-floor phone visitation area. If the first-floor visitation phones are used the recording function will be turned off prior to the interview. Initial intake interviews for symptomatic PUI inmates will only take place via the roll away phone (red phone).
- ii. Classification housing unit visits may take place via the public visitation booths at the discretion of the individual classification counselor.

L. ACJS

- i. ACJS personnel will conduct interviews for non-symptomatic PUI inmates via the roll away phone (red phone), the video conferencing system in interview room 1, or in the first-floor phone visitation area. If the first-floor visitation phones are used the recording function will be turned off prior to the interview. Interviews for symptomatic PUI inmates will only take place via the roll away phone (red phone).

VI. HOSPITAL TRANSPORTS AND DETAILS

A. Hospital transports and details for inmates

- i. If a hospital transport and detail is needed for a non-PUI inmate between the hours of 0700 and 1700, the following will occur:
 1. The watch commander will contact the division commander of Judicial Services and Special Operations.

2. The division commander of Judicial Services and Special Operations will arrange staffing for the transport and detail from non-security and non-support services sworn personnel.
- ii. If a hospital transport and detail is needed for a non-PUI inmate between the hours of 1700 and 0700 hours, the following will occur:
 1. The watch commander will have security staff conduct the transport as soon as possible.
 2. The watch commander will contact the division commander of Judicial Services and Special Operations.
 3. The division commander of Judicial Services and Special Operations will immediately arrange staffing by non-security and non-support services sworn personnel via call-back to replace the security personnel at the hospital.
- iii. If a hospital transport and detail is needed for a PUI inmate between the hours of 0700 and 1700, the following will occur:
 1. The watch commander will contact the division commander of Judicial Services and Special Operations.
 2. The division commander of Judicial Services and Special Operations will arrange staffing for the transport and detail from non-security and non-support services sworn personnel.
 3. If the inmate is symptomatic, medics will conduct the transport.
 4. If the inmate is non-symptomatic, the staff conducting the transport will follow the guidance outlined in section V, subsection I of this policy.
- iv. If a hospital transport and detail is needed for a PUI inmate between the hours of 1700 and 0700 hours, the following will occur:
 1. The watch commander will have security staff conduct the transport as soon as possible if the inmate is non-symptomatic following the guidance outlined in section V, subsection I of this policy.
 2. If the inmate is symptomatic, medics will conduct the transport.

3. The watch commander will contact the division commander of Judicial Services and Special Operations.
4. The division commander of Judicial Services and Special Operations will immediately arrange staffing by non-security and non-support services sworn personnel via call back to replace the security personnel at the hospital.

B. Hospital details for arrestees committed at the hospital

- i. If an arresting officer has an arrestee at the hospital and they receive a commitment order from the magistrate, the following will occur:
 1. The arresting officer will notify the Alexandria Sheriff's Office at 703-746-4099.
 2. The Control 1 deputy will notify the watch commander.
 3. The watch commander will contact the division commander of Judicial Services and Special Operations.
 4. Between the hours of 0700 and 1700 the division commander of Judicial Services and Special Operations will arrange for one on-duty non-security and non-support services sworn staff member to assist the arresting officer at the hospital.
 5. Between the hours of 1700 to 0700 the division commander of Judicial Services and Special Operations will arrange for one non-security and non-support services sworn staff member to assist the arresting officer at the hospital via call-back.
 6. The sworn staff member will always wear the proper PPE for the duration of the detail.

VII. ACJS AND ALTERNATIVE PROGRAMS

A. Intermittent, weekend reporting, and advanced commitments

- i. Any person reporting to the PSC to serve a delayed confinement or weekender sentence will be advised that their sentences have been delayed by the Alexandria Courts. The front screening post deputy will not allow them to leave until the following has occurred:

1. If they arrive during normal business hours:
 - a. Notify the alternative programs staff.
 - b. Alternative programs staff will report to the front gate and obtain contact and sentencing information from the participant via the intercom system.
2. If the participant reports after normal business hours:
 - a. The front screening post deputy will complete the ASO Alternative Programs Delayed Confinement Contact form by communicating with the person via the intercom system and return the form to the Alternative Programs manager.

B. ACJS pretrial and local probation

- i. Any person that arrives at the PSC to report to ACJS will be screened as outlined in section III, subsection A of this policy. If the person is cleared to come into the PSC, they will report to ACJS. ACJS staff will ensure this person follows the cleaning guidance outlined in section VIII, subsection B (4). If they are not cleared to come into the PSC, the following will occur:
 1. Notify ACJS staff that they have a participant at the gate.
 2. ACJS staff will report to the front gate and obtain contact information from the participant by communicating with the person via the intercom system.
- ii. If a participant reports after normal business hours, the front screening post deputy will complete the ACJS Pretrial and Local Probation Contact Information form by communicating with the person via the intercom system and return the form to the ACJS program director.
- iii. If the participant is directed to report to ACJS during normal business hours after being released from the ADC:
 1. Booking staff will provide the inmate with the proper ACJS paperwork to complete and a phone number to contact ACJS at. They will not be directed to ACJS upon their release.

VIII. WGTADC AND PSC COVID-19 CLEANING PROTOCOL

A. WGTADC cleaning protocols (2001 Mill Road)

- i. The following locations will be cleaned at least once per shift with the electrostatic sprayer or other cleaning supplies:
 1. IRC/Booking
 2. Medical Unit
 3. I5
 4. Visiting area both public and inmate side
 5. Control 1 lobby
 6. Visitor elevator
 7. Elevator landings
 8. Expanded cleaning to include housing units will occur once the above are cleaned first.
- ii. Staff will utilize sanitizing wipes at least twice per shift to clean their workstations, preferably at the beginning and end of their shift. Inmates will not be provided sanitizing wipes at any time.
- iii. Supervisors will ensure all doorknobs and handles are wiped down once per shift with sanitizing wipes. This includes the elevator and buttons.
- iv. All staff are to follow proper hand washing hygiene. Staff are to wash hands routinely, particularly if they have contact with potentially infectious material, and before putting on and upon removal of PPE, including gloves. Hand hygiene can be performed by washing with soap and water for at least 20 seconds.
- v. Decontamination of Sheriffs' Office vehicles will be conducted after every transport by wiping down all surfaces with the "Sani-Cloths" germicidal disposable wipes. The electrostatic spray can be used to disinfect and clean the caged portion of the vehicle in lieu of wipes.
- vi. Inmate Kitchen Work Force Protocol
 1. All kitchen work force inmates are to wash their hands upon leaving their housing unit and upon arrival to the kitchen. The kitchen supervisor shall ensure proper hygiene is enforced throughout the day in addition to ensuring gloves and other protective clothing is worn by food service staff and inmates.
 2. After dinner meal service the meal cart will be cleaned by a kitchen inmate worker under the DIRECT SUPERVISION of Aramark kitchen staff with a bleach-based cleaning solution before placing it outside the kitchen.

vii. Video advisement room

1. The video advisement room will be cleaned and disinfected by staff or inmate work force at least twice a day. Once in the morning before any judicial proceedings and once in the evening after all judicial proceedings have been completed.
2. If a PUI inmate occupies the video advisement room, it will be cleaned and disinfected as follows:
 - a. If multiple PUI inmates are scheduled to use the video advisement room in succession, the room does not need to be fully cleaned and disinfected until all PUI inmates have concluded their hearings. The table and other items the PUI inmate may have touched should be wiped down frequently in between hearings.
 - b. If a non-PUI inmate has a hearing after a PUI inmate, the room will be cleaned and disinfected before the non-PUI inmate hearing begins.

B. PSC cleaning protocols (2003 Mill Road)

- i. All staff will sanitize their workstations/areas at least once daily.
- ii. All staff are to follow proper hand hygiene. Staff are to wash hands routinely, particularly if they have contact with potentially infectious material, and before putting on and upon removal of PPE, including gloves. Hand hygiene can be performed by washing with soap and water for at least 20 seconds.
- iii. All common areas will be cleaned at least once Monday through Friday by Classic Cleaning to include but not limited to:
 1. ACJS
 2. Locker rooms
 3. Workout room
 4. Roll call rooms
 5. Magistrates lobby
 6. 1st and 2nd Admin floors
- iv. Individuals reporting for Pre-Trial Services will wash their hands in the restroom immediately upon reporting. Pre-Trial Services may evolve to a call in only depending upon advisement from the courts

and the Alexandria Health Department.

IX. GENERAL INFORMATION

A. Staff training:

Mandatory training for all sworn and civilian staff will be coordinated between the Sheriff's Office and Wellpath as needed. Updates will be provided as appropriate.

B. Public notification:

The Sheriff's Office PIO will inform the community of any outbreaks in the detention facility after consultation with the Sheriff, the health department, and jail medical staff.

C. Deliveries to PSC:

- i. All US postal and delivery services will be delivered to the Visitor's Center.
- ii. All outside food deliveries will stop at the front screening post in the Visitor's Center.

D. Employee sick leave

- i. When an employee calls out sick and requests to use sick leave, the following will occur:
 - 1. The employee will contact their immediate supervisor.
 - 2. Their immediate supervisor will:
 - a. Complete the ASO COVID-19 Employee Screening form with the employee via the telephone.
 - b. If the employee answers "yes" to any questions the human resources director will be contacted immediately. The human resources director will then provide further instruction.
 - c. After the form is completed, the supervisor will forward it via email to human resources director.
 - 3. If the employee has any questions about the type of sick leave that will be used please review the Interim Human

Resources Guidance for the Coronavirus Disease 2019
(COVID-19) found on AlexNet.

E. Employee Roll Call

- i. All staff attending any roll call will wear a mask. The mask can be an N95 mask, cloth mask, or surgical mask.
- ii. Larger rolls calls will be reduced to teleconference call ins or held in an area that can accommodate proper social distancing. Staff effected by this modification will be notified by their division commander.



DANA LAWHORNE, SHERIFF

JULY 24, 2020
DATE

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 12-cv-01570-RPM

HAROLD CUNNINGHAM,
PERCY BARRON,
ALPHONSO BLAKE,
JABBAR CURRENCE,
CARLTON DUNBAR,
SCOTT FOUNTAIN,
SEAN GILLESPIE,
CHARLES HIPPS,
JOHN LAMB,
HERBERT PERKINS,
JOHN J. POWERS,
ARNELL SHELTON, and
MARCELLUS WASHINGTON,

Each individually and on behalf of all others similarly situated,

and

DISABILITY LAW COLORADO,
COLORADO'S PROTECTION AND ADVOCACY SYSTEM,

Plaintiffs,

vs.

FEDERAL BUREAU OF PRISONS,

Defendant.

ADDENDUM TO JOINT MOTION TO APPROVE SETTLEMENT

I. INTRODUCTION

1. On June 15, 2015, Plaintiffs Harold Cunningham, Percy Barron, Alphonso Blake, Jabbar Currence, Carlton Dunbar, Scott Fountain, Sean Gillespie, Charles Hipps, Ronnie Houston, John Lamb, Herbert Perkins John J. Powers, Arnell Shelton and Marcellus

Washington, each individually and on behalf of others similarly situated, and Disability Law Colorado (collectively “Plaintiffs”) filed a Second Amended Complaint (“Complaint”) alleging that the treatment of inmates with mental illness by the Federal Bureau of Prisons (hereafter “Defendant” or “Bureau”) at the United States Penitentiary, Administrative Maximum, located in Florence, Colorado (“ADX”), has failed to meet the minimum level of care necessary to satisfy the Eighth Amendment to the U.S. Constitution. Since June 2012, Plaintiffs and Defendant (collectively “the Parties”), through their respective counsel identified on the signature page below, have exchanged information and conducted discovery, both under the Freedom of Information Act (“FOIA”) and by way of voluntary and informal disclosures of information.

2. Plaintiffs define in their Complaint two different classes of inmates for whom this lawsuit was brought. Plaintiffs first define a class regarding screening as “[a]ll persons who are now, or will be in the future, confined to the custody of the Federal Bureau of Prisons at [ADX].” Plaintiffs next define a subclass regarding treatment as “[a]ll persons who are now, or will be in the future, confined to the custody of the Bureau [at the ADX] and have been diagnosed by the [Bureau] or its representative personnel [or contractors] with [a mental illness].”

3. Defendant denies the allegations in the Second Amended Complaint. The issue of liability has not been litigated. Defendant, prior to and since the initiation of this litigation, commenced significant initiatives to enhance the delivery of mental health services to inmates housed in the ADX and that process has been ongoing throughout this litigation. Defendant represented the interests of the Bureau of Prisons, which include decisions regarding its constitutional duty to provide care for mentally ill inmates and to protect their safety, along with

the safety of its staff and the public. Defendant does not concede that the policies and initiatives contained within this Addendum are required by the Constitution.

4. This Addendum is also the result of nearly four years of collaborative, arm's length settlement negotiations by energetic and experienced counsel for the Parties and their respective consultants and experts, aided by an experienced United States Magistrate Judge, to resolve the claims raised by this action. The Parties, without conceding any infirmity in their claims or defenses, engaged in extensive arm's length settlement negotiations to implement changes related to the constitutional violations alleged in the Second Amended Complaint. Plaintiffs' counsel received sufficient formal and informal discovery prior to and during settlement negotiations to enable them to make informed decisions. The Parties also benefited from the informed advice of two psychiatrists, Jeffrey Metzner, M.D., and Sally Johnson, M.D., with correctional experience, who have significant experience as expert witnesses and monitors in corrections mental health litigation, as well as other outside and Bureau experts. This collaborative attitude allowed Defendant to address the issues raised in association with the alleged constitutional violations with practical creativity.

5. Defendant's voluntary, significant initiatives, and the Parties' collaborative work resulted in the following:

a. The creation, revision, and implementation of the following Program Statements and Institutional Supplements (the "Policies"), which contain negotiated substantive provisions regarding, among other matters, screening and diagnosis of mental illness, provision of mental health care, suicide prevention, and conditions of confinement to reduce the risk of development or exacerbation of mental illness:

i. Program Statement 5310.16, *Treatment and Care of Inmates with Mental Illness*.

