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UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

☒ FILED ☐ LODGED

Apr 27 2020

CLERK U.S. DISTRICT COURT
 DISTRICT OF ARIZONA

Victor Antonio Parsons, et al.,

Plaintiffs,

v.

Charles L. Ryan, et al.,

Defendants.

No. CV-12-0601-PHX-DKD

CV-12-00601-PHX-ROS

*Plaintiffs Motion For Injunction
 Covid-19 Preventative Measures
 (Expedited Ruling Requested)*

*Plaintiff requests this Court grant an Injunction for ADC to
 impliment preventative measures against the spread of the Covid-19
 virus in ADC Prisons in order to prevent violations of Plaintiffs
 1st Amendment right to Petition the government for redress of
 grievances; 14th Amendment right to equal protection of the law; and
 Access to the courts under the 8th Amendment right to be free from
 Cruel and Unusual Punishment.*

*In Helling v. McKinney, 509 U.S. 25, 35, 113 S. Ct. 2475 (1993)
 the Supreme Court stated that "Eighth Amendment bars exposure, with
 deliberate indifference, to conditions "that pose an unreasonable
 risk of serious damage to [the plaintiffs'] future health." This Court
 has already made orders concerning Covid-19 (Fuqua v. Ryan, CV-15-0286
 Docs #139 and #141)
 see also (Martinez v. Ryan, No. CV-19-04449-PHX-DLR (Docs #76 and
 #78)) due to Defendants, in both cases, motions. Covid-19 is a serious
 danger to Plaintiffs future health as stated in Helling (id) that will
 prevent him from litigating this case, which will violate his 1st
 Amendment right to Petition the Court for Redress of Grievances,
 14th Amendment Right to Equal Protection and Access to Courts if ADC's
 refusal to take preventative measure to prevent to spread of
 Covid-19 in ADC prisons, and 8th Amend. Cruel and Unusual Punishment.*

A. The Plaintiff is Threatened with Inseparable Harm

For months, Directors Shinn Ordered ADC employees and

Contractors not to wear Personal Protective Equipment (PPE) as it

would 'scare the inmate population' (see ABC 15 news reports) when

it is the exact opposite that is true. Not wearing PPE, in light of the

Covid-19 pandemic is scaring the inmate population (P50F at 1).

Furthermore, Correctional Officers have been making "jokes" about

infecting the inmate population purposely, coughing at inmates

and their food (P50F at 2), not changing gloves, not changing clothing

upon entrance to the facility, not sterilizing handcuffs and phones

between inmate contact and legal library cells, not utilizing pre-

packaged food that can be heated and wiped down prior to eat

delivery, and not supplying ADC employees and inmates with PPE or

allocating home-made PPE to be worn. (P50F at 3)

The CDC has recently (4/3/20) recommended home-made

PPE to the civilian population. Estelle v. Gumble, 429 U.S. 97, 105,

97, S.Ct. 285 (1976) (noting that "intentionally interfering with treat-

ment once prescribed" is a form of unlawful deliberate indifference)

It was also noted by ABC 15 news that over half of the ADC

inmate population has underlying conditions that put them at more

risk of serious issues if Covid-19 breaks out in ADC prisons. (P50F at 4)

As a matter of law, the continuing deprivation of constitutional

rights constitutes irreparable harm. Elrod v. Burns, 427 U.S. 373,

96 S.Ct. 2673 (1976); American Trucking Association, Inc. v. City of Los

Angeles, 559 F.3d 1046, 1058-59 (9th Cir. 2009). This principle has been

applied in prison litigation generally, see Jolly v. Coughlin, 76 F.3d 468,

482 (2nd Cir. 1996); *Newsom v. Morris*, 888 F.2d 371, 378 (6th Cir. 1989).

Mitchell v. Cuomo, 748 F.2d 804, 806 (2nd Cir. 1984); McClendon v. City of Albuquerque, 272 F.Supp. 2d 1250, 1259 (D.N.M. 2003), and specifically in prison medical care cases. Phillips v. Mich. Dept of Corrections, 731 F.Supp. 792, 801 (W.D. Mich. 1990), aff'd, 932 F.3d 969 (6th Cir. 1991).

