

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

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CARL LAROCQUE, ROBERT SILVA-)
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)
)
Plaintiffs,)
v.)
)
THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and)
STEPHEN KENNEWAY,)
Superintendent of Souza-Baranowski)
Correctional Center;)
)
Defendants.)

COMPLAINT FOR CIVIL CONTEMPT
PURSUANT TO MASS. R. CIV. P. 65.3

Plaintiffs bring this action for civil contempt pursuant to Mass. R. Civ. P. 65.3. On February 28, 2020, after a two-day evidentiary hearing, this Court (Cannone, J.) ordered Defendants to “return to each inmate their legal materials within forty-eight (48) hours of this Order,” and “allow inmates sufficient time outside their assigned living quarters during business

hours (9:00 a.m. and 5:00 p.m.) on business days to make attorney phone calls.”¹ Defendants have not done so.

In further support of this complaint for civil contempt, the following is stated:

Defendants’ continuing failure to return legal paperwork

1. Although Defendant Kenneway testified that all legal materials had been returned by January 31, 2020, the Court did not credit this testimony. Ex. A. at 11. Instead, the Court credited the affidavits of counsel, exhibits, and the testimony of Plaintiffs’ witnesses that some inmates did not receive their legal paperwork until after that date, and some did not receive their legal paperwork at all. Ex. A at 11-12.
2. This Court found that Defendants’ failure to return inmate legal paperwork “hindered the presentation of several inmates’ nonfrivolous legal claims,” Ex. A at 25, and therefore denied them their right to meaningful access to the courts. Ex. A at 26.
3. Many inmates are still being denied their legal paperwork and, therefore, their right to meaningful access to the courts.
4. Multiple prisoners at Souza-Baranowski Correctional Center affirm that they are still missing their legal paperwork.
 - a. John Diaz is missing the paperwork from a civil lawsuit he filed against the defendants, written notes, and transcripts. He also reports that Defendants confiscated two legal books in his possession: *Jailhouse Lawyer’s Handbook* and *Protecting Your Health and Safety*. Ex. B.
 - b. Troy Harrigan is still missing legal paperwork, including his briefs and half of the grand jury minutes from his case, which was taken in January 2020. Ex. C.

¹ A copy of the court’s order is attached as Exhibit A.

- c. On January 21, 2020, Defendants took all of Wilfredo Duran's legal paperwork and it has not yet been returned. Ex. D
 - d. Defendants did not return any legal paperwork to William Boyd, who almost eight months later is still missing all of his legal paperwork, including the briefs, trial transcripts, police reports, and letters from his attorney. Ex. M.
 - e. In January 2020, all of Jude Despage's legal paperwork was taken, including all of my grand jury minutes and the transcripts from his case, and it has still not been returned. Ex. N.
5. Attorney Angela Lehman reports that on March 9, 2020, the legal paperwork of one of her clients, including transcripts, still had not been returned. On March 17, 2020, her client had finally received much of his legal paperwork, but not all, and that it was in such complete disarray that he is unable to figure out what is missing. As a consequence, he requested a new copy of his entire file. Ex. E.
6. In early May, a different client reported to Attorney Lehman that Defendants returned only a small portion of his legal work, which included transcripts Attorney Lehman had copied for a second time after the first copy was lost or destroyed. The little paperwork that her client received was jumbled and unusable, so Attorney Lehman copied eight or nine volumes of transcripts, plus all of the discovery, for a third time at CPCS' expense. Ex. E.
7. Some prisoners that have their paperwork are still being denied access to it. Adam Bradley has made repeated requests to access his paperwork in legal storage and has not been provided with any access. This forced him to file motions in his civil case without access to his paperwork, which adversely impacted the presentation of his claims. Ex. F.

Defendants' continuing failure to permit adequate time for attorney telephone calls

8. In addition, Defendants continue to adhere to the North-Side Tier and Recreation Schedule, dated February 13, 2020,² which provides insufficient time to place attorney phone calls. Based on the schedule provided, some prisoners are afforded only one hour a day, two days a week, to make an attorney phone call during business hours. Ex. K.
9. This schedule violates the right to counsel. *See* Ex. A at 30.
10. Even if it were acceptable to limit attorney phone calls as provided by this schedule, prisoners have reported to us that correctional officers do not always follow the schedule and they do not regularly or reliably get to make phone calls.
11. For example, in at least one unit, the prisoners are not given their full recreation time, which makes it difficult to get phone access. Two prisoners reported to Attorney Custer that at least two or three times a week they do not get access to the phones due to lockdowns. Ex. G.
12. Moreover, prisoners in the Restricted Housing Unit are limited in the number of phone calls they can make a week, and attorney phone calls are not exempted from this limit. *See* 103 Code Mass. Reg. 423.13(m) (Ex. H). *See also* Ex. N.
13. Since the start of the pandemic, Defendants have instituted a policy whereby if an attorney wants to speak to a person in DOC custody, the attorney can call the facility and have the staff inform the prisoner that the attorney needs them to call. Ex. I. At SBCC, however, prisoners often are not given these messages, Ex. J., and even when they are, they must wait until their next scheduled time on the tier during business hours to make

² This schedule was provided to the Court at the evidentiary hearing as Exhibit 7 and is attached here as Exhibit K.

the phone call. Ex. F. In any event, this is insufficient, because our clients need to be able to reach out to us when they have something they need to discuss.

14. According to Adam Bradley, who is currently being held on the north side of SBCC, he is only permitted to make calls during his tier time, and that is not enough time to reach his attorney. He has requested opportunities to make attorney phone calls during other times, but those requests are denied. He has also been informed that his attorney has called and asked him to call the attorney during a certain time, but unless that time coincides with his tier time, he is not permitted to make the call. Ex. F.
15. Additionally, John Diaz reports that he has been attempting to get an attorney number for Mental Health Legal Advisors Committee and the number for Senator Eldridge on his contact list for almost three months, and SBCC still has not put those numbers on his list. Ex. B.

Defendants are in civil contempt of this Court's Order

16. Notwithstanding the clear and unequivocal terms of the Order dated February 28, 2020, Defendants still have not returned “to each inmate their legal materials.”
17. Notwithstanding the clear and unequivocal terms of the Order dated February 28, 2020, Defendants are not allowing inmates “sufficient time outside their assigned living quarters during business hours (9:00 a.m. and 5:00 p.m.) on business days to make attorney phone calls.”
18. “Civil contempt is found where there is a clear and undoubted disobedience of a clear and unequivocal command.” *Commonwealth v. One 1987 Ford Econoline Van*, 413 Mass. 407, 411 (1992), quoting *Allen v. School Comm. of Boston*, 400 Mass. 193, 194 (1987).

19. The failure of Defendants to return each inmate's legal property clearly and unequivocally violates this Court's order and is therefore punishable by contempt. *See id.*
20. Moreover, as this Court is undoubtedly aware, due to the COVID-19 pandemic, it is important to reduce in person interactions as much as possible. Prisoners are particularly vulnerable to contagious diseases such as this one. Yet the extreme restrictions on attorney phone calls and the failure to return legal materials, have the opposite effect; they force attorneys to make extra visits that might not otherwise have been necessary.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- A. Issue a summons, pursuant to Mass. R. Civ. P. 65.3(d), ordering Defendants to appear before this Court for the purpose of a hearing on the merits;
- B. After a hearing, find Defendants in civil contempt for failing to comply with this Court's February 28, 2020, Order;
- C. Order Defendants to return all unreturned legal materials and reimburse CPCS or retained MACDL members for the costs of copying and mailing legal paperwork that was not returned;
- D. Order Defendants to permit prisoners at least one hour per day or at least three attempts per day during business hours to make attorney phone calls without infringing on the tier time of other prisoners who may need the time to call their attorneys;
- E. Order Defendants to pay all costs and legal fees incurred by counsel for Mr. Silva-Prentice and MACDL for the entirety of the above-captioned case, including this contempt action; and
- F. Award all other relief deemed equitable and just.

Respectfully submitted,

Committee for Public Counsel Services

Massachusetts Association for Criminal Defense
Lawyers

By its attorney,

By its attorney,

/s/ Rebecca Jacobstein
Rebecca Jacobstein, BBO# 651048
Benjamin A. Keehn, BBO# 542006
Committee for Public Counsel Services
44 Bromfield Street
Boston, MA 02108
rjacobstein@publiccounsel.net
617.910.5726

/s/ Victoria Kelleher
Victoria Kelleher
BBO# 637908
MACDL President
One Marina Park Drive, Suite 1410
Boston, MA 02114
victoriouscause@gmail.com
978.744.4126

Robert Silva-Prentice

Tamik Kirkland

By his attorney,

By his attorney,

/s/ Patty DeJuneas
Patty DeJuneas, BBO# 652997
Sibbison, DeJuneas & Allen, LLP
One Commercial Wharf West
Boston, MA 02110
dejuneaslaw@gmail.com
617.529.8300

/s/ Merritt Schnipper
Merritt Schnipper, BBO# 676543
Schnipper Hennessy PC
25 Bank Row, Suite 2S
Greenfield, MA 01301
mschnipper@schnipperhennessy.com
413.325.8541

Dated: August 13, 2020

LIST OF EXHIBITS

- A. Findings of Facts, Rulings of Law, and Order on Plaintiffs' Emergency Motion for a Preliminary Injunction.
- B. Affidavit of Juan Diaz
- C. Affidavit of Troy Harrigan
- D. Affidavit of Wilfredo Duran
- E. Affidavit of Angela Lehman
- F. Affidavit of David Hirsch
- G. Affidavit of Lindsay Custer
- H. 103 Code Mass. Reg. 423
- I. DOC Announcement for Attorneys
- J. Affidavit of Jessica LaClair
- K. North-Side Tier and Recreation Schedule, dated February 13, 2020
- L. Affidavit of Margaret Curran
- M. Affidavit of William Boyd
- N. Affidavit of Jude Despage

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 20-00295

CARL LAROCQUE & others¹

vs.

THOMAS TURCO² & others³

**FINDINGS OF FACT, RULINGS OF LAW, AND ORDER ON PLAINTIFFS'
EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION**

The Plaintiffs, Carl Larocque, Robert Silva-Prentice, Tamik Kirkland, the Massachusetts Association of Criminal Defense Lawyers (“MACDL”), and the Committee for Public Counsel Services (“CPCS”) (the “Plaintiffs”) filed this action in the aftermath of an attack on correction officials at the Souza-Baranowski Correctional Center (“SBCC”), which took place on January 10, 2020. They allege that the Defendants, Thomas Turco, Secretary of the Executive Office of Public Safety and Security; Carol A. Mici, Commissioner of the Massachusetts Department of Correction (“DOC”); and Stephen Kenneway, Superintendent of SBCC (the “Defendants”), violated their constitutional rights to counsel and access to the courts; the Massachusetts Civil Rights Act (“MCRA”); existing Department of Correction (“DOC”) regulations; and the Administrative Procedure Act (“APA”) when they deprived Plaintiffs Larocque, Silva-Prentice, and Kirkland (the “Plaintiff Inmates”) of access to their legal material, to telephone calls with their attorneys, and to attorney contact visits following the attack.

¹ Robert Silva-Prentice, Tamik Kirkland, the Massachusetts Association of Criminal Defense Lawyers, and the Committee for Public Counsel Services

² In his capacity as Secretary of the Executive Office of Public Safety and Security

³ Carol A. Mici, in her capacity as Commissioner of the Massachusetts Department of Correction, and Stephen Kenneway, in his capacity as the Superintendent of Souza-Baranowski Correctional Center

Exhibit A

Presently before the court is the Plaintiffs' Emergency Motion for a Preliminary Injunction seeking to permit SBCC inmates (1) to possess their legal paperwork in their assigned living quarters, in conformance with 103 Code Mass. Regs. § 403.10; (2) sufficient time out of their cells during business hours to make attorney phone calls; and (3) to have attorney contact visits. The court held an evidentiary hearing⁴ on this matter on February 13 and 19, 2020. After careful consideration of the evidence, as well as the parties' submissions and arguments, and for the following reasons, the Plaintiffs' Emergency Motion for a Preliminary Injunction is **ALLOWED.**

FINDINGS OF FACT

SBCC is the state's only maximum-security prison. There are inmates at SBCC who are awaiting trial, inmates who have cases on direct appeal, and inmates who have pending post-conviction motions. There are over 700 inmates living at the prison, many of whom not only have criminal records of violent convictions but also have been found to possess drugs in the prison or committed violent acts while incarcerated. The prison is divided into the Northside and the Southside. Traditionally, the Northside is occupied by inmates who have been found to cause disciplinary problems within the institution, generally do not participate in programs, and, according to Superintendent Kenneway, are viewed by the staff as dangerous. The inmates housed on the Southside generally participate in programs and do not present institutional problems.

Efforts are generally made to keep known enemies from being housed together. There are many gangs, sometimes referred to as "Security Threat Groups" ("STG"), in the prison.

⁴ Although not required, an evidentiary hearing is often desirable at the preliminary injunction stage when material facts are contested. See *Riverdale Mills Corp. v. Cavatorta N. Am., Inc.*, 146 F. Supp. 3d 356, 360 (D. Mass. 2015). However, the evidentiary hearing was not consolidated with a trial on the merits. See Mass. R. Civ. P. 65(b)(2).

Exhibit A

Because correction officials believe that it is important not to co-mingle STGs, efforts are made not to place Southside inmates on the Northside unless they cause disciplinary problems. A Northside inmate can earn a move to the Southside by participating in programs and being disciplinary report free.

January 10, 2020

On January 10, 2020, inmates on the Northside of SBCC seriously assaulted correction officers in a housing unit. Four officers were taken to the hospital for injuries. Two officers required hospitalization. One correction officer sustained head trauma and a broken nose; another correction officer sustained a broken jaw and broken vertebrae in his neck. At one point during the assault, inmates attempted to pull one correction officer into a cell before the officer broke free and got away. The prison was immediately placed in lockdown. Investigation by prison officials revealed that twenty-three inmates were involved in the assault and those men were quickly transferred out of the prison. DOC's investigation led Superintendent Kenneway to believe that many other inmates were involved in planning and continuing the assault upon officers. Multiple gangs were involved and intelligence revealed that there would be additional assaults upon staff, which included threats to rape, stab, or kill. None of the Plaintiff Inmates were involved in the incident. All three men were living in the Southside on January 10, 2020.

Lockdown

A lockdown is ordered when an event occurs within the prison that requires the entire prison to be shut down but does not require the assistance of outside personnel and can be handled internally. Lockdowns occur after instances of inmate insurrection, work stoppage, fire, power outage, or loss of other services. An emergency is declared and an announcement is broadcast in the institution. Every individual in the facility is returned to his cell. Lockdowns

Exhibit A

are sometimes followed by institutional searches. The Superintendent is in charge of all operations, security, classification, and administration. It is the Superintendent who determines when a lockdown occurs. Since becoming Superintendent at SBCC in February 2019, Superintendent Kenneway has called for four lockdowns and four institutional searches. Once the facility is in lockdown, it remains until the Superintendent recommends to the Commissioner that the lockdown should be terminated. It is the Commissioner who determines when the lockdown ultimately ends.