- ii. Institutional Supplement FLM 5310.16, *Treatment and Care of Inmates with Mental Illness*.
- iii. Institutional Supplement FLM 5324.08, *Suicide Prevention Program*.
- iv. Institutional Supplement FLP 53310.11A, *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*.
- v. Institutional Supplement FLM 5212.07J, *Control Unit Programs*.
- vi. Institutional Supplement FLM 5321.07(1)B, *General Population and Step-Down Unit Operations*.
- vii. Institutional Supplement FLM 5321.07(4)A, *High Security Adult Alternative Housing Program*.

b. The development and activation of the following units for mental health treatment:

- i. A secure mental health unit at the United States Penitentiary in Atlanta, Georgia.
- ii. A second secure mental health unit at the United States Penitentiary in Allenwood, Pennsylvania.
- iii. A Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program at the United States Penitentiary, High Security, in Florence, Colorado.

c. The undertaking of the following significant initiatives:

- i. The development and implementation of privilege incentive programs for inmates housed at ADX.
- ii. The continued use and enhancement of an at-risk recreation program to identify inmates who are not participating in any recreation programs, attempting to educate them on wellness, and encouraging their participation in a structured recreation program.
- iii. Constructing, maintaining, and employing facilities for group therapy at ADX.
- iv. Constructing, maintaining, and employing areas for private psychological and psychiatric counselling sessions in all housing units at ADX.

- v. Changes to the manner in which telepsychiatry is conducted at ADX to allow those sessions to take place in private without the presence of correctional officers.
- vi. The screening of all inmates housed at ADX as of August 2014, to determine, among other things, whether the inmates have a mental illness. This included a screening record review of all inmates and in-depth clinical interviews of approximately 130 inmates by outside psychiatrists and non-ADX Bureau psychologists.
- vii. Clarifying that psychotropic medications will be available to any inmate for whom such medication is prescribed, regardless of the inmate's housing assignment (i.e., Control Unit)
- viii. Taking steps to ensure that inmates receiving psychiatric medications at the ADX are seen by a psychiatrist, physician, or psychiatric nurse every ninety (90) days, or more often as clinically indicated for, at a minimum, the first year.
- ix. Taking steps to ensure that the screening and classification of inmates prior to, and when, they arrive at ADX, to ensure those inmates with mental illness are identified, provided accurate diagnosis, and assessed to determine the severity of any mental illness and any suicide risk.
- x. The development and implementation of procedures to ensure that Health Services notifies the psychiatrist, psychiatric mid-level provider, psychiatric nurse, or physician and Psychology Services of inmates who refuse or consistently miss doses of their prescribed psychotropic medications.
- xi. Health Services staff taking steps to ensure that psychotropic medications are prescribed so that they are distributed on pill line.
- xii. The periodic assessment of all inmates at ADX to determine whether mental illness has developed since the last screening.
- xiii. The use of mental health care levels as defined in Program Statement 5310.16, *Treatment and Care of Inmates with Mental Illness*, dated May 1, 2014, for classification of inmates housed at ADX.
- xiv. The exclusion of certain inmates with a Serious Mental Illness, as defined in the Bureau's Program Statement 5310.16, *Treatment and Care of Inmates with Mental Illness*, from ADX, except when extraordinary security needs exist; when extraordinary security needs exist, ensuring those inmates are provided treatment and care commensurate with their mental health needs, which includes the

- development of an individualized treatment plan in accordance with the Policies.
- xv. Taking steps to ensure the prompt identification of inmates who develop signs or symptoms of possible mental illness while incarcerated at ADX, to permit timely and proper diagnosis, care, and treatment.
 - xvi. Taking steps to ensure the reasonable access to clinically appropriate mental health treatment for all inmates with mental illness at ADX.
 - xvii. Considering a commitment order under 18 U.S.C. § 4245, or other applicable statute or regulation, for inmates who have a need for, but who do not agree to participate in, a Secure Mental Health Unit or for a treatment program at a Medical Referral Center. An inmate's refusal to be designated to a Secure Residential Mental Health Unit or Medical Referral Center, or a court's denial of a commitment order, is not grounds or justification to house an inmate with a Serious Mental Illness at ADX. However, if a court denies commitment or determines that an inmate does not have a Serious Mental Illness, permitting that inmate to be placed at ADX if needed for security and safety reasons and providing treatment commensurate with his mental health care level.
 - xviii. Housing certain inmates in need of inpatient psychiatric care (CARE4-MH) at a Medical Referral Center.
 - xix. If an inmate with Serious Mental Illness who continues to be housed at ADX due to extraordinary security needs declines treatment consistent with his mental health care level, taking steps to develop and implement a treatment plan that includes regular assessment of the inmate's mental status, rapport-building activities, and other efforts to encourage engagement in a treatment process, and, at a minimum, a weekly attempt to engage the inmate.
 - xx. Offering inmates with Serious Mental Illness who continue to be housed at ADX due to extraordinary security needs between 10 and 20 hours of out-of-cell therapeutic and recreational time per week consistent with their individualized treatment plan.
 - xxi. Taking steps to support inmates with mental illness through creation of wellness programs and recreational activities, specialized training of staff, and care coordination teams.
 - xxii. The development of procedures for heightened review of requests and referrals for mental health services.

- xxiii. Ensuring that any calculated use of force or use of restraints involving an inmate at ADX with a mental illness is applied appropriately to an inmate with such conditions, as set forth in the Policies.
- xxiv. The exclusion of mental health clinicians from participation as a use of force team member in a calculated use of force situation, other than for confrontation avoidance.
- xxv. The merging of the Bureau's Electronic Medical Record (BEMR) and Psychology Data System (PDS).
- xxvi. The staffing and hiring of 3 additional full-time psychologists, one psychiatric nurse, and one psychology technician. One of the 3 additional full-time psychologist positions is to facilitate trauma-informed psychological programming (Resolve Treatment (Trauma) Coordinator).
- xxvii. The ADX Care Coordination and Reentry (CCARE) Team meeting monthly, pursuant to the applicable section ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*.
- xxviii. Taking steps to ensure the completion of a Mental Health Transfer Summary in BEMR/PDS every time an inmate with mental illness (CARE2-MH, CARE3-MH, and CARE4-MH) transfers out of ADX, pursuant to the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*.
- xxix. Taking steps to ensure the collaboration of Psychology and Health Services staff, beginning no later than 12 months before an inmate's anticipated release with Community Treatment Specialist (CTS) regarding ADX inmates CARE2-MH or higher releasing to a residential re-entry center or home detention, pursuant to the applicable section of the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*.
- xxx. Hiring a full-time Social Worker for FCC Florence, whose priority is those inmates housed at ADX and who provides Reentry Planning Services within 1 year of an inmate's projected release date, as appropriate, and pursuant to the applicable section of the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*.
- xxxi. Taking steps to ensure that discipline is applied appropriately to inmates with Serious Mental Illnesses or Mental Illness, as set forth in the Policies.

xxxii. Enhancing mental health training provided to Bureau staff.

6. The Parties believe the Addendum is fair, reasonable, and adequate to protect the interests of all parties.

7. Nothing in this Addendum requires Defendant to compel an inmate to accept treatment (including medication) for a mental illness over the inmate's objections; provided that this paragraph shall not limit or otherwise affect the rights or obligations of Defendant or any inmate under 18 U.S.C. § 4245.

8. Nothing in this Addendum prevents the Defendant from modifying the above referenced Policies. Defendant maintains its right to amend the Policies without approval of Plaintiffs. However, during the Compliance Period (as defined in paragraph 36, below), the Defendant agrees that any modifications to these Policies will not diminish the standards for screening or standards for services and treatment specified in the Policies. Defendant further agrees to inform Plaintiffs' counsel and the Monitor in writing in advance of any changes to the Policies during the Compliance Period. Compliance with any revised policy or procedure that is consistent with the preceding sentences in this paragraph shall not be deemed a breach of this Addendum. Any dispute concerning whether services, standards, or treatment provided to inmates have been diminished shall be resolved pursuant to the paragraphs set forth in sections **IX (DISPUTE RESOLUTION) and X (ENFORCEMENT)** of this Addendum.

9. The Parties acknowledge that certain documents in this case were produced subject to the Protective Orders entered by the Court, Docket Nos. 73, 85, 167, 213 (collectively, "the Protective Orders"). The Parties agree that the Protective Orders will remain in effect throughout the term of this Addendum. The Parties further agree that any inmate-specific medical or psychology records previously produced or that are produced in connection with the implementation of this Addendum will be considered "Confidential"—whether or not they are so

marked—and subject to the Protective Orders. At the conclusion of the Compliance Period, the procedures in Paragraph 18 of Docket No. 85 will apply to all documents covered by the protective order.

II. PRISON LITIGATION REFORM ACT (PLRA), 18 U.S.C. § 3626

10. The Parties agree that this Addendum will be submitted to the Court for approval as provided below, and that it will not be effective until approved by the Court, following a hearing and a finding that it is fair, reasonable, and adequate pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

11. The Parties agree that a finding by the Court that the Addendum is fair, reasonable, and adequate does not mean this Addendum is a “consent decree” under 18 U.S.C. § 3626(c)(1).

III. CLASS CERTIFICATION

12. Class Certification. For the purposes of this Addendum only, the Parties agree to the certification by the Court of a Plaintiff class regarding screening and a Plaintiff subclass regarding treatment of inmates with a Covered Mental Illness (as defined below), pursuant to Federal Rule of Civil Procedure 23(b)(2).

13. Preliminary approval. Following the execution of this Addendum, Plaintiffs will file an unopposed motion with this Addendum, requesting that the Court preliminarily approve this Addendum, and further requesting that upon such preliminary approval the Court will schedule a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (hereinafter referred to as the “Fairness Hearing”), after which the Court will determine whether to grant its final approval of the Addendum. That motion will include an unopposed request that the Court modify the order of reference in this case pursuant to 28 U.S.C. § 636 to permit Magistrate Judge

Hegarty (or his successor) to perform the duties set forth in paragraphs 50-51 and 85-86 of this Addendum. At the same time, Plaintiffs will move for certification of the Class and Subclass defined above, with such Certification being for the purposes of this Addendum only and being conditional upon final approval of this Addendum.

14. Notice of Proposed Class Action Settlement and Fairness Hearing. Within thirty (30) days after the date on which the Court preliminarily approves this Addendum, the Bureau will hand-deliver a Notice of Proposed Class Action Settlement and Fairness Hearing (a copy of which is attached as Ex. A) to each inmate then-housed at ADX and to named Plaintiffs not at that time housed at the ADX, and will also provide a copy of the Notice to any inmate who arrives at ADX after the Notice is initially provided but prior to the time the Addendum is approved by the Court. The language of the Notice has been agreed to by the Parties. The Notice contains a brief description of the claims advanced by Plaintiffs and the Bureau's denial of liability for such claims, a summary of the terms of this Addendum, and information regarding the upcoming Fairness Hearing. The Bureau shall bear the cost of distributing the Notice as required by this section.

15. Class and Subclass. The Screening Class and the Treatment Subclass are each defined in section **V, DEFINITIONS**.

16. Upon certification of the Screening Class and Treatment Subclass, all the Screening Class and Treatment Subclass members will be bound by the terms of this Addendum subject to the limitations on the preclusive effect of this Addendum specified in paragraphs 73, below.

17. The relief provided in this Addendum is for the benefit of all Screening Class and Treatment Subclass members.

IV. CLA – ACKNOWLEDGEMENT & ROLE

18. The District Court in this case has held that the CLA has standing to pursue claims for declaratory and injunctive relief for inmates with mental illness housed at ADX. (Doc. 324.) For the purposes of this Addendum only, Defendant does not object to the CLA’s standing to pursue claims for declaratory and injunctive relief for inmates with mental illness housed at ADX

19. Defendant shall distribute to all inmates at ADX, within thirty days from the Effective Date, a letter drafted by CLA, and approved by the Parties. Generally, the letter will advise inmates that CLA is available, at the inmate’s request, to represent inmates in connection with complaints concerning the implementation of this Addendum, and will provide CLA’s contact information. Defendant will provide CLA with the names and registration numbers of all inmates who arrive at ADX after the Effective Date and during the Compliance Period, to permit CLA to contact them and advise them of CLA’s availability. Such information shall be provided at the earliest practicable date, but in all events no more than 30 days after each such inmate arrives at ADX.

20. CLA shall take reasonable steps to resolve any complaints it receives from inmates concerning the implementation of this Addendum in accordance with the provisions of the Protection and Advocacy for Individuals With Mental Illness Act, 42 U.S.C. §§ 10801, *et seq.*, and the paragraphs set forth in section IX, **DISPUTE RESOLUTION**, and section X, **ENFORCEMENT**.

21. Except as specifically set forth in paragraph 73, below, this Addendum does not restrict the CLA’s ability to seek remedies outside of this litigation on behalf of inmates with

mental illness or compromise the authority of CLA to pursue such remedies through other litigation, legal action, or other forms of advocacy.

V. DEFINITIONS

22. The term “ADX” means the United States Penitentiary, Administrative Maximum, Florence, Colorado.

23. The term “USP Florence” means the United States Penitentiary, High Security, Florence, Colorado.

24. The term “FCC Florence” means the Federal Correctional Complex, Florence, Colorado.

25. The term “Covered Mental Illness” means a mental disorder as defined in the most current edition of the *Diagnostic and Statistical Manual of Mental Disorders* that results in classification of the inmate as a CARE2-MH or higher.

26. The term “Serious Mental Illness” is defined as in the Bureau’s current Program Statement regarding the *Treatment and Care of Inmates with Mental Illness*.

27. The Mental Health Care Levels are defined in the Bureau’s current Program Statement regarding the *Treatment and Care of Inmates with Mental Illness*.

28. The term “Serious Suicide Attempt” means an incident of serious self-harm coupled with suicidal intent that requires medical treatment.

29. The term “Screening Class” means all persons who are confined at ADX at any time between the Effective Date and the last day of the Compliance Period.

30. The term “Treatment Subclass” means all persons who are confined at ADX at any time between the Effective Date and the last day of the Compliance Period and have been

diagnosed by the Bureau or its representative personnel or contractors with a Covered Mental Illness, as defined in paragraph 25 above.

31. “Secure Mental Health Unit,” or “Secure Mental Health Program” means a residential psychology treatment program that provides mental health treatment for male inmates who (1) have a Serious Mental Illness, diagnosed by the Bureau; (2) do not require inpatient treatment, but have been classified as a CARE3-MH or as a CARE2-MH with SMI and in need of enhanced mental health treatment, and require intensive, specialized psychiatric services or psychological interventions in a residential setting; and (3) have a history of violent behavior resulting in a referral, or consideration for referral, to ADX Florence or a Special Management Unit (SMU).