B. The Balance of Harshships Favors the Plaintiff

In deciding whether to grant injunctions, courts ask whether the suffering of the moving party, if the motion is denied, will outweigh the suffering of the non-moving party if the motion is granted. See e.g., Mitchell v. Cuomo, 748 F.2d 804, 808 (2nd Cir. 1984) (holding that dangers posed by prison crowding outweighed state's financial and administrative concerns); Rubin v. Araya, 642 F.Supp. 510, 527 (D.N.M. 1986) (holding that prisoners' interest in safety and medical care outweighed state's interest in saving money by cutting staff).

In this case, it is nothing but insane for all parties involved and the public interest, financial benefits and health benefits to prisoners, ADC employees and their families, not to require PPE to be worn by all ADC employees, not to require sanitation of handcuts, meal trays, CO. Clothing prior to unit/Facility entrance, sanitation of legal library cells, etc... Prisoners can not practice Social Distancing. In Max units, CDUs and Transferees, it is ADC Policy to have the CA have their "hands-on" the inmates at all times not secured. If Plaintiff catches Covid-19 he will not be able to litigate this case or his Criminal Appeals in the State Courts.

C. The Plaintiff is Likely to Succeed on the Merits

The plaintiff has a great likelihood of success on the merits.

What ADC is doing, showing deliberate indifference to the Covid-19 pandemic and its future risks to plaintiff by not requiring ADC

employees to take preventative measures once recommended by the CDC was specifically singled out by the Supreme Court as an example of unconstitutional behavior of "deliberate indifference" to prisoners' medical needs. Estelle v. Gamble, 429 U.S. 97, 105, 97 S.Ct. 285 (1976).

It should be noted that Plaintiff is not sentenced to the Death Penalty and that ADC has suspended all visits and any inmate who goes to "off-facility medical or court" will be quarantined for 21 days, so my outbreak of Covid-19 will be due to ADC employee contamination due to direct contact, cross-contamination, or deliberate infection.

It is well documented that ADC employees are willing to go to extreme lengths to not provide proper medical care to ADC inmates (Parsons v. Ryan, CV-12-0601 (Dist. of Az) orders holding ADC Director in Contempt of Court) and their willingness to misuse funds (Ex 4) and their attempt to cover up these issues with misdirection, excuses, and out-right perjury.

D. The Relief Sought Will Serve the Public Interest

In this case, the injunction sought, if granted, will serve the public interest because, ¹ it is always in the public interest for prison officials to obey the law, especially the Constitution, Phelps v. Hooper v. Nixon, 545 F.3d 685, 690 (8th Cir. 2008); Duran v. Annaya, 642 F.Supp. 510, 527 (D.N.M. 1986) ("Respect for law, particularly by officials responsible for the administration of the State's correctional system, is in itself a matter of the highest public interest."); Llewellyn v. Oakland County Prosecutor's Office, 402 F.Supp. 1379, 2393 (E.D. Mich. 1975) (stating that "the Constitution is the ultimate expression of the public interest."); ² The Covid-19 pandemic, when it breaks-out in prison, will cost the public a lot of money compared to the requested preventative measures.

These costs include isolation areas, medical personnel, treatments for the infected, ADC staff overtime (and private contractors) as well as future litigation costs and damages if ADC continues to refuse to protect its inmates and there are sick inmates and deaths; 3) It is also in the public interest for ADC employees (and their children) not to pass Covid-19 from one to another. There is no "Social Distancing" in prison for inmates or employees. ADC employees and contractors live in all different areas of Arizona (and Mexico). For instance, we have C.O.'s that work in Lewis Complex from Florence, Scottsdale, Tucson, Phoenix, Mexico, Litchfield Park, etc., and C.O.'s who do overtime from as far away as Yuma Prison Complex, routinely. Any Covid-19 contamination here, starts a new outbreak in the community. If a Yuma ADC employee comes to work at Lewis Complex and catches Covid-19 from a Phoenix address employee, there is a transfer from Phoenix to Yuma (where there are few cases so far) via Lewis Prison Complex.

