

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

|                                       |   |                           |
|---------------------------------------|---|---------------------------|
| C.N., L.B., and minor child B.K.L.N.; | : |                           |
| J.A.R., E.G.M, and minor child J.G.;  | : |                           |
| M.N., P.M., and minor child H.M.N.;   | : |                           |
| M.C., G.S.C., and minor children      | : |                           |
| G.R.S.C. and N.B.T.; M.E.L., E.O.E.,  | : |                           |
| And minor child J.O.E.                | : |                           |
|                                       | : |                           |
|                                       | : |                           |
| Petitioners,                          | : |                           |
|                                       | : |                           |
| v.                                    | : | Docket No.: 268 M.D. 2020 |
|                                       | : |                           |
| Department of Human                   | : |                           |
| Services,                             | : |                           |
|                                       | : |                           |
|                                       | : |                           |
| Respondent.                           | : |                           |
|                                       | : |                           |

**NOTICE TO PLEAD**

TO: C.N. *et al.*, Petitioners

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE NEW MATTER IN THE ENCLOSED **RESPONDENT’S ANSWER WITH NEW MATTER TO PETITIONERS’ EMERGENCY PETITION FOR ISSUANCE OF A WRIT OF MANDAMUS** WITHIN THIRTY (30) DAYS FROM SERVICE HEREOF OR SUCH OTHER TIME AS THE COURT DIRECTS, OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Date: April 28, 2020

*/s/Edward G. Cherry*  


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Edward G. Cherry  
Deputy Chief Counsel

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| M.C., G.S.C., and minor children      | : |                           |
| G.R.S.C. and N.B.T.; M.E.L., E.O.E.,  | : |                           |
| And minor child J.O.E.                | : |                           |
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| Petitioners,                          | : |                           |
|                                       | : |                           |
| v.                                    | : | Docket No.: 268 M.D. 2020 |
|                                       | : |                           |
|                                       | : |                           |
| Department of Human                   | : |                           |
| Services,                             | : |                           |
|                                       | : |                           |
| Respondent.                           | : |                           |
|                                       | : |                           |

**RESPONDENT’S ANSWER AND NEW MATTER  
TO PETITIONERS’ EMERGENCY PETITION  
FOR ISSUANCE OF A WRIT OF MANDAMUS**

AND NOW, the Pennsylvania Department of Human Services (“Department”) hereby responds to Petitioners’ April 22, 2020 Emergency Petition for Issuance of a Writ of Mandamus (the “Petition”) as follows:

**I. INTRODUCTION**

1. Denied. This paragraph contains a conclusion of law to which no responsive pleading is required.
  
2. Denied. The Department recently conducted a remote inspection of the Berks County Residential Center (“BCRC”) commencing

on March 31 and concluding on April 7. *See* Declaration of Erin Roman, attached hereto as Exhibit A at ¶ 7. The inspector found that BCRC had policies to respond to and to mitigate the effects of COVID-19. *Id.* at ¶¶ 14-15. In addition to finding policies directly addressed to mitigating the spread of COVID-19, the inspector did not find any evidence that BCRC residents could not practice social distancing. *Id.* at 16. In fact, the day the inspection concluded on April 7, only 21 individuals resided in the 96-bed facility and each family had their own bedroom. *Id.* at ¶¶ 12 and 13. As of the date of filing this Answer, BCRC houses only 16 individuals. *Id.* at ¶ 20. This allows for adequate separation.

3. Denied. There is no urgent need for the Department to take immediate action. The Department's inspector concluded that BCRC is complying with the Department's licensing requirements under 55 Pa. Code Chapter 3800. Exhibit A at ¶ 18. The Department's inspector found no evidence of gross incompetence, negligence, misconduct in the licensee's operation of BCRC, or mistreatment or abuse of residents. Consequently, there are no circumstances that constitute an immediate and serious danger to the life or health of the residents of BCRC. *See id.* at ¶ 17.

4. Denied. The Department acted by remotely inspecting the facility from March 31 through April 7, 2020. The Department's inspector

found no evidence of gross incompetence, negligence, misconduct in the licensee's operation of BCRC, or mistreatment or abuse of residents.