Disorder Protocol

A disorder protocol is initiated when the institution realizes that it needs outside assistance in dealing with an emergency situation. The Disorder Management Policy used here is based on American Correctional Association guidelines. The goals of the disorder protocol are (1) isolation and containment; (2) stabilization; and (3) resolution.

Assistant Deputy Commissioner of Field Services Patrick DePalo testified that during the assault, it became clear that the situation was escalating and that external resources were needed. Commissioner Mici ultimately made the decision to begin the protocol. Superintendent Kenneway testified that the policy does not specify how long an institution should remain in lockdown. He also testified that there is nothing in the Disorder Management Policy about access to attorneys or inmate access to legal materials.

On January 10, 2020, correction officials determined that reclassification of all inmates was necessary. In order to facilitate the reclassification, a tactical team was organized. The team consisted of individuals from every correction facility who had applied to be a member of the team, passed an endurance test, and taken an additional forty hours of training a year. The team specializes in crowd control. The Special Operations Director served as the tactical team

Exhibit A

commander. The tactical team has no policy concerning telephone use, no policy concerning legal materials, and no policy concerning attorney visits.

Also on January 10, 2020, when correction officials determined that there was a need to reclassify all inmates, it was contemplated that the entire plan would take one week. Inmates who were not going to programs and had disciplinary reports were sent to the Northside of the prison. Those inmates who were going to programming remained on the Southside. One hundred inmates were removed from SBCC and were relocated to medium security prisons.

All remaining inmates were locked in their cells on January 10, 2020. Three days later, for the first time since the lockdown began, some inmates were permitted to leave their cells to shower. Two correction officers would remove an inmate from his cell in handcuffs and walk him to the shower. The inmate was permitted to shower and was then handcuffed and walked back to his cell. The inmate was allowed out of his cell for a period of fifteen minutes. After the first shower, the three-day wait for a shower continued.

Inmates remained locked in their cells from January 10, 2020, until January 21, 2020. On January 21, 2020, it was determined that the tactical team would go into the prison with an “operational plan” that was in accordance with the disorder protocol. It was a concise plan, with no guesswork, and the goal was to successfully move inmates. The process to take one inmate from one cell and move him to another cell involved having two officers in every section of the prison and five officers at a time to move one inmate. A video camera was set up in every unit of the prison. DOC possesses between forty and fifty hours of this video footage from this time period.⁵

⁵ Title 103 Dep’t of Corr. § 560 contains the private Disorder Management Policy. Title 103 Dep’t of Corr. § 561 governs planned institutional searches conducted by the tactical team. Title 103 Dep’t of Corr. § 506 contains DOC’s search policies, including removing inmates from cells.

Exhibit A

January 21, 2020

On January 21, 2020, DOC began the process of moving the inmates. Correction officers and tactical team officers went to each cell and handed the inmate a T-shirt, pair of boxers, and shower slippers. Each inmate was strip-searched.

The tactical team officers all wore helmets bearing identification numbers. They carried Tasers that looked like firearms. These Tasers had a red laser beam that could be pointed at a target. The Tasers contained oleoresin capsicum ("OC") spray. Dogs were also brought into the cells. Two inmates were bitten by the dogs.

Each inmate was handcuffed and walked from the cellblock to the gym, wearing only the boxers, T-shirt, and shower slippers. Officials conducted body scans on all inmates. The inmates remained handcuffed and facing a wall while the tactical team officers pointed their laser guns at them and told them not to move or they would be shot. The uncontroverted testimony at the hearing was that the men remained standing, handcuffed, in the gym for two hours. Each cell was searched. Each inmate's possessions, including legal paperwork, were placed in bags bearing the inmate's name and removed from the cell. The items were placed in the property room. Each bag was later searched.

The inmates, while handcuffed, were escorted to new cells. The court credits Plaintiff Silva-Prentice's testimony that he was placed in a cell in the security camera's blind spot. The person placed in the cell with him was of a different race. Shortly after arriving in the cell, several tactical team officers, dressed in army fatigue greens, carrying what appeared to be firearms, rushed into his cell. An altercation broke out in the cell and Plaintiff Silva-Prentice suffered burns from Tasers and several of his dreadlocks were pulled from his scalp.

Exhibit A

The court also credits inmate Ricardo Arias's testimony that during the time the tactical team went through the cells, inmates were yelling that the officers did not have cameras, which they were supposed to have. Several inmates were beaten while their hands were cuffed behind their backs.

Telephone Service and Electronic Mail

Each block has eight telephones. Typically, inmates are allowed out of their cells twelve at a time. Six inmates are allowed on the tiers (hallways with cells) and six inmates on the recreation deck. Telephone calls are allowed during this time. During the lockdown, telephone service was suspended, starting on January 10, 2020. Inmates were not permitted to use the phones until January 24, 2020. Inmates are permitted to purchase tablets, which enable them to email their attorneys, family, and friends, all of whom must be identified to DOC.⁶ For those inmates who do not have tablets, there is a kiosk on each housing flat with Internet access through CorrLinks.⁷ Correction officers read the emails sent by the inmates. Additionally, emails sent to the inmates are not confidential and are read by correction officers. For this reason, many inmates do not communicate with their attorneys through email.

Moreover, emails sent from January 10 through January 25 on inmates' individual tablets were significantly delayed. Generally, emails are read by correction officers and sent out within a day. During the period of January 10 through January 25, some emails took more than a week to be sent out. Additionally, inmates were not permitted to use the kiosk for several days during this period.

⁶ DOC must approve the inmate's proposed family and friends before the inmate can contact those people.

⁷ CorrLinks is an electronic system that allows for family and friends to interact with an inmate while he is incarcerated.

Exhibit A

Prior to the incident on January 10, 2020, Attorney Merritt Schnipper regularly communicated with his client, Plaintiff Kirkland via email, which Plaintiff Kirkland was able to access through his tablet. After the January 10, 2020 incident, all communication between the two was disrupted. Between January 8, 2020, when Attorney Schnipper last visited with Plaintiff Kirkland, and January 28, 2020, when counsel saw Plaintiff Kirkland in court, Attorney Schnipper emailed Plaintiff Kirkland three times with information regarding his case. Plaintiff Kirkland did not respond to any of those emails. On January 28, 2020, Plaintiff Kirkland was transported to the Hampden Superior Court and told Attorney Schnipper that all of his legal materials had been removed from his cell and he did not have access to it, nor did he have access to the law library.

Attorney Lisa Newman-Polk represents men serving life sentences who are seeking parole. She attested that regular communication through attorney visits and phone calls is the core of her work with clients. She has one client currently living in the Secure Treatment Program (“STP”)⁸ at SBCC. She had a phone call scheduled with her client on January 15, 2020, but he was not permitted to contact her because of the lockdown. When he was finally able to call her on January 27, 2020, he expressed distress that he had been unable to call her during the prior two and one half weeks.

Mail Service

If an inmate had a stamp, envelope, paper, and writing instruments in his cell during the lockdown, he was permitted to write a letter and the letter was picked up from his cell for mailing. If an inmate did not have a stamp, he could not buy one during the lockdown. In addition, if he did not have his legal materials with his attorney’s address, he could not obtain

⁸ The STP is a segregation tier in unit M3 on the top level of the prison.

Exhibit A

counsel's address during the lockdown. The court credits the affidavits of criminal defense counsel representing inmates at SBCC that inmates experienced great difficulty in trying to send legal mail to their attorneys during the lockdown. The court also finds that inmates did not receive letters from their lawyers in a timely manner, sometimes ten days after the letter was posted.

Housing Status Changes

On February 3, 2020, inmates received a written document announcing the implementation of housing status changes for all inmates placed in housing units on the Northside. The document indicated that the changes would be implemented "effective Thursday, January 30, 2020." Prior to the January 10, 2020 incident, prisoners were strictly separated between the Northside and the Southside based on gang or neighborhood affiliations. Individuals from opposing sides were prohibited from interacting with each other because it was considered a safety risk. For this reason, all activities (with the rarest exception) were conducted separately between the two sides, including time spent in the chow hall or at programming, religious services, the gym, the yard, and the library. Visits with family were held on opposite days, and attorneys could only meet with clients in the contact visiting room on certain days if a prisoner from the opposite side had an attorney visit taking place. The separation of individuals on opposite sides was considered necessary for prisoner safety.

Northside Tier and Recreation Schedule

On February 13, 2020, Ronald Gardner, Director of Security at SBCC produced a memo to All Inmates regarding a Northside tier and recreation schedule. Inmates placed in Housing Units on the Northside of SBCC, effective that date, would be permitted tier and recreation access based on a schedule where up to six inmates would be permitted on the recreation deck at

Exhibit A

a time and up to six inmates would be permitted on the tier at a time. When a scheduled recreation ends, all inmates would be secured in their assigned cells and the rotation would switch. The memo included a schedule of the times during February and March when inmates on each housing unit will be permitted time out onto the recreation deck and tier. This schedule will permit inmates to be able to coordinate phone calls, not only with attorneys but also with family.

Legal Paperwork

Title 103 Code Mass. Regs. § 403 has long permitted prisoners to have some personal items in their cells including, photographs, books, and a television. Title 103 Code Mass. Regs. § 403.10 (2)(c) permits inmates to possess one cubic foot of legal materials in their cell. Legal materials in excess of one cubic foot are kept in storage and inmates are allowed to make an exchange of legal materials upon request. There have been times where an inmate has requested more than the one cubic foot of materials and the Superintendent has allowed that request. During the lockdown and institutional search, every single item was removed from each cell and searched. These items included correspondence from counsel, transcripts of court proceedings, legal research, and any thoughts, questions, or concerns about an inmate's case that the inmate had written down. Many inmates, including the Plaintiff Inmates, are active participants in their pending cases. It is essential that they have access to their legal paperwork in order to prepare. Though represented by counsel, it is critical that the inmate be permitted to review trial transcripts, police reports, grand jury minutes, pleadings, and exhibits because, as stated by Mr. Arias, "nobody cares more about my case than I do."

Superintendent Kenneway testified that from January 10 until January 21, all legal materials had remained with the inmates. He testified that the property of inmates who were

Exhibit A

transferred from the Northside to the Southside followed them. He testified that the inmates might have had to wait two to three days for their property to arrive, but by January 24, all legal materials had been returned to the Southside inmates. Superintendent Kenneway also testified that, by January 31, all legal materials had been returned to the Northside inmates. The court does not credit this testimony. The court credits the affidavits of counsel and exhibits one and four indicating that inmates still did not have their property until February 2, 4, 5, 6 and 9, as detailed below:

- a. When Attorney Kathryn Karczewska Ohren visited her client, Plaintiff Silva-Prentice, on January 29 and February 2, in an effort to discuss his appeal, they were unable to do so because Plaintiff Silva-Prentice's legal materials had been confiscated and had not yet been returned. When the materials, including trial transcripts, were eventually returned, sometime between February 2 and February 6, they were unbound and in a jumbled and confused state.
- b. Attorney Angela Lehman was told by her Northside client on February 3, 2020, that his paperwork had been taken and thrown into a messy pile along with an unknown number of other inmates' paperwork and had not been returned as of that date.
- c. Attorney Libby Hugetz was told by her Northside client on February 3, 2020, that since his transfer to MCI-Shirley (due to injuries sustained at SBCC) his legal paperwork had not followed him.
- d. Attorney Ira Alkalay reported that as of February 4, 2020, his Southside client had not received his legal paperwork or any personal mail since January 10, 2020.

Exhibit A

- e. Attorney Philip Weber reported that as of February 4, 2020, his client had not received his legal paperwork that had been taken from him on January 10, 2020.
- f. Attorney Amy Belcher indicated that when she met with her Northside client on February 5, 2020, he told her that none of his legal paperwork that was removed from his cell on January 10, 2020 had been returned to him.
- g. Attorney Elizabeth Doherty reported that as of February 6, 2020, her former Southside client, who had been moved to the Northside as a result of a disciplinary report, had not received any of his legal paperwork or personal property that was taken from his cell following the January 10, 2020 incident.
- h. Attorney Ira Gant reported that when he met with his client on February 6, 2020, the inmate reported that he had not been permitted access to any of his legal paperwork since the January 10, 2020 incident.
- i. Attorney Lisa Newman-Polk reports that as of February 7, 2020, her client, who resides in the STP, had not received his personal property, including his legal paperwork.
- j. Attorney Katherine Essington reports that when she visited her client, Donte Henley, on February 9, 2020, his personal property and legal materials, which include his trial transcripts, had not yet been returned to him.
- k. Attorney Ann Grant, counsel for Mahamadou Kante, who resides in South Restricted Housing Unit, reported that he had not received his legal material as of February 8, 2020.

The court credits the testimony of Plaintiff Silva-Prentice that he took notes during the hearing on the instant motion on February 13, 2020, and that those notes were confiscated from

Exhibit A

him when he returned to the prison that night from court. His notes were returned to him on the evening of February 18, the night prior to his testimony in support of the instant request for a preliminary injunction, which did not give him adequate time to prepare. This court also credits the testimony of Mr. Arias that he was moved from the Southside to the Northside on January 24 and that his paperwork did not accompany him. On Friday, February 14, he received some of his trial transcripts, but much of his paperwork was missing. He did not receive the list of cases that his lawyer had sent him, which she told him he might find helpful to his case. Mr. Arias actively participates in his appeal, usually going to the law library every Wednesday and working on his case. When some of his legal paperwork was delivered to him, the correction officer told him that since the instant lawsuit commenced, they were trying to get everyone their paperwork.

Attorney Visits

Attorney visits were suspended during the disorder protocol beginning on January 10. On or about January 16, 2020, Commissioner Mici spoke with Prison Legal Services attorney, James Pingeon, and informed him that attorney visits were temporarily suspended due to the January 10 staff assaults. Commissioner Mici informed Attorney Pingeon that she anticipated that attorney visits would be suspended through the end of that week. On January 17, 2020, SBCC began to permit some attorney visits and counsel for MACDL was informed that attorney visits had been reinstated. Superintendent Kenneway stated that on January 22, 2020, attorney visits were fully reinstated. However, testimony and exhibits entered into evidence at the hearing indicates that inmates continued to be denied meaningful access to counsel beyond this date.

There are three attorney visiting rooms at SBCC. These rooms are private and permit counsel and the inmate to speak freely, review documents and filings, and when permitted by

Exhibit A

regulation, exchange materials. SBCC also has a noncontact visitation area. When the three attorney visiting rooms are full and a fourth attorney arrives, he or she can use the noncontact room or elect to wait for one of the three attorneys to leave the attorney visiting room.