Plaintiff requests this Court to grant the following Preventative Measures (PM):

PM#1: Require All ADC employees and contractors to wear PPE while on State Facility property;

PM#2: Require All ADC employees to change into newly washed clothing when entering ADC facilities and transferring from Unit to Unit;

PM#3 Requiring ADC to release all inmates sentenced to a Non-Dangerous (ND) felony by the Court;

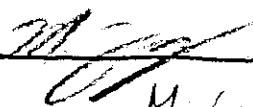
PM#3 Requiring ADC to sterilize handcuffs, phones, and general use areas between each inmate usage;

PM#4 Requiring ADC to utilize pre-packaged food.

PM#5 Requiring ADC supply ADC employees and inmates with face masks, or bandannas if masks are unavailable, to protect others and themselves.

Furthermore, Plaintiff is aware that this issue has been brought before Judge Rosylin Silver. However, plaintiff has no way to ascertain which court, the case name or number, etc. As plaintiff only saw Judge Silver's name and quote from a ruling she issued on AN ADC Covid-19 issue on ABC 15 News. Plaintiff request this motion be filed in that case as well

Submitted this 27th day of April 2020 for E-Filing



MICHAEL FURQUA
Plaintiff, Pro Se



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CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONAUNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

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No. CV-12-00601-PHX

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Plaintiffs Statement of Facts in Support
of Motion For Injunction - Covid-19
With Exhibits 1-4

Plaintiff provided the following Statement of Facts in Support of his Motion For Injunction - Covid-19 Preventative Measures.

PSOF #1. The ADC inmate population wants ADC employees to wear Personal Protective Equipment (PPE) including facemasks. We are worried about catching Covid-19 from ADC Employees. (Ex 1 at 1, Ex 2 at 1-5, Ex 3 at 1, 5-6)

PSOF #2. There have been numerous incidents of ADC employees terrorizing inmates by not wearing PPE and coughing at them or their food trays as a "joke". (Ex 1 at 2, Ex 2 at 7)

PSOF #3. ADC inmates have consistently requested ADC implement mandatory preventative measures to prevent the Covid-19 outbreak in ADC Facilities, including glove changing; clothes changing upon entrance to each unit; hand cuff sterilization between each inmate use and phones and general areas such as legal library cells; using prepackaged food; supplying ADC employees with PPE and Inmates as well. To date, inmates are not allowed to even wear their own home-made face masks (Ex. 1 at 3, Ex 2 at 4, Ex 3 at 1, 4-5)

PSOF #4 About half of the ADC inmate population have underlying conditions that make them more vulnerable to a serious

Covid-19 infection. (Ex 2 at 8; Ex 3 at 6).

Submitted this 27th day of April, 2020 By E-Filing



Michael Fuqua

Plaintiff, Pro Se

Ex 1

Declaration of Michael Fuqua

Michael Fuqua, ADC # 215717, hereby declares the following under penalty of perjury.

1. I personally want ADC employees to wear PPE. ADC has shut down all inmate visitation and any inmate who goes to court or "outside" medical is quarantined for 21 days. Every inmate I've spoken to realizes that the only way Covid-19 comes into ADC facilities is through its employees and I want ADC employees to wear PPE all of the time and implement mandatory preventative measures listed in this motion, and I am worried that ADC employees are not.
2. I have personally seen Correctional Officers cough at inmates and their food trays.
3. I have personally asked for, and heard a lot of other inmates ask, that ADC make the requested P.M.s in this motion mandatory.

Declarant with further thought. 4/12/20


Michael Fuqua
1/1

Ex 2

United States District Court
District of Arizona, Maricopa County

Declaration of Alfredo
B. Martinez # 241374

I, Alfredo B. Martinez write This Declaration in Support of the Injunctive Relief Motion, For Covid-19 Preventative Measures. This Declaration Should have the Attention of the Arizona Court System in a manner and effort for equal protection, Right to be free from cruel and unusual punishment, And to Preserve Individuals State of health.

On April 7, 2020 ADCRR Confirmed Two inmates Contracted the Covid-19 Virus within the inmate Population. That Same Day (April 7) ADCRR handed out Face mask to All ADCRR Admin., officers, Trinity

Kitchen Supervisors (White Shirts), and Librarians, but Leaving it to the Description of that individual to wear that mask or not. Inmates fear that AOCRR staff and employees not wearing their face mask authorized to them will in effect rapidly spread the COVID-19 virus within the inmate population, the officers, and thus furthermore back into the community a large across all Arizona cities AOCRR officers reside in. As of 4/19/20 25 confirmed COVID-19 Inmate cases.

