IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THURMAN WILLIAMS, et al.,

Plaintiffs-Petitioners,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants-Respondents.

Civil No. 1:20-cv-890

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

Pursuant to Federal Rule of Civil Procedure 23 and Local Rule 23.1, Plaintiffs move the Court to certify this case as a class action and to appoint Plaintiffs' counsel as class counsel.

INTRODUCTION

Plaintiffs file this class action to challenge Defendants' reckless and deliberately indifferent treatment of the people in their custody and care at the Hope Village halfway house. As alleged in the complaint and demonstrated in Plaintiffs' application for a temporary restraining order and motion for a preliminary injunction, Defendants are failing to take measures necessary to protect the health, safety, and lives of prisoners at Hope Village whom Defendants have crammed into small confined spaces, in violation of recent government guidance and orders.

This class satisfies all of the requirements of Federal Rule of Civil Procedure 23(a). *First*, the class members are numerous, consisting of more than 200 prisoners, making joinder impracticable. *Second*, the class members share common questions of fact, as they are all subject

to the same life-threatening conditions and practices. They also share common questions of law, including whether conduct by the Federal Bureau of Prisons and the D.C. Department of Corrections violates their rights under the Eighth Amendment and whether Hope Village's conduct is negligent by failing to exercise due care to prevent the spread of COVID-19. *Third*, the class representatives are subject to the same conditions as all class members and therefore assert claims typical of those asserted by the class. *Fourth*, the class representatives and their counsel will fairly and adequately protect class interests and will vigorously prosecute the action on behalf of the class.

Certification of Plaintiffs' proposed class is warranted under Rule 23(b)(2), because Defendants are acting in the same matter with respect to the class, such that a temporary restraining order and preliminary injunction with respect to the whole class is appropriate.

Class members' claims are not dependent on any individualized determinations. The central question is whether Defendants' actions and inactions fall below minimum constitutional standards and the well-established duty of care as prisoner custodians. More than 200 prisoners at Hope Village are being or will be subjected to the consequences of those actions and inactions, and are or will be exposed to similar harms as a result.

Therefore, this Court should certify the proposed class and appoint class counsel.

FACTUAL BACKGROUND

The relevant facts are set out in Plaintiffs' Complaint and Motion for a Temporary Restraining Order and Preliminary Injunction. However, a brief summary of the facts is below:

COVID-19 is an out-of-control global pandemic. Because COVID-19 is highly contagious, the Centers for Disease Control and Prevention and other public health experts have advised that the best method to limit transmission of the virus is to practice "social distancing" and meticulous personal hygiene. At present, all men detained at Hope Village are unable to

practice these social distancing and sanitary measures. Hope Village currently houses more than 200 individuals in tight quarters. Defendants have also denied sufficient access to appropriately sanitation methods, education, and equipment. Absent the granting of immediate injunctive relief and the entry of a temporary restraining order for the class, detention at Hope Village will likely result in severe illness, permanent medical consequences, and even death for a significant number of class members.

LEGAL STANDARD

Federal Rule of Civil Procedure 23 sets out the requirements for certification of a class action. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997); *J.D. v. Azar*, 925 F.3d 1291, 1312 (D.C. Cir. 2019). First, Plaintiffs must satisfy the four Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011) ("Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate."). Second, Plaintiffs must demonstrate that the case meets the requirements of one of Rule 23(b)'s subsections. Rule 23(b)(2) requires a showing that "the party opposing the class has 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." Fed. R. Civ. P. 23(b)(2); *see Wal-Mart Stores, Inc.*, 564 U.S. at 360.

