IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 95-948 TFH
	)	
THE DISTRICT OF COLUMBIA, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR A PRELIMINARY INJUNCTION TO ENJOIN DANGEROUS AND LIFE-THREATENING PRACTICES AND TO ENSURE BASIC CARE, SERVICES AND TREATMENT

Pursuant to Fed. R. Civ. P. 65 and D.D.C. R. 205(c) and (d), the United States moves for a preliminary injunction requiring the Defendants immediately to remedy practices and conditions at the D.C. Village Nursing Home ("DCV") which jeopardize the lives, health, and safety of the individuals who reside at DCV and violate their constitutional rights.

PRELIMINARY STATEMENT

Defendants are failing to provide DCV residents with basic medical and nursing services in fundamental areas necessary for the adequate care of elderly persons with serious medical needs and of other persons with special needs. Inadequate care of DCV residents has resulted in widespread suffering of preventable pressure sores, known as decubitus ulcers. Inadequate treatment of these sores has resulted in serious harm, including preventable amputations and the death of residents. Within the last three months alone, DCV lists "multiple decubitus ulcers" as

a cause of death for two residents. Unless immediate action is taken, many DCV residents are in imminent danger of infection, potential loss of limb, sepsis, and even death.

In addition, other critical areas of basic care at DCV are also dangerously inadequate. Bed-ridden residents are left to sit in their own urine and feces for hours. Adequate amounts of nutritious food and drink are not always available. Essential medical supplies and needed medications are not provided to the residents. At times, even hot water for bathing is insufficient or unavailable.

The District's grossly delinquent payment of vendors who supply critical goods and services to DCV, including food and dietary suppliers and medical equipment providers, is placing the residents in serious jeopardy. Moreover, overreliance on and failure to pay "contract nurses" in lieu of permanent and reliable staff are resulting in severe deficiencies in nursing and basic care, including widespread medication errors.

These deficiencies at DCV expose residents daily to unreasonable risk of harm, suffering, and life-threatening conditions. The evidence in support of these deficiencies comes from multiple sources -- DCV residents and relatives, service providers, advocates, and independent experts -- and is supported by over two dozen declarations that are attached to this Memorandum.1/ The evidence is indisputable and overwhelming.

1/ The declarations are attached as Exhibit 1. The United States is also prepared to offer additional evidence through an

(continued...)

It leads to only one conclusion: Immediate relief through intervention by this Court is needed to prevent continuing irreparable injury.

I. BACKGROUND

On May 19, 1995, the United States brought an action for equitable and injunctive relief against Defendants, the District of Columbia et al., pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.2/ The Complaint alleges that the Defendants are violating the constitutional and legal rights of the approximately 279 individuals who live at DCV, a residential, District-operated nursing home housing a wide variety of persons with serious medical problems. The Complaint outlines wide-ranging deficiencies in the care and treatment of DCV residents, including inadequate medical, psychiatric, and nursing services.

Based upon recent allegations of imminent harm by a number of informants, the United States and three nationally recognized experts, Rebecca D. Elon, M.D., M.P.H., Blaine S. Greenwald, M.D., and Ellen Anderson, B.S.N., M.A., J.D., conducted an expedited tour of the facility in order to assess current

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1/ (...continued)
evidentiary hearing which is requested in the Motion for Preliminary Injunction.

2/ This lawsuit is the product of the District's intransigence over a protracted period of time to either correct voluntarily the conditions at DCV depriving residents of their constitutional and legal rights or to negotiate an enforceable settlement agreement.

conditions and services.3/ They found that medical, psychiatric, and nursing care and treatment at DCV fall significantly below accepted professional standards and expose residents to harm. Elon Decl. at 4, 20 ¶¶ 10, 48; Greenwald Decl. at 5, 10 ¶¶ 11, 25; Anderson Decl. at 3 ¶ 5. All three experts found that the deficiencies they had identified in the prior year's CRIPA investigation had not been corrected, and had deteriorated even further, placing residents at increased risk of significant harm. Elon Decl. at 5 ¶ 12; Greenwald Decl. at 5-6 ¶¶ 11, 12; Anderson Decl. at 4 ¶ 9.4/

All of these deficiencies, as well as additional deficiencies identified by the United States in its Complaint, are serious and in need of correction. There are, however, imminent concerns arising from the recent tours, interviews with DCV residents, and other sources of information that have led the

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3/ Dr. Elon is a board certified gerontologist who is the Medical Director at the Johns Hopkins Geriatric Center. She is also an Associate Professor of Medicine, Division of Geriatric Medicine and Gerontology, at the Johns Hopkins School of Medicine. Dr. Greenwald is a board certified psychiatrist who is the Director of the Geriatric Psychiatry Division, Associate Chairman of the Department of Psychiatry, and attending psychiatrist for the Hillside Hospital-Long Island Jewish Medical Center. He is also an Associate Professor in the Department of Psychiatry at the Albert Einstein College of Medicine. Ms. Anderson is a clinical nurse who has served as the Deputy Director for the State of Maryland's Department of Health and Hygiene, Mental Hygiene Administration. For further details on the backgrounds of these individuals, see attached curricula vitae. Drs. Elon and Greenwald toured DCV on May 30, 1995; Ms. Anderson toured on May 25, 26 and 30, 1995.

4/ Dr. Elon, Dr. Greenwald, and Ms. Anderson previously toured DCV on June 6-7, 1994 as part of our investigation of the facility pursuant to CRIPA.

United States to seek a preliminary injunction to prevent irreparable injury. Those areas of most immediate concern include: (1) inadequate prevention and treatment of decubitus ulcers; (2) inadequate care of incontinent residents; (3) shortage of food, drink, medical supplies, and hot water; (4) lack of adequate nursing staff; (5) medication errors; and (6) non-payment of vendors for critical goods and services. The facts supporting the need for immediate relief in these areas, along with citations to supporting declarations and documents, are summarized below.

II. FACTS SUBSTANTIATING THE NEED FOR A PRELIMINARY INJUNCTION

A. Inadequate Prevention And Treatment Of Decubitus Ulcers

Medical and nursing services at DCV are inadequate for the care, prevention and treatment of pressure sores or decubitus ulcers. Elon Decl. at 5, 6 ¶¶ 13, 17; Anderson Decl. at 3, 4 ¶¶ 6, 11. Our medical and nursing consultants both concluded that DCV residents continue to suffer unnecessary skin breakdowns that are not being assessed, evaluated and treated properly. Elon Decl. at 5 ¶ 13; Anderson Decl. at 6 ¶ 16.5/

5/ Because the DCV population has become largely immobile through old age, disease or injury, a high percentage of DCV residents are at risk of developing decubitus ulcers. Anderson Decl. at 5 ¶ 13. In fact, more than one out of every ten DCV residents suffers from decubiti. Elon at 6-7 ¶ 18; Anderson Decl. at 6 ¶ 15. These sores are not only painful, but if not treated properly, could lead to progressively worsening infection and sepsis, leading to risk of limb amputation or even death. Elon Decl. at 5-6 ¶ 14. However, most decubitus ulcers are preventable and all are treatable if identified at an early stage. Elon at 6 ¶ 15; Anderson Decl. at 5 ¶ 12. The DCV residents are entitled to reasonable and professional nursing and (continued...)

The neglect and improper care of decubitus ulcers at DCV has had "dire consequences" for a number of residents. Elon Decl. at 6 ¶ 17; Anderson Decl. at 6 ¶ 16. For example, a relative of a recently deceased DCV resident described the lack of adequate care DCV provided for his father's sores:

> At the time of his death, my father had become afflicted with severe bed sores. Before entering DCV, my father had never suffered with bed sores. The sores started appearing a few months after placement at DCV. They kept getting worse. At first, the bed sores were just large; then they became deep too. By the time he had reached the hospital just prior to his death, the hospital doctor showed me that the sores on his buttocks were so deep, he could put his hand in them. I saw these sores personally, and I can attest that the sores were humongous ... Given the size of the leg sores and the potential for infection, it was decided that the best course of action would be to have both his legs amputated. This was done at the hospital. Given my father's frail health, he died a few days later. The sores developed in the first place because the DCV staff had failed to keep my father walking and active and because they failed to properly turn my father while he was on the bed.