Consequently, there are no circumstances that constitute an immediate and serious danger to life or health of the residents of BCRC. *Id.* By way of further answer, a newspaper article describing a facility in another state is irrelevant to the conditions at BCRC.

5. Denied. Petitioners' Application for Extraordinary Relief and the Supreme Court's April 16, 2020 order speak for themselves.

6. Denied. This paragraph contains a conclusion of law to which no responsive pleading is required. By way of further answer, the Department has taken action to protect the children and families through conducting a remote inspection. The Department's inspector concluded that BCRC has complied with the Department's licensing requirements under 55 Pa. Code Chapter 3800, and found no evidence of gross incompetence, negligence, misconduct in the licensee's operation of BCRC, or mistreatment or abuse of residents. Consequently, there are no circumstances that constitute an immediate and serious danger to life or health of the residents of BCRC. *Id.* at ¶ 17.

7. Paragraph 7 was omitted from the Petition.

**II. PARTIES**

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. This paragraph contains a conclusion of law to which no response is required. Nonetheless, it is denied as stated. By way of further answer, Department's responsibilities are as specified in the Human Services Code, 62 P.S. §§ 101 – 1503, which speaks for itself.

**III. STATEMENT OF JURISDICTION**

15. Denied. This paragraph contains a conclusion of law to which no responsive pleading is required. By way of further answer, Petitioners brought an original jurisdiction emergency petition for an issuance of a writ of mandamus in this Court.

**IV. FACTS AND PROCEDURAL HISTORY**

16. Admitted in part, and denied in part. It is admitted that the COVID-19 pandemic represents a danger to the health of the public. Petitioners' alleged sources speak for themselves. Petitioners'

representation of the facts and conclusions found in the sources are specifically denied.

17. Denied as stated. Petitioners' alleged sources speak for themselves. All characterizations are denied. Petitioners' representation of the facts and conclusions found in the sources are denied. The Respondent does not have independent knowledge of the number of employees of Berks Heim nursing home that have tested positive.

18. Denied. Petitioners' alleged sources speak for themselves. Petitioners' representation of the facts or conclusions found in the sources is specifically denied.

19. Admitted in part, and denied in part. It is admitted that COVID-19 is infectious. The remaining averments and characterizations are denied. Petitioners' alleged sources speak for themselves. Petitioners' representation of the facts and conclusions found in the sources are denied.

20. Denied. By way of further answer, the Declarations of Dr. Julie De Aun Graves and Dr. Jaimie Meyer speak for themselves. Petitioners' representation of the facts or conclusions found in the sources or Declarations are specifically denied.

21. Denied. The sources Petitioners cite speak for themselves. Petitioners' representation of the facts and conclusions found in the sources

are specifically denied. By way of further answer, the Department's inspector did not find any evidence that BCRC residents could not practice social distancing. Exhibit A at ¶ 16. The day the inspection concluded, only 21 individuals resided in the 96-bed facility. *Id.* at ¶¶ 12 and 13. As of the date of filing this Answer, BCRC houses only 16 individuals. *Id.* at ¶ 20. Those census numbers allow for adequate separation.

22. Denied. Petitioners' sources speak for themselves. Petitioners' representation of the facts or conclusions found in the sources is specifically denied. By way of further answer, the Department's inspector found no evidence of gross incompetence, negligence, misconduct in the licensee's operation of BCRC, or mistreatment or abuse of residents. Consequently, there are no circumstances that constitute an immediate and serious danger to life or health of the residents of BCRC. *See id.* at ¶ 17.

23. Denied. The Department's inspector did not find any evidence that BCRC residents could not practice social distancing. *Id.* at ¶ 16. The day the inspection concluded, only 21 individuals resided in the 96-bed facility. *Id.* at ¶¶ 12 and 13. As of the date of filing this Answer, BCRC houses only 16 individuals. *Id.* at ¶ 20. Those census numbers allow for appropriate social distancing.

24. Denied. BCRC has instituted multiple mitigation strategies to address COVID-19. The specific strategies are enumerated in the response to Paragraph 2, above, which is incorporated herein by reference as though set forth in full. Lastly, the Declarations cited in the Petition speak for themselves. Petitioners' representation of the facts and conclusions found in these Declarations is specifically denied.