The noncontact visit occurs in an area that has been described as “cubbies,” where ten to fifteen attorneys or family members sit behind a table on one side of a Plexiglass panel, while the inmate sits on the other side of the panel and behind a second table. There is no privacy. One can hear the person sitting next to her. The lawyer has to speak through an oval grate in the glass in order for her client to hear her. The attorney is unable to effectively review materials with her client because she cannot pass a paper through the window; rather, she merely can hold it up to the glass for the inmate to see.

CPCS assigns lawyers to represent indigent defendants in criminal cases. Attorneys who accept court-appointed cases must follow CPCS standards, which include timely visits with clients who are in custody and working closely with them in the preparation of their case. During the lockdown, many lawyers were prohibited from having private, contact visits where they could discuss the progress of their client’s case and where they could show the inmate the work they had done on his behalf.

Attorneys were denied contact visits on January 30, 31, February 4, 6, as detailed below:

- a. Attorney David Rangaviz was only permitted a noncontact visit with his Northside client on Thursday, January 30, 2020.
- b. Attorney Donald Frank was only permitted a noncontact visit with his Northside client on January 31, 2020.
- c. Attorney Lipou Laliemthavisay was only permitted a noncontact visit with her Northside client on Friday, January 31, 2020.

Exhibit A

- d. Attorney Chauncey Wood was told that he could only have a noncontact visit with his Northside client on February 4, 2020, because it was a Southside visit day. It did not appear to Attorney Wood that there were any Southside contact visits taking place at the time. Attorney Woods's client had only recently been moved from Southside to Northside and the move was not precipitated by any known enemies on the Southside or for a disciplinary infraction.
- e. Attorney Ira Alkalay was only permitted a noncontact visit with his Southside client on February 4, 2020.
- f. Attorney Philip Weber was only permitted a noncontact visit with his client on February 4, 2020.
- g. Attorney Elizabeth Doherty reported that when she met with her Northside client on February 6, 2020, she was told that she could only have a noncontact visit despite the fact that she called earlier that morning to confirm that she would be able to have a contact visit. She was also told that contact restrictions only applied from 1 p.m. to 4 p.m.
- h. Attorney Ira Gant was permitted only a noncontact visit with his Southside client on February 6, 2020.
- i. On January 15, 2020, Attorney Catherine Essington attempted to visit clients at SBCC and was turned away at the door. The officer behind the window told her that there would be no attorney visits until the following week. On January 28, 2020, before going to the prison, Attorney Essington called and was informed that she could have contact visits with her clients because they were residing on the Southside. When she arrived, she was told by the correction officer behind the

Exhibit A

desk that she could only have noncontact visits. Ultimately, she was able to persuade that officer to allow her to have contact visits after telling the officer that she had called ahead and had been assured of a contact visit.

- j. When Attorney Kathryn Karczewska Ohren called the Superintendent's office on January 14, 2020, to arrange a visit, she was told that there would be no counsel visits for one week per order of the Commissioner. On January 21, 2020, Attorney Ohren called the prison and requested to see Plaintiff Silva-Prentice. She was told that all attorney visits were canceled until at least January 25, 2020, without exception. Attorney Ohren was advised to call the prison before arriving on January 25 to assure that entry would be permitted. On January 29 and February 2, she was able to meet with her client, though he did not have his legal materials.

Attorney Lisa Newman-Polk is a licensed social worker and worked as a mental health clinician at SBCC from 2013 to 2014. She currently represents an inmate assigned to her by CPCS who is housed in the STP and who is not alleged to have played any role in the January 10, 2020 incident. Attorney Newman-Polk reports that though the law prohibits DOC from subjecting individuals with serious mental illnesses to solitary confinement conditions, the prisoners in the STP were subjected to lockdown for most of the time between January 10 and January 26, 2020. Her client informed her that no prisoner in the unit had phone access to call lawyers or loved ones, as well as no access to the canteen, to email, or to sick slips. The STP typically conducts twelve to thirteen sessions of group therapy per week. Her client reported that during the lockdown, there were only four therapy groups. Her client also reported that he was not permitted to shower for six days from January 13 to January 18, 2020, and that none of the

men had been permitted outside on the recreation deck. Her client reported that since January 10, 2020, there have been at least eight incidents of self-injurious behavior by individuals in the unit, with at least one resulting in hospitalization.

CPCS performance standards require counsel to visit with clients at least once a month. Because of the lockdown, Attorney Newman-Polk was not able to see her client in the STP on or around January 17, 2020, which marked one month since her prior visit. Additionally, she and her client had a phone call scheduled for January 15, 2020, that was canceled because of the lockdown. She was able to visit with her client on January 28, 2020. Attorney Newman-Polk's client did not have his legal material during this visit. As a result, there were legal issues regarding his case from fifteen years ago that he is not able to provide to his attorney.

Attorney Ohren avers that as a result of significant delay in permitting counsel to visit her client and returning Plaintiff Silva-Prentice his legal documents, filing his appeal has been indefinitely delayed.

Attorney Essington avers that she will have to seek an enlargement of time for Mr. Henley's reply brief until his legal materials are returned to him because he cannot meaningfully participate in the process of drafting a reply brief without his legal materials.

Attorney Schnipper avers that as a result of his inability to communicate with Plaintiff Kirkland, he was unable to prepare additional arguments regarding his appeal that he wished to pursue. This communication barrier has caused delay in Attorney Schnipper's ability to pursue all legal arguments necessary for Plaintiff Kirkland's appeal and challenge to his conviction.

Counsel for DOC introduced into evidence the docket sheets for pending appeals indicating that deadlines had not yet expired for filing pleadings. The court notes, however, that any delay in an appellant's ability to work with his counsel could jeopardize the ability to file a

Exhibit A

motion in a timely manner. For example, even though Mr. Arias's deadline for filing his direct appeal and new trial motion had been extended several times, motions for new trial, particularly in homicide cases, involve a great deal of investigation, discovery, and preparation.

Attorney Lisa Kavanaugh, Director of the Innocence Project for CPCS, testified that she recently visited a client at SBCC who was actively involved in his pending litigation. She was unable to have a contact visit with him. There were hundreds of pages of documents she wanted to review with him during this visit. Because she was not permitted a contact visit, she held the paperwork up against the Plexiglass and spoke to her client through the grate in the window. She later found out that there were Inner Perimeter Security officers sitting a few feet away from her client and they could hear everything he said to her.

Attorney Kavanaugh testified that her client had been unable to call her during the lockdown. During the pendency of the hearing on the instant motion, Attorney Kavanaugh learned that the District Attorney's office had agreed to her motion for a new trial for her SBCC client. She testified that she was unable to inform her client of that information until February 13, 2020, because he did not have access to her.

In their Verified Complaint, the Plaintiffs allege that when Northside inmates inquired about the basis for the collective punishment on all inmates collectively, the correction officer responded that it was retribution for the January 10, 2020 attack. As one correction officer explained it, "[i]f you put hands on an officer, you will all pay." Ver. Compl. par. 6. Further facts are reserved for the Discussion section below.

RULINGS OF LAW

I. *Standard of Review*

A preliminary injunction is warranted when the moving party establishes: (1) a likelihood of success on the merits of the claim; (2) that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm; and (3) that the harm to the moving party outweighs any harm the opposing party would suffer if the injunction entered. See *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). In preliminary injunction proceedings involving public entities, the court must look to whether the “requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984).

“[T]he significant remedy of a preliminary injunction should not be granted unless the plaintiffs have made a clear showing of entitlement thereto.” *Student No. 9 v. Board of Educ.*, 440 Mass. 752, 762 (2004). “Trial judges have broad discretion to grant or deny injunctive relief.” *Lightlab Imaging, Inc. v. Axsun Techs., Inc.*, 469 Mass. 181, 194 (2014).

II. *Analysis*

a. *Mootness*⁹

As a threshold matter, the court must determine whether the issues raised in the complaint are moot. The Defendants argue that the issues raised by the Plaintiffs are moot, and the Plaintiffs’ motion for the preliminary injunction should be denied, because the named Plaintiff Inmates and all SBCC inmates are in possession of and have access to their legal materials, have telephone access for calling their attorneys, and have attorney contact visits. The

⁹ The Defendants did not raise the issue of standing in opposition to the instant motion. However, the court notes that they did reserve the right to challenge MACDL’s standing to bring the instant motion and the underlying complaint.

Plaintiffs disagree, arguing that the instant issues are not moot because the challenged conduct could reasonably be expected to recur. The court concludes that the issues raised by the Plaintiffs are not moot.

In establishing the mootness of the Plaintiffs' claims, the "[D]efendant[s] bear[] a heavy burden of showing that there is no reasonable expectation that the wrong will be repeated." *Wolf v. Commissioner of Pub. Welfare*, 367 Mass. 293, 299 (1975). See also *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (defendant's "voluntary cessation" of allegedly wrongful conduct does not render claim moot unless "absolutely clear" that challenged conduct "could not reasonably be expected to recur"). Here, while the affected inmates, including the Plaintiff Inmates, are no longer subject to the restrictions applied during the lockdown and disorder protocol following the January 10, 2020 attack, they remain incarcerated and subject to reapplication of such restrictions at any time. See *Cantell v. Commissioner of Corr.*, 475 Mass. 745, 754 n.17 (2016) (prisoners' complaints regarding conditions in special management unit not mooted by transfer out of unit because they remained incarcerated and therefore risked return to unit). Significantly, Superintendent Kenneway attested that "[t]here are numerous types of disorders that trigger DOC's Disorder protocol," and "[i]t is entirely possible that a new Disorder could arise which would lead to temporary restrictions." Kenneway Aff. pars. 7, 44. Further, he testified that "[t]his could happen at any time, this could happen any time in the future." As the restrictions raised by the Plaintiffs could reasonably be repeated at any time, the Plaintiffs' claims are not moot.

b. *Likelihood of Success on the Merits*

i. *Violation of Constitutional Rights to Assistance of Counsel and Access to the Courts*

The Plaintiffs argue that they have a likelihood of success on the merits of their claim that the restrictions the Defendants imposed as a result of the implementation of the disorder protocol—depriving the inmates of their telephone access, access to their legal material, and their attorney contact visits—violated their Federal and State constitutional rights to counsel and access to the courts under the Sixth and Fourteenth Amendments to the United States Constitution and Article XII of the Massachusetts Declaration of Rights. The court concludes that the Plaintiffs have established a likelihood of success on the merits of this claim.

The right to assistance of counsel is a fundamental constitutional right.¹⁰ See *Commonwealth v. Means*, 454 Mass. 81, 88 (2009) (Sixth Amendment to United States Constitution and Article XII of Massachusetts Declaration of Rights guarantee right to assistance of counsel). In addition, prisoners possess a constitutional right of access to the courts, which requires prison authorities to assist inmates in the preparation and filing of legal papers by providing prisoners with adequate law libraries and adequate assistance from persons trained in the law. *Bounds v. Smith*, 430 U.S. 817, 828 (1977), abrogated on other grounds by *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (disclaiming statements in *Bounds* suggesting state must enable prisoner to discover grievances and to litigate effectively once in court).

Prison inmates retain constitutional rights while incarcerated. “Prison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner v. Safley*,

¹⁰ The Sixth Amendment to the United States Constitution provides in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” Article XII of the Declaration of Rights of the Massachusetts Constitution provides in pertinent part: “[E]very subject shall have a right to . . . be fully heard in his defense by himself, or his council at his election. . . .”

482 U.S. 78, 84 (1987). Because inmates retain constitutional rights, when a prison regulation or practice offends a fundamental constitutional guarantee, courts will discharge their duty to protect constitutional rights. See *id.*

However, the Supreme Court has recognized, and this court acknowledges, that “maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees.” *Bell v. Wolfish*, 441 U.S. 520, 546-547 (1979). For this reason, “[p]rison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Id.* at 547. See *Hoffer v. Commissioner of Corr.*, 397 Mass. 152, 155 (1986) (commissioner has substantial obligations to maintain security, safety, and order at state correctional facilities).

Accordingly, a prison regulation impinging on inmates’ constitutional rights “is valid if it is reasonably related to legitimate penological interests.” *Turner*, 482 U.S. at 89. To determine whether a prison directive impinges upon inmates’ constitutional rights, the court considers four factors: (1) is there a “valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it”; (2) “whether there are alternative means of exercising the right that remain open to prison inmates”; (3) “the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally”; and (4) whether “ready alternatives” to the regulation exist such that the regulation may constitute “exaggerated response.” *Id.* at 89-90 (internal quotation marks omitted).

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Here, the Plaintiffs argue that the restrictions at issue, applied during the lockdown and disorder protocol and not pursuant to any written regulation, were unconstitutional. The penological interest advanced here to justify the implementation of the restrictions at issue is that such implementation allowed correction officials to carry out the disorder protocol, pursuant to the Disorder Management Policy, following the January 10, 2020 attack.¹¹ However, the evidence suggests that there is no valid, rational connection between that legitimate penological interest described above and the blanket, prolonged restriction on the inmates' means of communicating with their attorneys about their cases, especially where the inmates who suffered the restrictions were not those who were involved in the attack. While Superintendent Kenneway testified that he had credible information about additional planned attacks, the restrictions at issue, coupled with severely limited mail and email access, effectively eliminated all means of communication between an inmate and his attorney. These restrictions sweep much more broadly than can be justified by the Defendants' penological objectives. See *Turner*, 482 U.S. at 90, 97-98 (regulation restricting inmate marriage swept much more broadly than could be explained by petitioners' penological objectives). See also Ver. Compl. par. 6 (“[i]f you put hands on an officer, you will all pay.”).

In addition, during the time period at issue, the inmates had no available, alternative means of exercising their rights because all of their means of accessing counsel and the courts were restricted. Attorney phone calls were suspended on January 10, 2020. Attorney Newman-Polk attested that her client was not able to call her until January 27, 2020. Attorney visits were also suspended on January 10, 2020. Attorneys were denied contact visits as late as February 6,

¹¹ Superintendent Kenneway testified that there is nothing in the Disorder Management Policy itself about access to attorneys or inmate access to legal materials. The evidence also demonstrates that the tactical team, which carried out the disorder protocol, had no policy concerning telephone use, no policy concerning legal materials, and no policy concerning attorney visits.

Exhibit A

2020. Removal of inmates' legal materials occurred January 21, 2020, at the latest, and in many cases, as early as January 10, and the materials were not returned to some inmates until February 9, 2020, or later. In addition, the materials, including previously bound trial transcripts, were returned in jumbled, confused states, such that they were not meaningfully useable. Moreover, the evidence suggests that mail and email access also were severely limited.