Burgess Decl. at 2-3 ¶¶ 5, 6 (emphasis added).6/

Our nursing consultant observed the condition of another DCV resident, Claude B., on her most recent visit and described it in a similarly graphic way:

> [The] decubitus ulcer on his hip is one of the worst I have seen in my professional career. It was deep, red and raw with the skin completely eaten away. It was sickening and hard to view such sores on the body of another human being. Claude kept squirming and crying out from pain while the

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5/ (...continued)
medical care that will treat the sores once they develop, but more importantly, will prevent their occurrence in the first place. Elon at 6 ¶¶ 15, 16; Anderson Decl. at 5 ¶ 14.

6/ A review of records at DCV indicates that the facility lists "multiple decubitus ulcers" as a cause of other, more recent deaths. See Elon Decl. at 7-8 ¶ 20 (John B. on March 5, 1995; Marie D. on May 5, 1995).

> treating physician manipulated the skin tissue to examine the wound. Claude had to be restrained by the nurse. I have seen some pretty hideous bedsores over my 23 years of nursing practice but this particular sore was horrible and one of the worst I have ever seen. In my opinion, given the inadequate care and treatment, further skin breakdown is imminent for Claude unless corrective action is taken immediately ... I watched the physician pull off the layer of skin tissue on top of the decubitus ulcers [on Claude's foot]. Claude continued to cry out in pain. The skin was red, raw and bruised inside.

Anderson Decl. at 6-7 ¶¶ 17, 18. Dr. Elon described Claude's hip ulcer as "dusty blue and red, with unhealthy tissue ... [that] looks like old hamburger." Elon Decl. at 8 ¶ 22. She observed that the ulcer "hole" extended "through the muscle and down to the bone." Elon Decl. at 8 ¶ 22. Dr. Elon concluded that because of DCV's inadequate care of Claude, he was at "high risk of having his wounds becoming infected and is in danger of potentially losing his leg unless corrective action is taken immediately." Elon Decl. at 9 ¶ 23.

Indeed, several DCV residents have recently suffered amputation of parts of their bodies due to inadequate care of decubitus ulcers. Elon Decl. at 7 ¶ 19. For example, William S. had his leg amputated in April 1995 because decubitus bed sores were allowed to deteriorate. Dr. Elon concluded that his "amputation was a direct result of inadequate care and neglect coupled with improper delayed notification by nursing staff of signs of infection. The result was the amputation of a resident's leg that could have been prevented." Elon Decl. at 10 ¶ 26. Our nursing consultant also concluded that the amputation

of William's leg "could have been avoided and prevented". Anderson Decl. at 8 ¶ 20.7/

Marco Waters, another DCV resident, declares that he had his lower leg amputated in December 1994 after his foot had become infected from a sore that had developed at DCV. Waters Decl. at 1 ¶ 2. The sore became infected and spread to the rest of his foot and to his lower leg. Mr. Waters declares that even though his foot became progressively worse, his doctor came to see him personally "only a very few times. Instead of visually inspecting me and my foot, he would rely on the written reports of the nurses ... even though his office was right around the corner from me." Waters Decl. at 1 ¶ 2.

Mr. Waters indicates that his foot turned completely black and that he had to be sent to the local hospital where the doctors were "shocked" at the condition of his foot. Waters Decl. at 2 ¶ 3. They informed him that the infection was likely to spread to the rest of his body and possibly kill him, so Mr. Waters was forced to lose his leg to amputation. Waters Decl. at 2 ¶ 3. After reviewing Marco's care, Dr. Elon concluded that he had "lost a limb after a long history of deteriorating decubitus

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7/ William currently suffers from additional sores including a large hole in his right hip that has "eaten into the muscle," a decubitus ulcer on his right buttock that is "raw, red and beginning to eat into muscle tissue." Anderson Decl. at 8 ¶ 20. Dr. Elon described the current sores as "oozing green pus." Elon Decl. at 11 ¶ 28. The wounds can easily become infected, however, no cultures of the wounds had been ordered. Elon Decl. at 11 ¶ 28; Anderson Decl. at 8 ¶ 20. In addition, Dr. Elon observed that William was left to lie on an air mattress that was improperly inflated, thus "offering no pressure relief." Elon Decl. at 11 ¶ 28.

ulcers that became infected and gangrene ... the inadequate care and neglect by D.C. Village was a significant contributing factor." Elon Decl. at 13 ¶ 32.

Moses D. had both of his legs amputated after very delayed treatment at DCV. Elon Decl. at 11-12 ¶ 29. He currently has an ulcer at the base of his spine with the top layer of skin missing over the entire area and skin breakdown complete to the muscle. Anderson Decl. at 9 ¶ 22. Within the past several weeks, Ms. Anderson twice personally observed that he was left sitting for prolonged periods of time in his own urine which exacerbated the ulcers. Anderson Decl. at 9 ¶ 22. Dr. Elon also observed Moses lying in his own urine and feces. Elon Decl. at 12 ¶ 30. She further noted that he was improperly positioned and that his wound was not properly hydrated due to an inappropriate dressing. Elon Decl. at 13 ¶ 30. Dr. Elon concluded that "Moses is at imminent risk of infection due to his inadequate treatment." Elon Decl. at 13 ¶ 30.8/

Many residents have been hospitalized recently for complications related to decubitus ulcers: George A. (possible infected decubitus ulcer, dehydration); Marie D. (amputation of left leg due to infected decubitus ulcers); William S. (septic right knee; leg amputated above the knee due to necrosis and gangrene); Willie V. (flap closure); Claude B. (flap closure);

8/ Dr. Elon also observed inappropriate treatment of Houston J.'s two decubitus ulcers which place him at "imminent risk that the wound will get larger and get infected ... [resulting in] a potential loss of limb, sepsis, and even possibly death." Elon Decl. at 10 ¶ 25.

Houston J. (surgical flap, left hip); Milton B. (cellulitis, right leg); James T. (cellulitis). Elon Decl. at 7, 13-14 ¶ 19, 33, 34. Other residents have been hospitalized for sepsis which may be related to poor ulcer care. Elon Decl. at 8 ¶ 21.

The facility treats some decubitus ulcers improperly with Elase, an ointment that aids in the debridement of dead tissue. Dr. Elon observed a DCV physician spread the ointment on Claude B. beyond the sore area onto adjacent healthy tissue. Elon Decl. at 9 ¶ 23. As Dr. Elon stated, "If extended beyond the necrotic area, the result is that healthy adjacent tissue may be damaged, resulting in extending the decubitus ulcers. The result was that the D.C. Village 'cure' could actually exacerbate the problem." Elon Decl. at 9 ¶ 23.9/

DCV also improperly uses Intrasite gel, which is normally used to enhance healthy tissue growth, to treat necrotic or dead skin tissue. Elon Decl. at 9 ¶ 24. Dr. Elon concluded that DCV's use of Elase and Intrasite for Lamont R. significantly departs from professional standards and "place[s] Lamont at risk of imminent harm." Elon Decl. at 9 at ¶ 24. She concluded that past inappropriate treatment has led to a progression of Lamont's wounds and "predisposes him to potentially losing a limb unnecessarily." Elon Decl. at 9 ¶ 24.10/

9/ The facility uses Elase for other residents with decubitus ulcers, including Lamont R. E.g., Elon Decl. at 9 ¶ 24 (sixty day order for Elase for Lamont's foot ulcer is inappropriate).

10/ See also Anderson Decl. at 7 ¶ 19 (Lamont R. has decubitus ulcers on his left ankle and on the ball of his left foot; "[t]he (continued...)

Finally, the District of Columbia's Long Term Care Ombudsman, Ms. Anne Hart, states that she has observed the effects of the facility's poor care of residents' decubitus ulcers. Hart Decl. ¶¶ 7-10.