32. The term “Secure STAGES” means a residential, unit-based Psychology Treatment Program for inmates with Borderline Personality Disorder or Other Specified Personality Disorders, as diagnosed by the Bureau, who have a chronic history of self-injurious behavior or do not function effectively in a prison setting.

33. The term “Legally Privileged Information” means information that is classified or implicates national security concerns or that is protected by one or more of the following privileges or doctrines: the attorney-client privilege, the attorney work product doctrine, the law enforcement privilege, or the deliberative process privilege.

34. The term “Effective Date” shall mean the date that the United States District Court for the District of Colorado (herein, the “Court”) enters an Order pursuant to Federal Rules of Civil Procedure 23(e), finding the Addendum is fair, reasonable, and adequate, and thereby approves this Addendum.

35. The term “Expiration Date” means the date upon which the parties’ obligations and the Court’s jurisdiction under this Addendum terminates as set forth in section VIII below.

36. The term “Compliance Period” means the period of time starting on the Effective Date and ending on the Expiration Date.

37. The term “Site Visit” shall mean a visit by the Monitor(s) to FCC Florence to visit either the ADX, the Secure STAGES Program at USP Florence, or both.

38. The term “Monitored Initiatives” means all provisions of the policies and procedures, which are applicable to ADX and the Secure STAGES Program at USP Florence only, with respect to which the Monitor(s) will assess compliance pursuant to sections 43, 44 and 45, below.

VI. MONITORING & REPORTING

39. The parties agree that Sally Johnson, M.D., and Jeffrey Metzner, M.D. will serve as co-Monitors in this action, to assess Defendant’s compliance with the Monitored Initiatives. If Dr. Johnson or Dr. Metzner becomes unavailable to monitor Defendant’s obligations under the Monitored Initiatives, the Parties shall, within 30 days, jointly decide whether to proceed with one monitor, or if both Dr. Johnson and Dr. Metzner become unavailable, the parties will jointly select one or two other Monitors. If the Parties are unable to agree upon a replacement Monitor, the Court will appoint one after receiving one suggestion from each of the Parties and remaining Monitor, if any.

40. The Monitor(s) shall not be liable for any claim, lawsuit or demand arising out of a Monitor’s performance pursuant to this Addendum.

41. Defendant agrees to pay all reasonable fees and costs incurred by the Monitors, subject to the Monitors complying with the appropriate payment procedures, up to a maximum

of 330 hours of work a year for Dr. Johnson (or any replacement expert who resides outside of the state of Colorado), and 290 hours of work a year for Dr. Metzner (or any replacement expert who resides within the state of Colorado). The Monitor(s) will be paid an hourly rate of no more than \$450. In the event that the Monitor(s) reasonably believe that time in excess of the foregoing limitations will be necessary to complete the work contemplated by this Addendum, they shall notify the Parties, who will confer concerning the matter. If the Parties are unable to agree on a modification of the foregoing limitations, Plaintiffs may file an appropriate motion with the Court, which may be granted for good cause shown.

42. Except as may be provided in a separate Agreement signed by the Parties, the Monitor(s) shall only have access to, and shall only monitor Defendant's policy compliance with respect to, the ADX and the Secure STAGES Program at USP Florence. Defendant intends to continue to house the Secure STAGES Program at USP Florence during the Compliance Period. Defendant will provide Plaintiffs' counsel with advance notice if Defendant decides that it needs to move the program to a different institution.

43. Monitoring:

a. Monitoring at ADX: The Monitor(s) will assess and report on Defendant's compliance with all of the following Monitored Initiatives at the ADX during the first two Site Visits and will assess and report on Defendant's compliance with any or all (as they deem appropriate) of the following Monitored Initiatives at the ADX during subsequent Site Visits:

- i. Application of the definition of Serious Mental Illness to mental disorders diagnosed by Defendant. Pursuant to paragraph 26, above, Serious Mental Illness is defined as in the Bureau's current Program Statement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the Effective Date of this Addendum is located in section 1 of the Program Statement and section IV(F) of the ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*.
- ii. Screening

1. The screening of inmates pursuant to **Mental Health Care Levels, Psychology Intake Screening, Assignment and Change of Mental Health Care Level Assignment, ADX Referral Review Procedures, and Extended Restrictive Housing Reviews** sections of the Bureau's Program Statement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the Effective Date of this Addendum are sections 5, 6(c)-(e), 8(b)(2), 8(d), respectively.
 2. The requirements concerning the screening of inmates pursuant to **Procedures for Assessment, Identification, and Referral** section of the ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the Effective Date of this Addendum is section IX.
- iii. Exclusion
1. The requirement that inmates diagnosed with Serious Mental Illness, as determined by Defendant, are only designated to the ADX if the inmates have extraordinary security needs, as determined by Defendant, pursuant to the **SMU/ADX Exclusionary Criteria** of the Bureau's Program Statement regarding *Treatment and Care of Inmates with Mental Illness*, which at the time of this Addendum is section 8(c).
 2. The requirement that inmates diagnosed with a Serious Mental Illness while housed at the ADX, as determined by Defendant, only remain at the ADX if the inmates have extraordinary security needs, as determined by Defendant, pursuant to the ADX exclusion criteria and ADX removal process sections of the Bureau Program Statement and ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*, which at the effective date of this Addendum are sections 8(e), and VII and X, respectively.
 3. The requirement that inmates classified as CARE4-MH are not placed at, or are removed from, the ADX as provided in section X of the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*.
 4. The requirement that ADX inmates who, while housed at ADX, are diagnosed by Defendant as suffering from a Serious Mental Illness, and who do not have extraordinary

security issues as determined by Defendant, are referred to an alternative, appropriate placement outside ADX, pursuant to section X(E) of the ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*.

iv. Treatment

1. The requirement that inmates diagnosed with a Serious Mental Illness by Defendant and who must remain at the ADX due to extraordinary security needs are housed and treated in accordance with the **Treatment and Care for Inmates with Serious Mental Illnesses Remaining at ADX Due to Extraordinary Security Concerns** section of the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*, which at the Effective Date of this Addendum is section XI(F).
2. The following sections of ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*: **Responsibilities; Mental Health Staffing; Team Approach to Care; Individual Counseling/Therapy; Group Treatment; Psychiatric Services; Turning Point Protocol; Adjunctive In-Cell Therapeutic Activities; and Achievement Awards & Incentives**, which at the effective date of this Addendum are sections V-VI, VIII, XI(A)-(E), and XV.
3. The *following* sections of Bureau Program Statement regarding the *Treatment and Care of Inmates with Mental Illness* as they are implemented at the ADX: **Recovery-Oriented Program Model; Evidence-Based Practices; Team Approach to Care; Services for Inmates in Restrictive Housing; Mental Health Treatment Achievement Awards; and Continuity of Care Between Institutions**, which at the Effective Date of this Addendum are sections 3, 4, 7, 8(a), 12, and 13(b).
4. Defendant's maintenance and use of suitable facilities for group therapy at ADX.
5. Defendant's maintenance and use of suitable private areas for psychiatric and psychological consultation sessions in all units at ADX.
6. The **Between Bureau Institutions** section of ADX Institutional Supplement regarding the *Treatment and Care*

of Inmates with Mental Illness, which at the effective date of this Addendum is section XVI(C).

7. The **Behavioral Health Committee Meeting (BHCM)** section of ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the effective date of this Addendum is section XVI(B).
 8. The **Calculated Use of Force** section of ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the effective date of this Addendum is section XIV.
- v. Reentry Planning Services
1. The following applicable sections of the Bureau Program Statement regarding *Treatment and Care of Inmates with Mental Illness* that pertain to **Reentry**, which at the effective date of this Addendum are sections 14(a)-(e).
 2. The following sections of the ADX Institutional Supplement regarding *Treatment and Care of Inmates with Mental Illness*: **Community Treatment Services**; and **Reentry Planning Services**, which at the effective date of this Addendum are sections XVI(D)-(E).
- vi. Discipline: The inmate discipline section of the ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the effective date of this Addendum is section XIII, **Inmate Discipline**.
- vii. Suicide Prevention
1. The following sections of the Bureau's Program Statement regarding the *Suicide Prevention Program*: 7, 8(a), 14(a), 14(d), and 15.
 2. The ADX Institutional Supplement regarding *Suicide Prevention Program*.
 3. The following sections of ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*: **Inmates Who Are Known to Require Special Precautions** and **Suicide Prevention**, which at the effective date of this Addendum are sections XVI(A), and (F).

- viii. Training: The **Mental Health Training** section of ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the effective date of this Addendum is section XII.
- ix. Quality Improvement: The **Quality Improvement** section of ADX Institutional Supplement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the effective date of this Addendum is section XVI(G).

b. Monitoring at Secure STAGES: The Monitor(s) will assess and report on Defendant's compliance with all of the following Monitored Initiatives at the Secure STAGES program during the first two Site Visits and will assess and report on Defendant's compliance with any or all (as they deem appropriate) of the following Monitored Initiatives at the Secure STAGES program during subsequent Site Visits:

- i. The following sections of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*: **Program Overview** and **Program Responsibilities**, which at the effective date of this Addendum are sections IV and V.
- ii. The requirement of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program* that only inmates affiliated with Secure STAGES program are allowed to live in the Program Unit, which at the effective date of this Addendum is the first sentence of subsection B(1) of section VI.
- iii. The requirement of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program* concerning community meetings, which at the effective date of this Addendum is subsection B(2) of section VI.
- iv. The provisions of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program* concerning Admission and Orientation, which at the effective date of this Addendum is subsection C of section VI.
- v. The following subsections of the **Conditions of Confinement** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*: **Residential Program Unit**, **Recreation**, and **Mental Health Care**, which at the effective date of this Addendum are subsections A, K, and T of section VI.

- vi. The **Treatment Assessment Procedures** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this Addendum is section VIII.
- vii. The **Treatment Phases, Program Completion, Program Withdrawals, Program Incompletes, and Program Expulsions** sections of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this Addendum are sections IX, XII-XV.
- viii. The **Security Levels** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this Addendum is section X.
- ix. The **Psychology Treatment Program Achievement Awards** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this agreement is section XI.
- x. Subsections C, E, and F of the **Secure STAGES Companions** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this Addendum is section XVI.
- xi. The **Discipline Procedures** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this Addendum is section XVIII.
- xii. The Bureau's Program Statement regarding the *Suicide Prevention Program*, except that because sections 7(a), 7(b), 7(c) and 14(b) of that Program Statement do not apply to the Secure STAGES Program, they will not be monitored.
- xiii. The **Program Participant Appeal Rights** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this Addendum is section XIX.
- xiv. The **Staff Training** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth*

and Emotional Strength (STAGES) Program, which at the effective date of this Addendum is section XX.

- xv. The **Inmate Monitoring Form** section of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, which at the effective date of this Addendum is section XXI.
- xvi. The **Reentry** section of the Bureau's Program Statement regarding the *Treatment and Care of Inmates with Mental Illness*, which at the effective date is section 14.

44. With respect to both the ADX and the Secure STAGES Program, the Monitor(s) may access, review, and utilize other sections within the following Bureau Program Statements and Institutional Supplements to inform their assessment of the Defendant's compliance, where, when, and if applicable, with the initiatives identified in paragraph 43, above:

- a. Bureau Program Statement regarding *Psychiatric Services*.
- b. Bureau Program Statement regarding *Psychiatric Evaluation and Treatment*.
- c. USP Florence Institutional Supplement regarding *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*.

45. In monitoring the Secure STAGES Program, the Monitor(s) shall not monitor and report on compliance with the conditions of confinement provisions in section VI(D), (F)-(J), and (L)-(S) of USP Florence's Institutional Supplement regarding the *Secure Steps Toward Awareness Growth and Emotional Strength (STAGES) Program*, unless (1) Plaintiffs' counsel or the CLA has alleged that Defendant has substantially failed to comply with one of more of these sections, or (2) a Class or Subclass Member has raised, during a Site Visit, an issue that Defendant has substantially failed to comply with one of more of these sections. In such circumstances, if the Monitor(s) agree that the alleged failures materially interfered with the effective delivery of mental health services to participants in the Secure STAGES Program, the

Monitor(s) may request access to records that the Monitor(s) reasonably determine are relevant to this issue, with the exception of Legal Privileged Information, which may be redacted.

46. In the event that the Bureau modifies any Program Statement or Institution Supplement that sets forth any Monitored Initiative in a manner that affects section or paragraph references, the Monitor(s) will monitor the applicable provisions of revised document subject to the same monitoring subject matters and subject matter limitations set forth in paragraphs 43, 44 and 45, above. For clarity, and as an example, if the Bureau revises its Program Statement regarding the *Treatment and Care of Inmates with Mental Illness* such that SMU referrals are addressed in a paragraph other than 8(b)(1), then the Monitor(s) shall not monitor the SMU referral section of the revised program statement, wherever it appears. Likewise, if the revised Program Statement addresses the investigation of inmate suicides in section 8(b)(1) of the revised Program Statement, then the Monitor(s) will monitor the revised section 8(b)(1), notwithstanding the specific paragraph references in this Addendum.

47. The Monitor(s) shall have access to the ADX as provided herein. While inside the ADX, the Monitor(s) will be escorted by staff pursuant to the institution's standard security procedures. While inside the ADX, the Monitor(s) may, upon request, be escorted into each housing unit other than the Special Security Unit and Units/Ranges exclusively housing inmates in the Special Security Unit Program, except as authorized in paragraphs 50 and 51, below. While inside the ADX, the Monitor(s) may also request to inspect Health Services, Psychology Services, the group therapy area, the tele-psychiatry area, the visiting room, and receiving and discharge. While inside the ADX, the Monitor(s) may request and will have the ability to speak confidentially to any inmate who is not housed in the Special Security Unit or Units/Ranges exclusively housing inmates in the Special Security Unit Program; provided that if Defendant

reasonably believes that an inmate with whom the Monitor(s) wishes to communicate confidentially poses a serious risk of harm to Bureau staff members or the Monitor(s) that cannot be managed using procedures and facilities ordinarily used for confidential mental health consultations, then Defendant may employ security measures reasonably necessary to safeguard staff members and the Monitor(s), and in so doing the confidentiality of the communication shall be maintained to the greatest extent possible. These visits will take place either in the confidential rooms in which therapy takes place, or, if not available in a particular unit, the visiting room.