With regard to the impact on prison guards and inmates, as well as on prison resources, the evidence suggests that avoiding the wholesale restriction on all means of communication between inmates and counsel during a lockdown and disorder protocol would not be a hardship. SBCC already makes these accommodations when the prison is not in lockdown. Moreover, while the court recognizes that during a lockdown, prison staff and resources are focused on restoring order and maintaining safety, providing some means of communication between inmates and their attorneys—during a time when the need for such communication is arguably greatest—could reasonably be accommodated.

Further, the implementation of the restrictions at issue represents an exaggerated response to the serious security concerns here. While the court recognizes that during the lockdown and the execution of the disorder protocol restrictions were warranted to aid in the restoration of order, the restriction on effectively all means of confidential and meaningful communication between inmates and their attorneys for more than a week—and for some inmates, almost a month—suggests that ready alternatives existed here. For these reasons, the court concludes that the restrictions at issue were not reasonably related to the legitimate penological interest of ensuring safety and order following the attack; rather, they represent an exaggerated response to that important interest.

Exhibit A

Notwithstanding, the Defendants contend that the Plaintiffs do not have a likelihood of success on their violation of meaningful access to the courts claim because they have not alleged actual injury. To make out such a claim, the Plaintiffs must establish that they suffered "actual injury," meaning that the restrictions at issue frustrated or impeded their efforts to pursue a nonfrivolous legal claim attacking their sentences, directly or collaterally, or challenging the conditions of their confinement. See *Lewis*, 518 U.S. at 349-355. See also *Puleio v. Commissioner of Corr.*, 52 Mass. App. Ct. 302, 311 (2001) (to establish meaningful access to the courts claim, plaintiff required to demonstrate that temporary inconvenience of lack of access to his legal files prevented or hindered his ability to make nonfrivolous legal claim). "The actual injury that must be established by an inmate is that an actionable claim involving a challenge to a sentence or to conditions of confinement has been lost or rejected, or that the presentation of such a claim is currently being prevented, because this capability of filing suit has not been provided." *Jiles v. Department of Corr.*, 55 Mass. App. Ct. 658, 662 (2002), quoting *Lewis*, 518 U.S. at 356 (internal quotation marks omitted).

Here, the evidence suggests that the restrictions at issue prevented or hindered the presentation of several inmates' nonfrivolous legal claims, namely, the direct appeal of their convictions and postconviction motions. See *Lewis*, 518 U.S. at 354 (noting access-to-courts cases analyzed by Court in *Bounds* involved attempts by inmates to pursue direct appeals from convictions for which they were incarcerated). The evidence suggests that Plaintiff Kirkland was unable to prepare additional arguments regarding the appeal he wished to pursue because he lacked access to his legal materials.

Plaintiff Silva-Prentice could not discuss his appeal with Attorney Ohren because he did not have his legal materials, which indefinitely delayed his appeal. When his legal materials

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were returned to him, they were so jumbled that Attorney Ohren was unsure if they remained useable. Additionally, the delay of his direct appeal of his conviction could result in his spending “dead time” in prison if such appeal is ultimately successful. Such “dead time” in Plaintiff Silva-Prentice’s life cannot be replaced.

Additionally, the Commonwealth’s brief in Mr. Henley’s appeal was due on February 13, 2020, and the Appeals Court indicated that there would be no additional enlargements of time for the Commonwealth. Attorney Essington intended to seek an enlargement of time to file Mr. Henley’s reply brief because he cannot meaningfully participate in the process of drafting his reply brief without his legal materials.

While the evidence shows that inmates were still transported to court dates during the lockdown and that Plaintiff Kirkland was provided with his legal materials just prior to a hearing related to the appeal of his conviction, simply placing legal paperwork into a handcuffed inmate’s hands as he heads to court in shackles in a transportation van does not constitute meaningful access. See *Bounds*, 430 U.S. at 828 (“the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.”).

An inmate’s communication with his attorney, whether it be via phone, in meetings, or, particularly, with the aid of access to legal materials, is of paramount importance to his right to meaningful access to the courts. Indeed, it is difficult to imagine a more crucial right for an inmate, particularly following a prolonged lockdown as described here, where the inmate played no role in the reason for the lockdown.

The Defendants also argued that Attorney Kavanaugh's testimony that the District Attorney's office had agreed to her motion for a new trial for her SBCC client, during a period where he was denied access to her, showed that she did not need her client's input to win the motion and therefore the client was not prejudiced by the restrictions at issue. The court concludes otherwise. Though undoubtedly Attorney Kavanaugh is an excellent advocate and may or may not have needed her client's input, he had a constitutional right to participate in his defense. The fact that there was a delay in relaying to her client that he was about to be released from prison after being incarcerated for forty-five years is perhaps the ultimate violation of the rights to assistance of counsel and meaningful access to the courts. For these reasons, the court concludes that the Plaintiffs have a likelihood of success on the merits of their constitutional claims.

ii. *Violation of the Massachusetts Civil Rights Act*

The Plaintiffs claim that the Defendants violated their rights pursuant to the MCRA, G. L. c. 12, §§ 11H-11I. Neither party specifically addressed this claim in its brief. Nonetheless, the court concludes that the Plaintiffs have a likelihood of success on the merits of this claim based on the above analysis regarding the constitutional claims and for the additional reasons that follow.

The core of the Plaintiffs' MCRA claim is that the Defendants interfered with the Plaintiffs' constitutional rights to assistance of counsel and meaningful access to the courts. To prove such a claim under the MCRA, the Plaintiffs must establish "(1) the exercise or enjoyment of some constitutional or statutory right; (2) has been interfered with, or attempted to be interfered with; and (3) such interference was by threats, intimidation, or coercion." *Currier v. National Bd. of Med. Exam'rs*, 462 Mass. 1, 12 (2012). See *Jiles*, 55 Mass. App. Ct. at 664-665

(plaintiff inmate's MCRA claim lacked essential element of interference with exercise or enjoyment of constitutional rights effectuated through threat, intimidation, or coercion).

For the reasons previously stated, the court concludes that the Plaintiffs have demonstrated a likelihood of satisfying the first and second prongs of the MCRA analysis, *i.e.*, that the Defendants interfered with their constitutionally-guaranteed rights to assistance of counsel and meaningful access to the courts.

The court then turns to the third prong of the analysis: whether this interference was effectuated by threats, intimidation, or coercion. “[A] ‘threat’ consists of ‘the intentional exertion of pressure to make another fearful or apprehensive of injury or harm’; ‘intimidation’ involves ‘putting in fear for the purpose of compelling or deterring conduct’; and ‘coercion’ is ‘the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.’” *Glovsky v. Roche Bros. Supermarkets, Inc.*, 469 Mass. 752, 763 (2014), quoting *Haufler v. Zotos*, 446 Mass. 489, 505 (2006). Here, the record supports the conclusion that the Plaintiffs likely will be able to satisfy this third prong of the MCRA analysis.

The evidence suggests that during the institutional search, the tactical team seized all property from the inmate's cells, including their legal material and put them in bags. While doing so, they handcuffed the inmates, pointed Tasers at them, and told them that if they did not cooperate, they would be shot. Specifically, Plaintiff Silva-Prentice suffered Taser burns and several of his dreadlocks were pulled from his scalp. There was also testimony that once noncontact attorney visits resumed, Inner Perimeter Security officers were seated a few feet away from the inmates and could hear the conversations between the attorneys and the inmates.

For these reasons, the court concludes that the Plaintiffs have a likelihood of success on the merits of their MCRA claim.¹²

c. Irreparable Harm

The Plaintiffs argue that the restrictions at issue have caused them to suffer irreparable harm in the form of the deprivation of their constitutional rights to assistance of counsel and access to the courts and that they will continue to suffer such harm if the Defendants are not enjoined. The Defendants contend that the Plaintiffs have failed to establish a real and immediate threat of irreparable harm because the restrictions at issue have been restored. They also argue that granting the instant request for a preliminary injunction is not in the public interest because prison administrators enjoy wide-ranging deference in the adoption and execution of policies and practices needed to preserve order and maintain institutional security, particularly at SBCC, the state's only maximum security facility.

As noted above, on one hand, prison walls do not form a barrier separating inmates from the protections of the Constitution. See *Turner*, 482 U.S. at 84. On the other hand, “[r]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources,” such that correction officials should be afforded appropriate deference. *Id.* at 84-85.

On balance, any harm that the Defendants will suffer as a result of the granting of the preliminary injunction does not exceed that which the Plaintiffs will suffer by being denied their constitutional rights. See *Means*, 454 Mass. at 88-89 (“Because the right to the assistance of

¹² The Plaintiffs also argue that they have a likelihood of success on the merits on their claims that the Defendants, by imposing the restrictions at issue, violated Massachusetts law and their own regulations and created new, unwritten regulations in violation of the APA. The court need not reach these alternative arguments because it concludes that the Plaintiffs have satisfied their burden with respect to some of their claims, and they seek the same injunctive relief at this juncture for each of their claims.

counsel is essential to individual liberty and security, and to a fair trial, its erroneous denial can never be treated as harmless error.”). Cf. *T & D Video, Inc. v. Revere*, 423 Mass. 577, 582-583 (1996) (harm suffered by denial of First Amendment right to open adult entertainment video store outweighed harm to city resulting from location of another such store in its borders). See also *Romero Feliciano v. Torres Gaztambide*, 836 F.2d 1, 4 (1st Cir. 1987) (loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury). Significantly, the restrictions at issue were imposed well beyond one week and some restrictions continued to be applied even after the lockdown was lifted.

The court recognizes the wide-ranging deference it must accord the Defendants with regard to its administration of SBCC and, particularly, the important interest of ensuring the safety of SBCC staff and inmates. See *Bell*, 441 U.S. at 547. Specifically, the court acknowledges the policies that have been implemented since the initiation of the instant litigation, such as a February 13, 2020 policy providing for a revised Northside Tier and Recreation Schedule. Ex. 7. Granting the requested preliminary injunction likely will interfere with the Defendants’ ability to run SBCC in the manner they deem appropriate. This is particularly so where there is a possibility that the Defendants may deem another lockdown necessary in the future, given the credible intelligence that security concerns may persist and the fact that SBCC is a maximum security prison.

However, when the court, in its discretion, balances this harm against the harm of the violation of the Plaintiffs’ constitutional rights, in light of their likelihood of success on the merits, the balance of these harms tips in the Plaintiffs’ favor. This conclusion is especially true where the Plaintiff Inmates, as well as many other inmates subjected to the restrictions at issue, were determined not to be involved in the January 10, 2020 attack and nonetheless were denied

effectively all access to their counsel and legal materials for an extended period of time. Moreover, while the Defendants contend that the restrictions are presently lifted, the evidence demonstrates that they could be imposed again “at any time.” Where the Defendants’ implementation of the restrictions at issue here offends a fundamental constitutional guarantee, the court will discharge its duty to protect those constitutional rights. See *Turner*, 482 U.S. at 84. It is unnecessary to further dehumanize an inmate during a time of crisis. See also Board of Editors, “Videoconferencing Plan Needs a Second Look,” 49 Mass. Lawyers Weekly 8, Feb. 24, 2020, at 38 (“Being a criminal defendant is a dehumanizing experience. The workings of the criminal justice system already strip away much of the dignity of these people. Limiting their ability to have meaningful participation in their defense and preventing any true human interaction with their attorneys . . . only exacerbates that dehumanization.”).

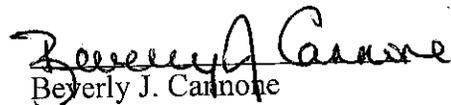
Because the instant proceeding involves a public entity, the court must also look to whether the “requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” *Mass. CRINC*, 392 Mass. at 89. The Defendants argue that granting the relief sought here is against the public interest because it would interfere with the extremely difficult task of running a prison, such that public safety would be harmed. The requested equitable relief likely will interfere with the Defendants’ administration of SBCC, which could raise public safety concerns. However, the court concludes that the requested preliminary injunction promotes the public interest. Indeed, the court can think of no greater public interest than the protection of individuals’ sacred constitutional rights. See *Means*, 454 Mass. at 88-89 (individual’s constitutional right to be represented by counsel is fundamental component of criminal justice system and essential to individual liberty and security). Accordingly, the Plaintiffs’ request for a preliminary injunction is **ALLOWED**.

ORDER

It is therefore **ORDERED** that the Plaintiffs' Emergency Motion for a Preliminary

Injunction be **ALLOWED**. The court further **ORDERS** as follows:

1. The Defendants must return to each inmate their legal materials within forty-eight (48) hours of this Order. Inmates shall be allowed to possess their legal materials in their assigned living quarters in conformance with 103 Code Mass. Regs. § 403.10 (2)(c);
2. The Defendants must reinstate attorney contact visits within forty-eight (48) hours of this Order;
3. The Defendants must allow inmates sufficient time outside their assigned living quarters during business hours (9:00 a.m. and 5:00 p.m.) on business days to make attorney phone calls;
4. The Defendants shall notify CPCS immediately when a lockdown that will impede attorney-client communication occurs.


Beverly J. Cannone
Justice of the Superior Court

DATED: February 28, 2020

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

CARL LAROCQUE, ROBERT SILVA-)
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)
)
Plaintiffs,)
v.)
)
THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)

AFFIDAVIT OF JOHN DIAZ

I, John Diaz, state the following to the best of my information and belief.

1. I am currently incarcerated at Souza-Baranowski Correctional Center (SBCC) on the north side.
2. In January of this year, my legal paperwork and property was taken. I am still missing the paperwork from a civil lawsuit that I filed against SBCC, written notes, and transcripts. SBCC also took two legal books that I have had with me for a long time: Jailhouse Lawyer's Handbook and Protecting Your Health and Safety.

Exhibit B

3. I have requested that SBCC put an attorney at Mental Health Legal Advisors Committee and Senator Eldridge on my contact list so that I can call them. However, it has been over three months and SBCC still has not put those numbers on my list.

Signed under the pains and penalties of perjury this ____ day of August, 2020.

John Diaz 8-12-2020
John Diaz

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

CARL LAROCQUE, ROBERT SILVA-)
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)
)
Plaintiffs,)
v.)
)
THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)

AFFIDAVIT OF TROY HARRIGAN

I, Troy Harrigan, state the following to the best of my information and belief.

1. I am currently incarcerated at Souza-Baranowski Correctional Center (SBCC).
2. I am being held on the north side.
3. On Tuesday, January 21, 2020, five officers from a tactical team came into my cell, which was a single cell on the south side that I had earned through good behavior, stripped me to my boxers, put handcuffs on me, and took me out of my cell. A correctional officer took a shirt and put it over my head. The officers then moved me to the north side without any of my belongings, including my address book and my legal paperwork.