In sum, the facility's deficient medical and nursing care of decubitus ulcers is having a broad and profound effect on many different DCV residents. The impact ranges from amputation and life-threatening illness to death. Such practices are dangerous, grossly deficient, and in need of immediate correction.

B. Care Of Incontinent Residents Is Inadequate

The DCV nursing and direct care staff routinely neglect the basic care needs of incontinent residents, leaving them to sit in their own urine or feces for long periods of time. Ms. Baugh declares that she has personally observed dependent DCV residents "left in fecal matter for hours simply because the staff neglected to check on them." Baugh Decl. at 7 ¶ 16. Typically, incontinent residents are left to sit in their own feces from 1:00 in the afternoon until after 6:00 at night. Baugh Decl. at 7 ¶ 16. Nurses are supposed to be monitoring the residents, but many of them sit at the nursing station all day talking. Baugh Decl. at 7 ¶ 16. Mr. Forte, the President of the DCV Residents' Association, declares, "I've also seen residents left wet for prolonged periods of time. You can smell the urine. I noticed

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10/ (...continued)
decubitus ulcer I observed looked infected, was raw and deep and had increased to the size of a quarter"; urine allowed to seep down his leg onto sore).

this just a few days ago." Forte Decl. at 3 ¶ 9. The Long Term Care Ombudsman has found that the smell of urine is so overpowering on one unit that residents "complain they can't breathe and ask for fresh air." Hart Decl. ¶ 27.

Our nursing consultant personally observed Moses D. laying in bed in his own urine on two separate recent occasions:

> I observed that the [ulcer] dressing was saturated with urine. The entire dressing, large portions of his body and the bed linens were soaked. The best way to describe what I saw was a pool of urine. Around the edges, the urine had dried, leaving huge stains. This indicates to me that Moses had been left laying in his own urine for hours without being checked. As a professional nurse, I was appalled to see that. A resident requiring total care who is bed-ridden should never be left for long periods of time without supervision ... After the charge nurse removed the dressing, I observed that Moses' urine had seeped through and was laying directly on the wound contaminating the decubitus ulcer ... I returned a second time to review Moses' care four days later on May 30, 1995, and was utterly appalled to find almost the exact same situation. Moses was again laying in his bed with a urine soaked dressing over his decubitus ulcers. The bed was soaking wet. It appeared that Moses had been neglected again for hours.

Anderson Decl. at 9-10 at ¶ 22.11/

Mr. Burgess commented on deficient nursing care of his deceased father in this area as well:

> I was very dissatisfied with the care my father received at DCV. As soon as I placed him at DCV, his health deteriorated rapidly. When I would visit him, I often found that my father had been sitting in his own feces or laying in bed full of his own feces. The smell was awful. The nursing staff had completely neglected to meet his needs. I was left to clean him up and change him myself. The staff would only act when I would complain. In fact, care always got worse the longer I stayed away from the facility. Only when I spoke up all the time, did the staff ever act to provide anything to my father.

11/ Our medical consultant also personally observed Moses lying in his own urine and feces. Elon Decl. at 12 ¶ 30.

Burgess Decl. at 1-2 ¶ 3. Charlease Hatchett, a relative of Mazie Edwards, a DCV resident who died, also declared that she was "shocked" at the conditions at DCV, noting a urine smell to the rooms. Hatchett Decl. at 1 ¶ 2.

DCV resident Lamont R., who is paralyzed from the neck down, told our nursing consultant during our recent visit that he noticed urine flowing out of his tennis shoe. Anderson Decl. at 7 ¶ 19. The urine had spilled out of his catheter tubing, down his pants leg and into his shoe and was affecting a decubitus ulcer on his foot. Anderson Decl. at 7 ¶ 19.

DCV resident Saundra Baugh indicates that she was forced to remain immobile in bed for an entire week last month while her wheelchair was being repaired. Baugh Decl. at 6 ¶ 14.12/ During that time, she indicated that "the nursing and direct care staff failed to attend to my basic needs ... staff regularly left me in bed wet with urine for 10-12 hours at a time after I had been incontinent. Needless to say, it is very uncomfortable, unhealthy and embarrassing to be left wet for such a long time." Baugh Decl. at 6 ¶ 15.

In sum, incontinent residents are grossly neglected and routinely left to sit in their own urine and feces for unnecessarily protracted periods of time. This neglect is abhorrent, beyond any standards of decency and is simply unacceptable.

12/ Mr. Royster indicated that when his wheelchair was being repaired, he was left in bed for four to five months. Royster Decl. at 3 ¶ 9.

C. Shortages Have Resulted In Unnecessary Suffering

The United States has attached the declarations of seven DCV residents who explain, at length, ongoing shortages that have resulted in current basic care deficiencies at the facility.13/ Their stories mutually reinforce one another, revealing, for example, severe shortages of food, medications, medical supplies, hot water for bathing, clean and appropriate eating utensils, and adequate staff. See Baugh Decl. at 1-3 ¶¶ 3-5, 8-12, 18, 21; Forte Decl. at 1-2, 3 ¶¶ 2-6, 10; Royster Decl. at 1-3 ¶¶ 2-7; Veasey Decl. at 1-3 ¶¶ 2-10; Scott Decl. at 1-2 ¶¶ 3-5; Morton Decl. at 1-2 ¶¶ 2, 5; Waters Decl. at 2 ¶ 6.

The consequences and reasons for these shortages are readily identifiable by DCV residents. For example, Ms. Baugh indicates, "the residents have suffered because of these shortages." Baugh Decl. at 2 ¶ 3. Mr. Forte declares "the financial crisis [in the District] has caused real problems for residents at the facility." Forte Decl. at 2 ¶ 2.

The prevalence of these problems is also readily apparent to outside advocates who frequently visit DCV. For example, the District's Long Term Care Ombudsman indicates that she has received many complaints about the shortage of supplies at DCV. Hart Decl. ¶ 15. She states, "I have verified through direct

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13/ The vast majority of DCV residents are unable to effectively communicate with outsiders. Many suffer from dementia, Alzheimer's disease or some other condition that renders them unable to speak clearly or at length. There are few DCV residents without such limiting conditions. As a result, the few declarants necessarily must speak for the others.

investigation and personal observation that various units at D.C. Village have been without diapers, bibs, clean sheets, duoderm tape for changing dressings for decubitus ulcers, drinking cups, juice, milk, Procardia, Xantax, A & D Ointment, and all manner of vitamins that are prescribed to assist in the healing of decubitus ulcers." Hart Decl. ¶ 15. Another advocate, Ms. Laurence, of DC Arc, declares that DCV staff have indicated to her that certain activities related to resident care "do not occur in the manner they are supposed to because of a lack of necessary equipment, staffing or training." Laurence Decl. at 3 ¶ 4.14/

1. Food And Drink

There are serious food and drink shortages at DCV that adversely impact the residents. Residents have reported that, among other things, they have not been served juice with lunch or dinner for months; they have been forced to endure peanut butter sandwiches for meals as a substitute for meat; and they have not been served fresh vegetables or salad for months. Baugh Decl. at 1-3 ¶¶ 3-6; Forte Decl. at 1-2 ¶¶ 2, 3; Royster Decl. at 2 ¶ 6; Veasey Decl. at 2-3 ¶¶ 4-7; Scott Decl. at 1 ¶ 3; Morton Decl. at

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14/ Ms. Laurence is the Supervisor of Volunteer Advocacy Services at DC Arc, which is the court-appointed Monitor for the class of individuals with developmental disabilities who have been outplaced into the community from Forest Haven, a District-run institution that was forced to close under court order in 1991. Laurence Decl. at 1 ¶ 1. She is responsible for monitoring conditions and services provided to class members with mental retardation who were transferred to DCV. Laurence Decl. at 1-2 ¶¶ 2, 3.

1 ¶ 2. During the past few months, there have been food shortages at all meals. Forte Decl. at 2 ¶ 3.15/

The District's Long Term Care Ombudsman, Anne Hart, confirms in her declaration that the insufficient quantity and quality of food leave DCV residents hungry simply because they are not getting enough to eat. Hart Decl. ¶ 16. DCV rarely, if ever, serves fresh vegetables to the residents. Hart Decl. ¶ 17. She also indicates that instead of real food, DCV is serving some residents liquid nutritional supplements as their entire source of nutrition simply because of food shortages. Hart Decl. ¶ 21.