48. The Monitor(s) shall have access to USP Florence as specified in this paragraph. While inside USP Florence, the Monitor(s) may, upon request, be escorted into the unit that houses the Secure STAGES Program, Health Services, the visiting room, receiving and discharge and any other area at USP Florence that the Monitor(s) reasonably determine he, she or they need to visit to carry out their duties concerning the Secure STAGES Program. While inside the Secure STAGES housing unit at USP Florence, the Monitor(s) will be escorted by staff pursuant to the institution's standard security procedures. While in the Secure STAGES housing unit at USP Florence, the Monitor(s) may request and will have the ability to speak confidentially to inmates; provided that if Defendant reasonably believes that an inmate with whom the Monitors wishes to communicate confidentially poses a serious risk of harm to Bureau staff members or the Monitors that cannot be managed using procedures and facilities ordinarily used for confidential mental health consultations, then Defendant may employ security measures reasonably necessary to safeguard staff members and the Monitor(s), and in so doing the confidentiality of the communication shall be maintained to the greatest extent possible.

49. There shall be no more than three Site Visits to FCC Florence per year. On one such visit each year, only the FCC Complex Warden and the Supervisory Attorney, currently Jack Fox and Christopher B. Synsvoll, respectively, shall have prior knowledge of the date and time of the visit. The Monitor(s) will coordinate the hours of the visits with Warden Fox and Mr. Synsvoll. Each visit may last for up to four consecutive business days, if necessary.

50. **Procedures applicable to the Special Security Unit and Any Unit/Range Housing Special Security Unit Program Inmates.** For any Site Visit, if requested by the Monitor(s), the Monitor(s) will be brought into the “bubble area” of the Special Security Unit and will be permitted to look down the ranges, but not to communicate with any inmate at that time. Magistrate Judge Hegarty (or his successor) may accompany the Monitor(s) on such a visit, and the Magistrate Judge will be permitted to enter the range on the Special Security Unit and to speak with any of the inmates there, unless such communication is prohibited by a Special Administrative Measure or an applicable court order.

51. **Procedures applicable to inmates subject to Special Administrative Measures (SAMs), court-imposed communication restrictions, or who are subject to Bureau special security measures.** Magistrate Judge Hegarty (or his successor) will also be permitted to conduct inmate interview(s) of inmates subject to Special Administrative Measures (SAMs), court-imposed communication restrictions, or who are subject to Bureau special security measures, unless prohibited by law or regulation. Magistrate Judge Hegarty may seek input from the Monitor(s) before and after the interview. These visits will be conducted in the visiting room area and will be subject to the monitoring terms of the SAMs. The inmates selected for such interviews have the right to decline to consent to the interviews.

52. The Monitor(s) will conduct a close-out meeting with Christopher Synsvoll and/or the Complex Warden, or their designees, and one or more representatives designated by Plaintiffs after each visit, which Plaintiffs' designees may attend in person if they are available, and otherwise by telephone.

53. The Monitor(s) will be permitted to conduct a baseline visit within 120 days of their appointment. This baseline visit may last for up to four business days. The hours of the visit will be coordinate with Warden Fox and Mr. Synsvoll. Defendant shall provide the Monitor(s) with an orientation to the ADX, and the Monitors may request additional information concerning background matters reasonably related to the Monitored Initiatives. The Monitor(s) shall have access to all records during the baseline visit as set forth below. The Monitor(s) may, upon request, meet one-on-one with inmates during the baseline visit. The inmates selected for such meetings have the right to decline to consent to the meetings. Upon the request of the Monitor(s) or any inmate, any such meeting shall be conducted confidentially; provided that if Defendant reasonably believes that an inmate with whom the Monitor(s) wishes to communicate confidentially poses a serious risk of harm to Bureau staff members or the Monitor(s) that cannot be managed using procedures and facilities ordinarily used for confidential mental health consultations, then Defendant may employ security measures necessary to safeguard staff members and the Monitor(s) but shall maintain the confidentiality of the communication to the greatest extent possible.

54. Defendant will direct all employees to cooperate fully with the Monitor(s), subject to any restrictions set forth herein.

55. Prior to any Site Visit during the Compliance Period, Defendant will provide the Monitor(s) data and documents collected by Defendant to track compliance with the Monitored Initiatives.

56. During the Compliance Period, the Monitor(s) shall also have reasonable access to the medical (BEMR) and psychology (PDS) records for Class and Subclass members housed at ADX or Secure STAGES at USP Florence and to additional records that the Monitor(s) reasonably determine are relevant to the Monitored Initiatives (such as disciplinary records, recreation logs, medication compliance records, and relevant information from inmates' Central Files), with the exception of Legal Privileged Information, which may be redacted, and documents relating to inmates assigned to the Special Security Unit Program. The Monitor(s) may also make reasonable requests for additional reports and documents to be compiled from existing data.

57. If documents are requested in conjunction with a Site Visit and the Monitor(s) requests the documents at least thirty (30) days prior to the visit, Defendant will provide these documents to the extent feasible within ten (10) business days prior to the visit.

58. The Monitor(s) will be provided with and sign an acknowledgement form for the confidentiality and Privacy Act Protective Orders entered by the Court. The Monitor(s) will keep the information he or she learns during the course of monitoring confidential as provided by those Orders, regardless of whether the information provided is specifically designated as confidential. Excepting only in connection with proceedings to enforce the terms of this Addendum, the Monitor(s) shall not testify in any other litigation or proceeding with regard to any act or omission of Defendant or any of its agents, representatives, or employees related to

this Addendum, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Addendum.

59. Following each visit, the Monitor(s) will provide to the Parties with a joint written report concerning the Defendant's compliance with the Monitored Initiatives, which may be organized by those subject matter headings (e.g., Screening, Exclusion, Treatment, Reentry Services Planning, Discipline, Suicide Prevention, Training, Quality Improvement, and Secure STAGES). Each report may also include additional advice, suggestions or proposals in the nature of quality assurance or quality improvement as the Monitor(s) deem appropriate. The Monitor(s) will provide each report to the Parties in draft form for comment before finalizing the report, and will allow the Parties two weeks to comment. These reports shall be written with due regard for the privacy interests of individual inmates and staff.

60. To assess the current conditions, the Monitor(s) may review pertinent documents; interview necessary staff; and interview a sufficient number of inmates, all as determined by the Monitor(s) in his, her, or their reasonable discretion. The Monitor(s) may independently verify representations from Defendant and examine supporting documentation, where applicable. The Monitor's(s') Report may describe the steps taken to analyze conditions and implementation of the Monitored Initiatives, including documents reviewed and individuals interviewed, and the factual basis for each of the Monitor's(s') findings. If the Monitor(s) reports that Defendant is not in compliance with any Monitored Initiative, the Monitor(s) shall make recommendations as to actions the Monitor(s) believes necessary to meet the terms of the provision or provisions.

61. The report issued by the Monitor(s) shall not be admissible against Defendant or any current or former employee or contractor of Defendant in any other proceeding other than a proceeding related to the enforcement of this Addendum.

62. Although Defendant will give full consideration to advice, suggestions, and proposals offered by the Monitor, all decisions concerning the specific diagnosis or assignment of mental health care-levels will be made by the Bureau's mental health providers in accordance with this applicable Bureau policies, including the Monitored Initiatives, and any applicable legal requirements.

63. In the event that a suicide attempt or incident of self harm is determined by ADX to be serious, the event will be reported to the Monitor(s) within three (3) business days after it occurs. At the time of the report, the Bureau shall provide the Monitor(s) with the Suicide Risk Assessment or other relevant medical record. Upon request, the Bureau shall provide the Monitor(s) with additional information about the incident, with the exception of any Legally Privileged Information. After consulting with the Defendant, the Monitor(s) may in his or her reasonable discretion provide copies of the documents to Plaintiffs' counsel. Such documents will be considered "Confidential"—whether or not they are so marked—and subject to the Protective Orders previously entered by the Court.

64. Any suicide will be reported to the Monitor(s) within three business days and will be investigated in accordance with Bureau policy. The identity of the inmate will not be disclosed until the next of kin has been contacted or until seven days have elapsed since the death and reasonable efforts to locate the next of kin have failed. All medical and psychological records about the inmate during the time he was housed at ADX shall be made available promptly to the Monitors. In addition, Defendant shall provide to the Monitors all after-action, incident, and other internal reports, investigations or conclusions concerning the suicide, with the exception of any Legally Privileged Information, within three business days after such materials are completed. After consulting with the Defendant, the Monitor(s) may in his or her reasonable

discretion provide copies of the documents to Plaintiffs' counsel. Such documents will be considered "Confidential"—whether or not they are so marked—and subject to the Protective Orders previously entered by the Court.

65. In the event that the Monitor(s) believe(s) that this Addendum unreasonably restricts his or her ability to monitor Defendant's implementation of the Monitored Initiatives, or to otherwise adequately perform the obligations imposed by this Addendum on the Monitor(s), the Parties agree to negotiate in good faith in an effort to remedy the Monitor's('s) concerns. Any such issues not resolved following such good-faith negotiations shall be resolved as specified by section IX, Enforcement, below.

VII. CONSTRUCTION AND IMPLEMENTATION

66. Underlying Efforts and Collaboration. This Addendum reflects the substantial, voluntary efforts by Defendant to enhance the mental health services available to the members of the Class and Subclass, and the initiatives developed in collaboration with Plaintiffs' counsel and experts.

67. Initial Substantial Compliance. Except where otherwise specifically indicated, Defendant shall achieve substantial compliance with all Monitored Initiatives by the time of the Baseline Visit.

68. Communication to Bureau Staff. Within 30 days following the Effective Date, Defendant shall communicate to Bureau employees, and any contractors involved in providing mental health treatment to inmates at the ADX or in the Secure Stages Program at USP Florence, the requirements set forth in this Addendum that are applicable to their respective jobs.

69. Application to Transferred Inmates. Nothing in this Addendum shall be deemed to limit any existing authority of Defendant to transfer inmates to other state or federal

jurisdictions. If Defendant transfers any inmate who is a member the Screening Class or Treatment subclass and who is diagnosed with a Serious Mental Illness to a facility outside the District of Colorado, the Parties each reserve all of their respective rights and claims concerning the jurisdiction and powers of the United States District Court for the District of Colorado with respect to such inmate and specifically whether any failure to comply with the Policies during the time that inmate was housed at ADX or Secure STAGES constitutes a violation of this Addendum.

70. Admission, Waiver, and Sovereign Immunity. Neither this Addendum, nor any policies or procedures established thereunder, shall define any federal constitutional rights, be deemed an admission, or a waiver of sovereign immunity.

71. Governing Law. This Addendum shall be governed by federal law as enunciated or applicable in the Tenth Circuit, and to the extent that state law applies to any issue arising under, by the laws of the State of Colorado.

72. No Third Party Beneficiaries. No person or entity is intended to be a third-party beneficiary of this Addendum for purposes of any civil, criminal, or administrative action. This Addendum is not intended to impair or expand the right of any person or entity to seek relief against Defendant or its officials, employees or agents for their conduct, except as specifically provided in this Addendum. Moreover, the Parties will not contend that any of the provisions, policies, and procedures stated herein define clearly established constitutional rights of inmates. This Addendum is not intended to alter legal standards governing any such claims. Accordingly, this Addendum is not intended to have any preclusive effect except between Plaintiffs, Screening Class Members and Treatment Subclass Members on the one hand, and Defendant on the other

hand, with respect to the relief provided for in this Addendum, other than as provided in paragraph 73, below.

73. Legal Release. Plaintiffs, the members of Screening Class and Treatment Subclass, and their heirs, administrators, representatives, successors, and assigns, and each of them hereby release, waive, acquit, and forever discharge the United States, the Federal Bureau of Prisons, and its employees in their official capacities from, and are hereby forever barred and precluded from prosecuting, any and all claims, causes of action, or requests for any injunctive or declaratory relief, including costs, attorneys' fees, expenses, and/or interest, whether presently known or unknown, that have been asserted in this litigation, or that pertain to the treatment of ADX inmates' mental health; provided that in no event shall this Release be deemed to release or otherwise affect in any way: (1) any claim for money damages; (2) any claim by any inmate for a judicial determination concerning the inmate's personal mental health diagnosis; or (3) any claim based in whole or substantial part on events occurring during the Compliance Period and that does not concern one of the Monitored Initiatives.

74. Inmates Must Comply With Policies and Procedures. This Addendum in no way waives or otherwise affects, limits or modifies the obligations of inmates to comply with Bureau regulations, Program Statements, and Institutional Supplements; or any current or future federal law governing the rights and obligations of incarcerated persons.

75. Possible Conflict with Legal Obligations or Collective Bargaining Agreements. Nothing in this Addendum shall be deemed to require or permit Defendant to violate the laws of the United States, or to violate any terms or conditions of any collective bargaining agreement to which Defendant is a party. Defendant is not aware of any conflict between any of the

provisions of this Addendum and any such law or collective bargaining agreement referred to in this section.

76. Entire Agreement. This Addendum shall constitute the entire integrated agreement of the parties; provided that the parties may enter into one or more separate agreements concerning any subject, which shall be enforceable according to their terms. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for any purpose in this litigation or in any other proceeding.

77. Successors and Assigns. This Addendum shall be applicable to, and binding upon, all Parties, their officers, agents, employees, assigns, and their successors in office.

78. Partial Invalidity. If any provision of this Addendum is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Addendum.

79. Use of Addendum in Other Proceedings. Neither the fact of this Addendum nor any statements contained herein may be used in any way, including in any other case or administrative proceeding, by any person, whether or not a party to this action, except that Defendant and its employees reserve the right to use this Addendum and the language herein to assert issue preclusion, res judicata, satisfaction, and release in other litigation matters seeking class or systemic relief regarding mental health services at ADX.

VIII. DURATION

80. Defendant shall not move to terminate the parties' obligations and/or the Court's jurisdiction under this Addendum before the second anniversary of the Effective Date.