2) I was sentenced to 7 years (6 months of a prison term, not death. If these preventative measures are not implemented soon, there will no doubt be a wide spread COVID-19 pandemic in the prison system. This COVID-19 virus attacks the respiratory system, and as I have documented medical condition of Asthma, and the lack of proper medical care compared to the public, if I were to contract COVID-19 within the prison system I would not be sent to a hospital, but instead to Morey unit at Lewis Complex which is quarantine for the inmate population and lacks the ventilator that someone with my condition would need due to the complications of the COVID-19 virus.

3) Hand Soap is handed out upon request, and only when available (one every two weeks) and one deep cleaning day per week, per POD of 25-50 inmates

utilizing the 4 showers on a daily basis. The Nominal Cost of Sanitation Chemicals Should not outweigh the health And Safety of the inmate Population.

4) Inmates Are Prohibited And denied to act on their own behalf, and wear a cloth mask, to be in compliance with the CDC guidelines And recommendations, And furthermore it is impossible for the inmate population as a whole, on any complex, any unit to practice social distancing because the prison unit layout And foundation was built to compact a high ratio of inmates within a small confined Area.

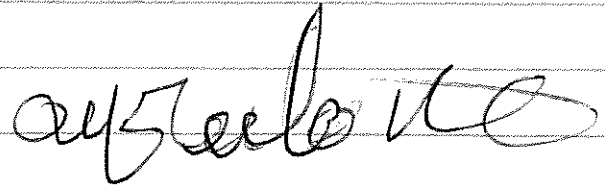
5) Without mandating a strict order of preventative Covid-19 measures, The ADC Department would And will continue to have the minimal effort put forth of preventative measures of spreading or containing the Covid-19 virus. These measures are viable to the inmates who are confined in the state prison system, it's employees entirely, And their family who they go home to after their shift.

6) Alfredo B. Martinez's Declaration calls for the Court's Attention And oversight of preventative measures of Covid-19 virus in the Arizona State Prison complex. This is a matter of urgency and necessity.

7) The ADC officers Do not Take The health and Safety of The inmate Population Seriously in regards to The Covid-19 Virus, often in A Joking Manner Coughing in front of inmates, by our food Trays, not Changing their gloves When Touching multiple Surfaces, And with Their "Hands on" Inmate Policy AT RAST MAX unit effectively Create A breeding and contamination zone TO spread The Covid-19 Virus.

8) Nearly 40% of The inmate Population has Documented underline illnesses, medical conditions Such As Asthma, Diabetes, hep c, H.I.V, Aids, Serious heart conditions And so forth. This is A fragile Percentage of The inmate Population And As CDC guidelines And Recommendations An individual in These categories Should Take extra precautionaries in protecting themselves Against This Covid-19 Virus. Thus if ADCRR is not Providing These health And Safety guidelines within the ADC State prison system, than They are in Direct Violation of the CDC guidelines And Recommendations along with, on The State Level; The Arizona governor's Health orders for "All" Arizona residents And Those within State Lines And borders.

The foregoing is True And Correct under The
Penalty of Perjury.



Alfredo Martinez
#241374

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

EX. 3

DECLARATION OF: AZ. DEPT. OF
CORRECTION INMATE JOE ANGEL GOMEZ
ADC# 154269

I JOE ANGEL GOMEZ WRITE THIS DECLARATION IN SUPPORT OF THE
INJUNCTIVE RELIEF MOTION FOR COVID-19 PREVENTATIVE MEASURES... THIS
DECLARATION SHOULD HEED THE ATTENTION OF THE ARIZONA COURT SYSTEM
IN A MANNER AND EFFORT FOR EQUAL PROTECTION RIGHT TO BE FREE FROM
CRUEL AND UNUSUAL PUNISHMENT AND TO PRESERVE INDIVIDUALS STATE OF
HEALTH.... THIS DECLARATION IS ALSO IN SUPPORT OF ENSURING PRISONER(S)
RIGHT OF ACCESS TO THE COURT IS NOT VIOLATED NOR INTERFERED WITH
DUE TO COVID-19 PREVENTATIVE MEASURES....