ARGUMENT

I. The Proposed Class Satisfies the Rule 23(a) Requirements.

A. The Proposed Class Satisfies the Numerosity Requirement.

The proposed class satisfies the requirement that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This requirement "imposes no absolute limitations" and is determined on a case-by-case basis. *Radosti v. Envision EMI, LLC*, 717 F. Supp. 2d 37, 51 (D.D.C. 2010) (quoting *Gen. Tele. Co. of the Nw., Inc. v. EEOC*, 446

U.S. 318, 330 (1980)); *see also Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 25 (D.D.C. 2006) ("There is no specific threshold that must be surpassed in order to satisfy the numerosity requirement; rather, each decision turns on the particularized circumstances of the case."). However, this Court has "generally found that the numerosity requirement is satisfied . . . where a proposed class has at least forty members." *Radosti*, 717 F. Supp. 2d at 51 (citing cases); *In re APA Assessment Fee Litig.*, 311 F.R.D. 8, 14 (D.D.C. 2015). "[A] plaintiff need not provide the exact number of potential class members in order to satisfy this requirement," *Bynum v. Dist. of Columbia*, 214 F.R.D. 27, 32–33, "[s]o long as there is a reasonable basis for the estimate provided." *Kifafi v. Hilton Hotels Ret. Plan*, 189 F.R.D. 174, 176 (D.D.C. 1999).

Additionally, "[d]emonstrating impracticability of joinder does not mandate that joinder of all parties be impossible—only that the difficulty or inconvenience of joining all members of the class make[s] use of the class action appropriate." *DL v. Dist. of Columbia*, 302 F.R.D. 1, 11 (D.D.C. 2013) (quotation marks and citation omitted), *aff'd*, 860 F.3d 713 (D.C. Cir. 2017). Factors relevant to impracticability include the "financial resources of class members ... and requests for prospective injunctive relief which would involve future class members." *Id.* (quoting *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993)).

Here, the proposed plaintiff class satisfies the numerosity requirement because it will comprise over 200 prisoners who are detained or will be detained at Hope Village. The proposed class is thus significantly larger than the general threshold requirement of forty people. Besides the sheer number of class members, joinder is impractical for other reasons. First, the class seeks relief for future class members. Joinder is inherently impracticable where "the class seeks prospective relief for future class members, whose identities are currently unknown and who are therefore impossible to join." *DL*, 302 F.R.D. at 11. Also, the overwhelming majority of

putative class members are indigent, which raises another barrier to individual suits. *See Colo. Cross- Disability Coal. v. Taco Bell Corp.*, 184 F.R.D. 354, 359 (D. Colo. 1999) (finding joinder impracticable where many class members could not afford to bring individual actions); *Jackson v. Foley*, 156 F.R.D. 538, 54142 (E.D.N.Y. 1994) (finding joinder impracticable where the majority of class members came from low-income households, greatly decreasing their ability to bring individual lawsuits).

Accordingly, the proposed class satisfies the numerosity requirement of Rule 23(a)(1).

B. The Proposed Class Satisfies the Commonality Requirement.

Rule 23(a)(2), which requires that there be "questions of law or fact common to the class," is likewise satisfied. The key to commonality is that class members' claims "must depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. 338, 350 (2011). "Even a single common question" will support a commonality finding, *id.* at 359 (alterations omitted), so long as its resolution will "generate common answers for the entire class." *Thorpe v. Dist. of Columbia*, 303 F.R.D. 120, 146-47 (D.D.C. 2014).

Commonality is satisfied where there is a single or "uniform policy or practice that affects all class members." *DL v. Dist. of Columbia*, 713 F.3d 120, 128 (D.C. Cir. 2013). "[F]actual variations among the class members will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all proposed class members." *Bynum*, 214 F.R.D. at 33. Thus, in *Bynum*, Judge Lamberth explained that a proposed class challenging over-detention by the District of Columbia Department of Corrections satisfied the commonality requirement because "despite the fact that some of the plaintiffs might have been detained past their release date for a longer time period than other plaintiffs, there are questions

of law and fact that are common to the class." *Id*. at 34.