In addition, there is evidence that special, medically required diets are not being followed. For example, Ms. Laurence, of DC Arc, discovered that a specially selected liquid nutrient used in a tube feeder could not be given to a DCV resident as prescribed "because of unavailability." Laurence Decl. at 4 ¶ 7.

This crisis has impacted not only the quantity but also the quality of the meals. For example, Ms. Laurence overheard a staff member comment on the poor quality of the food she was feeding to a resident, "I'm surprised you can eat it, it's so hard." Laurence Decl. at 4 ¶ 6.

15/ Virtually every resident indicated that food quality and quantity improved markedly when the United States' experts were present at DCV. However, they indicated that the inadequate food and drink were sure to return again, as it always does, once they were gone. See, e.g., Baugh Decl. at 2 ¶ 4; Forte Decl. at 2 ¶ 3; Royster Decl. at 3 ¶ 7; Veasey Decl. at 3 ¶ 3; Scott Decl. at 2 ¶ 4; Morton Decl. at 1 ¶ 2. See further discussion of this issue below.

Not only do the food shortages cause hunger, they also contribute to nutritional problems that can compromise health, including unduly slowing the healing of pressure sores. See Anderson Decl. at 11 ¶ 25.

2. Medical Supplies And Equipment

There is a critical shortage of needed medical supplies at DCV. The shortages range from gauze pads, ointments, medications, to catheters -- and even soap. Significantly, supplies needed to treat decubitus ulcers are in short supply.

Medical and nursing staff throughout the facility report shortages of essential medical supplies normally used to treat decubitus ulcers. Elon Decl. at 15 ¶ 36.16/ In particular, shortages of duoderm tape and 4X4 pads were continually reported. Elon Decl. at 15 ¶ 36. Ms. Anderson found similar deficiencies. Anderson Decl. at 10-11 ¶ 24.

Many residents who signed declarations in support of this Motion have had or currently have decubitus ulcers. More than one such resident declares that medical supply shortages such as gauze, bandages and duoderm tape have directly compromised the staff's ability to properly treat their sores. Baugh Decl. at 4 ¶ 9; Royster Decl. at 1 ¶ 2; Veasey Decl. at 2 ¶ 3. See also Forte Decl. at 2 ¶ 5 (observed shortage of such medical

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16/ Dr. Elon observed a medical doctor forced to do a debridement of dead skin tissue using improper equipment because of lack of adequate supplies. In addition, this same doctor used an improper ointment because he thought the facility still had a shortage of the appropriate Silvadine ointment. Elon Decl. at 15 ¶ 36.

supplies). For example, Ms. Baugh indicates that because of recent medical supply shortages at DCV, the "staff are left to improvise" creating a make-shift patch for her sores which "often becomes dislodged, leaving the sensitive sore exposed and subject to further irritation ... the patch never stays in place properly." Baugh Decl. at 4 ¶ 9.17/

One nurse advised Ms. Anderson during her recent tour that there had been numerous medication and supply shortages, and that they have been short for so long, staff have lost track of what is and is not available. Anderson Decl. at 10 ¶ 24. Numerous other nurses and aides confided in her that supplies were an on-again/off-again proposition. Anderson Decl. at 10-11 ¶ 24. A physician indicated that shortages of medications, especially antibiotics, had become commonplace and that the physician was forced, on occasion, to substitute alternative medications. Anderson Decl. at 10-11 ¶ 24. Finally, Dr. Greenwald reports that many staff told him that there were supply shortages and medication shortages. Greenwald Decl. at 5-6 ¶ 12. He added,

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17/ Further, the District has failed to pay two companies who provide DCV with essential products that help prevent and treat decubitus ulcers. Roomberg Decl. at 2 ¶ 4; Haynes Decl. at 1 ¶ 3. In fact, one company no longer provides its therapy beds to DCV. Haynes Decl. at 2 ¶ 4. The Chief Financial Officer of the other company declared that it would continue to provide its mattress overlay systems to DCV simply because it believes "it is against public policy to stop service to the medically fragile DCV residents who are using our products ... [because] their lives may be at stake." Roomberg Decl. at 2 ¶ 6. Nonetheless, he could envision a day when the District's continuing refusal to pay for services rendered would force them away from this posture of benevolence. Roomberg Decl. at 2 ¶ 6. See further discussion below.

"several physicians told me in confidence that because of medication and staff shortages, they believed nursing staff would either mark in the record that the drug had been given, even if it had not been given, or indicate that the resident refused the medication." Greenwald Decl. at 5-6 ¶ 12.18/

The residents have detailed other current medical and basic care supply shortages. See, e.g., Baugh Decl. at 4-5 ¶ 10 (toothbrushes, combs, brushes, soap, lotion, paper towels, cups, light bulbs); Royster Decl. at 1 ¶¶ 2, 3 (toothbrushes, toothpaste, combs, brushes, soap, lotion, paper towels, cups, gauze, stretch wrap, catheters); Veasey Decl. at 1-2 ¶ 2 (urine bags); Morton Decl. at 2 ¶ 4 (proper hearing aid batteries). Mr. Royster declared that he has had to pay for a catheter himself simply because the facility had "run out of catheters for me." Royster Decl. at 1 ¶ 2. Mr. Veasey stated that because of the shortage of urine bags, he has been forced to "re-use the same dirty bag two to three days in a row." Veasey Decl. at 1 ¶ 2. In sum, basic supply and equipment shortages have forced the DCV

18/ Dr. Greenwald also found that inappropriate psychotropic medications are being prescribed, which is but one of the many deficiencies that he found in psychiatric care and treatment at DCV. Greenwald Decl. at 6-10 ¶¶ 13-24 (concluding that DCV's care is utterly bereft of adequate and appropriate psychiatric assessment, proper psychiatric differential diagnoses, appropriate treatment and sufficient monitoring of signs and symptoms). Dr. Greenwald also concluded that because of the lack of proper assessments, some individuals likely are inappropriately placed at DCV. See Greenwald Decl. at 10-12 ¶¶ 26-30 (DCV physician admitted "plenty of people are here who should not be here").

residents to endure squalid conditions and improper care for their ailments.

3. Hot Water For Bathing And Cleaning Eating Utensils

In addition to the supply shortages listed above, there has been a lack of hot water for bathing and a lack of hot water for washing and sanitizing eating utensils at DCV. See, e.g., Baugh Decl. at 1, 5-6 ¶¶ 3, 11, 12; Forte Decl. at 2 ¶ 6; Royster Decl. at 2 ¶¶ 4, 5; Scott Decl. at 2 ¶ 5; Morton Decl. at 2 ¶ 5; Waters Decl. at 2 ¶ 6. In fact, Ms. Baugh, Mr. Forte, and Mr. Royster all claim that there was recently no hot water for bathing on some units for at least a week. Baugh Decl. at 5 ¶ 11; Forte Decl. at 2 ¶ 6; Royster Decl. at 2 ¶ 4.

Ms. Hart confirms that because silverware eating utensils are not provided regularly to the residents, they are often left to use plastic "sporks." Hart Decl. ¶ 18. Some residents cannot use these "sporks" properly and end up not eating a sufficient amount of food. Hart Decl. ¶ 18. Last month, she observed residents crying and very distressed over having to eat food with their fingers because there were no eating utensils available. Hart Decl. ¶ 19, 20. See also Laurence Supp. Decl. at 1-2 ¶¶ 2-4 (no adaptive equipment available for use by residents who need it at mealtimes; one resident was observed eating fallen food off her bench; another resident suffered weight loss seemingly from not having adaptive equipment to help her eat).

D. Nursing Deficiencies Needlessly Subject Residents To Harm And Risk Of Harm

1. Lack Of Adequate Nursing Staff

Appropriate nursing care is crucial to the health and welfare of the medically fragile and/or otherwise involved DCV population. Not only does this comport with common sense, it is consistent with reasonable professional standards. Inadequate and inappropriate staffing has resulted in residents not receiving the care and attention they require. Anderson Decl. at 14, 15 ¶¶ 34, 35.