ON APRIL 7TH. 2020 ADCRR CONFIRMED TWO INMATES CONTRACTED THE COVID
19 VIRUS WITHIN THE INMATE POPULATION, THAT VERY SAME DAY APRIL 7TH. 2020
A.D.C.R.R (ARIZONA DEPT. OF CORRECTION REHABILITATION AND REENTRY) HANDED OUT
FACE MASK TO ALL A.D.C.R.R EMPLOYEES WHICH CONSIST OF CORRECTION OFFICERS,
ADMINISTRATION OFFICERS, TRINITY KITCHEN SUPERVISORS AND THE LIBRARIANS

BUT A.D.C.R.R. LEFT IT UP TO THE DISCRETION OF THAT INDIVIDUAL TO WEAR THE PROVIDED MASK OR NOT... AS OF APRIL 10TH 2020 FACE MASK HAVE NOT BEEN PROVIDED TO ANY INMATES WITHIN THE A.D.C.R.R...

2) ON APRIL 7TH 2020 AT OR AROUND 8AM I JOE ANGEL GOMEZ WAS SCHEDULED TO GO TO THE LEGAL LIBRARY... I AM A PRO SE PLAINTIFF IN THE FOLLOWING CASE (JOE ANGEL GOMEZ - V - DE LOS SANTOS CV.18-03294-PLX-JJT-MHB) A.D.C.R.R. OFFICER ORNELAS BADGE NUMBER #10091 WHO ARRIVED AT MY CELL TO ESCORT ME TO THE LEGAL LIBRARY, DUE TO ME BEING AT RAST MAX UNIT I AM REQUIRED TO BE HANDCUFFED BEHIND MY BACK WHICH LEAVES ME UNABLE TO CARRY ALL MY LEGAL MATERIAL, ON THIS DAY IT WAS THREE LEGAL BOOKS WHICH CONTAINED CASE LAW THAT I NEEDED LEGAL COPIES OF BEING THE BOOKS DID NOT BELONG TO ME, I ALSO HAD TWO COMPOSITION NOTE BOOKS THAT I USE TO TAKE NOTES WHILE DOING RESEARCH IN THE LEGAL LIBRARY, I ALSO HAD A BRIEF FILE FOLDER WHICH CONTAIN A MOTION THAT NEEDED TO BE E-FILED WHILE AT THE LEGAL LIBRARY... OFFICER ORNELAS BADGE #10091 STATED HE WOULD NOT CARRY MY LEGAL MATERIAL THAT IF I COULD NOT CARRY MY MATERIAL PERSONALLY BEHIND MY BACK THAT I WOULD HAVE TO GO TO THE LEGAL LIBRARY WITHOUT IT OR HE WOULD MARK ME DOWN AS REFUSING MY SCHEDULED LEGAL LIBRARY TIME SLOT.... HE ALSO DID THE EXACT SAME THING TO A SECOND INMATE WHO SCHEDULED FOR THE LEGAL LIBRARY..... I BEGAIN TO ARGUE AFTER FAILED ATTEMPTS OF EXPLAINING THAT HE WAS HINDERING AND INTERFERING WITH MY ACCESS TO THE COURT, AND MY RIGHT TO TIMELY LITIGATE MY CASE, AND THAT IT WAS NOT HUMANLY POSSIBLE TO CARRY ALL MY LEGAL MATERIAL BEHIND MY BACK WHILE HANDCUFFED WHEN THE CONTENTS WEIGHED AT LEAST 65 POUNDS AND TWO OF THE BOOKS WERE 12 X 10 AND OVER 900 PAGES

EACH, NOT TO MENTION MY SMALLER BOOK (GEORGETOWN LAW JOURNAL) WHICH CONTAINED 1,300 PAGES..... A SECOND OFFICER COIT BUNCI RESPONDING TO THE ARGUMENT INFORMED OFFICER ORNELAS THAT BOTH INMATES WERE RIGHT, COIT BUNCI PROVIDED THE ESCORTING OFFICER COIT ORNELAS WITH A CART TO PUT BOTH INMATES BELONGINGS ON WHILE BEING ESCORTED TO THE LEGAL LIBRARY....