25. Denied as stated. By way of further answer, BCRC has implemented procedures to mitigate the spread of COVID-19, and the Department's inspector did not find circumstances that constituted an immediate and serious danger to life or health of residents. The Department incorporates herein by reference its response to paragraph 2, above, as though fully set forth.

26. Denied. Petitioners' Declarations speak for themselves. Petitioners' representation of the facts or conclusions found in the Declarations is specifically denied. By way of further answer, BCRC has implemented procedures to mitigate the spread of COVID-19, and the Department's inspector did not find circumstances that constituted an immediate and serious danger to life or health of residents. The Department incorporates herein by reference its response to paragraph 2, above, as though fully set forth.



27. Denied. Petitioners' Declarations speak for themselves. Petitioners' representation of the facts or conclusions found in the Declarations is specifically denied. By way of further answer, BCRC has implemented procedures to mitigate the spread of COVID-19, and the Department's inspector did not find circumstances that constituted an immediate and serious danger to life or health of residents. The Department incorporates herein by reference its response to paragraph 2, above, as though fully set forth.

28. Denied. After reasonable investigation, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. By way of further answer, health officials have cautioned against going to the hospital or other health care provider unless absolutely necessary.

29. Denied. This paragraph contains conclusions of law to which no responsive pleading is required.

30. Denied. After reasonable investigation, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Moreover, Petitioners' alleged sources speak for themselves. Petitioners' representation of the facts or conclusions found in the sources is specifically denied.

31. Denied. This Paragraph contains a conclusion of law to which no responsive pleading is required. By way of further answer, the Department's inspector found no evidence of gross incompetence, negligence, misconduct in the licensee's operation of BCRC, or mistreatment or abuse of residents, likely to constitute an immediate and serious danger to life or health of the residents of BCRC. *See* Exhibit A at ¶ 17. Additionally, the Department's inspector did not find any evidence that BCRC residents could not practice social distancing. *Id.* at 16. The day the inspection concluded, only 21 individuals resided in the 96-bed facility. *Id.* at ¶¶ 12 and 13. As of the date of filing this Answer, BCRC houses only 16 individuals. *Id.* at ¶ 20. This census figure allows for appropriate social distancing.

32. Denied. The Department has conducted a recent remote inspection of BCRC via Facetime. *See* Exhibit A at ¶¶ 7-19. The Department's inspector found that BCRC is compliant with the Department's licensing regulations. By way of further answer, the Department incorporates herein by reference its response to paragraph 2, above, as though set forth in full.

33. Denied. This Paragraph contains conclusions of law to which no responsive pleading is required. The cited regulation speaks for itself.

By way of further response, the Department's inspector did not find evidence of gross incompetence, negligence or misconduct in operating BCRC, or mistreatment or abuse of clients. Consequently, no circumstances exist that would be likely to constitute an immediate and serious danger to life or health of the clients. *See* Exhibit A at ¶¶ 7-19. The Department incorporates herein by reference its response to paragraph 2, above, as though set forth in full.

34. Denied. This paragraph contains conclusions of law to which no response is required. By way of further answer, the litigation Petitioners cite speaks for itself. Petitioners' representation of that litigation is specifically denied.

35. Denied. This Paragraph contains conclusions of law to which no responsive pleading is required. By way of further answer, Petitioners sources speak for themselves. Petitioners' representation of the facts or conclusions found in the sources is specifically denied. By way of further answer, the Department recently inspected BCRC. The Department did not find evidence of gross incompetence, negligence, or misconduct in operating BCRC, or mistreatment or abuse of clients. Consequently, no circumstances were found that would be likely to constitute an immediate and serious danger to life or health of the clients. Exhibit A at ¶¶ 7-19. Petitioners'

recitation of prior allegations is irrelevant to Petitioners' mandamus action. By way of further answer, those allegations are specifically denied.

36. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent any of the allegations in this paragraph are construed to be factual, they are specifically denied.

## **V. ARGUMENT**

37. Denied. This paragraph contains a conclusion of law to which no responsive pleading is required. The cited cases and law speak for themselves.

38. Denied. This paragraph contains a conclusion of law to which no responsive pleading is required. By way of further answer, the Petitioners do not have a legal right to mandamus relief because the Department's inspector found no evidence of gross incompetence, negligence, or misconduct in operating the facility or agency, or mistreatment or abuse of clients, likely to constitute an immediate and serious danger to life or health. Exhibit A at ¶¶ 7-19. The Department incorporates by reference its response in Paragraph 2, above, as though set forth in full.