Exhibit C

4. They have still not returned all of my legal paperwork, including half of the grand jury minutes from my case.
5. As a result of the COVID-19 pandemic, this affidavit was read to me over the phone by my attorney and I assent to having my signature affixed below.

Signed under the pains and penalties of perjury this 10th day of August, 2020.

/s/ Troy Harrigan

Troy Harrigan

Signed with approval

/s/ Jessica LaClair

Jessica LaClair
BBO#675350

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

CARL LAROCQUE, ROBERT SILVA-
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)

Plaintiffs,)

v.)

THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)

Defendants.)

AFFIDAVIT OF WILFREDO DURAN

I, Wilfredo Duran, state the following to the best of my information and belief.

1. I was previously incarcerated at Souza-Baranowski Correctional Center (SBCC). I am currently incarcerated at N.C.C.I. Gardner.
2. When I was incarcerated at S.B.C.C., I was being held on the north side.
3. On January 10, 2020, I returned from my job at the barbershop, and my cellmate told me what happened with the assault on the guard. Later, correctional officers came into my cell without warning and with no camera. They told me to get on the floor, put me in handcuffs,

Exhibit D

brought me to the second floor of the unit, and made me kneel down in front of a wall with other prisoners for four hours. While kneeling, if prisoners fell over, a canine would come over to them and then the correctional officers would force them back up against the wall. I submitted a sick slip for the knee injuries as a result of kneeling for such a long period of time.

4. On January 21, 2020, they brought me to unit P1 on the north side.
5. The correctional officers took all of my legal paperwork and it has still not been returned. I have filed a formal complaint with SBCC seeking the return of my legal paperwork and other items.
6. As a result of the COVID-19 pandemic, this affidavit was read to me over the phone and I assent to having my signature affixed below.

Signed under the pains and penalties of perjury this 11th day of August, 2020.

/s/ Wilfredo Duran
Wilfredo Duran

Exhibit E

including transcripts. On March 10, 2020, I sent a letter to Commissioner Mici and Superintendent Kenneway about the missing documents. On March 17, 2020, my client informed me that he had finally received much of his legal paperwork, but not all, and that it was in such complete disarray that he is unable to figure out what is missing. As a consequence, he requested a new copy of his entire file.

4. In early May, a different client reported to me that SBCC had returned only a small portion of his legal work, which included transcripts I had copied for a second time after the first copy was lost or destroyed. The little paperwork that my client received was jumbled and unusable, so I am again required to copy eight or nine volumes of transcripts, plus all the discovery, for a third time at CPCS' expense.

Signed under the pains and penalties of perjury this 12th day of August, 2020.



Angela Lehman

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

<u>CARL LAROCQUE, ROBERT SILVA-</u>)
<u>PRENTICE, TAMIK KIRKLAND,</u>)
<u>MASSACHUSETTS ASSOCIATION</u>)
<u>OF CRIMINAL DEFENSE LAWYERS,</u>)
<u>and COMMITTEE for PUBLIC</u>)
<u>COUNSEL SERVICES,</u>)
)
Plaintiffs,)
v.)
)
THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)

AFFIDAVIT OF DAVID B. HIRSCH

I, David B. Hirsch, state the following:

1. I am appointed post-conviction counsel for Adam Bradley, along with my colleague, Dennis Shedd;
2. Mr. Bradley is incarcerated at Souza-Baranowski Correctional Center (SBCC), where he is currently held on the north side.
3. Mr. Bradley has advised me that he does not get enough time out of his cell to call me or Mr. Shedd because he gets only one hour of “tier time” for recreation and he can use the phone only during that time. He advises me that he has tried calling me numerous times without success

Exhibit F

due to this restriction. He tells me he has asked corrections officers for permission use the phone at certain times and they have always denied his requests.

4. I recently left a message with SBCC staff asking Mr. Bradley to call me at a certain time. He advised me some time later that he could not do so because, as a case worker told him, it was not his recreation time on the tier.

5. All of his legal paperwork was taken from him when he was moved to the north side, he tells me, and was not returned until approximately six days later.

6. Mr. Bradley reports to me that he has a large amount of civil and criminal legal paperwork in legal storage, and that the only way he can gain access to it is by filing a legal storage request.

7. Mr. Bradley has told me that he filed requests in both May and June to go to legal storage in order to prepare motions in a civil case and retrieve documents related to the criminal case in which I represent him. Because he was not provided with access to his legal paperwork, he told me, he had to prepare the motions in his civil case without necessary documents, causing the motions to be far weaker than they otherwise would have been.

8. I called SBCC administration on Tuesday, August 11, asking that Mr. Bradley be told to call me. He did not call me on that date.

9. On Wednesday, August 12, it appears that Mr. Bradley made numerous attempts to call me over a short period of time. Unfortunately, I was unable to answer the phone due to illness.

I hereby certify under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge and belief.

August 13, 2020

/s/ David B. Hirsch
David B. Hirsch, BBO #600915
PO Box 900
Portsmouth NH 03802
603-501-0364
david.hirsch@comcast.net

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

CARL LAROCQUE, ROBERT SILVA-)
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
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THOMAS TURCO, Secretary of the)
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Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)

AFFIDAVIT OF ATTORNEY LINDSAY CUSTER

I, Lindsay Custer, state the following to the best of my information and belief.

1. I am an attorney. I worked at the Committee for Public Counsel Services until August 1, 2020.
2. Prior to the lockdown due to the COVID-19 pandemic, I made several trips to the Souza-Baranowski Correctional Center (SBCC) to interview prisoners inside. I received many reports from prisoners who are still missing their legal documents and who were facing various phone restrictions.
3. On March 6, 2020, two prisoners reported to me that they were missing all of their legal

Exhibit G

paperwork, including grand jury minutes, trial transcripts, motions, police reports, evidence from trial, and case law research.

4. On March 13, 2020, I met with four additional prisoners at Souza. Two prisoners informed me that they were missing all of their legal paperwork, including motions, grand jury minutes, police reports, evidence from trial, and probation reports. Both men also estimated that at least two to three times per week they were denied their scheduled recreation time and thus the ability to make phone calls due to surprise "lock-ins."
5. This same date, a third prisoner, who was in segregation when I spoke with him, reported that he was missing motions that he filed and transcripts from his probation surrender hearing. He additionally reported that for the prior two weeks, he had been denied the ability to make any legal telephone calls because his recreation hour kept getting rescheduled to non-business hours.
6. On March 20, 2020, I met with another prisoner at SBCC who reported that he was still missing all of his legal paperwork which included grand jury minutes and police reports related to his case.

Signed under the pains and penalties of perjury this 10th day of August, 2020.

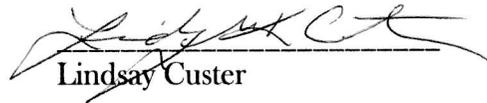

Lindsay Custer

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

103 CMR 423.00: RESTRICTIVE HOUSING

Section

- 423.01: Purpose
- 423.02: Authorization
- 423.03: Cancellation
- 423.04: Applicability
- 423.05: Access to 103 CMR 423.00
- 423.06: Definitions
- 423.07: Establishment of Restrictive Housing Units
- 423.08: Restrictive Housing Placement and Limitations on Placement in Restrictive Housing
- 423.09: Restrictive Housing Reviews
- 423.10: Calculation of Time in Restrictive Housing
- 423.11: Placement and Transfer to a Secure Adjustment Unit
- 423.12: Medical and Mental Health Services
- 423.13: Conditions of Restrictive Housing
- 423.14: Maximization of Out-of-cell Activities and Programs
- 423.15: Records and Staffing
- 423.16: Responsible Staff
- 423.17: Exigent Circumstances
- 423.18: Review Date
- 423.19: Severability Clause

423.01: Purpose

The purpose of 103 CMR 423.00 is to establish rules governing Restrictive Housing.

423.02: Authorization

103 CMR 423.00 is issued pursuant to M.G.L. c. 124, § 1(c) and (q); M.G.L. c. 127, §§ 39, 39A, 39B, 39C, 39E, 39F and 39H. 103 CMR 423.00 is not intended to confer any procedural or substantive rights not otherwise granted by state or federal law, or any private cause of action.

423.03: Cancellation

103 CMR 423.00 cancels all previous versions of 103 CMR 423.00, including all standard operating procedures appended thereto.

423.04: Applicability

103 CMR 423.00 governs non-disciplinary Restrictive Housing. 103 CMR 423.00 does not apply to:

- (a) the placement of inmates in the Department Disciplinary Unit (DDU);
- (b) the placement of inmates on disciplinary detention;
- (c) the placement of inmates in non-Restrictive Housing; and
- (d) Bridgewater State Hospital and the Bridgewater State Hospital state sentenced patient units at the Old Colony Correctional Center; and civilly committed persons at the Massachusetts Alcohol and Substance Abuse Treatment Center (MASAC). The placement of inmates in the DDU and the placement of inmates on disciplinary detention shall be governed by 103 CMR 430.00: *Inmate Discipline*. Placement Reviews of inmates serving DDU and/or Disciplinary Detention sanctions shall be governed by 103 CMR 430.00.

423.05: Access to 103 CMR 423.00

103 CMR 423.00 shall be maintained within the Department of Correction's central policy file, in each institution's central policy file, in each institution's inmate law library, and shall be made available to the public.

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.06: Definitions

Correctional Program Officer (CPO). The staff person at an institution who, when assigned duties required in 103 CMR 423.00, collects information obtained through inmate interviews and available casework records, and prepares a summary of this information for classification. A CPO is also responsible for monitoring an inmate's participation and compliance with a personalized program plan or program recommendations and facilitates reentry preparation.

Department Disciplinary Unit (DDU). A restricted area or areas designated by the Commissioner to which an inmate has received a recommended sanction by a Special Hearing Officer. For purposes of 103 CMR 423.00, the DDU is not a Restrictive Housing Unit. The DDU is disciplinary Restrictive Housing and is governed by 103 CMR 430.00: *Inmate Discipline*.

Director of Security. The individual responsible for the overall security within a correctional institution through formulation and enforcement of rules and regulations and by overseeing the performance of security staff.

Disciplinary Detention. The Restrictive Housing of an inmate who has been found guilty of a serious violation of 103 CMR 423.00. Such sanction shall not exceed 15 days for one offense and no more than 30 days for all violations arising out of the same or substantially connected incident(s), unless specifically authorized by the Commissioner. This status may be imposed only after complying with all provisions of 103 CMR 430.00: *Inmate Discipline*. Disciplinary detention does not refer to inmates sentenced to a DDU.

Disciplinary Restrictive Housing. A placement in Restrictive Housing in a state correctional facility for disciplinary purposes after a finding has been made that the inmate has committed a breach of discipline.

Exigent Circumstances. Circumstances that create an unacceptable risk to the safety of any person.

General Population. For purposes of 103 CMR 423.00, general population is defined as any housing area, other than a Restrictive Housing Unit (RHU), a Health Services Unit (HSU), a Department Segregation Unit (DSU), a DDU, a Secure Treatment Unit (STU), a Secure Adjustment Unit (SAU), or the Intensive Treatment Unit (ITU) at MCI-Framingham.

Inmate Management System (IMS). The Department of Correction's automated information system that provides processing, storage, and retrieval of inmate-related information needed by the Department.

Institution Duty Officer. A rotating staff person assigned specific institutional duties by the Superintendent.

Placement Review Committee. A multidisciplinary examination to determine whether Restrictive Housing continues to be necessary to reasonably manage risks of harm, notwithstanding any previous finding of a disciplinary breach, exigent circumstances, or other circumstances supporting a placement in Restrictive Housing.

Placement Review Group which shall include, but not be limited to, one member of the security staff, one member of the programming staff and one member of the mental health staff. This Committee may include the Superintendent, Deputy Superintendents, Director of Security, Director of Classification, Restrictive Housing Unit Captain, or their respective designees, and such other staff as deemed necessary to determine whether Restrictive Housing continues to be necessary to reasonably manage risks of harm, notwithstanding any previous finding of a disciplinary breach, exigent circumstances or other circumstances supporting a placement in Restrictive Housing.

Protective Custody/Special Housing Units. A form of separation from the general population for inmates requesting or requiring protection from other inmates for reasons of health or safety. The inmate's status is reviewed periodically in accordance with 103 DOC 422.00: *Department Protective Custody Units*, by the classification committee or designated group with the goal of terminating the separate housing assignment as soon as possible.

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.06: continued

Qualified Mental Health Professionals. Treatment providers who are psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for the mental health needs of patients.

Restrictive Housing. A placement that requires an inmate to be confined to a cell for at least 22 hours per day for the safe and secure operation of the facility. For purposes of 103 CMR 423.00, Restrictive Housing shall not include the following: any placement in a DDU as the result of a sanction imposed in accordance with 103 CMR 430.00: *Inmate Discipline*; any placement of an inmate on disciplinary detention as the result of a sanction imposed in accordance with 103 CMR 430.00; any placement ordered by a medical or mental health provider including, but not limited to, the placement of an inmate in a Health Services Unit; the placement of an inmate in a hospital; the placement of an inmate in a medical setting where treatment is being provided; or the placement of an inmate on a mental health watch.

Restrictive Housing Unit (RHU). A separate housing area from general population within institutions in which inmates may be confined to a cell for more than 22 hours per day where:

- (a) it has been determined that the inmate poses an unacceptable risk to the safety of others, of damage or destruction of property, or to the operation of a correctional facility;
- (b) the inmate requires protection from harm by others; and/or
- (c) the inmate is serving a disciplinary detention sanction.

Secure Adjustment Unit (SAU). A highly structured unit that is not Restrictive Housing and that provides access to cognitive behavioral treatment, education, programs, structured recreation, leisure time activities and mental health services for those inmates diverted from or released from Restrictive Housing.

Secure Treatment Unit (STU). A maximum security residential treatment program that is not Restrictive Housing and that is designed to provide an alternative to Restrictive Housing for inmates diagnosed with serious mental illness in accordance with clinical standards adopted by the Department of Correction.

Serious Mental Illness (SMI). A current or recent diagnosis by a Qualified Mental Health Professional of one or more of the following disorders described in the 5th edition of the *Diagnostic and Statistical Manual of Mental Disorders*:

- (a) schizophrenia and other psychotic disorders;
- (b) major depressive disorders;
- (c) all types of bipolar disorders;
- (d) a neurodevelopmental disorder, dementia or other cognitive disorder;
- (e) any disorder commonly characterized by breaks with reality or perceptions of reality;
- (f) all types of anxiety disorders;
- (g) trauma and stressor related disorders; or
- (h) severe personality disorders; or a finding by a Qualified Mental Health Professional that the inmate is at serious risk of substantially deteriorating mentally or emotionally while confined in Restrictive Housing, or already has so deteriorated while confined in Restrictive Housing, such that diversion or removal is deemed to be clinically appropriate by a Qualified Mental Health Professional.