Our nursing consultant concluded that nurse staffing at DCV is "professionally unsound and dangerous." Anderson Decl. at 13 ¶ 31. As she had concluded a year earlier, she found that the existing nursing staff is forced to operate in a perpetual "crisis mode." Anderson Decl. at 3, 14 ¶¶ 7, 31. As a result, the overburdened staff have failed to meet the basic and routine needs of the residents. See Anderson Decl. at 15 ¶ 35 (residents not bathed frequently enough, not turned on a regular basis to prevent or minimize incidents of decubitus ulcers, not provided with needed therapy, weights and nutritional needs not monitored in a timely fashion). Ms. Hart has similar concerns and cites to a pattern of unexplained injuries and a high incidence of falls which demonstrate inadequate supervision and a lack of proper care and monitoring of vulnerable residents. Hart Decl. ¶ 11.

Ms. Baugh declared "over half the time we do not have enough nurses on the unit. The nurse shortage means that they cannot attend to the needs of the full care residents. There always

seems to be a shortage of nurses and staff on the weekends." Baugh Decl. at 9 ¶ 21.19/ Mr. Forte indicated that "[w]e're usually short-staffed all the time." Forte Decl. at 3 ¶ 10. Ms. Laurence has also concluded that there is not adequate staff to meet the needs of the residents. Laurence Decl. at 3 ¶ 5.

Dr. Greenwald was told by DCV staff that there are nurse and nurse's aide shortages that lead to situations where there are not enough staff to feed people or to bathe people. Greenwald Decl. at 5-6 ¶ 12. The staff also indicated that the requirements of tube feedings, nebulizer treatments, and medical administration have overwhelmed the DCV nursing manpower. Greenwald Decl. at 5-6 ¶ 12.20/ See also Laurence Supp. Decl. at 2-3 ¶¶ 6, 7 (nursing staff failed to monitor feeding tubes closely enough). One staff person commented to Dr. Greenwald that as a result, "there's gotta be mistakes." Greenwald Decl. at 5 ¶ 12.

Nurses often do not carry out the duties they are obligated to undertake. Ms. Baugh declares, "[f]or nurses at DCV, paperwork is more important than the residents. Nurses often

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19/ Ms. Baugh indicated that even though she is unable to brush her own teeth, "no staff person or nurse had brushed my teeth for the entire week before the outside surveyors arrived." Baugh Decl. at 7 ¶ 17. Ms. Morton has observed that the "staff and nurses often don't groom the residents properly. I've seen residents in need of such services left with their hair not combed and nappy all day long." Morton Decl. at 2 ¶ 6.

20/ Ms. Anderson, for example, noticed that nursing staff had twice failed to provide Moses with his physician-ordered water bolus injection which serves to exacerbate Moses' skin breakdown and places him at risk of dehydration. Anderson Decl. at 10 ¶ 23.

write entries in the record without interacting with or saying a word to the residents." Baugh Decl. at 8 ¶ 19. Ms. Laurence declares, "[o]n several occasions, I have observed the staff sitting in the dayroom at a table talking to one another with [residents] sitting idle while the TV is on in the background. I have never seen a supervisor tell the staff that this type of behavior is unacceptable." Laurence Decl. at 3 ¶ 5.

A relative of a recently deceased DCV resident detailed similar neglect by nursing staff:

> While he was alive, the DCV staff did not take care of my brother adequately; they didn't provide for his basic care needs. It was a crime the way they treated him. They just ignored him ... The staff were very unprofessional; in fact, they were a disgrace to their profession. Whenever I visited him, I found him needing a shave and needing to be cleaned up. I couldn't even find staff to help me take care of him when I visited. I would have to find my own razor and shave him myself. I would also do my best to clean him up myself. I never saw staff around to help. I think this was outrageous neglect.

Hawkins Decl. at 2 ¶ 5.

Nurses often write in the record that they perform certain duties and yet, in fact, they do not. For example, Mr. Forte indicated that "[a] lot of residents have gotten what I call a 'pencil bath' where the nurses write in the record that they bathed the person, but in fact, they had not." Forte Decl. at 3 ¶ 9. Ms. Baugh confirms that many times, nurses will "write in the record that they have done something, like change a dressing for a bed sore, yet they will have not done anything at all." Baugh Decl. at 8 ¶ 19.

Our nursing consultant found several instances where staff had written in the record that they had performed certain duties when, in fact, they had not. In one instance, Ms. Anderson confronted the medication nurse on a unit who had marked in the record of Charles L. that he had received his physician-ordered seizure medication. The medication nurse admitted, however, that the dosage had not been administered and that the written record was inaccurate. Anderson Decl. at 12-13 ¶ 27. Ms. Anderson also found that the night shift staff had marked in the record of Catherine S. that a certain procedure had been done throughout the shift, despite the fact that the shift had not yet begun. Anderson Decl. at 15-16 ¶ 36.21/

Moreover, the District has traditionally failed to staff DCV with an adequate number of permanent nursing staff to meet the needs of the residents. As a result of this failure, for at least the past year, DCV has been forced to rely on using agency or contract nurses to fill staff unit positions.

Ms. Anderson found that the nursing staff complement, comprised of almost fifty percent temporary contract nurses, failed to meet the needs of the DCV residents and placed them at risk of harm. Anderson Decl. at 3-4, 14 ¶¶ 7, 32. She concluded that such widespread use of contract nurses presents "serious risks to the health and safety" of the residents. Anderson Decl. at 14 ¶ 32. She added, "[t]his overreliance on temporary staff

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21/ Dr. Elon also noted irregularities in entries in a medical record. Elon Decl. at 18-19 ¶ 46.

is inappropriate and dangerous in a facility such as D.C. Village where continuity of care and familiarity with residents are critical to ensure adequate safety and treatment." Anderson at 14 ¶ 33.22/

In sum, acknowledged nursing and staff shortages as well as the overuse of contract nurses have compromised care and service to the DCV residents placing them at further risk of harm.

2. Medication Errors

Our nursing consultant also found an excessive number of medication errors at DCV. Anderson Decl. at 3, 12 ¶¶ 6, 27. She concluded that medication errors were a "systemic, on-going problem exacerbated by a nursing staff that is understaffed, overburdened and confronted with the prevalent use of temporary agency/contract nurses who are not adequately familiar with the needs of D.C. Village residents." Anderson Decl. at 13 ¶ 30. See also Anderson at 14 ¶ 32 (several individual members of the contract staff did not know the names and identities of the residents to whom they were providing care and nursing services and administering medications).

Ms. Baugh indicates, "I invariably have to tell the [contract] nurses what medications I take and when I take them. Often I have to correct the nurses after they hand me the wrong pills at the wrong time. Even after I correct their mistake, if

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22/ Consistent with this, Ms. Baugh indicates that because the contract nurses are not familiar with the residents, they make mistakes such as improperly treating residents' decubiti and constantly making medication errors. Baugh Decl. at 7-8 ¶ 18.

it's just a timing error, the contract nurses often encourage me to take the pills that they've given me at the time anyway." Baugh Decl. at 7-8 ¶ 18. Mr. Forte also indicates that the contract nurses have committed a lot of medication errors: "On many occasions, I've been handed the wrong medication by a contract nurse, forcing me to correct her mistake." Forte Decl. at 3 ¶ 8. Mr. Veasey indicates that contract nurses have made quite a few mistakes in dispensing medications. He added, "I know what I'm supposed to be taking, and when I tell the nurses that they've made a mistake, they don't like it." Veasey Decl. at 3 ¶ 9.

Our consultant further found that medications were routinely documented as having been administered to residents when in fact, they had not been. See Anderson Decl. at 12-13 ¶¶ 27-30 (all medications on Unit 3A were marked as having been administered when they had not been; medication nurse admitted that the record documenting that seizure medication had been administered to Charles L. was inaccurate and that medication had not been given; three dosages of seizure medication had not been given to Houston J.; Edward S. had not been given his anti-seizure medication twice in the prior week). Ms. Anderson concluded that "this type of nursing practice grossly violates accepted nursing standards and is professionally unjustifiable." Anderson Decl. at 13 ¶ 27.