39. Denied. This paragraph contains a conclusion of law to which no responsive pleading is required. By way of further response, the

Department denies that the court's analysis in this case has any bearing in this matter.

40. Denied. This Paragraph contains conclusions of law to which no responsive pleading is required. By way of further answer, Petitioners do not have a legal right to mandamus relief because the Department's inspector found no evidence of gross incompetence, negligence, or misconduct in operating the facility or agency, or mistreatment or abuse of clients, likely to constitute an immediate and serious danger to life or health. Exhibit A at ¶¶ 7-19. The Department incorporates by reference its response in Paragraph 2, above, as though set forth in full.

41. Denied. This Paragraph contains conclusions of law to which no responsive pleading is required. To the extent the allegations in this paragraph may be construed to be factual, they are specifically denied. .

42. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. The cited cases speak for themselves.

43. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. The cited cases speak for themselves.

44. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. The cited cases speak for themselves.

45. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent the allegations in this paragraph may be construed to be factual, they are specifically denied.

46. Denied.

47. Denied.

48. Denied. After reasonable investigation, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. By way of further answer, Petitioners' Declarations also speak for themselves, and any characterization of them is denied.

49. Denied. By way of further answer, Petitioners' Declarations speak for themselves, and any characterization of them is denied.

50. Denied. Petitioners' Declarations speak for themselves, and any characterization of them is denied.

51. Denied. This Paragraph contains conclusions of law to which no response is required. Moreover, Petitioners' Declarations speak for themselves, and any characterization of them is denied. By way of further answer, it is denied that the circumstances alleged in this paragraph apply to BCRC, where the current census is 16 individuals and each family has their own bedroom. *See* Exhibit A at ¶¶ 13 and 20. .

52. Denied. By way of further answer, Petitioners' Declarations and cited material speak for themselves, and any characterization of them is denied.

53. Denied. After reasonable investigation, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Petitioners' cited material speaks for itself, and any characterization of it is denied. By way of further answer, it is denied that the generalizations alleged in this paragraph apply to BCRC, where the current census is 16 and each family has their own bedroom. *See* Exhibit A at ¶¶ 13 and 20.

54. Denied. Petitioners' Declaration speaks for itself, and any characterization of it is denied.

55. Denied. Petitioners' cited material speaks for itself, and any characterization of it is denied. By way of further answer, Petitioners' cited materials are irrelevant to the current conditions at BCRC.

56. Denied. Petitioners' Declaration speaks for itself, and any characterization of it is denied. By way of further answer, it is denied that the generalizations alleged in this paragraph apply to BCRC, where the current census is 16 and each family has their own bedroom. *See* Exhibit A at ¶¶ 13 and 20.

57. Denied. Petitioners' Declaration speaks for itself, and any characterization of it is denied.

58. Denied. This paragraph contains a conclusion of law to which no response is required. To the extent the allegation in this paragraph may be construed to be factual, that allegation is specifically denied.

59. Denied. After reasonable investigation, the Department is without knowledge or information sufficient to form a belief as to the truth of the hypothetical allegations contained in this paragraph. This paragraph also contains a conclusion of law to which no response is required.

60. Denied. This paragraph contains a conclusion of law to which no response is required. By way of further answer, Petitioners' cited material speaks for itself, and any characterization of it is denied.

Petitioners' cited material is irrelevant to the current conditions at BCRC. The Department's inspector found no evidence of gross incompetence, negligence, or misconduct in operating the facility or agency, or mistreatment or abuse of clients, likely to constitute an immediate and serious danger to life or health. Exhibit A at ¶¶ 7-19. The Department incorporates by reference its response in Paragraph 2, above, as though set forth in full.



61. Denied. After reasonable investigation, the Department is without knowledge or information sufficient to form a belief as to the truth of the hypothetical allegations contained in this Paragraph. By way of further answer, it is specifically denied that BCRC has provided inadequate medical care to detained children.