81. Defendant shall not move to terminate the parties' obligations and the Court's jurisdiction under this Addendum at any time on or after the second anniversary and before the

third anniversary of the Effective Date, unless Plaintiffs consent, in advance, in writing. A motion filed pursuant to this paragraph may seek to terminate all or portions of the obligations under this Addendum. Defendant may request that the Parties meet and confer about termination or partial termination at any time. Plaintiffs will consider in good faith any request by Defendant to terminate made under this paragraph, will not unreasonably withhold their consent to such a request, and if they do withhold consent will provide Defendant with the reason(s) consent was withheld, stated in reasonable detail. In the event the parties are unable to reach agreement on a request or partial request to terminate under the paragraph, either party may invoke the dispute resolution procedures in section IX below.

82. In the event that there is no motion filed and granted pursuant to the prior paragraph, the Parties' obligations under this Addendum and the Court's jurisdiction shall terminate on the third anniversary of the Effective Date; provided, however, that the Court may order a one-time, one-year extension of the Term of the Addendum (i.e., to a total term of four years from the Effective Date) for a specific obligation(s), upon a motion by Plaintiffs filed prior to the end of the three-year presumptive term. Such a motion may only be filed if the District Court has previously determined, based on a motion filed pursuant to paragraphs 92 or 93, below, that Defendant was not in substantial compliance during the first three years of the agreement, or if there is a pending appeal by Plaintiffs challenging the denial of such a motion. The parties will meet and confer prior to the filing of any such motion. In the event the parties are unable to reach agreement Plaintiffs' proposed motion, either party may invoke the dispute resolution procedures in section IX below. If the motion is granted by the Court, the one-year, one-time extension shall apply only to the specific obligation(s) that was/were the subject of the motion to enforce compliance. Under no circumstances will the term of any

provision of this Addendum, the parties' obligations thereunder, or the Court's jurisdiction extend beyond four years.

IX. DISPUTE RESOLUTION

83. If Plaintiffs' counsel believes Defendant is not in substantial compliance with any Monitored Initiative and/or provision of this Addendum as it relates to a Class or Subclass member, Plaintiffs' counsel shall contact Christopher Synsvoll or successor, or his designee, by email or telephone in an effort to resolve the matter informally.

84. If the foregoing informal effort does not resolve Plaintiffs' counsel's concerns within five (5) days, then Plaintiffs' counsel shall notify Defendant in writing of the specific reasons why they believe Defendant is not in substantial compliance, including a reference to any finding of the Monitor(s) if Plaintiffs are relying on those findings or opinions. Defendant shall investigate and respond in writing within thirty (30) calendar days; provided that if Plaintiffs' counsel reasonably believe that an issue presents a substantial risk of death or serious injury, then Defendant shall investigate and provide a preliminary verbal response as soon as practicable and in all events within five (5) business days, and shall provide a written response as soon thereafter as is practicable. Defendant's response shall contain a description of the steps it took to investigate the issues addressed in the notification, the results of the investigation and whether or not Defendant proposes corrective action (and if so, a specific plan for addressing the issues).

85. If Plaintiffs' counsel contend that Defendant's response does not adequately resolve the issue, they shall request a prompt meet and confer with Defendant, unless the Parties have already met and conferred on such issue prior to Defendant's written response. Either Party may request at any time that Magistrate Judge Hegarty, or his successor, participate in a meet

and confer, or in a meeting subsequent to a meet and confer, in order to facilitate informal resolution of the issue.

86. If the Parties are unable to resolve informally a claim that Defendant is not in substantial compliance with one or more of the Monitored Initiatives or provisions of the Addendum, either side may seek mediation by Magistrate Judge Hegarty, or his successor, or by a private mediator, to mediate the dispute; or alternatively, may invoke the procedures in the “Enforcement” section, above.

87. If the Court enters an order pursuant to paragraph 92 and Plaintiffs contend that Defendant has not complied with that order, the procedures in paragraphs 83-86, above, will apply.

X. ENFORCEMENT

88. The parties stipulate and agree that this Addendum complies in all respects with the requirements for prospective relief under the Prison Litigation Reform Act, 18 U.S.C. § 3626(a), and that Act shall govern the terms of this Addendum. Except to enforce, modify, or terminate this Addendum, this Addendum, and any findings made to effectuate this Addendum, will not be admissible against the Bureau or its current or former employees in any court for any purpose. Moreover, this Addendum is not an admission of any liability on the part of United States and/or its employees, agents, and former employees and agents, or any other persons, and will not constitute evidence of any pattern or practice of wrongdoing.

89. This Addendum will be filed in the United States District Court as part of an unopposed motion by Plaintiffs pursuant to Federal Rule of Civil Procedure 23(e) and 41(a)(2) to approve this Addendum and to dismiss the Complaint subject to the parties’ compliance with the terms of this Addendum, as contemplated by *Kokkonen v. Guardian Life Insurance Co. of*

America, 511 U.S. 375 (1994). This case will remain on the Court’s inactive docket for the Compliance Period. The Court will retain jurisdiction only to enforce the terms of this Addendum.

90. The Court shall be the sole forum for enforcement of this Addendum. The Parties agree to continue to work collaboratively and in good faith to avoid enforcement actions. The Bureau agrees that Christopher Synsvoll, Supervisory Attorney at the Federal Correctional Complex, Florence, Colorado, will remain the principal point of contact for any enforcement-related issues, regardless of whether he later holds a different position within the Bureau. If Mr. Synsvoll is no longer employed as an attorney by the Bureau, the successor Supervisory Attorney at the Federal Correctional Complex in Florence will undertake this role.

91. The Parties agree that temporary or isolated incidents of non-compliance shall not constitute substantial non-compliance. The Parties also agree that Defendant is in substantial compliance unless there is evidence of something more than failure to comply with technicalities. However, the Parties agree that intermittent compliance during a period of sustained non-compliance shall not constitute substantial compliance.

92. If the Parties are unable to resolve informally a claim by Plaintiffs that Defendant is not in substantial compliance with one or more Monitored Initiatives or provisions of this Addendum pursuant to the procedures in the “Informal Resolution” section above, Plaintiffs, and only through counsel, may petition the Court to effect substantial compliance with such Monitored Initiatives or provision of this Addendum, but not through a petition for contempt, and only on the provision or provisions in which Plaintiffs claim Defendant is in substantial non-compliance through the dispute resolution process. Any relevant report of the Monitor(s) may be filed with the Court in connection with such a petition. The only issue before the Court will be

whether Defendant is or is not in substantial compliance with a specific provision or provisions of the Monitored Initiatives or this Addendum. No petition may raise any claim for money damages or any claim by any inmate for a judicial determination concerning the inmate's personal mental health diagnosis. If the Court determines that Defendant is not in substantial compliance, the Court may enter an order within the Court's equitable or inherent authority to remedy the substantial non-compliance, but Plaintiffs may not seek an order of contempt.

93. If the Court enters an order pursuant to the preceding paragraph and Plaintiffs contend that Defendant has not complied with that order, they may, after reasonable notice to Defendant and an opportunity to cure, seek further relief from the Court. Reasonable notice shall include written notice providing specific facts and at least a 14-day time period to cure. Such further relief may include further equitable orders. Nothing in this paragraph purports to (i) limit the remedies or orders available to the Court in enforcing an order entered pursuant to the preceding paragraph; or (ii) waive the sovereign immunity of the United States.

XI. MODIFICATION

94. If, at any time, any party to this Addendum desires to modify this Addendum for any reason, that party will notify the other party in writing of the proposed modification and the reasons for it thirty (30) days before filing any motion seeking a modification. No modification will occur unless there is written agreement by the parties and unless the Court approves the modification under Fed. R. Civ. P. 23.

XII. ATTORNEYS' FEES AND COSTS

95. The Parties do not agree as to the prevailing party in this matter. Defendant maintains its position was substantially justified.

96. Nevertheless, upon the Effective Date of this Addendum, Defendant will:

a. pay the Washington Lawyers Committee for Civil Rights and Urban Affairs the sum of \$30,424 to reimburse it for out-of-pocket expenses incurred and paid by that organization in connection with the Lawsuit, and make a separate lump sum payment of \$73,704 to the Washington Lawyers Committee for Civil Rights and Urban Affairs to defray the attorneys' fees incurred by that organization in connection with the case; and

b. pay Disability Law Colorado the sum of \$5,500 to reimburse it for out-of-pocket expenses incurred and paid by that organization in connection with the Lawsuit, and make a separate lump sum payment of \$48,217 to Disability Law Colorado to defray the attorneys' fees incurred by that organization in connection with the case; and

c. pay Arnold & Porter LLP the sum of \$3,692,155, which includes \$880,297 to reimburse it for expert witness fees and other out-of-pocket expenses incurred and paid by that firm in connection with the Lawsuit. Of this total amount, Arnold & Porter will request the Court to approve a transfer of a lump sum payment of \$2,811,858 to the Arnold & Porter LLP Foundation, which funds various public interest legal services efforts using money recovered from its work on pro bono matters.

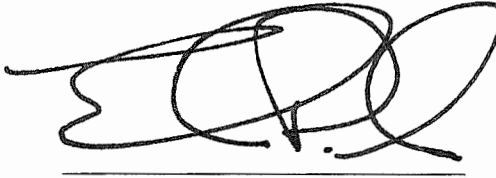
97. Plaintiffs and their counsel agree not to seek further fees and costs with respect to work incurred prior to the Effective Date of this Addendum.

98. The parties shall bear their own costs and attorney's fees for any subsequent proceedings following the Effective Date, other than Plaintiffs reserve their rights to seek fees and costs in only two circumstances: (1) if Defendant files a motion to terminate this Addendum prior to the second anniversary of the Effective Date, or (2) Plaintiff files and prevails on a motion to enforce based on substantial non-compliance.

IT IS SO STIPULATED AND AGREED.

For Plaintiffs:

DATED: 11-11-2016



Edwin P. Aro
Partner
Arnold & Porter LLP

DATED: _____

Deborah Golden
Project Director, D.C. Prisoners' Project
Washington Committee for Civil Rights and
Urban Affairs

DATED: _____

Mark Ivandick
Managing Attorney / Program Coordinator
Disability Law Colorado

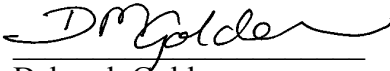
IT IS SO STIPULATED AND AGREED.

For Plaintiffs:

DATED: _____

Edwin P. Aro
Partner
Arnold & Porter LLP

DATED: 11 / 11 / 2016



Deborah Golden
Project Director, D.C. Prisoners' Project
Washington Committee for Civil Rights and
Urban Affairs

DATED: _____

Mark Ivandick
Managing Attorney / Program Coordinator
Disability Law Colorado

IT IS SO STIPULATED AND AGREED.

For Plaintiffs:

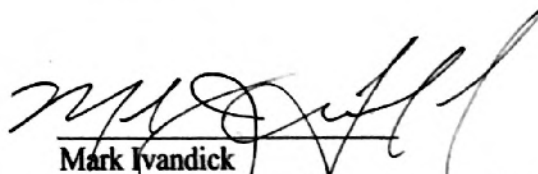
DATED: _____

Edwin P. Aro
Partner
Arnold & Porter LLP

DATED: _____

Deborah Golden
Project Director, D.C. Prisoners' Project
Washington Committee for Civil Rights and
Urban Affairs

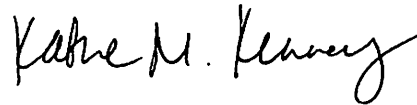
DATED: 11/11/2016



Mark Ivandick
Managing Attorney / Program Coordinator
Disability Law Colorado

For Defendants:

DATED: 11/10/16



Kathleen M. Kenney
Assistant Director / General Counsel
Office of the General Counsel
Federal Bureau of Prisons

DATED: 11/9/16



Amy L. Padden
Amy L. Padden
Acting Executive Assistant U.S. Attorney
Deputy Chief, Civil Division
U.S. Attorney's Office, District of Colorado

EXHIBIT C



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: CPD/ICT
NUMBER: 5214.02
DATE: April 1, 2015

Communications Management Units

/s/

Approved: Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

§ 540.200 Purpose and scope.

(a) **Purpose of this subpart.** This subpart defines the Federal Bureau of Prisons' (Bureau) authority to operate, and designate inmates to, Communications Management Housing Units (CMUs) within Bureau facilities.

(b) **CMU.** A CMU is a general population housing unit where inmates ordinarily reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.

(c) **Purpose of CMUs.** The purpose of CMUs is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between inmates in CMUs and persons in the community. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protection of the public. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart.

Federal Regulations from 28 CFR are shown in this type.
Implementing instructions are shown in this type.

(d) Application. Any inmate (as defined in 28 CFR § 500.1(c)) meeting criteria prescribed by this subpart may be designated to a CMU.

(e) Relationship to other regulations. The regulations in this subpart supersede and control to the extent they conflict with, are inconsistent with, or impose greater limitations than the regulations in this part, or any other regulations in this chapter, except 28 CFR part 501.

The CMU is established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communications with persons in the community to protect the safety, security, and orderly operation of Bureau facilities, and protect the public.

CMU designation is non-punitive and may be appropriate for any inmate meeting the referral criteria in Section 2.

a. **Program Objectives.** The expected results of this program are:

- Inmates who meet the criteria for designation to a CMU will be referred for redesignation.
- CMU inmates will be monitored and redesignated when appropriate.
- Safe and orderly environments at institutions will be enhanced by the operation of CMUs.
- Increased monitoring of communications with persons in the community will protect the safety, security, and good order of institutions, staff, inmates, and the public.
- Inmates designated to a CMU will be provided due process as described in this policy.

b. **Pretrial/Holdover/Detainee Procedures.** This Program Statement applies to all inmates.

2. REFERRAL SOURCES

Designation to a CMU may be considered for any inmate whose interaction with persons in the community requires greater management to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public. Referrals may come from any source, such as, but not limited to, the following:

- Counter Terrorism Unit (CTU) communication monitoring and intelligence gathering.
- The Designation and Sentence Computation Center (DSCC), as part of the initial and re-designation processes.
- Individual institutions or regional offices, based upon an inmate's behavior or activities.
- Recommendations from other law enforcement agencies or courts.

3. DESIGNATION PROCEDURES

§ 540.202 Designation procedures.