3) IT SHOULD BE NOTED THAT I HAVE WENT TO THE LEGAL LIBRARY MULTIPLE TIMES BEFORE AND THAT I HAVE NEVER HAD PROBLEMS BEFORE CONCERNING MY LEGAL MATERIAL BEING CARRIED FOR ME OR MY LEGAL MATERIAL BEING PLACED ON A CART..... BUT DUE TO THE COVID 19 OFFICERS ARE UNCLEAR HOW TO PROCEED WITH DAILY OPERATIONS AS THEY MAINTAIN A COVID 19 PREVENTATIVE PROTOCOL THAT DOES NOT VIOLATE INMATES CIVIL RIGHTS DUE TO LACK OF COVID-19 MEASURES BEING INSTRUCTED BY A.D.C.R.R. DIRECTOR DAVID SHINN

4) IT SHOULD ALSO BE NOTED HERE AT RAST MAX UNIT ONLY TWO ICEL CELLS EXIST FOR A TOTAL OF TWO INMATES TO USE THE LEGAL LIBRARY... THE LEGAL LIBRIAN SCHEDULES INMATES TWO WEEKS IN ADVANCE DUE TO THE LARGE AMOUNT OF INMATES CURRENTLY LITIGATING AND THE DEMAND TO BE SCHEDULED FOR LEGAL LIBRARY.... I AS A PRO'SE PLAINTIFF CAN NOT AFFORD AN OFFICER TO REFUSE MY SCHEDULED TIME SLOT TO UTILIZE THE LEGAL LIBRARY FOR ANY REASON....

5) ON APRIL 9TH 2020 AT AROUND 1:00PM I WAS BEING PULLED OUT FOR MANDATORY EDUCATION CLASS, I HAD A BANDANA AROUND MY NOSE AND MOUTH TO UTILIZE AS A FACE MASK BEING ALL MY REQUEST FOR A FACE MASK HAVE BEEN IGNORED BY MEDICAL AND A.D.C.R.R. SUPERVISORS. THE

ESCORTING OFFICER COTI RUIZ ADVISED ME THAT I WAS NOT ALLOWED TO WEAR MY HOME MADE FACE MASK AND THAT RAST MAX UNIT WARDEN COLMAN WAS IN THE HALL WAY THAT IF HE SAW ME THAT I WOULD GET A TICKET FOR BEING OUT OF COMPLIANCE DUE TO DRESS CODE, I ASKED COTI RUIZ WHY HE WAS WEARING HIS FACE MASK HE STATED TO PROTECT HIMSELF FROM COVID-19 I EXPLAINED THE NEED AND RIGHT TO PROTECT MYSELF FROM COVID-19, HE ADVISED ME NOT TO WEAR MY BANDANA FACE MASK... I REMOVED IT BEING I DID NOT WANT TO CATCH A TICKET AND LOSE MY PHONE ~~AND~~ PRIVILEGES, STORE PRIVILEGES AND RECREATION PRIVILEGES AND I PROCEEDED TO MANDATORY EDUCATION CLASS, BECAUSE IF I REFUSED I WOULD BE GIVEN A TICKET AND LOSE ALL MY PRIVILEGES IN RESULT OF THAT TICKET / ANY TICKET...

6>
I CURRENTLY HAVE HEPITITIS C, THERE ARE ALOT OF INMATE POPULATION THAT HAVE DOCUMENTED ILLNESSES RANGING FROM HEP.C, ASTHMA, HIV, HEART CONDITIONS TO CANCER AND KIDNEY/LIVER DIESESES.... THE A.D.C.R.R IS CURRENTLY NOT PREPARED FOR A COVID-19 OUTBREAK WITHIN THE PRISONS, A.D.C.R.R. DIRECTOR DAVID SHINNS INSTRUCTIONS ARE VALUE OR NON EXISTENT..... A.D.C.R.R IS CURRENTLY VIOLATING OUR RIGHTS TO SAFE CONDITIONS PROTECTING US FROM THE COVID-19 OUT BREAK.... COMMON PLACE AREAS SUCH AS SHOWERS, PHONE ROOMS, LEGAL LIBRARY ICEL CELLS ARE BEING CLEANED WITH CHEMICALS ONLY ONCE A WEEK.... INMATES ARE NOT GIVEN FACE MASK AND DEPENDING ON YOUR ESCORTING OFFICER SOME OFFICERS ARE ALLOWING INMATES TO SELF GUARINTEEN FROM MANDATORY CLASSES/MOVEMENT OR ALLOWING INMATES TO COVER THEIR FACE WITH HOME MADE FACE MASK... I AM HUMBLBY ASKING THE COURT TO INTERVENE TO ENSURE A.D.C.R.R. DIRECTOR DAVID SHINN GIVES INSTRUCTIONS FROM TOP TO BOTTOM TO BE FOLLOWED BY ALL