62. Denied. This paragraph contains conclusions of law to which no response is required. To the extent the allegations in this paragraph may be construed to be factual, it is denied that the generalized allegations in this paragraph apply to BCRC. By way of further answer, Petitioners do not have a legal right to mandamus relief because the Department's inspector found no evidence of gross incompetence, negligence, or misconduct in operating the facility or agency, or mistreatment or abuse of clients, likely to constitute an immediate and serious danger to life or health. Exhibit A at ¶¶ 7-19. The Department incorporates by reference its response in Paragraph 2, above as though set forth in full.

63. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. The cited cases speak for themselves, and Petitioners' characterization of those cases is specifically denied. By way of further answer, it is denied that the authority of the Department under 55 Pa. Code § 20.37 is mandatory. Petitioners do not have a legal right to

mandamus relief because the Department's inspector found no evidence of gross incompetence, negligence, or misconduct in operating the facility or agency, or mistreatment or abuse of clients, likely to constitute an immediate and serious danger to life or health. Exhibit A ¶¶ 7-19. The Department incorporates by reference its response in Paragraph 2, above, as though set forth in full.

64. Denied. This paragraph contains conclusions of law to which no responsive pleading is required.

65. Denied. This Paragraph contains conclusions of law to which no responsive pleading is required.

66. Denied. This Paragraph contains conclusions of law to which no responsive pleading is required. The cited cases speak for themselves.

67. Denied. This paragraph contains a conclusion of law to which no responsive pleading is required. The cited case and accompanying quotation speak for themselves.

68. Denied. This paragraph contains conclusions of law to which no responsive pleading is required. To the extent the allegations in this paragraph may be construed to be factual, those allegations are specifically denied.

## NEW MATTER

The Department pleads new matter as follows:

69. The Department incorporates Paragraphs 1 through 68, above.

70. Petitioners have failed to state a claim upon which relief can be granted.

71. Petitioners have failed to specifically plead a cause of action.

72. Petitioners have failed to conform their pleading to a law or rule of court.

73. Petitioners do not have a clear right to an emergency removal order (“ERO”) under 55 Pa. Code § 20.37.

74. Mandamus requires Petitioners to prove the following: (1) a clear legal right in the petitioner, (2) a corresponding duty in the respondent, and (3) a lack of any other adequate or appropriate remedy at law. *See, e.g., Sinkiewicz v. Susquehanna County Bd. Of Comm’rs*, 131 A.3d 541, 546 (Pa. Cmwlth. 2015) (citation omitted).

75. The writ of mandamus is “rarely issued and never to interfere with a public official’s exercise of discretion.” *Sinkiewicz*, 131 A.3d at 546.

76. Petitioners do not have a clear right to an ERO because it would interfere with a public official’s exercise of discretion.

77. An ERO may only issue if the Department “finds evidence of gross incompetence, negligence, misconduct in operating the facility or agency, or mistreatment or abuse of clients, likely to constitute an immediate and serious danger to the life or health of the clients.” 55 Pa. Code § 20.37. In such circumstances, “the Department will take immediate action to remove the clients from the facility or agency.” *Id.*

78. The Department must make the requisite findings to warrant issuance of an ERO.

79. Circumstances warranting an ERO do not exist at BCRC.

80. The Department conducted a remote inspection of BCRC commencing on March 31 and concluding on April 7. Exhibit A at ¶ 7.

81. The remote inspection included: a) a telephone interview of the Director of BCRC; b) a visual walk-through of BCRC using the mobile application Facetime; and c) a desk review of documents requested by the inspector and supplied by BCRC and the United States Immigration and Customs Enforcement (“ICE”). *id.* at ¶¶ 8 – 11.

82. The inspector specifically reviewed BCRC’s procedures put in place to respond to COVID-19. *Id.* at ¶¶ 14 and 15. BCRC’s procedures include several elements to address and mitigate the spread of COVID-19. *Id.* at ¶ 14.

83. Additionally, the medical staff amended the initial health and safety assessments for the doctor to ask the following questions:

- a. “Have you been in close contact with a person with laboratory confirmed 2019 novel coronavirus or their respiratory secretions in the past 14 days?”
- b. “Have you traveled from or through a geographic area(s) with widespread or sustained community transmission in the past 2 weeks?”

*Id.* at ¶ 15.

