

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL GRAHAM; ALEXUS DIGGS; and
HEATHER CONNOLLY, *on behalf of themselves
and all others similarly situated,*
Plaintiffs-Petitioners,

20-cv-496

v.

ALLEGHENY COUNTY; and ORLANDO
HARPER, *Warden of Allegheny County Jail,*
Defendants-Respondents.

Defendants' Answer and Affirmative Defenses

Introduction

1. This paragraph is an introductory narrative that requires no response. Moreover, the Defendants cannot respond to this long narrative paragraph concisely, as required by the Federal Rules of Civil Procedure. The Defendants have, however taken reasonable and necessary measures to protect inmates and employees at the Allegheny County Jail from the COVID-19 virus.

2. This paragraph is a narrative that requires no response. Moreover, the Defendants cannot respond to this long narrative paragraph concisely, as required by the Federal Rules of Civil Procedure. The Defendants have, however taken reasonable and necessary measures to protect inmates and employees at the Allegheny County Jail from the COVID-19 virus.

3. This paragraph is a narrative that requires no response. Moreover, the Defendants cannot respond to this long narrative paragraph concisely, as required by the Federal Rules of Civil Procedure. The Defendants have, however taken reasonable and

necessary measures to protect inmates and employees at the Allegheny County Jail from the COVID-19 virus.

4. This paragraph is a narrative that requires no response. Moreover, the Defendants cannot respond to this long narrative paragraph concisely, as required by the Federal Rules of Civil Procedure. The Defendants have, however taken reasonable and necessary measures to protect inmates and employees at the Allegheny County Jail from the COVID-19 virus. By way of further response, The Allegheny County jail has placed all inmates identified by the CDC as having an increased risk of adverse consequences from COVID-19 in single cells, unless contraindicated by other medical or penological reasons.

5. This paragraph is a legal conclusion that requires no response. To the extent a response is required this paragraph is denied.

Jurisdiction and Venue

6-8. The Defendants do not contest venue and they do not question subject matter jurisdiction, except that it is denied that a single Federal District Court Judge has jurisdiction to order inmates to be released. 18 U.S.C. § 3626.

Parties

9. Michael Graham is a pre-trial detainee at the Allegheny County Jail. Mr. Graham's medical conditions are admitted to the extent that they conform to the ACJ medical records, otherwise they are denied. The Allegheny County Jail accepts the recommendations of the CDC and the Allegheny County Health Department (ACHD) regarding which persons are at increased risk of severe illness or death if they contract COVID-19. Its recommendations are written and speak for themselves.

10. Plaintiff Alexis Diggs is a pre-trial detainee at the Allegheny County Jail. Ms. Diggs' medical conditions are admitted to the extent that they conform to the ACJ medical records, otherwise

they are denied. The Allegheny County Jail accepts the recommendations of the CDC and the ACHD regarding which persons are at increased risk of severe illness or death if they contract COVID-19. Its recommendations are written and speak for themselves.

11. Heather Connelly is a pre-trial detainee at the Allegheny County Jail. Ms. Connelly's conditions are admitted to the extent that they conform to the ACJ medical records, otherwise they are denied. The Allegheny County Jail accepts the recommendations of the CDC and the ACHD regarding which persons are at increased risk of severe illness or death if they contract COVID-19. Its recommendations are written and speak for themselves.

12. Allegheny County is a home rule county organized and existing under the laws of the commonwealth of Pennsylvania. Allegheny County operates the Allegheny County Jail. Orlando Harper is the Warden of the Allegheny County Jail. Persons committed to the Allegheny County Jail by law are in the custody of Orlando Harper.

13. Warden Harper has custody of inmates committed to the Allegheny County Jail by lawful authorities.

Factual Allegations

14-20. The Defendants lack sufficient knowledge to admit or deny these paragraphs. By way of further response, the Defendants do not deny that COVID-19 is a serious infectious disease that can cause death or serious injury. The Allegheny County Jail has taken and is taking reasonable measures to protect its inmates and employees from COVID-19. The updated version of its continuing Operations Plan, which was originally adopted March 9, 2020, Exhibit 1, is attached and incorporated by reference.