The same is true here. Proposed class members have, at least, the following key *factual issues* in common:

- Whether Defendants knew, or should have known, about the risks of COVID-19 to members of the proposed class;
- Whether Defendants knew about the unhygienic and crowded conditions at Hope Village;
- Whether Defendants have exposed, and are continuing to expose, members of the proposed class to a grave risk of serious harm, including death;
- Whether Defendants have denied members of the proposed class the ability to practice social distancing;
- Whether Defendants have denied members of the proposed class the ability to engage in adequate personal sanitary practices; and

Whether Defendants have failed to conduct adequate screening and temperature checks of proposed class members, and Hope Village staff members. In addition, the following *legal* questions are common to all proposed class members:

- Whether Defendants have acted with deliberate indifference towards members of the proposed class by failing adequately to safeguard their health and safety in the face of a known serious danger;
- Whether Defendants have failed to exercise due care to prevent the spread of COVID-19 to members of the proposed class.

Defendants' practices with respect to COVID-19 affect all class members; they do not arise out of circumstances unique to each member. Those practices will also result in "common harms." *DL*, 860 F.3d at 724. And all class members seek the same declaratory and injunctive relief. The Court's determination of the legality of Defendants' actions and inactions on one or

more of the grounds alleged by class members will resolve all class members' claims "in one stroke." *Wal-Mart*, 564 U.S. at 350.

Accordingly, the proposed class satisfies the commonality requirement of Rule 23(a)(2).

C. The Proposed Class Satisfies the Typicality Requirement.

Plaintiffs' claims are also "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). "The typicality requirement is satisfied 'if each class member's claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments to prove the defendant's liability.'" *Radosti*, 717 F. Supp. 2d at 52 (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 27 (D.D.C. 2001)). The typicality and commonality requirements "often overlap because both serve as guideposts" in determining "whether a class action is practical and whether the representative plaintiffs' claims are sufficiently interrelated with the class claims to protect absent class members." *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 181 (D.D.C. 2015) (internal quotations and citations omitted).

The typicality requirement "has been liberally construed." *Bynum*, 214 F.R.D. at 34. As with commonality, "[t]ypicality is not destroyed merely by 'factual variations.'" *Wagner v. Taylor*, 836 F.2d 578, 591 (D.C. Cir. 1987) (internal quotations and citations omitted). "Rather, if the named plaintiffs' claims are based on the same legal theory as the claims of the other class members, it will suffice to show that the named plaintiffs' injuries arise from the same course of conduct that gives rise to the other class members' claims." *Bynum*, 214 F.R.D. at 35; *see also Richardson v. L'Oreal USA, Inc.*, 991 F. Supp. 2d 181, 196 (D.D.C. 2013) ("[C]ourts have found the typicality requirement satisfied when class representatives suffered injuries in the same general fashion as absent class members.") (internal quotation marks and citation omitted).

The named Plaintiffs claims are typical of the proposed class claims. As explained above, their claims arise from the same response, or lack thereof, to the COVID-19 pandemic by Defendants that provides the basis for all class members' claims. They therefore "arise from the same course of conduct that gives rise to the other class members' claims," *Bynum*, 214 F.R.D. at 35, and are based on the same legal theories as all class members' claims. Moreover, the injuries that Plaintiffs have suffered, will continue to suffer, and may suffer—namely, exposure to a deadly virus and potential serious illness, permanent disability, and death—arise from this same course of conduct and are typical of the injuries of the class as a whole. Notwithstanding any individual differences that may exist between the Plaintiffs and other members of the proposed class, Plaintiffs' claims "are sufficiently interrelated with the class claims to protect absent class members." *R.I.L-R*, 80 F. Supp. 3d at 181.

Accordingly, Plaintiffs' claims satisfy the typicality requirement of Rule 23(a)(3).

D. The Proposed Class Satisfies the Adequacy Requirement.

The class representatives also "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To establish adequacy, "(1) the named representative must not have antagonistic or competing interests with the unnamed members of the class, and (2) the representative must appear able to vigorously prosecute the interests of the class through qualified counsel." *Twelve John Does*, 117 F.3d at 575 (quoting *Nat'l Ass'n of Regional Med. Programs, Inc. v. Mathews*, 551 F.2d 340, 345 (D.C. Cir. 1976)).