Shift Commander. The officer designated by the Superintendent to be responsible for the supervision of all subordinate custodial staff and the care and custody of inmates during an assigned tour of duty.

Superintendent. The chief administrative officer of a correctional institution.

423.07: Establishment of Restrictive Housing Units

The Commissioner may designate an area or areas within maximum and medium security correctional institutions for Restrictive Housing consistent with the purposes set forth in 103 CMR 423.00.

423.08: Restrictive Housing Placement and Limitations on Placement in Restrictive Housing

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

The Superintendent of a state correctional facility or designee may authorize the confinement of an inmate in Restrictive Housing if the inmate's retention in general population poses an unacceptable risk:

- (a) to the safety of others;
- (b) of damage or destruction of property; or
- (c) to the operation of a correctional facility.

Before placement in Restrictive Housing, an inmate shall be screened by a Qualified Mental Health Professional to determine if the inmate has a serious mental illness (SMI) or to determine if Restrictive Housing is otherwise clinically contraindicated based on clinical standards adopted by the Department of Correction, with said standards adopted in consultation with the Department of Mental Health, and the Qualified Mental Health Professional's clinical judgment. Additional mental health procedures and treatment attendant to Restrictive Housing placement shall comport with the requirements set forth in 103 DOC 650: *Mental Health Services*. Additionally, prior to or immediately upon placement in Restrictive Housing, the inmate shall be screened by medical staff. Screening by medical staff shall include a determination of any medical contraindications to Restrictive Housing, including the existence of a permanent physical disability that precludes placement in Restrictive Housing, in which the inmate shall not be placed in Restrictive Housing. This screening shall be documented and placed in the inmate's medical record. This shall be documented on the RHU Inmate Information screen.

423.09: Restrictive Housing Reviews

The fact that an inmate is lesbian, gay, bisexual, transgender, queer or intersex or has a gender identity or expression or sexual orientation uncommon in general population shall not be grounds for placement in Restrictive Housing.

A pregnant inmate shall not be placed in Restrictive Housing.

In accordance with 103 DOC 422.05: *Transfer to Awaiting Action Status*, an inmate who is classified to a Department protective custody unit/Special Housing Unit may be placed in Restrictive Housing for reasons unrelated to protective custody needs for a period that shall not exceed 45 days, unless the Commissioner personally approves a further period or periods of not more than 15 days. In no event shall the total amount of time on Restrictive Housing status for such inmate exceed 90 days.

An inmate with an anticipated release date (release from the custody of the Department) of less than 120 days shall not be held in Restrictive Housing unless:

- (a) the placement in Restrictive Housing is limited to not more than five days; or
- (b) the inmate poses a substantial and immediate threat.

When an inmate in Restrictive Housing is expected to be released to the community within 40 days, any continued retention of the inmate in Restrictive Housing must be authorized by the Deputy Commissioner of Prisons or designee. When the inmate is released to the community directly from Restrictive Housing, the release shall be documented in an incident report indicating the approving authority for the continued placement in Restrictive Housing, the detailed release plan, and the required notifications provided in accordance with 103 DOC 493: *Reentry Policy*, 103 DOC 407: *Victim Service Unit*, and 103 DOC 404: *Inmate Release Policy*. The requirements of this paragraph do not apply to immediate court-ordered releases.

(1) All Inmates in Restrictive Housing. During normal business hours, the Shift Commander may order the immediate removal of an inmate from general population to Restrictive Housing. This action will be approved, denied, or modified within 24 hours by the Superintendent or designee. During non-business hours, the Shift Commander may order the removal of an inmate from general population to Restrictive Housing and the institution duty officer shall be the reviewing authority.

(a) Once an inmate is placed in Restrictive Housing, the inmate's status shall be reviewed by the Placement Review Committee every Monday, Wednesday and Friday. At each Placement Review, the Placement Review Committee shall determine whether:

1. the inmate's placement in Restrictive Housing is reasonably expected to last more than 60 days;
2. continued placement in Restrictive Housing is appropriate;
3. transfer to a Secure Adjustment Unit is appropriate; or
4. release from Restrictive Housing is appropriate.

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.09: continued

(b) At each Placement Review, the Placement Review Committee shall review the reason(s) for placement, threat to institutional security, pending disciplinary issues, disciplinary sanctions, classification issues, enemy situations, mental health issues, attitude toward authority, willingness and ability to live with others, and any other pertinent information. These reviews shall be documented in the Restrictive Housing review screen in IMS.

(c) After each Placement Review, the inmate shall be retained in Restrictive Housing only if the Superintendent or designee determines that the inmate poses an unacceptable risk:

1. to the safety of others;
2. of damage or destruction of property; or
3. to the operation of a correctional facility. In the case of inmates held in Restrictive Housing for personal safety needs, a certification by the Commissioner or designee shall be completed after each Placement Review.

(d) Upon a determination by the Placement Review Committee that the inmate's placement in Restrictive Housing is reasonably expected to last more than 60 days, within 15 days of such determination:

1. the inmate shall be served with written behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review; and
2. the inmate shall thereafter receive the reviews set forth in 103 CMR 423.09(3). An inmate's failure to meet some or all of the standards and goals shall not preclude an inmate's release from Restrictive Housing.

(e) The inmate shall receive periodic verbal notification as to his or her status or change in status. Said periodic verbal notification may be provided during rounds by the CPO or Deputy Superintendent of Reentry or designee.

(2) Inmates in Restrictive Housing Less than 30 Days.

(a) SMI Inmates. An inmate shall not be held in Restrictive Housing if the inmate has been determined to have a serious mental illness (SMI) or a finding has been made by a Qualified Mental Health Professional that Restrictive Housing is clinically contraindicated unless, no later than 72 hours after the Restrictive Housing placement or finding, the Commissioner or a designee certifies in writing:

1. the reason why the inmate may not be safely held in the general population;
2. that there is no available placement in an STU or SAU;
3. that efforts are being undertaken to find appropriate housing and the status of the efforts; and
4. the anticipated time frame for resolution.

A copy of the written certification shall be provided to the inmate.

Such inmates shall be reviewed thereafter by the Placement Review Committee at least every Monday, Wednesday and Friday.

(b) Inmates with Safety Needs. Upon verification that an inmate requires separation from general population to protect the inmate from harm by others, the inmate shall not be placed in Restrictive Housing, but shall be placed in a housing unit that provides approximately the same conditions, privileges, amenities and opportunities as in general population; provided however, that the inmate may be placed in Restrictive Housing for no more than 72 hours while suitable housing is located. An inmate shall not be held in Restrictive Housing to protect the inmate from harm by others for more than 72 hours, unless the Commissioner or a designee certifies in writing:

1. the reason why the inmate may not be safely held in the general population;
2. that there is no available placement in a unit comparable to general population;
3. that efforts are being undertaken to find appropriate housing and the status of the efforts; and
4. the anticipated time frame for resolution.

A copy of the written certification shall be provided to the inmate.

Such inmates shall be reviewed thereafter by the Placement Review Committee every Monday, Wednesday and Friday. The written certification by the Commissioner or designee, as described above, shall be completed after each Placement Review.

(c) Inmates Awaiting Adjudication of Disciplinary Charges. Inmates in Restrictive Housing who are awaiting the adjudication of disciplinary charges shall be reviewed by the Placement Review Committee every Monday, Wednesday and Friday.

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.09: continued

(d) Inmates in Restrictive Housing for Other Reasons. Inmates *e.g.*, pending investigation, pending classification, pending transfer, or refusing housing placement.

Inmates in Restrictive Housing for any other reason shall be reviewed by the Placement Review Committee every Monday, Wednesday and Friday.

(3) Inmates in Restrictive Housing 30 Days or More.

(a) 30-Day CPO Review. Every inmate in Restrictive Housing for 30 days or more shall be provided with the following review within 30 days of his or her Restrictive Housing placement. Each such inmate shall be provided:

1. 48 hours written notice prior to the review;
2. the opportunity to participate in the review in person;
3. a written statement as to the evidence relied on and the reasons for the placement decision if no placement change is ordered; and
4. written behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon the next Placement Review if no placement change was ordered.

Notice: The CPO shall provide the inmate with at least 48 hours advance written notice of the review. The notice shall state the basis upon which the inmate is housed in Restrictive Housing. The notice shall also state the nature of the threat requiring the Restrictive Housing placement. Notice shall be documented and may be waived by the inmate in writing.

CPO Review: The CPO shall conduct the review. The inmate shall be offered the opportunity to participate in the review in person. The review shall not be conducted at cell front. The inmate's failure to appear at the scheduled review shall be deemed a refusal to appear but shall not be held against the inmate. The inmate's refusal to attend the review shall be documented in IMS.

At the review, the inmate may offer a verbal and/or written statement and/or submit documentation to contest the rationale for his or her placement in Restrictive Housing. The inmate shall not be entitled to call witnesses or to representation by counsel. At the conclusion of the review, the CPO shall inform the inmate orally of the recommendation as to whether there is a need for the inmate's continued placement in Restrictive Housing.

Recommendation: Within two calendar days of the review, the CPO shall enter a recommendation in IMS as to whether the inmate should continue to be housed in Restrictive Housing. A copy of this recommendation shall be served on the inmate. The recommendation shall include, but not be limited to, a description of the underlying basis that led to the Restrictive Housing placement (*e.g.*, pending disciplinary hearing), and a determination whether the inmate's return to general population would pose an unacceptable risk to life, property, staff or other inmates, or to the security or orderly running of the institution. Unless an investigation or safety or security concerns could be compromised, the written recommendation shall generally describe the factual basis or bases of the recommendation, including a brief description of any evidence relied upon by the CPO. The written recommendation shall also document whether the inmate made or submitted any statement or documents, and, when appropriate, that any such statement and/or documents were considered.

Standards/Goals: Within two calendar days of the review, the inmate shall also be served with written notice of the behavioral standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review. The written notice shall include a list of the specific programs being recommended for the inmate while in Restrictive Housing at that facility.

Inmate Appeal: If the inmate disagrees with the written recommendation of the CPO, the inmate may submit a written appeal within five business days of service of the written recommendation.

Final Decision: Within five calendar days after the close of the appeal period, *i.e.*, the last date upon which the inmate would be entitled to submit an appeal, the Superintendent or designee shall render the final decision in IMS and provide the inmate with such decision in writing. If it is determined that the inmate shall remain in Restrictive Housing, the written decision shall explain the reasons for the inmate's continued placement/status including, but not limited to, a description of the underlying basis that led to the Restrictive Housing placement (*e.g.*, pending disciplinary hearing) and an explanation why the inmate's return to general population would pose an unacceptable risk to life, property, staff or other inmates, or to the security or orderly running of the institution.

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.09: continued

Assistance: An inmate, either verbally or in writing, may seek an accommodation pursuant to 103 DOC 408: *Reasonable Accommodations for Inmates*, for the review and appeal. It shall be the inmate's responsibility to request such assistance within a reasonable time prior to the scheduled hearing or appeal. Whenever said request is made, the Institution's Americans with Disabilities Act (ADA) Coordinator shall determine what accommodations, if any, are reasonable pursuant to the procedures set forth in 103 DOC 408.

(b) Placement Reviews.

1. SMI Inmates. An inmate diagnosed with an SMI shall not be held in Restrictive Housing for more than 30 days unless the Placement Review Committee determines that the inmate poses an immediate and present danger to others or the safety of the institution.

Such inmates who are diagnosed with an SMI shall continue to be reviewed by the Placement Review Committee every Monday, Wednesday and Friday. At each Placement Review, the inmate shall be:

- a. provided with 24 hours written notice prior to each Placement Review;
- b. provided with the opportunity to participate in each review in writing;
- c. provided with a written statement as to the evidence relied on and the reasons for the placement decision if no placement change is ordered; and
- d. advised, in writing, as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review if no placement change was ordered.

These requirements apply regardless of the underlying reason for the Restrictive Housing placement (*e.g.*, if an inmate diagnosed with an SMI is awaiting adjudication of disciplinary charges, the aforementioned additional requirements shall be afforded for each Monday, Wednesday and Friday review, not for each 15-day review as would otherwise be required if the inmate were not SMI).

For each Placement Review scheduled to occur every 90 days after placement, the procedures set forth in 103 CMR 423.09(3)(c) shall be followed.

2. Inmates with Safety Needs. Upon verification that an inmate requires separation from general population to protect the inmate from harm by others, the inmate shall not be placed in Restrictive Housing, but shall be placed in a housing unit that provides approximately the same conditions, privileges, amenities and opportunities as in general population; provided, however, that the inmate may be placed in Restrictive Housing for no more than 72 hours while suitable housing is located. Such inmate shall not be held in Restrictive Housing to protect the inmate from harm by others for more than 72 hours unless the Commissioner or a designee certifies in writing:

- a. the reason why the inmate may not be safely held in the general population;
- b. that there is no available placement in a unit comparable to general population;
- c. that efforts are being undertaken to find appropriate housing and the status of the efforts; and
- d. the anticipated time frame for resolution.

A copy of the written certification shall be provided to the inmate.

Such inmates shall be reviewed thereafter by the Placement Review Committee every Monday, Wednesday and Friday. The written certification by the Commissioner or designee, as described in 103 CMR 423.09(3)(b)2.a. through d., shall be completed after each Placement Review.

Except as set forth in 103 CMR 423.09(3)(c), setting forth Placement Reviews that must occur within every 90 days of placement, for each Placement Review the inmate shall be:

- i. provided with 24 hours written notice prior to each Placement Review;
- ii. provided the opportunity to participate in each review in writing;
- iii. provided a written statement as to the evidence relied on and the reasons for the placement decision if no placement change is ordered; and
- iv. advised, in writing, as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review if no placement change was ordered.

Placement Reviews as provided by 103 CMR 423.09(3)(b)2.d.i. through iv. shall not be conducted upon the receipt of a written waiver from the inmate.

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.09: continued

3. Inmates Awaiting Adjudication of Disciplinary Charges. Inmates in Restrictive Housing who are awaiting the adjudication of disciplinary charges shall be reviewed by the Placement Review Committee every Monday, Wednesday and Friday.

Except as set forth in 103 CMR 423.09(3)(c), setting forth Placement Reviews that must occur within every 90 days of placement, for the Placement Reviews held every 15 days, the inmate shall be:

- a. provided with 24 hours written notice prior to the Placement Review;
- b. provided the opportunity to participate in the Placement Review in writing;
- c. provided a written statement as to the evidence relied on and the reasons for the placement decision if no placement change is ordered; and
- d. advised, in writing, as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review if no placement change was ordered.

Placement Reviews as provided by 103 CMR 423.09(3)(b)3.a. through d. shall not be conducted upon the receipt of a written waiver from the inmate.