84. In addition to finding policies directly addressed to mitigating the spread of COVID-19, the inspector did not find any evidence that BCRC residents could not practice social distancing. *Id.* at ¶ 16. The day the inspection concluded, only 21 individuals resided in the 96-bed facility, *id.* at ¶¶ 12, 13, which should allow for adequate separation.

85. As a result of the remote inspection, the inspector concluded that BCRC complied with the Department’s licensing requirements under 55 Pa. Code Chapter 3800. Exhibit A at ¶ 18.

86. More important for purpose of addressing Petitioners’ allegations, the Department’s inspector found no evidence of gross incompetence, negligence, misconduct in the licensee’s operation of BCRC, or mistreatment or abuse of residents, likely to constitute an immediate and serious danger to the life or health of the residents of BCRC. *Id.* at ¶ 17.

87. The Department has conducted monthly monitoring inspections of BCRC since revoking and non-renewing the facility's license in 2016, and will continue to do so.

WHEREFORE, the Department respectfully requests that Petitioners' Petition for Issuance of a Writ of Mandamus be dismissed, with prejudice.

Respectfully submitted,

Date: April 28, 2020

*/s/Edward Cherry*

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Kenneth Serafin

Attorney I.D. No. 66481

Acting Chief Counsel

Matthew McLees

Attorney I.D. No. 71592

Edward Cherry

Attorney I.D. No. 73822

Governor's Office of General Counsel

Department of Human Services

Health & Welfare Building, 3rd Floor

625 Forster Street

Harrisburg, PA 17120

Attorney for the Department

# EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C.N., L.B., and minor child B.K.L.N.; :  
J.A.R., E.G.M., and minor child J.G.; :  
M.N., P.M., and minor child H.M.N.; :  
M.C., G.S.C., and minor children :  
G.R.S.C. and N.B.T.; M.E.L., E.O.E., :  
and minor child J.O.E., :  
: No. 268 M.D. 2020  
: Petitioners, :  
v. :  
: :  
Pennsylvania Department of Human :  
Services, :  
: :  
Respondent. :

DECLARATION OF ERIN ROMAN IN SUPPORT OF  
RESPONDENT’S RESPONSE TO PETITIONERS’  
APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF  
AN APPLICATION FOR PEREMPTORY JUDGMENT IN  
MANDAMUS

I, Erin Roman, declare the following:

1. I am a Licensing Technician for the Northeast Region of the Department of Human Services (“DHS”), Office of Children, Youth and Families.
2. As a Licensing Technician, I am responsible to, among other things, inspect Child Residential and Day Treatment Facilities to determine whether those



facilities are in compliance with licensing requirements set forth at 55 Pa. Code Chapter 3800.

3. Berks County Residential Center (“BCRC”) currently operates under a license for Child Residential Facilities.

4. To successfully complete inspections of Child Residential and Day Treatment Facilities, I became familiar with the licensing requirements at 55 Pa. Code Chapter 3800 and with all interpretations of and policies applying those regulations.

5. I am also familiar with the general licensing regulations that apply to all type of entities licensed by DHS, which are set forth at 55 Pa. Code Chapter 20, and all interpretations of and policies applying those regulations.

6. In addition to determining whether a licensee is in compliance with the licensing requirements, I am also charged with determining whether there is evidence of gross incompetence, negligence, or misconduct in the licensee’s operation of the facility, or mistreatment or abuse of residents, likely to constitute an immediate and serious danger to the life or health of the clients, which would support an Emergency Removal Order under 55 Pa. Code § 20.37.

7. I conducted a remote inspection of BCRC commencing on March 31, 2020 and concluding on April 7, 2020. I conducted this inspection remotely out of

concern for the COVID-19 pandemic. Prior to this inspection, I personally conducted monthly onsite visits for almost four years.

8. The March/April remote inspection included: a) a telephone interview of the Director of BCRC, Diane Edwards; b) a visual walk-through of BCRC using the mobile application Facetime with Diane Edwards; and c) a desk review of documents requested by DHS from BCRC and the United States Immigration and Customs Enforcement agency (“ICE”).

9. The visual walk-through using Facetime included only open areas that I normally would inspect during an onsite inspection, including BCRC’s hallways, places of egress, playground, staff station, the living room/recreation area, and other common areas.