In sum, grossly deficient practice and the overuse of temporary nurses have produced an unacceptably high risk of

medication error each time medications are dispensed to residents at DCV.

E. Failure To Pay Vendors Has Resulted In Or Exacerbated Shortages And Deficiencies

It appears that the District's current financial crisis has caused many if not all of the food, supply and staffing shortages at DCV. A few of the residents indicate in their declarations that Ms. Brasfield, the DCV Executive Director, or other DCV employees admitted as much to them on a number of different occasions. Baugh Decl. at 1-2 ¶ 3; Forte Decl. at 1-2 ¶ 2. See also Robinson Decl. at 2 ¶ 5 (admission from Chief, Facility Support Services Division, DCV); Laurence Supp. Decl. at 2 ¶ 5 (admission from DCV nurse); Veasey Decl. at 2 ¶ 4 (admission from DCV kitchen staff).

The District has admitted that it currently owes over $1,000,000.00 in past due amounts to vendors who supply necessary basic care and other services to DCV. Exhibit 2. Specifically, the District admitted that as of March 1, 1995, it owed at least forty different vendors $1,022,178.95 in past due amounts dating back to last Fall.23/ Exhibit 2.

23/ Since March 1, 1995, the situation has only worsened drastically. For example, as of the time of its current signed declaration in June, the District owed SRT MedStaff over $200,000 for agency nursing services the company had already provided at DCV. Duval Decl. at 1 ¶ 3. Because of the District's non-payment, SRT completely stopped furnishing DCV with nurses earlier this month. Duval Decl. at 1-2 ¶ 4. As of the time National Nurses Service, another contract nursing service, signed its recent June declaration, it was owed over $180,000 in past due amounts for agency nursing services it had provided at DCV. Messenheimer Decl. at 2 ¶ 5. If the District continues to fail

(continued...)

Vendors owed past due amounts include food and dietary suppliers, pharmaceutical and drug companies, medical supply providers, a medical oxygen supplier, laundry service providers, hot water boiler repairmen, agency/contract nursing agencies, and providers of therapeutic beds and mattress overlay systems for the prevention and treatment of decubitus ulcers. Exhibit 2. A few of these vendors, including those who supply food products, medical supplies, products related to treating decubitus ulcers, laundry services, and contract nursing services, have signed declarations detailing amounts they are owed by the District. See generally Dorr Decl. (hot water boiler repair), Duval Decl. (contract nurses), Haynes Decl. (therapy beds), Messenheimer Decl. (contract nurses), Mogenson Decl. (food and dietary), Robinson Decl. (laundry), Roomberg Decl. (mattress overlay systems), Schimpff Decl. (laundry), Williams Decl. (medical products and supplies).

23/ (...continued)
to pay, National has declared that it is now at the point of having to discontinue future service to DCV. Messenheimer Decl. at 3 ¶ 7. As of the time National Patient Care Systems, Inc., a supplier of mattress overlay systems, signed its June declaration, it was owed over $66,000. Roomberg Decl. at 2 ¶ 4. It had not received payment for services rendered since October 1994. Roomberg Decl. at 2 ¶ 4. As of the time it signed its June declaration, District Healthcare and Janitorial Supply, Inc., a medical products supply company, was owed close to $60,000. Williams Decl. at 1-2 ¶ 4. As of the time they signed their declarations, the District owed Nutech Laundry and Textiles, Inc. over $80,000, and owed Healthcare Laundry Services over $100,000. Robinson Decl. at 2 ¶ 6; Schimpff Decl. at 1 ¶ 4. Nutech no longer provides laundering services to DCV. Robinson Decl. at 1 ¶ 3.

Because of the District's delinquent payment practices, some vendors have stopped supplying DCV with critical goods and services; other vendors have threatened to stop supplying DCV or are at great risk of being forced to stop soon. See Duval Decl. at 1, 2 ¶¶ 4, 7 ("[b]ecause of the District's failure to pay us, we have had to cancel all contract nursing services with DCV"); Messenheimer Decl. at 2-3 ¶¶ 5-7 ("I told [Vernon Hawkins, Interim Director, Department of Human Services ("DHS")] that we would be unable to continue service at DCV after the evening of June 9, 1995 unless we received payment for the past due amounts"); Williams Decl. at 2 ¶ 4 ("without payment of the past due amounts, we won't be able to supply them with goods in the future simply because we can't afford to do business indefinitely without getting paid"). See also Robinson Decl. at 2, 3 ¶¶ 5, 9 (District officials stopped using vendor because "budgetary restraints have forced us to take this action"; vendor declined to bid on future work because District is not "reliable").24/ The actual loss of basic supply or nursing

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24/ The District has made it exceedingly difficult for these vendors to obtain payment for amounts they are owed. Statements made include: "we have been forced to speak with many different District officials. Working with the D.C. Government has been an administrative nightmare," Robinson Decl. at 2 ¶ 7; "some individuals would not return my calls until I left a message with the magic words that we were threatening to terminate services," Duval Decl. at 3 ¶ 7; "we were forced to call repeatedly various District officials in an attempt to obtain the funds we were due. Many times, our phonecalls were not returned ... we were often asked to re-fax the invoices we had already submitted causing further delay," Messenheimer Decl. at 1-2 ¶ 3; "[w]e have made repeated telephone calls ... in an attempt to obtain payment. We are always promised payment, but it never arrives," Roomberg (continued...)

vendors, or even just the risk of loss, greatly compromises the health and well-being of the residents who need continuity of care and who need such goods and services to meet their often complex needs.

There is also a real danger that critical specialized support services for twenty-two individuals with mental retardation who live at DCV, provided through a contract with Georgetown University, will cease to exist after June 30, 1995. Laurence Supp. Decl. at 3 ¶ 8, and attached letter from Karen Clay, Director, DC Arc Pratt Monitoring Program. Although the District has taken steps to provide more appropriate services for these individuals by transferring them to community residences, the District has fallen behind its June 30, 1995 deadline for accomplishing this. Laurence Supp. Decl. at 3 ¶ 8, and attached Clay letter. As a result of the District's delay in transferring these individuals, individuals with mental retardation currently living at DCV would be left without needed habilitation and training or other necessary supports for the remainder of their stay at the institution if the Georgetown University contract is not renewed uninterrupted.

24/ (...continued)
Decl. at 2 ¶ 5; "[t]raditionally, the District has been slow in paying our invoices," Haynes Decl. at 1-2 ¶ 3.

F. Claim Of Improved Or Changed Conditions Does Not Eliminate The Need For Immediate Relief

Any claim that the District might make that they have undertaken initiatives to correct past problems and that conditions have generally improved, does not eliminate the need for immediate relief.25/

Efforts already undertaken to purportedly improve conditions and services seem to have not ultimately reached the DCV residents. For example, Maria Laurence, the representative from DC Arc, declares, based upon her recent visits to DCV, that although DCV has put a lot of new processes in place, "I have not found that these new processes resulted in significant improvements for the residents. The facility director, Ms. Brasfield, and the District administrators seem to have good intentions, but their initiatives, like total quality management and peer review, seem to have had little real impact on resident care and services." Laurence Decl. at 2 ¶ 4.

Further, any attempts at temporary improvement apparently only take place when DCV is under intense scrutiny, such as

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25/ See United States v. W.T. Grant Co., 345 U.S. 629, 632 n.5 (1953) ("[i]t is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption"); LaShawn A. v. Dixon, 762 F. Supp. 959, 982, 987 (D.D.C. 1991), aff'd, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, __ U.S. __, 114 S. Ct. 691 (1994) (in response to the District's late attempts to alleviate some deficiencies in the foster care system, the Court held that the District's proposed remedial actions were still too tentative to make injunctive relief unnecessary and that it would not rely on defendants' good faith alone given that it amounted to nothing more than unsubstantiated promises to improve).

during tours by outside surveyors.26/ Once the outsiders leave DCV, however, conditions revert to being deficient.27/

26/ For example, on the first day of our tour, the DCV staff and administrators pasted a bright orange poster at the main entrance to the facility trumpeting the kick-off of a brand new dysphagia clinic to be conducted over the next few days. The clinic was being started even though the Department of Justice had identified assessment and treatment of dysphagia as a problem at DCV based on its tour of the facility about a year earlier. Anderson Decl. at 11 ¶ 26; Elon Decl. at 16-17 ¶ 40.