4. Inmates in Restrictive Housing for Other Reasons. Inmates *e.g.*, pending investigation, pending classification, pending transfer, or refusing housing placement. Inmates in Restrictive Housing for any other reason not set forth in 103 CMR 423.09(2)(a) through (c) shall be reviewed by the Placement Review Committee every Monday, Wednesday and Friday.

In addition, for each 90-day Placement Review, the procedures set forth in 103 CMR 423.09(3)(c) shall be followed.

(c) 90-day Placement Review. Within 90 days of an inmate's initial placement in Restrictive Housing and within every 90 days thereafter, the inmate shall be reviewed as follows by a three person Placement Review Committee, consisting of one member of security staff, one member of the programming staff, and one member of the mental health staff. For such reviews, the inmate shall be:

1. provided with 48 hours written notice prior to the Placement Review;
2. provided the opportunity to participate in the Placement Review in person;
3. provided with a written statement as to the evidence relied on and the reasons for the placement decision if no placement change is ordered; and
4. advised, in writing, as to behavior standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review if no placement change was ordered.

Notice: The Placement Review Committee shall provide the inmate with at least 48 hours advance written notice of the Placement Review. The notice shall state the basis upon which the inmate is housed in Restrictive Housing. The notice shall also state the nature of the threat requiring the Restrictive Housing placement. Notice shall be documented and may be waived by the inmate in writing.

Placement Review: The Placement Review Committee shall conduct a Placement Review. The inmate shall be offered the opportunity to participate in the review in person. The Placement Review shall not be conducted at cell front. The inmate's failure to appear at the scheduled Placement Review shall be deemed a refusal to appear but shall not be held against the inmate. The inmate's refusal to attend the Placement Review shall be documented in IMS.

At the Placement Review, the inmate may offer a verbal and/or written statement and/or submit documentation to contest the rationale for his or her placement in Restrictive Housing. The inmate shall not be entitled to call witnesses or to representation by counsel. At the conclusion of the Placement Review, the Placement Review Committee shall inform the inmate orally of the recommendation as to whether there is a need for the inmate's continued placement in Restrictive Housing.

At any Placement Review conducted 180 days after initial placement, and every 180 days thereafter, the inmate may request that the Placement Review be recorded.

Recommendation: Within two calendar days of the Placement Review, the Placement Review Committee shall enter a recommendation in IMS as to whether the inmate should continue to be housed in Restrictive Housing. A copy of this recommendation shall be served on the inmate. The recommendation shall include, but not be limited to, a description of the underlying basis that led to the Restrictive Housing placement (*e.g.*, pending disciplinary hearing), and a determination whether the inmate's return to general

423.09: continued

population would pose an unacceptable risk to life, property, staff or other inmates, or to the security or orderly running of the institution. Unless an investigation or safety or security concerns could be compromised, the written recommendation shall generally describe the factual basis or bases of the recommendation, including a brief description of any evidence relied upon by the Placement Review Committee. The written recommendation shall also document whether the inmate made or submitted any statement or documents, and, when appropriate, that any such statement and/or documents were considered.

Standards/Goals: Within two calendar days of the Placement Review, the inmate shall also be served with written notice of the behavioral standards and program participation goals that will increase the inmate's chances of a less restrictive placement upon next Placement Review. The written notice shall include a list of the specific programs being recommended for the inmate while in Restrictive Housing at that facility.

Inmate Appeal: If the inmate disagrees with the written recommendation of the Placement Review Committee, the inmate may submit a written appeal within five business days of service of the written recommendation.

Final Decision: Within five calendar days after the close of the appeal period, *i.e.*, the last date upon which the inmate would be entitled to submit an appeal, the Superintendent or designee shall render the final decision in IMS and provide the inmate with such decision in writing. If it is determined that the inmate shall remain in Restrictive Housing, the written decision shall explain the reasons for the inmate's continued placement/status including, but not limited to, a description of the underlying basis that led to the Restrictive Housing placement (*e.g.*, pending disciplinary hearing) and an explanation why the inmate's return to general population would pose an unacceptable risk to life, property, staff or other inmates, or to the security or orderly running of the institution.

Assistance: An inmate, either verbally or in writing, may seek an accommodation pursuant to 103 DOC 408: *Reasonable Accommodations for Inmates*, for the hearing and appeal. It shall be the inmate's responsibility to request such assistance within a reasonable time prior to the scheduled hearing or appeal. Whenever said request is made, the Institution's Americans with Disabilities Act (ADA) Coordinator shall determine what accommodations, if any, are reasonable pursuant to the procedures set forth in 103 DOC 408: *Reasonable Accommodations for Inmates*.

423.10: Calculation of Time in Restrictive Housing

If an inmate on Restrictive Housing status is being held in a Health Services Unit (HSU) or placed on a mental watch, unless medical or mental health staff determine that it is not in the best interests of the inmate, the inmate shall receive Placement Reviews in accordance with 103 CMR 423.09.

If an inmate on Restrictive Housing status is transferred from one facility's Restrictive Housing Unit to another facility's Restrictive Housing Unit, the receiving facility shall schedule the inmate's Placement Review on the basis of the date of initial entrance to Restrictive Housing at the sending facility.

If an inmate is placed on Restrictive Housing status in the inmate's general population housing unit (*i.e.*, in cell confinement) for any reason and then is moved into the Restrictive Housing Unit, the Placement Review shall be scheduled on the basis of the date the inmate was first placed on Restrictive Housing status in the general population unit.

423.11: Placement and Transfer to a Secure Adjustment Unit

Consistent with the safety of all staff and inmates, an inmate may be transferred from Restrictive Housing to outplacement such as a Secure Adjustment Unit, following recommendation from the Placement Review Committee and a determination by the Superintendent or designee that the inmate no longer requires Restrictive Housing but cannot be placed in general population.

An inmate may be placed in a Secure Adjustment Unit for reasons including, but not limited to, when an inmate is:

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.11: continued

- (a) awaiting a hearing for a violation of institution rules or regulations;
- (b) pending investigation of a serious violation of institution rules or regulations;
- (c) pending investigation for disciplinary offenses or criminal acts that may have occurred while incarcerated;
- (d) pending transfer;
- (e) pending classification.

To initiate the temporary placement of an inmate from Restrictive Housing to a Secure Adjustment Unit, the Superintendent or designee shall submit a completed Secure Adjustment Unit transfer request form to the Classification Division. The Classification Division shall then identify a bed in an appropriate Secure Adjustment Unit and effect such transfer.

423.12: Medical and Mental Health Services

Each inmate in Restrictive Housing shall be visited daily by a member of the medical staff (unless medical attention is needed more frequently) to ensure his or her health and well-being are maintained. These visits shall be in addition to dispensing medication, shall be announced, and shall be documented in IMS. Documentation shall be separate from a medication log and shall include that an announcement has been made. Additional documentation by medical staff shall be entered in the IMS Restrictive Housing Inmate Daily Log screen. Mental health reviews, rounds and services shall be provided in accordance with 103 DOC 650: *Mental Health Services*.

A Qualified Mental Health Professional shall make rounds in every Restrictive Housing unit and may conduct an out-of-cell meeting with an inmate for whom a confidential meeting is warranted in the clinician's professional judgment. Inmates shall be evaluated by a Qualified Mental Health Professional in accordance with clinical standards adopted by the Department of Correction and the Qualified Mental Health Professional's clinical judgment to determine whether the inmate has a serious mental illness (SMI) or Restrictive Housing is otherwise contraindicated.

An inmate diagnosed with an SMI who is held in Restrictive Housing shall be offered additional mental health treatment in accordance with clinical standards set forth in 103 DOC 650: *Mental Health Services*.

If an inmate diagnosed with an SMI remains in Restrictive Housing for more than 30 days, mental health staff shall develop an individualized treatment plan that includes weekly monitoring by mental health staff, treatment as necessary, and steps to facilitate the transition of the inmate back to general population.

423.13: Conditions of Restrictive Housing

Each superintendent shall ensure each Restrictive Housing Unit provides for security, safety and orderly operation.

Inmates in Restrictive Housing shall be provided with the following:

- (a) meals that meet the same standards established by the Commissioner for general population inmates;
- (b) access to showers and shaving not less than three days per week;
- (c) issuance of an allowed exchange of clothing, bedding, and linen, and provided laundry, barbering, and hair care services on the same basis as general population;
- (d) the same opportunities for writing and receipt of letters as is available to the general population;
- (e) access to legal materials and legal reference material;
- (f) rights of visitation and communication by those properly authorized; provided, however, that the authorization may be diminished for the enforcement of discipline for a period not to exceed 15 days for each offense;
- (g) access to reading and writing materials and the opportunity to borrow reading materials from the institution library unless clinically contraindicated;
- (h) access to either a radio or television, the choice of which will be in the Department's sole discretion, if confinement exceeds 30 days;
- (i) periodic mental and psychiatric examinations under the supervision of the Department of Mental Health;
- (j) medical and psychiatric treatment as clinically indicated under the supervision of the Department of Mental Health;

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.13: continued

- (k) access to canteen purchases and privileges to retain property in a cell as provided by 103 CMR 403.00: *Inmate Property*, however, such access and privileges may be diminished for the enforcement of discipline for a period not to exceed 15 days for each offense or where inconsistent with the security of the unit;
- (l) one hour of exercise per day outside their cells, five days per week, unless security or safety considerations dictate otherwise. Additional out-of-cell time shall be provided as required by 103 DOC 650: *Mental Health Services*;
- (m) telephone privileges in accordance with 103 CMR 482.00: *Telephone Access and Use*. Superintendents may set limits on the permitted number of telephone calls; and
- (n) the same access to disability accommodations as inmates in general population, except where inconsistent with the security of the unit.

Subject to any disciplinary sanctions imposed in accordance with 103 CMR 430.00: *Inmate Discipline*, upon initial entry to Restrictive Housing, inmates who possess such will be permitted to retain their personal tablets. Upon request, after initial entry to Restrictive Housing, and subject to disciplinary sanctions imposed in accordance with 103 CMR 430.00, inmates who do not possess personal tablets will be provided with radios and headphones to use while in Restrictive Housing.

Notwithstanding the provisions of 103 CMR 423.13, the Superintendent may further limit the amount of property and issue scrubs in *lieu* of such clothing for security purposes if there is imminent danger that an inmate or inmates will destroy an item, or induce injury to self or others.

Inmates held in Restrictive Housing for a period of more than 30 days shall have access to vocational, educational and rehabilitative programs to the maximum extent possible consistent with the safety and security of the unit and shall receive good time for participation at the same rates as the general population. In addition, step down programs shall also be offered to facilitate the gradual reintegration of the inmate into general population or the community.

Any inmate who has fewer than 180 days until the inmate's mandatory release date or parole release date and is held in Restrictive Housing shall be offered reentry programming that shall include, but not be limited to, substantial resocialization programming in a group setting, regular mental health counseling to assist with the transition, housing assistance, assistance obtaining state and federal benefits, employment readiness training and programming designed to help the person rebuild interpersonal relationships, which may include, but not be limited to, anger management and parenting courses and other reentry planning services offered to inmates in a general population setting.

423.14: Maximization of Out-of-cell Activities and Programs

To maximize out-of-cell activities, the Superintendent or designee at each facility with a Restrictive Housing Unit shall assess whether, and to what extent, out-of-cell activities over and above five hours per week of out-of-cell recreation time (*i.e.*, one hour per day, five days a week) per inmate are consistent with the safety and security of all staff and inmates in that Restrictive Housing Unit. Such additional out-of-cell activities may include, but not be limited to, additional recreation periods, longer recreational periods, or programming.

In assessing whether additional out-of-cell activities or programs can safely be offered, the Superintendent or designee shall consider any factors deemed pertinent to such assessment, including but not limited to, the number of inmates in the Restrictive Housing Unit, the number of available correction officers, the number of available program staff, the availability of physical space in the Unit, the nature of the threat posed by particular inmates, and/or the climate of the Restrictive Housing Unit.

423.15: Records and Staffing

- (1) Records. All activities and events governed by 103 CMR 423.00 shall be documented in IMS including, but not limited to: admissions and releases; unit visitors; unusual events; inmates' opportunities for showering; out of cell exercise; telephone access; reviews conducted pursuant to 103 CMR 423.09 and 423.10; and deprivation of any usually authorized items or privileges of an inmate. In the latter mentioned instance, any such deprivation of a usual item or activity shall require that a report be filled out and sent to the Director of Security or designee and to the inmate's case folder.

Exhibit H
103 CMR: DEPARTMENT OF CORRECTION

423.15: continued

The Restrictive Housing Unit correctional program officer shall maintain Placement Review records.

(2) Restrictive Housing Unit Staff Qualifications and Training. All correction officers, supervisors and managers assigned to Restrictive Housing shall be trained in accordance with standards adopted by the Commissioner in consultation with the sheriffs and the Department of Mental Health and shall comport with the requirements set forth in 103 DOC 216: *Training and Staff Development*.

Training should include, but not be limited to, suicide prevention, trauma informed care, crisis intervention, de-escalation, signs and symptoms of mental illness, co-occurring disorders, emergency response, code 99, fire exits, restraints, IMS entries, counts, showers, medication, recreation, phones, rounds, pyramid of force, unit structure/operations, post orders, and interpersonal communications.

423.16: Responsible Staff

The Deputy Commissioner, Prison Division shall be responsible for implementation of 103 CMR 423.16 and for the review of all institutional procedures.

Each superintendent shall ensure that institutional practices conform to these directives.

423.17: Exigent Circumstances

In any instance in which an act or action required by 103 CMR 423.00 cannot or does not occur for reason of Exigent Circumstances, notification shall be made to the Deputy Commissioner, Prison Division. Where practicable, notification shall be made prior to the time mandated for the occurrence of such act or action. In such instance, responsible staff shall attempt to resolve the Exigent Circumstances as soon as possible, and the act or action shall be performed as soon as possible after the Exigent Circumstances cease to exist.

423.18: Review Date

103 CMR 423.00 shall be reviewed at least annually by the Commissioner or a designee. The person or persons conducting the review shall issue a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

423.19: Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 423.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 423.00.

REGULATORY AUTHORITY

103 CMR 423.00: M.G.L. c. 124, §§ 1(c) and (q); M.G.L. c. 127, §§ 39, 39A, 39B, 39C, 39E, 39F and 39H.

ANNOUNCEMENT FOR ATTORNEYS

The Department of Correction (DOC) is taking the following measures to ensure attorney/client communication with inmates in DOC custody during the pandemic. **These measures are for contacting inmates housed in DOC facilities only; attorneys contacting inmates housed in jails and houses of correction must contact that facility or the respective Sheriff's Office.**

The first measure is to establish a standard and centralized process so attorneys can change their telephone numbers on the PIN list of inmates in DOC custody during the pandemic. Attorneys requesting to change their telephone numbers must call DOC's Office of Investigative Services (OIS) at **508-958-3668**, which will be staffed on Mondays through Fridays from 8:00 a.m. to 3:00 p.m. Attorneys should provide their old telephone number, the new telephone number, and the name(s), DOC commitment number(s), and current housing facility (facilities) of their clients. The contact person in OIS for this process is Officer Thomas Perry. OIS staff will make the requested changes and notify the facility, who will then notify the inmate.