Inmates may be designated to CMUs only according to the following procedures:

(a) **Initial consideration.** Initial consideration of inmates for CMU designation begins when the Bureau becomes aware of information relevant to the criteria described in § 540.201.

b. **Referral.** Designations to a CMU are coordinated by the Counter Terrorism Unit (CTU). The CTU reviews the following information:

- Pre-Sentence Investigation Report (PSR).
- Judgment in a Criminal Case (J&C).
- Statement of Reasons (SOR).
- DHO reports relevant to referral, such as communication-related misconduct.
- Relevant SIS reports, PC investigations, etc.
- Memos, letters, etc., from courts, United States Attorneys' Offices, law enforcement officials, etc., relating to the referral.
- Any other information or intelligence related to the referral.

CTU staff may draw upon sensitive information and the expertise of other law enforcement and intelligence agencies during the CMU review process.

All material utilized during the review and referral process is ordinarily delivered to recipients in electronic format, except classified material that must be handled in accordance with prescribed handling procedures.

c. **Review.** The CTU completes the necessary CMU referral documentation, including the *Notice to Inmate of Transfer to a Communications Management Unit* (BP-A0944), and forwards a copy to the Office of General Counsel (OGC) for review.

d. **Decision.** After OGC completes its review of the referral, the packet is returned to the CTU, which then forwards it to the Assistant Director, Correctional Programs Division (CPD).

e. Assistant Director Authority

§ 540.202(b) Assistant Director authority. The Bureau's Assistant Director, Correctional Programs Division, has authority to approve CMU designations. The Assistant Director's decision must be based on a review of the evidence, and a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protection of the public.

Only the Assistant Director (or acting Assistant Director), Correctional Programs Division, has the authority to designate an inmate to a CMU. CMU designation approval authority may not be delegated below this level.

f. Designation Criteria

§ 540.201 Designation criteria.

Inmates may be designated to a CMU if evidence of the following criteria exists:

(a) The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;

(b) The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a substantial likelihood that the inmate will encourage, coordinate, facilitate, or otherwise act in furtherance of illegal activity through communication with persons in the community;

(c) The inmate has attempted, or indicates a substantial likelihood that the inmate will contact victims of the inmate's current offense(s) of conviction;

(d) The inmate committed prohibited activity related to misuse or abuse of approved communication methods while incarcerated; or

(e) There is any other substantiated/credible evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

Approval or denial by the Assistant Director, CPD, is reported to the CTU. The CTU then notifies a Designator at the DSCC, who notes the decision in SENTRY on the inmate's "CIM Clearance and Separatee Data," and also loads the initial designation or redesignation. Once the designation is loaded into SENTRY, movement of the inmate through the prisoner transportation system can be initiated.

g. **Notice to CMU Inmates.** Upon arrival at the designated CMU, inmates are provided the form BP-A0944, *Notice to Inmate of Transfer to a Communications Management Unit*, from the facility's Warden as follows:

§ 540.202(c) Written notice. Upon arrival at the designated CMU, inmates will receive written notice from the facility's Warden explaining that:

(1) Designation to a CMU allows greater Bureau staff management of communication with persons in the community through complete monitoring of telephone use, written correspondence, and visiting. The volume, frequency, and methods of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart;

(2) General conditions of confinement in the CMU may also be limited as necessary to provide greater management of communications;

(3) Designation to the CMU is not punitive and, by itself, has no effect on the length of the inmate's incarceration. Inmates in CMUs continue to earn sentence credit in accordance with the law and Bureau policy;

(4) Designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate will be provided an explanation of the decision in sufficient detail, unless the Assistant Director determines that providing specific information would jeopardize the safety, security, and orderly operation of correctional facilities, or protection of the public;

(5) Continued designation to the CMU will be reviewed regularly by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates;

(6) The inmate may challenge the CMU designation decision, and any aspect of confinement therein, through the Bureau’s administrative remedy program.

4. CENTRAL INMATE MONITORING (CIM) ASSIGNMENTS

CIM assignments regarding CMU candidates are finalized before assignment to a specific CMU. This ensures the most appropriate placement of each CMU inmate. Inmates who are CIM “separatees” for any reason may not be housed in the same CMU housing unit.

5. CONDITIONS OF CONFINEMENT

All Federal regulations (rules) apply to CMU inmates and cannot be waived. Additionally, all Bureau of Prisons policies and national directives apply to inmates in CMUs unless specifically provided differently in this policy. Waivers from any Bureau policy or national directive must be processed according to the Program Statement **Directives Management Manual**.

a. **Minimum Conditions.** Except as provided above, minimum conditions of confinement for CMU inmates are as follows and in accordance with the Program Statement **Occupational Safety, Environmental Compliance, and Fire Protection**, and other policies referenced in this Program Statement.

(1) **Environment.** Living quarters are well ventilated, adequately lighted, appropriately heated, and maintained in a sanitary condition.

(2) **Cell Assignments.** Living quarters ordinarily house only the number of occupants for which they are designed. The Warden, however, may authorize additional occupants as long as adequate standards can be maintained. The unit contains cells dedicated to segregated housing for inmates being placed in administrative detention or disciplinary segregation status.

(3) **Bedding.** Inmates receive a mattress, blankets, a pillow, and linens for sleeping. They have opportunities to exchange linens.

(4) **Clothing.** Inmates receive adequate institution clothing, including footwear. They have opportunities to exchange clothing or have it washed.

(5) **Personal Hygiene.** Inmates have access to a wash basin and toilet. They receive personal hygiene items. Showers are available daily. Inmates have access to hair care services.

(6) **Meals.** Inmates receive nutritionally adequate meals provided by the institution.

(7) **Education/Recreation.** National education policies are implemented. Inmates have access to library services per 28 CFR part 544, and the Program Statements **Education, Training, and Leisure Time Program Standards**, and **Recreation Programs, Inmate**.

Inmates are ordinarily permitted to leave their cells and recreate daily during regular institution hours of operation as directed by the Warden, except during counts.

Ordinarily, outdoor exercise areas are available for inmate use, weather and resources permitting. These areas will be available to inmates unless compelling security or safety reasons dictate otherwise. Inmates are provided various passive and active recreational activities in accordance with institution procedures, as well as hobbycraft opportunities. Televisions are available in unit common areas. Movies are shown using closed-circuit televisions.

(8) **Personal Property.** Inmates may have reasonable amounts of personal property. Personal property may be limited for reasons of fire safety, sanitation, or available space.

(9) **Commissary.** Inmates have access to the commissary similar to the institution general population, as determined by the Warden.

(10) **Legal Activities.** Inmates may perform legal activities per 28 CFR part 543, and the Program Statement **Legal Activities, Inmate**. The use of assistants by attorneys to perform legal tasks, as provided in the Program Statement **Legal Activities, Inmate**, applies to inmates in the CMU.

(11) **Religion.** Inmates may pursue religious beliefs and practices per 28 CFR part 548, and the Program Statement **Religious Beliefs and Practices**.

(12) **Medical Care.** Health Services staff provide sick call in the unit. Medications will also be delivered and administered in the unit. Specialized services may be provided in the institution's main health services units, under conditions that ensure inmates' lack of contact with non-CMU inmates. Emergency medical care is available either at the institution or from the community.

(13) **Mental Health Care.** For newly committed inmates, a Psychology Services initial intake evaluation is completed within 14 calendar days of the inmate's arrival at the institution. For inmates transferring from another Bureau institution, a transfer intake screening is completed within 30 calendar days of the inmate's arrival at the institution. In addition, if an inmate has been out of the institution for more than 30 continuous calendar days, e.g. hospitalized in the community for an extended period of time, returning from a lengthy federal or state writ, a

Transfer Intake Screening is completed within 30 calendar days of the inmates return to the institution.

(14) **Sanitation.** CMU inmates are responsible for sanitation in their living areas.

(15) **Work Assignments.** Work assignments include orderlies for unit sanitation, food service, and recreation, and are assigned by the Unit Team.

b. **Admission and Orientation/Classification and Reviews.** Inmates will participate in an institution and unit admission and orientation (A&O) program as outlined in the policy on A&O. The goal of the CMU A&O program is to provide inmates with information regarding institution operations and program availability. Classification and reviews of CMU inmates occur per the Program Statement **Classification and Program Review of Inmates.**

c. **Contact With Persons in the Community.** The purpose of the CMU is to provide increased monitoring of communications of assigned inmates. By operating a self-contained housing unit, staff regulate and monitor all communications between inmates and persons in the community. Contact between CMU inmates and persons in the community occurs according to the Program Statement **Visiting Regulations**, with necessary adjustments indicated herein. Privileged attorney-client communications are not monitored, consistent with the Program Statements **Legal Activities, Inmate** and **Visiting Regulations.**

(1) **Written Correspondence Limitations**

§ 540.203 Written correspondence limitations.

(a) General correspondence. General written correspondence as defined by Part 540, may be limited to six pieces of paper (not larger than 8.5 x 11 inches), double-sided writing permitted, once per calendar week, to and from a single recipient at the discretion of the Warden, except as stated in (c) below. This correspondence is subject to staff inspection for contraband and for content.

Incoming and outgoing written general correspondence is ordinarily reviewed by CTU staff before delivery to the inmate or further processing to the post office. All foreign-language correspondence is translated before delivery to the inmate or further processing to the post office.

Unless specifically restricted, inmates will ordinarily be allowed to communicate through general correspondence consistent with the Program Statement **Correspondence.** However, the Warden may impose limitations based on safety and security needs of the institution.

(b) Special mail.

(1) Special mail, as defined in this part, is limited to privileged communication with the inmate's attorney.

(2) All such correspondence is subject to staff inspection in the inmate's presence for contraband and to ensure its qualification as privileged communication with the inmate's attorney. Inmates may not seal such outgoing mail before giving it to staff for processing. After inspection for contraband, the inmate must then seal the approved outgoing mail material in the presence of staff and immediately give the sealed material to the observing staff for further processing.

(c) Frequency and volume limitations. Unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations, there is no frequency or volume limitation on written correspondence with the following entities:

(1) U.S. courts;

(2) Federal judges;

(3) U.S. Attorney's Offices;

(4) Members of U.S. Congress;

(5) The Bureau of Prisons;

(6) Other federal law enforcement entities; or

(7) The inmate's attorney (privileged communications only).

Only privileged communication with the inmate's attorney will be handled as special mail. All other types of correspondence do not receive special handling and will be treated as general correspondence. This includes, but is not limited to, media representatives and those entities listed in (c) above.

(d) Electronic messaging may be limited to two messages, per calendar week, to and from a single recipient at the discretion of the Warden.

CMU inmates are permitted electronic messaging where available, but can be limited in frequency and volume as indicated above. Additionally, the policy on TRULINCS electronic messaging applies to inmates in the CMU.

Incoming and outgoing electronic messaging is ordinarily reviewed by CTU staff before delivery to the inmate or further processing to the electronic post office. All foreign-language correspondence is translated before delivery to the inmate or further processing to the electronic post office.

(2) Telephone Communication Limitations

§ 540.204 Telephone communication limitations.

(a) Monitored telephone communication may be limited to immediate family members only. The frequency and duration of telephone communication may also be limited to three connected calls per calendar month, lasting no longer than 15 minutes. The Warden may require such communication to be in English, or translated by an approved interpreter.

Telephone communications between inmates and persons in the community (except properly placed, unmonitored legal calls) are:

- Conducted using monitored ITS phone lines.
- Ordinarily live-monitored by CTU staff.
- Subject to recording.
- Translated for foreign-language conversations.

Unless specifically restricted, inmates will be allowed two 15-minute monitored telephone calls per week. Calls may be placed Monday through Friday, except holidays, between 8:00 a.m. and 8:00 p.m., local time. On Sundays and holidays, telephone calls may be placed between 8:00 a.m. and 2:30 p.m., local time. No telephone calls will be permitted on Saturdays.

(b) Unmonitored telephone communication is limited to privileged communication with the inmate's attorney. Unmonitored privileged telephone communication with the inmate's attorney is permitted as necessary in furtherance of active litigation, after establishing that communication with the

verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.

(3) Visiting Limitations

§ 540.205 Visiting limitations.

(a) Regular visiting may be limited to immediate family members. The frequency and duration of regular visiting may also be limited to four one-hour visits each calendar month. The number of visitors permitted during any visit is within the Warden's discretion. Such visits must occur through no-contact visiting facilities.

(1) Regular visits may be simultaneously monitored and recorded, both visually and auditorily, either in person or electronically.

(2) The Warden may require such visits to be conducted in English, or simultaneously translated by an approved interpreter.

(b) Attorney visiting is limited to attorney-client privileged communication as provided in this part. These visits may be visually, but not auditorily, monitored. Regulations and policies previously established under 28 CFR part 543 are applicable.

(c) For convicted inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 543 are applicable.

Visiting between inmates and persons in the community (except properly scheduled, unmonitored legal visits) is:

- Conducted using non-contact facilities (i.e., secure partitioned rooms, telephone voice contact).
- Ordinarily live-monitored by CTU staff.
- Subject to recording.
- Translated for foreign-language conversations.

Inmates will ordinarily be allowed up to eight hours of visiting time per month. Visits may be scheduled in increments up to four hours at the discretion of the institution. No single visit (visiting day) may be scheduled for a period longer than four hours. Visits will be permitted

Sunday through Friday, during regular institution visiting hours. Visits may be scheduled on Federal holidays; however, no visits will be scheduled on Saturdays.

6. REDESIGNATION

a. **Redesignation Criteria.** Reviews for continuing CMU designation are done in a manner consistent with sound correctional judgment and security threat management practices. Unit Team staff, in conjunction with the CTU, review the status of an inmate in a CMU to determine the inmate's readiness for transfer. The decision to transfer reflects the Unit Team and CTU's judgment that the inmate can function in another facility in a manner in which he/she is not likely to be a threat to others, or to the institution's orderly operation. CTU staff may draw upon sensitive information and the expertise of other law enforcement and intelligence agencies during the review process.

Review of inmates for continued CMU designation will be conducted by the Unit Team in connection with regularly scheduled program reviews. Inmates are provided at least 48 hours prior notice of scheduled program reviews, are expected to attend, and can personally raise questions and concerns with Unit Team regarding their placement in the CMU.