Release of Medically Vulnerable Inmates

21–29. The Defendants lack sufficient knowledge to admit or deny these paragraphs. By way of further response, the Defendants do not deny that COVID-19 is a serious infectious disease that can cause death or serious injury. The Allegheny County Jail has taken and is taking reasonable measures to protect its inmates and employees from COVID-19. The population of the Allegheny County Jail has declined by approximately 750 since March 16, 2020. The Jail has no authority to admit or to release inmates, which is a judicial function. The ACJ is aware that jails and correctional institutions create unique Corona virus infections control problems. The CDC and the ACHD has published recommendations for such institutions and the ACJ endeavors to follow its recommendations. The ACJ also considers the advice and recommendations of the ACJ medical staff, the Allegheny County Health Department (ACHD), the Pennsylvania Department of Corrections, and other medical and correctional authorities, to the extent it is possible and practical to do so under the circumstances that exist at the ACJ. Warden Harper has custody of inmates committed to the Allegheny County Jail by lawful authorities. He does not possess the legal authority to receive, reject (with limited exceptions) or to release any inmate without judicial authorization.

Conditions of Confinement at the ACJ

30. Denied. The conditions of confinement at the ACJ are legal and adequate. The current ACJ policy regarding the COVID-19 emergency is attached to this Answer as Exhibit 1.

31-37. Denied. Exhibit 1 is incorporated by reference. The ACJ population has declined by approximately 740, since mid-March 2020. Some areas of the ACJ were vacant in March 2020. These were vacant, in part, to have areas to use if there was a need to specially house inmates infected with COVID-19. The ACJ is now placing inmates identified as medically vulnerable in single cells,

unless there is a reason to double cell those inmates, but there is no general policy to single cell all inmates. The number of ACJ inmates and employees who have been tested for COVID-19 and the results are posted on the ACJ website and they are updated daily. It is denied that inmates were not aware of social distancing. Signage is posted identifying COVID-19 recommendations.

38-41. Meals are now distributed in cells. The common areas and recreation areas now attempt to maintain a 6-foot separation between individuals, however, this is not always possible. Inmate telephones and showers are to be disinfected after each use according to policy.

42-45. Denied. All symptomatic employees are tested. The testing regimen followed by the Allegheny County Jail is recommended by the Allegheny County Health Department. The current number of tests and results for employees and inmates are listed on the ACJ website, which is updated daily.

46. Denied. The Defendants lack sufficient knowledge or information to respond to this paragraph.

47-50. The COVID-19 pandemic is rapidly evolving. The remaining averments of this paragraph are a mixture of alleged facts, opinions, and argument, which cannot be answered, except by an extended narrative which violates the Federal Rules of Civil Procedure. They are, therefore, denied. By way of further answer, Allegheny County Jail inmates and staff are aware of social distancing and signage is posted. Exhibit 1 is incorporated by reference.

51-52. Masks are available to all inmates and staff. Use of the mask was previously recommended, but it is now mandatory, except in cells.

53. Inmates had and have adequate soap and toilet tissue.

54-55. The Defendants deny that there are or has been insufficient cleaning and disinfecting supplies for inmates. To the extent that any inmate lacked adequate sanitation supplies, that was unknown to the Defendants and contrary to the ACJ's policy and custom.

56-74. Denied. To the knowledge and information of the Defendants no symptomatic inmate has been denied medically reasonable or necessary medical care at the Allegheny County Jail. Medical care for COVID-19 related issues is not and has not been limited by staffing. All of the inmates identified by name in the complaint have received necessary and appropriate medical care. Self-evaluation by the identified inmates of their medical conditions and treatment are denied, except to the extent they are verified by their Allegheny County Jail medical records.

Class Action Allegations

75-86. The averments of these paragraphs are legal conclusions that require no response. To the extent that a response may be required the averments of these paragraphs are denied.

Claim for Relief All Inmates – 42 U. S. C. §1983

87–90. For the reasons discussed in the prior paragraphs of this answer the averments of these paragraphs are denied. The Defendants have provided and are providing constitutionally adequate conditions of confinement related to COVID-19 for the inmates in the custody of the ACJ by lawful order of judicial officers.

Second Claim for Relief Medically Vulnerable Inmates– 42 U. S. C. §1983

91–93. For the reasons discussed in the prior paragraphs of this answer the averments of these paragraphs are denied. The Defendants have provided and are providing constitutionally adequate conditions of confinement related to COVID-19 for the inmates the custody of the ACJ by lawful order of judicial officers.

**Third Claim for Relief
Americans With Disabilities Act**

94-99. Denied. No inmates have been denied any services or programs based upon an alleged disability. It is specifically denied the mere presence of COVID-19 in the facility or infection by COVID-19, without more are disabilities.

Claim for Relief

100. This paragraph is a legal conclusion that requires no response. To the extent a response is required this paragraph is denied.

Affirmative Defenses

101. The Defendants incorporate the foregoing paragraphs as though set forth completely herein.

102. Plaintiffs have failed to establish, and cannot establish, proper subject-matter jurisdiction to sustain this suit.

103. Plaintiffs has failed to state facts showing, and cannot establish facts showing, that the Defendants acted under color of state, local or federal statute, ordinance, custom, policy, regulation, usage, law, or authority in any way violating any due process rights, other constitutional rights, or other legal rights had by Plaintiff.