27/ See, e.g., Baugh Decl. at 2 ¶ 4 ("basic services to residents were enhanced and increased [the week of the United States' tour] to make it appear to the outsiders as if there were no basic care shortages. However, this is misleading. For example, the meals served to us that week were of better quality and greater quantity than they had been for months. The facility always puts on a good show for the surveyors, yet poor services always return once the outsiders leave"); Forte Decl. at 2 ¶ 3 ("[o]nce the outsiders arrived last week, conditions improved and we had everything we needed ... Before they arrived, the meals were bad ... Now that the outsiders are gone, conditions are worsening again"); Royster Decl. at 3 ¶ 7 ("[w]hile the outside surveyors were here last week, we were provided with juice at all meals for the first time in months. The meals improved during that time as well. However, I fully expect the quality of the meals to go down again once they're gone. This is always the pattern"); Veasey Decl. at 3 ¶ 7 ("[t]he facility always improves conditions and services when outsiders tour DCV. Other than when the outside surveyors were here last week, we had not had juice for months. In fact, last week when the surveyors were here, food quality improved greatly ... However, once the surveyors leave, things always revert back to the way they had been"); Scott Decl. at 2 ¶ 4 ("[l]ast week, when the outside surveyors were here, the food was positively beautiful. This always happens when outsiders are visiting. However, the food is not to my liking once they go"); Morton Decl. at 1 ¶ 2 ("[l]ast week, I was happy because I knew the food would improve while the outside surveyors were here"); Anderson Decl. at 10 ¶ 24 (an evening charge nurse reported to our nurse consultant that the medical supply shortages were as recent as the prior week, however, another nurse stated: "things have gotten better this week").

III. STANDARDS FOR A PRELIMINARY INJUNCTION

In determining whether a preliminary injunction is warranted, four factors are to be considered: 1) the likelihood that the party seeking the preliminary injunction will prevail on the merits; 2) the likelihood that the moving party will be irreparably injured absent such relief; 3) the prospect that other parties interested in the proceedings will be harmed if the Court grants a preliminary injunction; and 4) the public interest in granting the relief sought. Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 842-43 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). See also National Black Police Ass'n v. District of Columbia Bd. of Elections and Ethics, 858 F. Supp. 251, 263 (D.D.C. 1994); National Fed'n of Fed. Employees v. Carlucci, 680 F. Supp. 416 (D.D.C. 1988); Huynh v. Carlucci, 679 F. Supp. 61 (D.D.C. 1988); T.I.M.E.-DC, Inc. v. I.A.M. Nat'l Pension Fund, 597 F. Supp. 256 (D.D.C. 1984).

These four factors are to be balanced relative to one another. The necessary level for possibility of success on the merits will vary according to the Court's assessment of the other equitable factors. Washington Metro. Area Transit, 559 F.2d at 843-44. Importantly, courts have recognized that where the irreparable injury alleged involves denial of constitutional rights, the moving party's burden of proving each of the four factors is lessened. A. Wright & Arthur R. Miller, Federal Practice and Procedure, Civil, § 2948 at 440 (1973); Phillips v.

Michigan Dep't of Corrections, 731 F. Supp. 792, 801 (W.D. Mich. 1990), aff'd, 932 F.2d 969 (6th Cir. 1991) (in a prison conditions case, the court concluded that "when an alleged deprivation of a constitutional right is involved, no further showing of irreparable harm is necessary").

A. The United States Is Likely To Succeed On The Merits

As outlined above and as clearly set out in the many attached declarations signed by individual DCV residents, relatives of DCV residents, the United States' experts, and others, the United States is likely to prevail on the merits here given the District's clear violation of the DCV residents' constitutional rights.28/

There is no question that individuals living in state-operated facilities have a right, at a minimum, to decent and humane care of their basic human needs. For example, individuals in state-run institutions have a "right to adequate food, shelter, clothing, and medical care." Youngberg v. Romeo, 457 U.S. 307, 315 (1982). These are the "essentials of the care that

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28/ In deciding this issue, the Court is not required to find that ultimate success by the movant is a wooden mathematical probability. Washington Metro. Area Transit, 559 F.2d at 843-44. Such an approach could be unnecessarily harsh and lead to an exaggeratedly refined analysis of the merits at an early stage in the litigation. Id. If other equitable elements are present, "it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." Id. at 844, quoting Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738, 740 (2d Cir. 1953).

the State must provide." Id. at 324.29/ However, it is evident that these essentials are currently not being provided at DCV, producing daily violations of the residents' basic and fundamental constitutional rights.

In the foster care context, this Court recognized such constitutional rights and found similar constitutional violations by the same defendants, the District of Columbia and the Department of Human Services. LaShawn A. v. Dixon, 762 F. Supp. 959 (D.D.C. 1991), aff'd, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, __ U.S. __, 114 S. Ct. 691 (1994). There are striking similarities between the LaShawn case and the present action. For example, in finding constitutional and legal violations in LaShawn, the Court held that although the plaintiff class members had "committed no wrong, they in effect have been punished as though they had." Id. at 998. As is true of the LaShawn class, the DCV residents have done society no wrong and they deserve no punishment. Id. at 996.30/

29/ Such individuals also have a constitutional liberty interest in reasonably safe conditions, freedom from undue bodily restraint, and a right to minimally adequate or reasonable training to ensure safety and liberty interests. Youngberg, 457 U.S. at 315-16, 318-19. This Court has found that children in the District's foster care system had analogous rights that included the right "to safety from psychological and emotional harm." LaShawn A., 762 F. Supp. at 992-3. The Court also held that the plaintiffs had a constitutional liberty interest in appropriate placements and case planning if such services were necessary to prevent harm. Id. at 993.

30/ The class members in LaShawn and the DCV residents are both "wards of the District who rely wholly on the District to provide them with all of life's necessities ... to protect them from harm and ensure their well-being." LaShawn A., 762 F. Supp. at 993.
(continued...)

Given the weight and breadth of the facts in support of this Motion for Preliminary Injunction, that detail black letter law violations of residents' rights, the United States has demonstrated a likelihood of success on the merits in this case.

B. Irreparable Injury Will Result If The Challenged Practices Are Not Enjoined

In this case, the injuries to the DCV residents are clearly irreparable. There can be no compensation or correction provided to the DCV residents who daily face pain, suffering, loss of limb, hunger, and risk of death because of the negligence and deficient care afforded them by Defendants.31/

30/ (...continued)
As was the case in LaShawn, DCV residents must "rely on the District to provide them with food, shelter and day-to-day care." LaShawn A., 762 F. Supp. at 960. The two cases share other similarities as well, including: beleaguered city employees trying to do their best to provide basic care necessities while plagued with excessive caseloads, staff shortages, inadequate resources, inadequate administrative supports, and budgetary constraints; the upper management of the DHS, as well as the former mayor, repeatedly being made aware of most, if not all of the deficiencies; the District hiring temporary employees rather than permanent employees to fill vacancies; the District arguing that it is operating at a severe deficit and that all departments within the city are under stringent budgetary constraints; and the Court using the language "perpetual state of crisis" to describe the widespread deficient conditions in the foster care system. Id. at 970, 977, 981, 987, 989, 996.

31/ D.C. Circuit courts, including this Court, have found irreparable injury on much less compelling facts: National Fed'n of Fed. Employees v. Carlucci, 680 F. Supp. 416 (D.D.C. 1988) (granted plaintiffs' application for an expanded preliminary injunction where government's compulsory random urinalysis drug testing was held to be a substantial intrusion and violative of plaintiffs' constitutional rights); Huynh v. Carlucci, 679 F. Supp. 61 (D.D.C. 1988) (granted plaintiffs' motion for a preliminary injunction against enforcement of a regulation that denied security clearance to recently-naturalized citizens where irreparable injuries included injury to careers and injury to
(continued...)