A.D.C.R.R STAFF TO ENSURE OUR SAFETY WITHIN HIS CARE AND TO ENSURE THAT OUR CIVIL RIGHTS ARE NOT BEING VIOLATED.... WITHOUT THE COURT INTERVENING THE A.D.C.R.R WILL CONTINUE TO HAVE THE MINIMAL EFFORT PUT FORTH OF PREVENTING THE SPREADING AND CONTAINMENT OF COVID-19 ALSO WITHOUT THE COURTS INTERVENING A.D.C.R.R. WILL CONTINUE TO FORCE INMATES TO PUT THEMSELVES AT RISK OF CATCHING AND SPREADING COVID-19 AS WELL AS LEAVING THOSE INMATES WHO DO CATCH COVID-19 TO SUFFER WITHOUT PROPER MEDICAL CARE.....

THE FOREGOING IS TRUE UNDER THE PENALTY OF PERJURY, EXECUTED ON APRIL 10TH. 2020....

JOE ANGEL GOMEZ #154269
ARIZONA STATE PRISON - LEWIS
RAST MAX UNIT • PO BOX 3600
BUCKEYE, AZ. 85326

J. A. Gomez



Arizona Prison Scandal: Cell Doors that Don't Lock, Maintenance Funds Misused



Ex. 4

by Matt Clarke

IN JUNE 2019, THE ARIZONA LEGISLATURE's Joint Committee on Capital Review approved \$16.5 million in special funding for the state's Department of Corrections (DOC) to repair faulty cell door locks at ASPC-Lewis, after a June 2018 surveillance video aired by a Phoenix TV station showed prisoners leaving their cells to attack each other and guards. One prisoner, 36-year-old Andrew McCormick, died in the melee after sustaining injuries from multiple attackers.

"Of all the places for locks not to be working, for the safety of inmates and officers alike, what the heck?" asked Jodie McCormick, Andrew's mother, who said the family will be filing a lawsuit against the DOC. She noted her son had only 18 months left to serve on his 12-year sentence. "It makes absolutely no sense," she stated.

The surveillance video of McCormick's murder was one of six obtained by TV station ABC15. In total, they showed over an hour and a half of footage during which unsupervised prisoners roamed the facility, assaulting guards and other prisoners.

"The inmates are running the unit, there's no doubt in my mind when I see what's going on here," said California prison expert Richard Subia.

News reports tracked the problem with cell locks in DOC facilities back to at least 1986, when "an inmate in full restraints kicked and opened a cell door" at ASPC-Phoenix, according to an article in the *Arizona Republic*. That incident surfaced during an investigation into a 2000 attack on a nurse by a prisoner who had jimmied the 80-year-old lock on his cell. New locks were on order but hadn't been installed, DOC officials said at the time.

New locks had also been ordered three years earlier at ASPC-Perryville near Good-year, but they weren't installed before guard Brent Lumley was stabbed to death by prisoners in 1997. [See: *PLN*, Sept. 1998, p.24; May 1997, p.24]. When state lawmakers subsequently provided emergency funding to repair faulty locks at the facility, the DOC admitted they had been broken for nearly a decade.

The DOC has a maintenance fund derived from a \$25 fee charged to each adult who applies for permission to visit a prisoner, plus a one percent fee on deposits into prisoners' trust fund accounts. But money in that fund had been diverted to "other uses or projects" instead of being used to repair or replace cell door locks at prisons such as Lewis, according to an April 2019 press release by Tempe-based Middle Ground Prison Reform, a non-profit that advocates for Arizona prisoners. Middle Ground had previously challenged the maintenance fund fee imposed on visitors and the one percent fee on trust account deposits.

