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SUPREME COURT OF GUAM

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Honorable Lourdes A. Leon Guerrero

Governor of Guam

IN THE SUPREME COURT OF GUAM

IN RE:

REQUEST OF LOURDES A. LEON GUERRERO, I MAGA'HÅGAN GUÅHAN, RELATIVE TO THE POWER OF THE EXECUTIVE BRANCH TO ESTABLISH, MAINTAIN, AND OPERATE QUARANTINE FACILITIES IN GUAM AND TO PROMULGATE QUARANTINE AND SANITATION REGULATIONS FOR THE PROTECTION OF GUAM AGAINST THE IMPORTATION AND SPREAD OF DISEASE

SUPREME COURT CASE NO.

CRQ 20-002

**REQUEST FOR
DECLARATORY JUDGMENT
(7 G.C.A. § 4104);
VERIFICATION; EXHIBITS 1-6**

COPY

Petitioner Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, by and through counsel and pursuant to 7 G.C.A. § 4104, Rules 26 of the Guam Rules of Appellate Procedure, and the Organic Act of Guam, requests that the Court issue declaratory judgment interpreting Article 6 of Title 10 Guam Code Annotated, relative to the authority and duty of the Department of Public Health and Social Services (“DPHSS”), as an agency of the executive branch of the government of Guam, to quarantine individuals entering Guam during the public health emergency due to dangers posed by the 2019 novel coronavirus (“COVID-19”), which Petitioner declared on March 14, 2020 in Executive Order No. 2020-03. *See* Executive Order No. 2020-03, Relative to Declaring a State of Emergency to Respond to the Novel Coronavirus (COVID-19) dated March 14, 2020, attached hereto as **Exhibit 1**.

I. INTRODUCTION

Since March 14th, Guam has been under a state of public health emergency in an effort to respond to the global pandemic caused by the spread of COVID-19. On March 15, 2020, the Government of Guam identified its first cases of COVID-19 and immediately implemented a series of emergency measures to contain its spread, safeguard and stabilize our island’s healthcare system, and address economic concerns caused by the pandemic. These actions were accomplished through executive action via orders issued by Petitioner or through directives and guidance memoranda issued by the DPHSS, which serves as the designated Public Health

Authority as provided under the *Islan Guåhan* Emergency Health Powers Act, codified at 10 G.C.A. § 19101 *et seq.* On March 16, 2020, Guam adopted a policy of quarantine for incoming travelers to Guam. *See* Executive Order No. 2020-04, Relative to Responding to Confirmed Cases of Novel Coronavirus (COVID-19) dated March 16, 2020, attached hereto as **Exhibit 2**. Since its adoption, the quarantine policy has been modified to reflect emerging science and data regarding COVID-19 and the unique challenges in containing the spread of the disease in Guam. A number of incoming travelers have challenged the policy in the Superior Court of Guam.¹

On October 27, 2020, the Superior Court issued an order in one of the cases, stating: “incoming travelers represent a statistically insignificant portion of cases.” *See Ikei v. Dep’t of Pub. Health and Soc. Serv.* SP 0141-20 (Super. Ct. Oct. 27, 2020), attached hereto as **Exhibit 3**. The Superior Court noted that, at the time it issued the Findings of Fact and Conclusions of Law, less than one percent (1%) of positive COVID-19 cases in Guam had been traced to quarantine. As of the time of this filing, two hundred and sixty eight (268) individuals who have tested positive for COVID-19 have been identified in quarantine. This number represents 3.723% of the total number of positive cases that have been identified in Guam. This current

¹ Collectively, these cases are referred to herein as the “quarantine cases.”

calculation demonstrates that, between late October and present time, the number of positive cases found in quarantine has almost quadrupled.

The characterization of the COVID-19 positive travelers as “statistically insignificant,” even in the context of the broader spread within the community at present time, does not fairly account for the true impact these positive cases have had on the island. COVID-19 is not endemic to Guam. It was imported and transmitted within the community by individuals who brought it in from other countries and jurisdictions. Two of the first three individuals in Guam who tested positive on March 15, 2020 had arrived in Guam the thirteen (13) days prior to their diagnosis. Like these original patients, the 268 individuals who have tested positive for COVID-19 while in government quarantine cannot be considered in a vacuum – they represent exponential opportunity for infection within the community were these individuals not subject to the quarantine policy.