In determining whether continued CMU placement is necessary, the Unit Team will consider whether the original reasons for CMU placement still exist, including whether:

- The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism.
- The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a propensity to encourage, coordinate, facilitate, or otherwise act in furtherance of illegal activity through communication with persons in the community.
- The inmate has attempted, or indicates a propensity, to contact victims of his/her current offense(s) of conviction.
- The inmate committed prohibited activity related to misuse/abuse of approved communication methods while incarcerated.
- There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's unmonitored communication with persons in the community.

Additional information to be considered includes whether the inmate can safely function in a less restrictive unit without posing a risk to institutional security and good order, posing a risk to the safety and security of staff, inmates, or others, including the inmate him-/herself, or posing a risk

to public safety. Ultimately, it must be staff's assessment that the inmate does not require the degree of monitoring and controls afforded at a CMU.

Unit Team staff forward their recommendations to the Warden. With the concurrence of the Warden, recommendations are then forwarded to the Bureau's Counter Terrorism Unit (CTU) for review of individual inmate cases. The CTU forwards the recommendation to the Assistant Director, Correctional Programs Division (CPD). The Assistant Director, Correctional Programs Division, has final authority to approve an inmate's redesignation from a CMU.

Only the Assistant Director (or acting Assistant Director), Correctional Programs Division, has the authority to redesignate an inmate from a CMU. CMU redesignation approval authority may not be delegated below this level.

All material utilized during the review and referral process is ordinarily delivered to recipients in electronic format, except classified material that must be handled in accordance with the prescribed handling procedures.

Inmates denied re-designation from a CMU are notified in writing by the Unit Team of the reason(s) for continued CMU designation. Inmates not satisfied with the re-designation decision, or any other aspect of confinement in the CMU, can appeal the decision or situation through the administrative remedy program. The inmate's Unit Team can provide the necessary form(s).

Once redesignation from a CMU is approved, CTU staff prepare a referral packet for the DSCC. The packet contains:

- Request for Redesignation Memorandum (drafted by the CTU).
- Approval memo signed by the Assistant Director, Correctional Programs Division.

Inmates approved for transfer from a CMU are ordinarily redesignated to the general population in the institution where the CMU is located, for a period of no less than 6 months, as a step-down process from the CMU, if they meet security and custody classification requirements for a medium security facility.

Inmates requiring placement in a high security institution are ordinarily redesignated to an appropriate facility for no less than 6 months, as a step-down process from the CMU.

Approval or denial by the Assistant Director, CPD, is reported to the CTU. The CTU then notifies a Designator at the DSCC, who notes the decision in SENTRY on the inmate's "CIM Clearance and Separatee Data," and also loads the initial designation or redesignation.

During the initial 6-month step-down period, the inmate's communications continue to be monitored by the CTU.

Should the inmate continue to program appropriately after transfer from a CMU, he/she can be considered eligible for transfer to another appropriate security level facility.

7. INMATE APPEAL OF TRANSFER TO A CMU

Inmates appeal their transfer to a CMU through the Bureau's Administrative Remedy Program, 28 C.F.R. §§ 542.10 through 542.19.

8. INSTITUTION SUPPLEMENT

Each institution with a CMU must develop an Institution Supplement that addresses local operations and procedures. The Institution Supplement is reviewed for legal sufficiency by Regional Counsel before implementation.

9. AGENCY ACA ACCREDITATION PROVISIONS

- American Correctional Association Standards for Adult Correctional Institutions, 4th Edition: 4-4287, 4-4288, 4-4290, 4-4295, 4-4296, 4-4297, 4-4299, 4-4300, 4-4301, 4-4305, 4-4428
- American Correctional Association Performance Based Standards for Adult Local Detention Facilities, 4th Edition: 4-ALDF-2A-28, 4-ALDF-2A-30, 4-ALDF-2A-31, 4-ALDF-5A-01
- American Correctional Association Standards for Administration of Correctional Agencies, 2nd Edition: 2-CO-4B-03, 2-CO-4B-04, 2-CO-4E-01, 2-CO-4F-01

REFERENCES

Program Statements

P1221.66	Directives Management Manual (7/21/98)
P1315.07	Legal Activities, Inmate (11/5/99)
P1330.18	Administrative Remedy Program (1/6/14)
P1600.09	Occupational Safety, Environmental Compliance, and Fire Protection (10/31/07)
P5100.08	Inmate Security Designation and Custody Classification (9/12/06)
P5180.05	Central Inmate Monitoring System (12/31/07)
P5230.05	Grooming (11/4/96)
P5264.08	Inmate Telephone Regulations (1/24/08)

- P5265.13 Trust Fund Limited Inmate Computer System (TRULINCS) – Electronic Messaging (2/19/09)
- P5265.14 Correspondence (4/5/11)
- P5267.08 Visiting Regulations (5/11/06)
- P5270.09 Inmate Discipline Program (7/8/11)
- P5270.10 Special Housing Units (7/29/11)
- P5290.14 Admission and Orientation Program (4/3/03)
- P5300.21 Education, Training and Leisure Time Program Standards (2/18/02)
- P5322.13 Inmate Classification and Program Review (5/16/14)
- P5360.09 Religious Beliefs and Practices (12/31/04)
- P5370.11 Recreation Programs, Inmate (6/28/08)
- P5521.05 Searches of Housing Units, Inmates, and Inmate Work Areas (6/30/97)
- P5580.08 Personal Property, Inmate (8/22/11)
- P5803.08 Progress Reports (2/27/14)
- P6031.04 Patient Care (6/3/14)
- P6340.04 Psychiatric Services (1/15/05)

BOP Forms

- BP-A0944 Notice to Inmate of Transfer to a Communications Management Unit

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.

EXHIBIT D



August 5, 2020

MEMORANDUM FOR ALL CHIEF EXECUTIVE OFFICERS

**FROM: ANDRE MATEVOUSIAN, ASSISTANT DIRECTOR
CORRECTIONAL PROGRAMS DIVISION**

**L. CRISTINA GRIFFITH, ASSISTANT DIRECTOR
HUMAN RESOURCE MANAGEMENT DIVISION**

LINELL GRIFFITH

Digitally signed by
LINELL GRIFFITH
Date: 2020.08.05
08:36:50 -04'00'

**N. C. ENGLISH, ASSISTANT DIRECTOR
HEALTH SERVICES DIVISION**

NICOLE
ENGLISH

Digitally signed by
NICOLE ENGLISH
Date: 2020.08.05
08:22:21 -04'00'

SUBJECT: CORONAVIRUS (COVID-19) PHASE NINE ACTION PLAN

This memorandum describes the Bureau's (BOP) Coronavirus (COVID-19) Phase Nine Action Plan, which includes an extension of previously disseminated guidance along with new measures to implement in the management of the pandemic.

EXTENSION OF PHASE EIGHT ACTION PLAN

The BOP will continue its nationwide action as described in previous phase memorandums. These measures will remain in place through August 31, 2020, at which time the plan will be evaluated.

STAFF TRAINING

All in-person training is suspended through August 31, 2020. Exceptions to in-person training includes: ICT I, ICT II, completion of mandatory requirements for Annual Training, OSHA mandated certifications, and any training that can be conducted remotely to fulfill ongoing mandatory credentialing requirements that cannot be waived. Any other exceptions to this suspension must be routed through the appropriate Assistant Director or Regional Director, and submitted to the Deputy Director for final approval.

STAFF TRAVEL

All non-essential official staff travel is suspended through August 31, 2020. Any requests for travel, except for deployment to institutions to assist with the COVID-19 pandemic, must be approved by the appropriate Regional Director or Assistant Director.

LEGAL ACCESS

As courts begin to conduct more criminal and civil proceedings, inmates will need increased access to counsel and legal materials.

Legal calls and/or virtual legal visits: Telephone calls and/or video conferencing with outside counsel should be accommodated to the extent possible. Please work with your IT Department to provide and expand virtual access to attorneys whenever possible using either a VTC unit and/or WebEx.

In-Person Legal Visits: Consistent with standing guidance, in-person legal visits should be accommodated upon request. The legal visits should be accommodated based on local resources, and consistent with the following recommendations:

Inmates in medical isolation for COVID-19 should not have in-person legal visits unless absolutely necessary. Strongly consider rescheduling or, as an alternative, utilize video teleconferences (VTC) and telephone legal calls.

Inmates in quarantine for COVID-19 may have asymptomatic COVID-19 infection or be in the incubation period, and should delay legal visits until they are COVID-19 tested negative at the end of quarantine. Video tele-conferencing (VTC) or legal telephone calls with attorneys are recommended as alternatives, if available.

In general, testing an inmate for COVID-19 immediately after a legal visit would have little utility and is not recommended.

Further considerations for in-person legal visits include:

- o Inmates and attorneys/ legal visitors should wear face coverings (cloth or surgical mask) and should perform hand hygiene (washing hand with soap and water or using hand sanitizer) just before and after in-person visits.
- o Use of Plexiglas or similar barrier between inmate and attorney is strongly recommended for in-person visits. In the alternative, if a barrier is not present, social distancing (i.e., 6 feet apart) should be used.

o Attorney/legal visitors should be symptom screened and temperature checked upon entry into the facility, should wear a face covering, and perform hand hygiene just before and after the legal visit. Legal visitors who are sick or symptomatic should not be allowed to visit.

o If necessary, documents should be passed back and forth in a manner to avoid touching.

o When legal attorney rooms are available, they should be utilized to allow for social distancing among all present in the room. If there is no legal attorney room available and if there are more than one attorney/inmate pair present, all pairs should be separated by more than six feet to the extent possible while protecting attorney-client communications.

o Tables, chairs, and other high-touch surfaces should be disinfected between usage.

Electronic Law Library and Discovery Materials: Whenever possible, consistent with social distancing protocols and safe institution operations, inmates should be permitted access to the Electronic Law Library (ELL) under conditions determined by the Warden at each facility. Similarly, inmates will need access to discovery materials relevant to pending cases, beyond those which are maintained by the inmate in his or her cell. We recommend that a schedule be established to permit fair and timely access to ELL terminals and discovery materials upon inmate request, and that the schedule be provided to inmates at the facility.

PROGRAMMING

Inmate programming is an essential function in our facilities, and delivery of First Step Act approved Evidence-Based Recidivism Reduction (EBRR) Programs and Productive Activities (PAs) is required by law. Institutions will offer programming in the following ways:

- Residential programs (i.e., RDAP, BRAVE, SOTP, TCU, FIT, etc.) will immediately resume full time treatment, as required by policy. Programs may resume groups with more than ten participants, however, other social distancing modifications should remain in place (e.g., holding groups in larger spaces; suspending community meetings).
- Delivery of non-residential EBRR Programs and PAs (e.g., GED, Anger Management) will resume/continue. These services will be offered at no less than half of their regular capacity.
- Institutions should continue to deliver EBRR and PA programming consistent with the curriculum; however, staff may offer programs on the housing unit or in outdoor or unused spaces for safety/social distancing.

- GED testing, in groups of six or less, will resume with priority given to inmates releasing within 120 days. Other inmates may be tested if resources allow.

Appropriate SENTRY assignments must be used to track program enrollment and participation. Inmates must be recommended for and allowed to sign up for programs that meet their assessed needs.

General population recreation access will resume. Ordinarily, inmates in groups of no more than 100 will be able to access the recreation yard for a minimum of one hour at a time as long as they remain appropriately distant from one another. Inmates should have access at least three times per week and attend the recreation yard with inmates from their designated housing units. Group sports or use of gym equipment (e.g., weights, basketballs) are prohibited. Small classes that do not involve physical contact may be offered at the discretion of the Warden. If this occurs, all materials must be thoroughly sanitized after each use.

- Recreation in Special Housing will resume, consistent with standards outlined in policy.

Institutions with active COVID-19 cases may make exceptions to these programming requirements for the safety of staff and inmates. Modification requests are sent to the Regional Director and concurrence given by the Reentry Services Division.

Beyond program delivery, staff are required to complete needs assessments on all newly-committed inmates, and this process remains in effect during the pandemic. As a reminder, needs are assessed by Unit Team, Health Services, Psychology Services, and Education staff. The results of the assessments must be keyed into SENTRY or Insight. Based on the needs assessment, inmates must be enrolled in an appropriate EBRR Program or PA.

VOLUNTEERS AND CONTRACTORS

Institution access for Volunteers and Contractors will continue as previously described in the Phase Six Action Plan.

UNICOR

In consultation with Safety & Health Services departments, Wardens will develop plans to safely have UNICOR operations at their institutions running at least 80% capacity no later than September 1, 2020 and 100% normal operation levels no later than October 1, 2020. Written plans are due to the Regional Directors for approval by Tuesday, August 11, 2020. Wardens whose institutions have a UNICOR operation will also develop and forward plans to establish UNICOR units. A standard questionnaire for reporting of these plans will be provided by the Assistant Director for FPI.

Institutions with active COVID-19 cases may make exceptions to these work requirements for the safety of staff and inmates. Modification requests are sent to the Regional Director and concurrence given by the Assistant Director, FPI.

COMPLIANCE REVIEWS

Effective immediately, the Program Review Division (PRD) will be conducting unannounced site visits to ensure institution operations conform to the ongoing COVID guidance. This compliance review will include, but is not limited to, adherence with the Health Services Division guidance on best practices for managing COVID-19 outbreaks, CDC guidance on COVID-19 precautions, and all of the Phase Memorandums outlining our progression as an agency through this crisis. PRD will soon disseminate written standards that will encompass the scope of their review.

COURT TRIPS

A number of variables affect the risk of COVID-19 transmission during in-person court appearances and will influence some of the specific management strategies that are needed at each location. The U.S. Marshals Service (USMS) takes responsibility for the inmate once they leave the BOP institution until their return. Each USMS district may have their own COVID management procedures. Individual courts may also have different COVID prevention/mitigation procedures and requirements. Recognizing the likelihood of BOP inmates mixing with non-quarantined, non-BOP inmates while in USMS custody during a court visit is essential to assess the risk of COVID-19 exposure.