10. The visual walk-through did not include resident rooms or other private areas, to protect the privacy of the residents. However, I did observe residents during the walk-through, and those residents were practicing social distancing.

11. My document review included a review of the following: fire drill records; BCRC’s census report; BCRC’s admission and discharge log since my last inspection on February 25, 2020; the admission physical examination and the initial health and safety assessments of the eight children who remained at BCRC

on the date of my review; and BCRC's procedures responding to the 2019 Novel Coronavirus (COVID-19).

12. On April 7, 2020, BCRC housed 13 adults and eight children.
13. Every family has their own bedroom.
14. BCRC has the capacity to house 96 individuals.
15. BCRC's procedures in response to COVID-19 include the following:
  - a. No new admissions since March 18;
  - b. Suspend all social visits;
  - c. Suspend all field trips;
  - d. Suspend all volunteer services;
  - e. Suspend all on-site professional interviews (job and background checks);
  - f. Continue and enhance the already preventative cleaning of the facility;
  - g. Staff serve from the resident salad bar; residents no longer serve themselves;
  - h. Change the offering of certain food items at the kitchenettes to sealed food options;
  - i. Allow staff to carry alcohol-based sanitizer on their person;
  - j. Placed alcohol-based sanitizer around the building for use by residents and staff;
  - k. Placed sanitizer wipes in the elevators for use by residents and staff;  
and

1. For all medical transports, staff and residents wear gloves and masks into the medical facility. Only the resident who is receiving the medical procedure may go on the trip, except that one parent may accompany a child.
16. In addition to BCRC's COVID-19 procedures, the medical staff, who are part of the United States Public Health Services, amended the initial health and safety assessments for the doctor to ask the following questions:
  - a. "Have you been in close contact with a person with laboratory confirmed 2019 novel coronavirus or their respiratory secretions in the past 14 days?"
  - b. "Have you traveled from or through a geographic area(s) with widespread or sustained community transmission in the past 2 weeks?"
17. I did not find any evidence that residents could not practice social distancing.
18. I did not find any evidence of gross incompetence, negligence, or misconduct in the licensee's operation of BCRC, or mistreatment or abuse of residents, likely to constitute an immediate and serious danger to the life or health of the residents of BCRC.
19. Based on my remote inspection, I concluded that BCRC was in compliance with DHS's licensing requirements under 55 Pa. Code Chapter 3800.
20. As of today, BCRC houses ten adults and six children.
21. The statements made in this Declaration are true and correct to the best of my personal knowledge or information and belief.

22. I understand that statements made in this Declaration are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Declarant states nothing further.

*Erin Roman*  
Erin Roman  
Licensing Technician  
Office of Children, Youth and Families  
Department of Human Services

Date: *4/28/2020*

VERIFICATION

I, Erin Roman, Licensing Technician for the Northeast Region of the Department of Human Services (“DHS”), Office of Children, Youth and Families, hereby state that I am authorized to make this verification on behalf of Department and that the facts set forth in the foregoing Department’s Answer with New Matter to Petitioners’ Emergency Petition for Issuance of a Writ of Mandamus are true and correct to the best of my knowledge, information, and belief, and that this verification is being made subject to 18 Pa. C.S, § 4904 relating to unsworn falsification to authorities.

Date: 4/28/2020

*Erin Roman*  
Erin Roman

**CERTIFICATE OF SERVICE**

The undersigned certifies that I caused a copy of the foregoing to be served upon the following as indicated:

By eService (PACFile):

David Bennion  
FREE MIGRATION PROJECT  
150 Cecil B. Moore Ave., Ste. 203  
Philadelphia, PA 19122

Bridget Cambria  
ALDEA-The People's Justice Center  
532 Walnut Street  
Reading, PA 19601

Karen Hoffmann  
SYRENA LAW 128 Chestnut St., Ste. 301A  
Philadelphia, PA 19106

Carol Anne Donohoe  
P.O. Box 12912  
Reading, PA 19612

By email:

Jacquelyn Kline  
ALDEA-The People's Justice Center  
532 Walnut Street  
Reading, PA 19601

Date: April 28, 2020

/s/Edward G. Cherry  
Edward G. Cherry

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that requires filing confidential information and documents differently than non-confidential information and documents.

Date: April 28, 2020

/s/Edward G. Cherry  
Edward G. Cherry