To date, DPHSS has identified over seven thousand two hundred (7,200) positive cases of COVID-19 in Guam. *See* Guam COVID-19 Situation Report – 191 for March 12 – December 18, 2020 issued by the Department of Public Health and Social Services, attached hereto as **Exhibit 4**. The island has lost one hundred twenty-one (121) residents to COVID-19-related deaths. Originally designated as the exclusive hospital for treatment of COVID-19 patients, the Guam Memorial Hospital (“GMH”) at its peak housed eighty-six (86) individuals hospitalized from

COVID-19, over three times the original threshold for COVID-19 patients. Overflow COVID-19 patients were treated at the Guam Regional Medical City (“GRMC”) and the Naval Hospital Guam, and BLU-MED response tents were set up outside GMH to assist in the response effort.

However, the scarcest resource in Guam’s response has been its human resources. With medical personnel stretched to their limits, GMH has engaged the services of traveling nurses at great cost, many of whom are no longer available to service Guam due to the rampant spread of the virus in the mainland United States. In addition to the limited medical resources available in Guam, treatment of COVID-19 in Guam is further complicated by the fact that the disease impacts the population more severely than their mainland counterparts, due to widespread comorbidity factors among members of the community.

The several decisions rendered in the quarantine cases have wielded guidelines published by the Centers for Disease Control and Prevention regarding the quarantine travelers, as a one-size-fits-all policy, determinative of the policy the Government of Guam should implement at its borders. This interpretation is contrary to the CDC’s own acknowledgment that local public health authorities determine and establish quarantine options for their respective jurisdictions. The CDC also specifically recommends that travelers follow state and local recommendations or requirements related to travel, and its website links visitors to

policies developed and implemented by local health authorities in response to the circumstances in their respective jurisdictions.

The Superior Court has also ignored the CDC's own continued endorsement of a fourteen (14) day quarantine², which remains the best method of ensuring that incoming travelers are not infected with the virus prior to reentering the community. The Superior Court has released individuals from quarantine without the requirement of home or self-quarantine, and has transferred individuals out of government quarantine because the high speed internet access was inconsistent during the six (6) days they were required to stay in the government facility. *See Bellis v. Dep't of Pub. Health and Soc. Serv.*, SP0207-20 (Guam Super. Ct. Dec. 3, 2020), attached hereto as **Exhibit 6**.

The Superior Court has substituted its judgment for that of DPHSS, and has inconsistently and selectively applied CDC guidelines that do not account for, and were not intended to account for, the nuanced circumstances that affect the spread of COVID-19 in specific jurisdictions, including Guam. It is against this backdrop that Petitioner comes before the Court today.

As DPHSS continues to develop its quarantine policy based on emerging science and data regarding Guam's response to COVID-19, it is critical that it understands the extent to which it is required to adhere to general guidelines

² See Centers for Disease Control and Prevention Quarantine Endorsement updated on December 10, 2020, attached hereto as **Exhibit 5**.

established by the CDC. For these reasons, Petitioner requests that this Court issue declaratory judgment on the questions presented herein, clarifying DPHSS's authority to craft the appropriate quarantine policy for Guam instead of relying exclusively on non-binding CDC guidelines, and further defining the applicable standards of review in cases challenging the quarantine policy.

II. STANDING

1. Petitioner is the Governor of Guam and has standing to request declaratory judgment pursuant to 7 G.C.A. § 4104.

III. JURISDICTION

2. This court has original jurisdiction over requests from the Governor of Guam to issue declaratory judgment interpreting any federal or local law “and upon any question affecting the powers and duties of [*I Maga'håga*] and the operation of the Executive Branch[.]” 7 G.C.A. § 4104. *See also* 48 U.S.C.A. § 1424-1(a).