If, after completing this process, there are any difficulties with the change in number, attorneys should contact Assistant Deputy Commissioner Pat DePalo at: Patrick.Depalo@MassMail.State.MA.US.

Attorneys are strongly encouraged to use this process, as contacting the housing facility directly will likely result in a delay in getting the telephone number changed.

The second measure is designed to ensure that attorneys can contact their clients housed in DOC facilities to arrange for a call with their new or existing client within 24 hours. Attorneys are strongly encouraged to use the following process:

- 1) The attorney will call the facility (Point of Contact and number are provided below for each facility) Monday through Friday from 9:00 a.m. to 5:00 p.m. After 5:00 p.m. on weekdays and weekends, attorneys will call the same line and ask for the Shift Commander.
- 2) The inmate will be given the message they need to call their attorney within a 24 hour period.
- 3) The inmate will be allowed access to the unit phone to call.
- 4) Any updates or changes to the attorney's numbers will be addressed by OIS using the procedure above, so the most accurate number will be in the Inmate Calling System for the attorney to receive the call.

For federal detainees held at MCI-Cedar Junction, the following process is to be used:

- 1) Vanessa Rideout is assigned to the Federal Unit as the Correctional Program Officer.
- 2) Attorneys for federal detainees can contact CPO Rideout from 8:30am - 3:00 PM Monday through Friday by telephone at 508-660-3000 ext. 106, or by email at Vanessa.Rideout@doc.state.ma.us.
- 3) CPO Rideout will coordinate with the attorney the date and time for the telephone call to be placed to the attorney from the detainee at MCI-Cedar Junction.

Exhibit I

Facility	Point of Contact #	Off Hours Number (Ask for Shift Commander)
Boston Pre-Release	617-822-5000 x 6125	617-822-5000 x 6135/6100
Lemuel Shattuck Hospital	508-889-2742	617-971-3384
MCI-Cedar Junction	508-660-8000 x 111	508-660-8000 x 201
MCI-Norfolk	508-660-5900 x 424	508-660-5900 x 477
Pondville Corr. Ctr.	508-660-3924 x 303	508-660-3924 x 311
Old Colony Corr. Ctr.	508-279-6836	508-279-6836
Mass. Treatment Ctr.	508-279-8150	508-279-8301
MCI-Concord	978-405-6100 x 418	978-405-6100
MCI-Shirley	978-425-4341 x 4122	978-425-4341
MCI-Framingham	508-532-5100 x 322	508-532-5100 x 396
NCCI-Gardner	978-630-6000 x 100	978-630-6000
North Eastern Corr. Ctr.	978-371-7941 x 1209	978-371-7941
South Middlesex Corr.Ctr.	508-875-2887 x 4100	508-875-2887 x 4100
Souza Baranowski Corr.Ctr.	978-514-6500 x 6103	978-514-6500

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

CARL LAROCQUE, ROBERT SILVA-)
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)
)
Plaintiffs,)
v.)
)
THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)

AFFIDAVIT OF JESSICA LACLAIR

I, Jessica LaClair, state the following to the best of my information and belief.

1. I am an attorney licensed to practice in Massachusetts with an office mailing address of P.O. Box 1215, Northampton, MA 01061.
2. On February 4, 2020, I was appointed by the Committee for Public Counsel Services to represent Mr. Troy Harrigan in post-conviction proceedings.
3. On Friday, August 7, 2020, and following the protocol promulgated by the Department of Corrections for arranging an attorney-client phone call, I called Souza-Baranowski Correctional Center at 9:15 a.m. to request an attorney-client call with Mr. Harrigan.

Exhibit J

4. There was no answer at the extension designated for arranging attorney-client calls, so I left a message stating my name, phone number, my client's name and W number, and requesting an attorney-client call with Mr. Harrigan within 24-hours.
5. I did not receive a call from Mr. Harrigan during the next 24 hours.
6. The protocol promulgated by the Department of Correction for arranging an attorney-client call outside business hours is to call the same point of contact number and extension, and request to speak to the shift-commander.
7. On Saturday, August 8, 2020, at 10:01 a.m., I called Souza-Baranowski again to arrange a phone call, using the same protocol. There was again no answer at the extension designated for arranging phone calls. I left a message requesting a phone call with Mr. Harrigan within 24-hours.
8. Because there had been no answer at the number and extension, I immediately called back in the hope of being connected to a live person so I could speak to the shift commander to arrange an attorney-client call.
9. Upon calling back, I listened to a pre-recorded message which stated that all inmate visits had been suspended, that the suspension did not apply to attorney visits (among others), and that "If you know your party's extension you may enter it now."
10. This pre-recorded message played in a continuous loop and did not provide instructions for having the call routed to a particular department in the facility, nor provide access to a menu of options for being routed to any particular department at the facility.
11. When the pre-recorded message indicated that I could dial an extension, I dialed "0" in the hope of connecting to a live person who could route my call to a shift commander.

Exhibit J

12. When I dialed “0”, the call was not routed to a new menu of options nor connected to an operator; instead, the same pre-recorded message played again. When I dialed “0” again, the call was automatically disconnected.

13. I immediately called the facility back and the same thing occurred – I was unable to access a menu of options for connecting to any department in the facility and I was unable to reach a live person.

14. I did not receive a phone call from Mr. Harrigan during the next 48 hours.

15. On Monday, August 10, 2020, at 11:33 a.m., I received a call from “Vicky Pineda” (I am unsure if I heard correctly) at Souza-Baranowski Correctional Center. She advised me that she had received my message requesting an attorney-client call and explained that the protocol for arranging a call outside business hours was to contact the shift-commander. I told Vicky that I had tried to reach the shift-commander when I called on Saturday, but had been unable to reach a live person. She told me that if I dialed extension “0” while listening to the facility’s pre-recorded message, the call should be routed to a live person who could transfer me to the appropriate person. I explained that this had not worked for me.

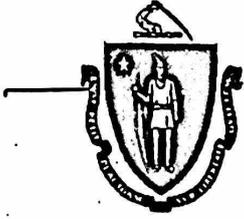
16. Vicky told me she would try to arrange for Mr. Harrigan to call me that day between the hours of 1 p.m. and 4 p.m.

17. Later that day, at 3:40 p.m. I received a call from Mr. Harrigan.

Signed under the pains and penalties of perjury this 12th day of August, 2020.

/s/ Jessica LaClair

Jessica LaClair
BBO#675350



*The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Correction
Souza-Baranowski Correctional Center
P.O. Box 8000
Shirley, Massachusetts 01464*



Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Thomas A. Turco III
Secretary

Office #(978) 514-6500
Fax #(978) 514-6529
www.mass.gov/doc

Carol A. Mici
Commissioner

John A. O'Malley
Chief of Staff

Christopher M. Fallon
Jennifer A. Gaffney
Michael G. Grant
Paul J. Henderson
Thomas J. Preston
Deputy Commissioners

Steven P. Kenneway
Superintendent

TO: All Inmates

FROM: Ronald Gardner, Director of Security

RE: North-Side Tier and Recreation Schedule

DATE: February 13, 2020

Please be advised that effective Thursday, February 13, 2020 Inmates placed in Housing Units on the Northside of Souza-Baranowski Correctional Center (L1, L2, M2, N1, N2, P1, P2) will be permitted tier and recreation access based on the following:

- Up to 6 inmates will be permitted on the recreation deck at a time.
- Up to 6 inmates will be permitted on the tier at a time.
- When a scheduled recreation period has ended, all inmates will be secured in their assigned cells and the rotation will switch. For example inmates on the recreation decks will then be afforded the opportunity for tier time and inmates on the tier will be offered the opportunity to transition to the recreation deck.
- Below are the approximate tier and recreation times, these times are subject to changes based on institutional need:

8:30AM-9:45AM

9:45AM-10:45AM

12:30PM-1:45PM

1:45PM-2:45PM

2:45PM-4:00PM

5:30PM-6:30PM

6:30PM-7:45PM

7:45PM-8:45PM

- The rotating schedule for your designated times will be posted on the unit bulletin boards monthly; please see attached for the month of February.

cc: Steven Kenneway, Superintendent
Dean Gray, Deputy Superintendent
James Mitchell, Deputy Superintendent

updated: 2/13/20

February 2020

January							February						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
			1	2	3	4	1	2	3	4	5	6	7
5	6	7	8	9	10	11	8	9	10	11	12	13	14
12	13	14	15	16	17	18	15	16	17	18	19	20	21
19	20	21	22	23	24	25	22	23	24	25	26	27	28
26	27	28	29	30	31		29	30	31				

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1 AM: 1-16 PM: 17-32
2	3	4	5	6	7	8
9	10	11	12	13	14 AM: 17-32 PM: 1-16	15 AM: 1-16 PM: 17-32
16 AM: 32-17 PM: 16-1	17 AM: 16-1 PM: 32-17	18 AM: 17-32 PM: 1-16	19 AM: 1-16 PM: 17-32	20 AM: 32-17 PM: 16-1	21 AM: 16-1 PM: 32-17	22 AM: 17-32 PM: 1-16
23 AM: 1-16 PM: 17-32	24 AM: 32-17 PM: 16-1	25 AM: 16-1 PM: 32-17	26 AM: 17-32 PM: 1-16	27 AM: 1-16 PM: 17-32	28 AM: 32-17 PM: 16-1	29 AM: 16-1 PM: 32-17
		Notes				

March 2020

S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7	8	9	10	11	12	13	14
15	16	17	18	19	20	21	22	23	24	25	26	27	28
29	30	31											

Sunday		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday	
1 AM: 17-32 PM: 1-16	2 AM: 1-16 PM: 17-32	3 AM: 32-17 PM: 16-1	4 AM: 16-1 PM: 32-17	5 AM: 17-32 PM: 1-16	6 AM: 1-16 PM: 17-32	7 AM: 32-17 PM: 16-1	8 Daylight Saving AM: 16-1 PM: 32-17	9 AM: 17-32 PM: 1-16	10 AM: 1-16 PM: 17-32	11 AM: 32-17 PM: 16-1	12 AM: 16-1 PM: 32-17	13 AM: 17-32 PM: 1-16	14 AM: 1-16 PM: 17-32
15 AM: 32-17 PM: 16-1	16 AM: 16-1 PM: 32-17	17 St. Patrick's Day AM: 17-32 PM: 1-16	18 AM: 1-16 PM: 17-32	19 AM: 32-17 PM: 16-1	20 AM: 16-1 PM: 32-17	21 AM: 17-32 PM: 1-16	22 AM: 1-16 PM: 17-32	23 AM: 32-17 PM: 16-1	24 AM: 16-1 PM: 32-17	25 AM: 17-32 PM: 1-16	26 AM: 1-16 PM: 17-32	27 AM: 32-17 PM: 16-1	28 AM: 16-1 PM: 32-17
29 AM: 17-32 PM: 1-16	30 AM: 1-16 PM: 17-32	31 AM: 32-17 PM: 16-1											
Notes													

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
DOCKET NO. 2084CV00295

CARL LAROCQUE, ROBERT SILVA-)
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)
)
Plaintiffs,)
v.)
)
THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)

AFFIDAVIT OF MARGARET CURRAN

I, Margaret Curran, state the following to the best of my information and belief.

1. I am an office manager, currently working at The Law Offices of Rosemary C. Scapicchio. The Law Offices of Rosemary Scapicchio does not represent Wilfredo Duran on this civil complaint.
2. On August 11, 2020, I spoke with Wilfredo Duran about his affidavit and made changes as he requested.
3. I read his affidavit to him word for word and affixed his signature electronically to his affidavit after confirming it was accurate and he wanted to sign.

Exhibit L

Signed under the pains and penalties of perjury this 11th day of August, 2020.

/s/ Margaret Curran
Margaret Curran

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
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CARL LAROCQUE, ROBERT SILVA-
PRENTICE, TAMIK KIRKLAND,)
MASSACHUSETTS ASSOCIATION)
OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)
)
Plaintiffs,)
v.)
)
THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)
)
)

AFFIDAVIT OF WILLIAM BOYD

I, William Boyd, state the following to the best of my information and belief.

1. I am currently incarcerated at Souza-Baranowski Correctional Center.
2. I am being held on the north side. Prior to January 21, 2020, I was on the south side.
3. When I was moved in January, my legal paperwork was taken and it is still all missing. It is not in legal storage. My missing documents include my trial transcripts, briefs, police reports, and letters from my attorney.

Exhibit M

4. Previously, to make an attorney call, I could ask the sergeant to make a call at certain times.

Now I have to wait until rec time, and I might not have rec time during the day.

5. As a result of the COVID-19 pandemic, this affidavit was read to me over the phone by my attorney and I assent to having my signature affixed below.

Signed under the pains and penalties of perjury this 11th day of August, 2020.

/s/ William Boyd

Signed with approval

/s/ Inna Landsman, BBO 640142

William Boyd

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPT.
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CARL LAROCQUE, ROBERT SILVA-)
PRENTICE, TAMIK KIRKLAND,)
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OF CRIMINAL DEFENSE LAWYERS,)
and COMMITTEE for PUBLIC)
COUNSEL SERVICES,)
)
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v.)
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THOMAS TURCO, Secretary of the)
Executive Office of Public Safety and)
Security; CAROL A. MICI,)
Commissioner of the Massachusetts)
Department of Correction; and STEVEN)
KENNEWAY, Superintendent of Souza-)
Baranowski Correctional Center;)
)
Defendants.)
)

AFFIDAVIT OF JUDE DESPAGE

I, Jude Despage, state the following to the best of my information and belief.

1. I am currently incarcerated at Souza-Baranowski Correctional Center (SBCC).
2. I am being held on the north side.
3. In January 2020, all of my legal paperwork was taken, including all of my grand jury minutes and the transcripts from my case, and it has still not been returned.
4. I have recently been in the Restricted Housing Unit (RHU). While in the RHU, I was limited in the number of phone calls I could make a week, and attorney phone calls are not

exempted from this limit. No one in the RHU is permitted to have contact attorney visits.

All attorney visits are non-contact.

5. As a result of the COVID-19 pandemic, this affidavit was read to me over the phone by my attorney and I assent to having my signature affixed below.

Signed under the pains and penalties of perjury this 13th day of August, 2020.

/s/ Jude Despage
Jude Despage

By his attorney

/s/ Eric Tennen
Eric Tennen BBO 650542