The irreparable injury stemming from the deprivation of DCV residents' constitutional rights is amply captured in the words of a relative of a DCV resident who recently died after amputation due to pressure sores:

> Every time I visited my brother at DCV, I became upset over the deplorable conditions ... I'm overcome with guilt sometimes because I left my brother there and he ended up dying. It's been very difficult for me to live with. I wish the place could be shut down so that no one else will have to suffer like my brother did. I'm afraid alot of other people will die needlessly. It's a national disgrace.

Hawkins Decl. at 1-2 ¶¶ 3, 4.

The evidence that DCV residents have suffered irreparable harm is overwhelming. The many attached declarations by experts, residents, relatives, and advocates, and Defendants' own admissions through interviews and documents, demonstrate that the individuals confined in DCV under present conditions will suffer irreparable harm without this Court's intervention.

C. There Is No Substantial Harm To Other Parties

In order to prevent the issuance of a preliminary injunction, the D.C. Circuit has advised that it must have a "serious adverse effect" on other interested parties. Virginia Petroleum Jobbers Ass'n, 259 F.2d at 925.

There can be no "harm" or "serious adverse effect" to Defendants by the issuance of a preliminary injunction in this

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31/ (...continued)
self-worth and well-being); T.I.M.E.-DC, Inc. v. I.A.M. Nat'l Pension Fund, 597 F. Supp. 256 (D.D.C. 1984) (granted plaintiff's motion for preliminary injunction to enjoin defendants from pursuing its withdrawal liability assessment against plaintiffs where irreparable injury was the threat of diminished consumer confidence and the elimination of business opportunities).

case. Any efforts undertaken or expenses incurred to meet the needs of the DCV residents are simply basic and fundamental obligations of the District of Columbia for as long as it undertakes to provide a haven to individuals who need nursing care and services. Defendants cannot be "harmed" by doing what they are already legally obligated to do. See, e.g., Boldhouse v. Continental Wingate Co., 656 F. Supp. 620, 630 (W.D. Mich. 1987) ("defendants cannot claim that they will be harmed by complying with [the law] since an injunction will only require that which the law already requires"); Association for Retarded Citizens of North Dakota v. Olson, 561 F. Supp. 473, 484 (D.N.D. 1982), aff'd and remanded in part on other grounds, 713 F.2d 1384 (8th Cir. 1983) (if the state chooses to operate such facilities, the operation of these facilities must meet minimal constitutional standards, and the obligation to meet those standards may not yield to financial considerations; the Constitution requires that the state either provide adequate funding to bring its facilities into compliance with constitutional standards, or abandon operation of such facilities).

Any expenses incurred in the future to provide minimally adequate care and services to residents captive in the institution, do not amount to "harm" or a "serious adverse effect" to the District. Any monies ordered to pay vendors will simply remunerate them for goods and/or services the District had

already asked them to provide. That certainly is no hardship.32/

The Court must consider the harm not only to the Defendants, but also to those parties not before the Court who may be interested in the proceedings. Amalgamated Transit Union, AFL-CIO v. Donovan, 554 F. Supp. 589, 599 (D.D.C. 1982). In this case, other interested parties include the vendors who supply goods and services to DCV. However, any form of relief that would issue from this Court requiring the adequate provision of services to residents should involve payment of past due amounts to the vendors and could therefore lead to the resumption of business for them at DCV. As such, injunctive relief will not harm the vendors, but will help them.

The Long Term Care Ombudsman and DC Arc are other interested parties who, as is evidenced by their attached declarations, substantively support the requested injunctive relief. They will not be harmed by its issuance and the interests of the DCV residents whom they represent will be helped by this Court's intervention.

32/ This is consistent with the Court's earlier ruling in LaShawn, where the Court found the District's arguments about fiscal constraints unavailing: "The Court is well aware of the District's financial plight, but this cannot relieve the District of liability for depriving the children in its foster care of their constitutionally protected liberty interests." LaShawn A., 762 F. Supp. at 997.

For the foregoing reasons, the United States has demonstrated that neither Defendants nor other parties will be harmed by the issuance of a preliminary injunction.

D. The Issuance Of The Preliminary Injunction Is In The Public Interest

The D.C. Circuit indicates that the public interest may have "many faces" with competing interests. Virginia Petroleum Jobbers Ass'n, 259 F.2d at 925. However, there can be no competing interests here because the public always has a strong interest in ensuring that its citizens' constitutional and legal rights are met. In fact, this Court has held that the issuance of a preliminary injunction served the public interest "by ensuring protection of constitutional rights." Huynh, 679 F. Supp. at 67. See also National Fed'n of Fed. Employees, 681 F. Supp. at 435 ("the public interest lies in enjoining unconstitutional searches"); National Black Police Ass'n, 858 F. Supp. at 263 ("it is in the public's interest to protect the infringement of plaintiffs' constitutional rights").

By enacting CRIPA, Congress recognized that there is a national, or public, interest in protecting the rights of institutionalized persons. Through CRIPA, Congress authorized the Attorney General to bring suit to secure those rights. In doing so, Congress stated "the Attorney General's authority extends to initiating suit 'for or in the name of the United States,' in order to represent the national interest in securing constitutionally adequate care for institutionalized citizens." H.R. Rep. No. 897, 96th Cong., 2d Sess. 13 (1980) (emphasis

added). There is an especially strong public interest in protecting a population like the DCV population at issue here which is dependent upon the District for vital and basic care, captive in an institution, and desperately in need of help from the Court. Hence, the issuance of the requested preliminary injunction would further the national/public interest inherent in protecting their rights. See Soave v. Milliken, 497 F. Supp. 254, 262 (W.D. Mich. 1980) (upholding the constitutional rights of institutionalized persons "serves not only their personal interests, but the interests of the society in which they live").

The long-standing and clear public interest in protecting the constitutional and legal rights of its citizens along with the greater need to protect those who cannot help themselves, compels the conclusion that the United States has met its burden of demonstrating that a preliminary injunction satisfies the public interest.

IV. NECESSARY REMEDY

Based on all of the foregoing, immediate injunctive relief is necessary to prevent substantial and serious harm to DCV residents. The United States has drafted a proposed order setting forth the required remedies in order to enjoin the Defendants from dangerous practices and to provide appropriate care and treatment in the following areas: (1) care of decubitus ulcers; (2) care of incontinent residents; (3) nursing staff and practices; (4) medication administration; (5) food and drink;

(6) medications, medical supplies, and equipment; (7) personal care items; and (8) services and alternative placements for people with mental retardation. In addition, the United States seeks an order requiring Defendants to pay in full all outstanding debts to individuals and vendors who have supplied goods and/or provided services to or on behalf of DCV residents and to provide prompt payments to them in the future. Moreover, due to Defendants' inability or unwillingness to remedy violations, the United States seeks the right to conduct unannounced visits of DCV as well as the appointment of a Monitor to oversee Defendants' compliance with the preliminary injunction. Finally, the United States seeks protection from retaliation for any individuals who provide information on conditions at DCV Village.

V. CONCLUSION

The evidence in support of the United States' Motion for Preliminary Injunction demonstrates a sufficient basis for granting a preliminary injunction to prevent continuing harm and the threat of irreparable injury. For all the foregoing reasons, the United States respectfully requests that the Court enter an order for a preliminary injunction pursuant to the attached proposed order to remedy the dangerous and life-threatening conditions and practices at DCV that violate residents' constitutional rights.

Respectfully submitted,

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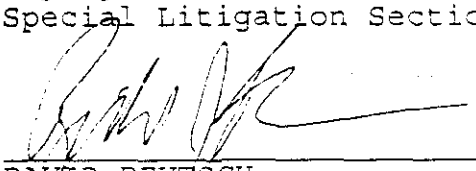

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