104. Plaintiff has failed to establish, and cannot establish, that the Defendants implemented or followed any unconstitutional customs or policies, that the County knew of, should have known of, or acquiesced in, any unconstitutional conduct, customs, or policies, or that the Defendants engaged in any constitutional conduct in any way whatsoever.

105. The Defendants engaged in no actions, customs, directives, inactions, policies, practices, procedures, or protocols

that interfered with Plaintiff's constitutional/legal rights while in the ACJ, that violated Plaintiff's constitutional/legal rights, and/or that violated any duties the Defendants had to Plaintiff.

106. The Defendants engaged in no actions, customs, directives, inactions, policies, practices, procedures, or protocols that caused Plaintiff any harms, injuries, or damages.

107. Plaintiffs have no private cause of action for monetary damages or for injunctive relief.

108. The County was not recklessly indifferent to, or deliberately indifferent to, Plaintiffs' needs and/or rights.

109. Plaintiffs have failed to state a claim, and cannot establish a claim, entitling Plaintiff to judgment against, or entitling Plaintiffs to recover any damages, attorneys' fees, or costs from the Defendants.

110. Plaintiffs have failed to state a claim, and cannot establish a claim, of any civil rights violation or other violation by the Defendants.

111. Plaintiffs have otherwise failed to state any claim, and cannot establish any claim, upon which relief can be granted against the Defendants under the Fourteenth Amendment to the U.S. Constitution, the Eighth Amendment to the U.S. Constitution, the Fourteenth Amendment to the U.S. Constitution, any other provision of the U.S. Constitution, 42 U.S.C. §§ 1983, 1988, any U.S. civil rights act and/or amendments thereto, any other federal laws or provisions, any provision of the Pennsylvania Constitution, any other Pennsylvania laws or provisions, or any other legal or equitable authority of any type whatsoever.

112. At all times relevant hereto, the Defendants took appropriate actions and used appropriate customs, directives, policies, practices, procedures, and protocols to protect Plaintiffs'

rights while at the ACJ and to meet all duties the Defendants had to Plaintiffs.

113. The Defendants met all their constitutional and statutory duties vis-à-vis Plaintiffs.

114. Plaintiffs failed to seek redress of grievances through the federal and/or Pennsylvania laws relating to prison litigation reform.

115. Plaintiffs have otherwise failed to exhaust their administrative remedies.

116. Plaintiffs have procedurally defaulted on their claims in this suit.

117. Plaintiffs have otherwise waived all claims against the Defendants.

118. Plaintiffs' suit and requests for damages are otherwise barred by law and/or equity.

119. To the extent not already pled by the Defendants, it asserts that Plaintiffs cannot demonstrate any conduct, policy, harm, injury, or damage constituting a constitutional violation and/or establishing a right to relief.

120. The Defendants are entitled to recover from Plaintiff all attorneys' fees and costs incurred by the Defendants in defending this suit.

121. The actions of the Defendants were not the cause in fact or the proximate cause of the Plaintiff's alleged injuries or damages.

122. The Defendants reserves the right to raise all other defenses available under any and all applicable laws by amending his answer and affirmative defenses and/or by raising such other

defenses at the summary judgment stage of this case and/or by raising such other defenses at the trial of this case.

123. Only a panel of three Federal District Court Judges have jurisdiction to order inmates to be released. 18 U.S.C. § 3626.

124. The relief that may be granted regarding relief related to jail conditions of confinement is governed by 18 U.S.C. § 3626.

Class Certification

125. Class certification must be denied because
- a. the class is not so numerous that joinder of all members is impracticable;
 - b. the claims or defenses of the representative parties are not typical of the claims or defenses of the class;
 - c. the representative parties will not fairly and adequately protect the interests of the class;
 - d. prosecuting separate actions by or against individual class members would not create a risk of (1) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class or (2) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
 - e. the Defendants have not acted or refused to act on grounds that apply generally to the class, so that

final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole;

f. questions of law or fact common to class members do not predominate over any questions affecting only individual members; and

g. a class action is not superior to other available methods for fairly and efficiently adjudicating the controversy.

WHEREFORE, Allegheny County and Orlando Harper respectfully demand that the Court deny certification of the putative class and that it enter judgment in Allegheny County's and Orlando Harper's favor and against the Plaintiffs. The Defendants also demand all attorneys' fees and all costs incurred by them in defending this suit.

Respectfully submitted,

/s/John A. Bacharach

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