Plaintiffs satisfy both criteria. First, Plaintiffs' do not have antagonistic competing interests with the unnamed members of the class. Plaintiffs and class members are suffering the same harms. They assert the same legal claims, seek the same litigation outcomes, and would benefit from the same declaratory and injunctive relief. Moreover, Plaintiffs are not seeking monetary relief, so no financial conflict can arise between the claims of Plaintiffs and those of

other class members. Thus, there is no conflict between Plaintiffs and unnamed class members. Second, Plaintiffs' counsel are competent to represent the class and are prepared to vigorously prosecute the interests of the class.

Accordingly, the proposed class satisfies the adequacy requirement of Rule 23(a)(4).

II. Class Certification is Appropriate Under Rule 23(b)(2).

In addition to satisfying the four criteria of Rule 23(a), the proposed class must also fall into one of the three categories outlined in Rule 23(b). Here, the class action qualifies for certification under Rule 23(b)(2).

Rule 23(b)(2) permits class certification where "the party opposing the class has 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." The Supreme Court has explained that

> The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them. In other words, Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.

Wal-Mart, 564 U.S. at 360 (quotation marks and citation omitted). Courts in this District have interpreted Rule 23(b)(2) to impose two requirements: "(1) the defendant's action or refusal to act must be generally applicable to the class, and (2) plaintiff must seek final injunctive relief or corresponding declaratory relief on behalf of the class." *Steele v. United States*, 159 F. Supp. 3d 73, 81 (D.D.C. 2016) (quotations and citations omitted); *Bynum*, 214 F.R.D. at 37; *R.I.L.-R*, 80 F. Supp. 3d at 182.

Both elements are easily satisfied. Defendants' challenged practices are not tailored to individual prisoners, but apply to the Hope Village population as a whole. They apply to all

class members simply by virtue of their status as persons detained (or to be detained) at Hope Village, without regard to the class members' individual circumstances. For the same reason, all class members seek the same declaratory and injunctive relief.

Therefore, certification pursuant to Rule 23(b)(2), and class-wide relief, is appropriate.

III. The Court Should Designate Plaintiffs' Counsel as Class Counsel.

Upon certifying the class, the Court must also appoint class counsel. Fed. R. Civ. P. 23(c)(1)(B); 23(g). Rule 23(g) requires the Court to consider the following four factors: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. *Id*. at 23(g)(1)(A)(i)–(iv). The Court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." *Id*. at 23(g)(1)(B).

Plaintiffs' counsel satisfy all four criteria. Counsel from Latham & Watkins LLP, the Washington Lawyers' Committee for Civil Rights & Urban Affairs, and the ACLU Foundation of the District of Columbia, jointly represent Plaintiffs. Counsel from all three organizations are experienced litigators who have extensive experience representing clients in state and federal court. As the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction indicate, Plaintiffs' counsel have already devoted a substantial amount of time and resources investigating the factual and legal issues in this case, and will continue to do so throughout the pendency of the litigation. *See, e.g.*, *Encinas v. J.J. Drywall Corp.*, 265 F.R.D. 3, 9 (D.D.C. 2010) ("The plaintiffs have shown that they will adequately represent the class. . . . Counsel have already committed substantial time and resources to identifying and investigating potential claims in the action."). Accordingly, the Court should appoint Plaintiffs' counsel as

class counsel in this case.

CONCLUSION

For the reasons stated above, Plaintiffs' motion should be granted. Plaintiffs respectfully request that the Court:

(1) certify the proposed class, consisting of all persons detained or to be detained at Hope Village; and

(2) appoint undersigned counsel to represent the class.

Dated: April 3, 2020

Respectfully submitted,

/s/ Kevin Metz

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