One of 13 facilities operated by the DOC, ASPC-Lewis has a capacity of more than 5,000 prisoners who are classified on a five-level security risk scale. ABC15 interviewed multiple guards and reviewed documents, such as lawsuits, internal investigations, inspection logs and other administrative records, and found that dozens of cell door locks in the facility's Morey, Rast and Buckley units still do not function properly. Those units house prisoners with a four- or five-level security classification.

After the ABC15 report aired, Governor Doug Ducey called for an investigation but maintained his support for DOC director Charles Ryan, even as some state lawmakers and the Arizona Correctional

Peace Officers Association (ACPOA) demanded his replacement. After the media storm broke, Ryan made an emergency visit to ASPC-Lewis with a videographer to record his inspection alongside other top DOC administrators, as maintenance workers placed new padlocks on cell doors.

"We don't know what Director Ryan hopes to prove with today's dog and pony show," the ACPOA wrote in an open letter to the governor and state lawmakers. "We don't need some contrived video. If Director Ryan were a straight shooter, [he] would release the video from Morey Unit made on Monday [April 22, 2019] at 8:13 p.m. where 40 cell doors were opened and 30 inmates refused to lock down requiring officers to intervene. Or the video made two hours later at 10:24 p.m. when an officer was assaulted in the Buckley Unit by inmates who were out of their cells."

The DOC's solution to the problem at ASPC-Lewis – installing padlocks on cell doors – also drew criticism for the ease with which the padlocks could be converted into weapons, as well as the difficulty they pose in the event of an evacuation in an emergency such as a fire. Prior to padlocks, the DOC had attempted to reinforce the old locks by welding metal flanges onto the cell doors and their frames, using metal pins to secure the doors. But surveillance video aired by ABC15 showed that the pins – which can be converted into weapons – were easily removed by prisoners. Dozens of pins remain missing and unaccounted for.

Along with funding for new prison locks, the legislature approved \$1.2 million for fire alarms and sprinklers that had been broken at ASPC-Lewis for a decade. But the ACPOA is less worried about fires and more about violence against staff members.

The union noted that DOC guards – whose \$33,000 starting salary is among the lowest in the country – experienced a record 590 attacks by prisoners in 2016.

"It has become so common it becomes a part of their culture," said retired 20-year veteran DOC guard Carlos Garcia, who now works for the ACPOA. "God bless them, but they don't even realize what a horrible situation they're stuck in."

A letter signed by the Democratic minority leadership in the Arizona House of Representatives called for DOC director Ryan's resignation, citing not only the broken lock scandal but also a lawsuit over "abysmally poor medical care for inmates" and other issues that led to federal oversight of some DOC operations.

"How have we been so negligent for so long?" wondered state Rep. Charlene Fernandez, who noted the DOC's annual budget is over \$1 billion. "We're putting our state employees' lives in danger," she added.

"Making sure employees are taken care of first, I believe that's where [Ryan's] heart is," countered state Senator David Gowan. "When it comes to fixing these areas, it's because of what's occurred in the past" – by

which he referred to fiscal constraints resulting from the recession that began in 2008.

"If we've had problems, we've either fixed it or done the maintenance to keep it going," Ryan – then the DOC's deputy director – said of the problem with cell door locks in a 2001 interview with the *Arizona Republic*. He has sought about \$36 million for replacement locks in more recent years, but the Republican-controlled state legislature denied his requests.

Meanwhile, in February 2016, eight current and former prison guards filed suit against Arizona state officials, claiming the DOC had "ignored safety problems, which led to inmate attacks and life-altering injuries," according to an ABC15 news report. The lawsuit cited several cases where guards were injured by mentally ill prisoners or prisoners who had received administrative overrides to lower security levels. Contributing factors cited in the complaint included broken cell door locks, staffing shortages and failure to restrain violent and mentally ill prisoners.

The federal district court granted in part and denied in part the state's motion to dismiss in February 2018, and the case is

currently on appeal before the Ninth Circuit. See: *Russett v. Arizona*, U.S.D.C. (D. Ariz.), Case No. 2:16-cv-00431-ROS. 

Sources: middlegroundprisonreform.org, wptv.com, abc15.com, azcentral.com