

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*,  
Plaintiffs,

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v.

Civil Action No. ELH-94-2541

LAWRENCE HOGAN, *et al.*,  
Defendants.

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**DECLARATION OF DEBRA GARDNER**

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1. I am one of the Class Counsel in this case.

2. As a result of emergency mediations and steps taken by the parties thereafter, I have been in close communication with counsel for the Defendants and staff in the Maryland Office of Public Defender (OPD) concerning the status of state court proceedings to secure release of current Class Members to the extent possible, for their safety as well as the safety of those who remain detained.

3. OPD staff who represent individual Class Members have over the last several weeks filed numerous motions thus far, prioritized according to level of COVID-19 risk as determined by Dr. Michael Puisis, the Court’s medical monitor in this case, and BCBIC medical staff. The first round of such motions were filed on behalf of detainees for whom no prior such relief had yet been sought. Presently, OPD staff are preparing and filing motions for detainees for whom release had previously been sought without particularized information concerning their COVID-19 risk, seeking reconsideration based on that information and the fact that there are now many cases of COVID-19 within the facility.

4. Though OPD staff have been working around the clock, their capacity to seek relief by individual motions is limited, in part because they must also keep up with daily bail determination proceedings, habeas corpus petitions, and other emergency matters. In addition, OPD's computer network was sabotaged at the very beginning of the public emergency, and they have had to recreate records and record-keeping systems since.<sup>1</sup>

5. A significant number of the identified Class Members are represented by private counsel. OPD staff have provided information to them, along with sample motions, but the capacity of those counsel to seek individual relief is largely unknown at this time.

6. More important, the current capacity of the District Court and Circuit Court for Baltimore City to consider the individual motions is severely limited. The great majority of the judges of those courts are not currently sitting at any one time, and the few who are must handle all emergency matters, including proceedings for protection from domestic violence, search warrant applications, and significantly, daily bail determination proceedings, among many other matters.

7. Of the 13 motions known to have been filed in the first round for the highest COVID-19-risk Class Members and for whom the status is known, four are awaiting hearings scheduled between May 22 and May 28. The underlying motions were filed between 17 and 25 days before the scheduled hearings. Thus, Class Members are waiting weeks in state courts for consideration of their risk of injury or death in BCBIC. Of the same 13 motions, 7 have been

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<sup>1</sup> The ability of OPD staff to prioritize replying to inquiries and provide information concerning the status of individual matters is of course severely limited by their capacity and direct representation demands, so the information in this declaration is not complete and is best considered representative of the pattern of proceedings in state courts.

denied without a hearing. OPD staff are considering and/or preparing requests for further relief, including habeas petitions where appropriate, but no timely relief is in sight.

8. Thus far, only two (former) Class Members have been released as a result of the motions filed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 20, 2020.

\_\_\_\_\_/s/\_\_\_\_\_  
Debra Gardner