The frequency of an inmate's court appearance and the number of inmates going to a court at any one time are also important factors to consider. It is recommended that each BOP detention center contact the USMS and the court to ascertain their COVID-19 mitigation procedures and consult with Regional Health Services staff on developing an individualized strategy. The following are general principles to follow:

- Inmates in COVID isolation should not have in-person court appearances unless absolutely necessary. Strongly consider the inmate appearing via telephone hearing or via a VTC if it is accessible.
- Inmates in COVID quarantine (intake/exposure) should delay in-person court appearances until they are COVID tested negative at the end of quarantine. It is recommended that VTC or telephone appearances be used as alternatives. In general, testing an inmate immediately after a court visit would have little utility and is not recommended as a strategy. If in-person attendance is required, however, Abbott ID NOW tests can be used on a case-by-case basis if a visit is ordered by the court.
- Inmates should wear face coverings and perform hand hygiene just before departure from and upon return to the institution.

- BOP officials should request to the USMS that BOP inmates be cohorted only within their own housing or quarantine cohort and not be mixed with inmates from other housing units or other institutions, or transported with inmates from other institutions to the extent possible while at court.
- Upon return to the detention center, inmates should be quarantined if they were outside of the institution and were exposed to inmates from other housing units or locations (i.e., county jails). Periodic testing of inmates with frequent court appearances should be considered. The 14-day quarantine period must be restarted for any inmate who is in close contact with other inmates not from their housing unit or location.

INTAKES

As we return to a more normalized inmate movement, the quarantine site model will no longer be utilized. All inmates entering an institution will require enhanced intake procedures:

- Institutions are to designate specific quarantine and isolation areas in advance with capacity numbers commensurate with anticipated levels and frequency of incoming inmates. Ideally, inmates should be quarantined or isolated in single-cells, if possible. When cohorting is necessary, the best practice is to keep cohorted inmates together and not add to the cohort when new intakes arrive.
- All new intakes should be screened for COVID-19 on arrival, to include a symptom screen, temperature check, and an approved viral PCR test (either an Abbott ID Now POC test or commercial send out lab test) performed on a sample obtained from a nasopharyngeal, mid-turbinate, or anterior nares swab.
 - Inmates who test positive and/or are symptomatic will be placed immediately in medical isolation. They will remain in medical isolation until they meet the CDC symptom-based (for symptomatic inmates) or time-based (for asymptomatic inmates) release from isolation criteria.
 - Inmates who are asymptomatic and test negative are placed in quarantine. They will remain in quarantine until:
 - They become symptomatic during the quarantine period. These inmates should be tested (Abbott or commercial) and placed in medical isolation immediately. Depending on the housing circumstances, potential contacts (e.g., cellmate, cohort, housing unit) will need to reset their quarantine. When risk of exposure and/ or spread of transmission is higher, re-testing of potential contacts could be considered.

- A testing frequency of every 3 to 4 days is preferred whenever feasible in consultation with the Regional Infection Prevention and Control Consultant and the Regional Medical Director.
- On or after 14 days. The inmates who have remained asymptomatic will have a symptom screen, temperature check, and be tested with a commercial lab test. Inmates should remain in quarantine status until test results are available. If the test is positive, see above bullet. If the test is negative, the inmate may be released to General Population.

MOVEMENT

Movement of inmates between BOP institutions can be a simple, short-distance transfer between two institutions or a complex, multi-day, multi-institution process. The risk of COVID-19 exposure and transmission increases as the complexity of the move increases. Movement variables that increase the risk of COVID-19 exposure and transmission should be avoided whenever possible and include multiple stops, staff and agencies; and potential mixing with other inmate groups from other BOP facilities or other correctional jurisdictions. However, even a direct movement from one facility to another is not without some degree of risk due to the characteristics and communicability of COVID-19. Refer to the HSD Guidance (6/19/20) for Inmates who are transferring or Releasing from a BOP Facility,

https://sallyport.bop.gov/co/hsd/infectious_disease/covid19/docs/guidance_for%20transferring_or%20releasing%20inmates_20200619.pdf

- As inmate movement operations move toward “normalizing”, the number and complexity of inmate moves will increase. This process of normalizing should be done in a measured approach to allow institutions, regions and the agency develop best practices moving forward.
- Institutions/ Regions should evaluate their space and staffing resources to accommodate increased numbers of the various types of quarantine inmate groups (intake, exposed and pre-release) as well as isolation inmates in various stages of the process. Various and/or large groups of quarantine and isolation inmates may require a re-distribution of inmates amongst institutions within a region.
- The first step in ensuring safe inmate movement is a full test-in/out, 14-day pre-release quarantine of transferring inmates prior to transport.
 - Planning an inmate move should occur with enough time in advance to allow for a full test in/out 14-day quarantine and turnaround time for test results (21 days).

- Planning should be coordinated with all the institutions involved from the beginning stages so that setting of dates will allow for the above process to occur for all the potential inmates on that move.
- Inmates who have tested negative at the completion of their quarantine should stay in quarantine status until they are transferred, preferably within 5 days of the negative result, but may still move within 14 days of the negative result.
- If an inmate develops symptoms and/or tests positive, they will not be permitted to travel until they have met the CDC symptom or time-based criteria for release from isolation. On rare occasions, there may be exceptions where an inmate must travel prior to the completion of this process or even with a positive result (e.g., court ordered transfer). In these cases, the transfer must be discussed and approved by local executive staff from the institutions and regions involved with input from health services staff, as needed.
- For inmates who have previously tested positive for COVID-19: (refer to https://sallyport.bop.gov/co/hsd/infectious_disease/covid19/docs/covid19_testing_expanded_inmate_testing_strategies_2020619.pdf)
 - If they meet CDC release from isolation criteria and are within 90 days of their original COVID-19 diagnosis (initial symptom onset for symptomatic patients or initial positive COVID-19 test for asymptomatic patients), they do not need any further testing or quarantine prior to transfer.
 - If they meet CDC release from isolation criteria but are more than 90 days out from their original COVID-19 diagnosis, they should be placed in quarantine and tested just like an inmate who has never had the infection.
 - If the test is positive, they cannot travel and must be placed in isolation until they meet the CDC release from isolation criteria.
- Planning of inmate movement should be coordinated with close involvement of local Executive Staff, CMC, Unit Team, and Health Services staff from all involved institutions/regions and transport agencies. Communication and accurate information are vital to ensure a proposed inmate movement has minimized any potential risk of COVID-19 exposure/transmission.
- To the extent possible, manifests should be generated that allow for appropriate social distancing during transport (e.g., loading a bus/ plane at 50% capacity).

- “Normal” transport routes and schedules will need to be reviewed and reconsidered. Inmate movement should be coordinated in a manner that:
 - **Has minimal stops/holdovers:** e.g., consider institutions meeting at a halfway point to pick-up inmates rather than having multiple stops and holdovers.
 - **Minimizes the amount of time inmates are held in holdover:** the longer an inmate spends in transit, the greater the risk. The frequency of certain drop offs/pick-ups may need to be increased to minimize holdover times.
 - **Avoids mixing of inmate groups** as much as possible:
 - The following Inmate group terms will be defined as follows:
 - **BOP group** - inmates who have completed a full test in/out pre-release/transfer quarantine process prior to transfer from a BOP facility.
 - **Non-BOP group** - inmates from other agency/correctional jurisdiction who have not undergone a full test in/out quarantine.
 - Maximize runs with only BOP groups; make every effort to coordinate runs for Non-BOP groups separately.
 - There are many scenarios where mixing of BOP groups from different BOP institutions is unavoidable. If all BOP-groups have been properly tested in/out of a pre-release/transfer quarantine just prior to transport at their sending institution, this practice is acceptable.
 - Ideally, any non-BOP group during a transfer will have been tested for COVID-19 prior to transport. However, this is often not possible or verifiable. All non-BOP group inmates must have a temperature check and symptom screen immediately prior to transport. Anyone with a known positive COVID-19 test or who has fever or symptoms will not be admitted on the transport.
 - If a BOP group is mixed with a non-BOP group at any point in the transfer process, all the inmates in that group will require intake screening, testing

and intake quarantine (asymptomatic) or isolation (symptomatic) at their destination institution.

- During transport, BOP-group inmates should wear at least facial coverings and staff should wear at least facial covering and gloves. For transport of Non-BOP or mixed groups, inmates should wear surgical masks and staff should wear surgical masks and gloves during transport and add gown and eye protection with direct contact.
- Documentation on the BEMR exit summary/transfer paperwork (e.g. In-Transit Form) needs to include results of the symptom screen and temperature check performed within 24 hours of release or transfer; the most recent COVID-19 test result; and the inmate's COVID-19 history. To ensure proper documentation of negative COVID-19 testing from a commercial lab is displayed on the exit summary, the **BOP ICD code of Z03818-c19** will need to be added to the inmate's health problem list. This marking will then display properly upon the inmate Exit Summary. The BEMR Exit Summary/transfer paperwork should be provided to the bus LT/USMS to verify that a commercial lab test has been completed with a negative test result.

- **Holdover Sites/Bus Hubs:**

- Holdover/ Bus hub sites should designate specific holdover quarantine areas in advance in numbers commensurate with anticipated levels and frequency of incoming inmates.
- For BOP group transfers that have not mixed with Non-BOP groups and require holdover at a facility, the BOP groups can generally be placed directly into a holdover unit setting without a test in/out process and do not need to complete a full 14-day quarantine prior to moving on to their next destination.
- These holdover groups should be housed separately from the new intake, post-exposure and prior to release/transfer* quarantine groups at that institution.

**Note there is a distinction between inmates coming from another institution in holdover status waiting to "transfer"/continue on to their next destination vs. inmates that are originating from the holdover site and waiting to transfer.*

- The various holdover groups may be housed together, if necessary.
- If a holdover site/bus hub is known to receive Non-BOP groups, they should consider having designated quarantine/isolation units for them and manage them as new intakes.

- Those inmates that are symptomatic and/or test positive must be placed in medical isolation and can be released after meeting CDC symptom- or time-based criteria for release from isolation into general population or transfer. If transfer is to occur more than 90 days from their initial symptom onset (symptomatic cases) or positive COVID-19 test (asymptomatic cases), the inmates will need to be quarantined and tested prior to transfer.
- Those who are asymptomatic and test negative will be placed in quarantine. When they complete quarantine and test-out:
 - Inmates who are expected to remain at the holdover site for a prolonged period of time can be released to General Population. If they are released to General Population, future transfers will require pre-transfer test-in/test-out quarantine.
 - For those inmates expected to transfer within a reasonable period of time, they should remain in quarantine until their transfer date. They should transfer within 14 days of the test-out negative result or be re-tested prior to transfer.
- If a holdover site/bus hub receives a mixed group of BOP and Non-BOP groups or BOP group that has previously mixed with a Non-BOP group, they must now all be managed as a Non-BOP group.

DESIGNATED (FINAL RECEIVING) INSTITUTIONS:

Transferred inmates will undergo the same process as a new intake, to include intake screen and temperature check, COVID-19 testing and isolation vs new intake quarantine at the final designated facility. One exception to this process is the inmate who has previously tested positive, has met the CDC's symptom- or time-based release from isolation criteria, and is within 90 days of the initial symptom onset or positive test. Such cases do not need to be quarantined upon arrival at the designated facility.

Questions

If staff have questions about COVID-19, they may reach out to the agency at the following email box: COVID19Questions@bop.gov.

We appreciate your assistance and cooperation in this important matter.

EXHIBIT E



August 31, 2020

MEMORANDUM FOR ALL CHIEF EXECUTIVE OFFICERS

FROM:


**ANDRE MATEVOUSIAN, ASSISTANT DIRECTOR
CORRECTIONAL PROGRAMS DIVISION**

SUBJECT: MODIFICATION OF CORONAVIRUS (COVID-19) PHASE NINE ACTION PLAN

This memorandum describes a modification to the Bureau's (BOP) Coronavirus (COVID-19) Phase Nine Action Plan, namely with regard to social visiting. (The other aspects of the Phase Nine Action Plan remain in effect thru September 30, 2020, at which time the plan will be evaluated.)

SOCIAL VISITS

Social visiting will resume no later than Saturday, October 3, 2020, in accordance with the guidance below. Wardens will immediately begin developing local procedures to reinstate social visiting. The following guidelines will be incorporated into procedures to protect the health and safety of all inmates, staff, and visitors.

- **Visitation will be non-contact only.** Use of Plexiglas or a similar barrier between inmate and visitors will prevent any contact. In the alternative, if a barrier is not present, social distancing (i.e., 6 feet apart) between visitors and inmates must be enforced.
- The number of visitors allowed in the visiting room will be based on the size of the available space. Institutions will need to measure out 6+ feet between each visitor area to determine the total number of visitors allowed in the room at any time.
- The frequency and number of visitors should be adjusted to ensure all inmates have an opportunity to visit at least twice a month.
- Visiting appointments and/or adjusting visiting times may be necessary. Consideration should also be given to the time needed to clean between visitor groups. Tables, chairs, and other high-touch surfaces must be disinfected between visitation periods.

- Visiting must be conducted as a cohort, e.g. from one housing unit, rather than from all over the institution, to limit potential exposure.
- Inmates in quarantine or isolation will not participate in social visiting.
- Visitors must be symptom screened and temperature checked upon entry into the facility. Visitors who are sick or symptomatic will not be allowed to visit.
- Staff must use masks and gloves to handle any visitor property. Gloves should be changed frequently. Additional PPE will be maintained in the lobby and visiting room.
- Both inmates and visitors must wear face coverings at all times and perform hand hygiene just before and after the visit. Visitors are expected to wear and will be screened for appropriate face coverings (including improper coverings such as bandanas.)
- There will be no physical contact of any kind to include an embrace at the beginning and end of the visit. Additionally, inmates and their visitors will not be authorized to take photographs based on the inability to socially distance themselves.
- Food and beverages will not be allowed. Special provisions must be made to allow for baby formula/food.
- There must be a coordinated entry and exit of visitors to ensure physical distance is maintained. The number of visitors allowed in the lobby will also be determined by measuring the available space.
- All areas, to include lobbies and sallyports, must be cleaned following the completion of visiting.
- All institutions visiting schedules are maintained in a database for publication on the BOP's public website. Any changes to the visiting schedule must be submitted via a HelpDesk ticket to the Advanced Systems Branch so that updates can be made for the public's information. (Updates the Institution Supplement may be made via the same method.)
- Written plans must be developed and submitted to the Regional Director for approval with a copy sent to the Correctional Programs Division by Friday, September 18, 2020.

Questions

If staff have questions about COVID-19, they may reach out to the agency at the following email box: COVID19Questions@bop.gov. We appreciate your assistance and cooperation in this important matter.