3. Guam law authorizes the Governor of Guam to request that the Supreme Court of Guam directly interpret federal or local law affecting the powers and duties of the Governor of Guam and the operation of the Executive Branch:

I [Maga'hågan] Guåhan, in writing...may request declaratory judgments from the Supreme Court of Guam as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of *I [Maga'håga]* and the operation of the Executive Branch...The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay. Such declaratory judgments *shall* not be available to private parties.

The Supreme Court of Guam *shall*, pursuant to its rules and procedure, permit interested parties to be heard on the questions presented and *shall* render its written judgment thereon.

7 G.C.A. § 4104 (emphasis in original).

4. This court has held:

[T]o pass jurisdictional muster, a party seeking a declaratory judgment must satisfy three requirements: (1) the issues raised must be a matter of great importance; (2) the issue must be such that its resolution through the normal process of law is inappropriate as it would cause undue delay; (3) and the subject matter of the inquiry is appropriate for section 4104 review.

In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity & Constitutionality of Pub. L. 26-35, 2002 Guam 1 ¶ 9.

IV. MATTER OF GREAT IMPORTANCE

5. This Court has held that a matter of great importance or public interest “signifies an importance of the issue to the body politic, the community, in the sense that the operations of the government may be substantially affected one way or the other by the issue’s resolution... the issue presented must be significant in substance and relate to a presently existing governmental duty borne by the branch of government that requests the opinion.” *In re Request of Governor Gutierrez for a Declaratory Judgment as to Organicity of Guam Pub. Law 22-42, 1996 Guam 4 ¶*

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6. This Petition seeks declaratory judgment regarding specific issues related to DPHSS's ability to develop a strategy and response to the COVID-19 public health emergency, which includes its duty and authority to quarantine individuals entering Guam during the COVID-19 public health emergency.

7. DPHSS is authorized to isolate and quarantine individuals or groups of individuals during a public health emergency, as well as "establish and maintain places of isolation and quarantine, and set rules and make orders." 10 G.C.A. § 19604 (a).

8. Quarantine and isolation measures are critical tools in DPHSS's effort to limit and prevent the introduction and spread of COVID-19 in Guam.

9. This Petition centers on the authority of DPHSS to make and implement policy decisions regarding appropriate quarantine measures as part of the public health response and the extent to which judges may override those decisions through court orders.

V. UNDUE DELAY IN NORMAL PROCESS OF LAW

10. Section 4104 "was intended to provide a fast track for the initiation of cases before the Supreme Court of Guam so that rulings could be obtained on important issues of law without time consuming litigation in the inferior court." *In re Gutierrez*, 1996 Guam 4 ¶ 8.

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11. At the time of this request, dozens of cases have been filed in the Superior Court of Guam challenging quarantine measures implemented by DPHSS to prevent the spread of COVID-19.

12. At issue in many of these cases is the role that guidance issued by the CDC should serve in the quarantine policies implemented by DPHSS.

13. The normal process of law may adversely impact the government of Guam's ability to quickly develop quarantine measures in response to emerging data and science. Delay in the development of appropriate quarantine measures may directly result in the introduction and spread of COVID-19 in the community.

**VI. REQUESTED INTERPRETATION AFFECTING GOVERNOR'S
POWERS AND DUTIES AND OPERATIONS OF THE EXECUTIVE
BRANCH**

14. This court has identified two subjects appropriate for section 4104 review: questions that require an interpretation of federal or local law lying within the jurisdiction of Guam and questions that affect the powers and duties of the Governor and the operation of the executive branch. Petitioner requests interpretation involving both subjects.

15. Petitioner requests an interpretation of 10 G.C.A. §§ 19601, 19604, and 19605. The interpretation of these statutes provides the framework for DPHSS's policy regarding quarantine measures aimed at preventing the importation and spread of infectious disease, including COVID-19.

16. The Governor seeks declarations on the following questions:
- a. Are CDC guidelines mandatory in Guam?
 - b. Are CDC guidelines regarding quarantine for travelers binding on DPHSS such that DPHSS may not implement a quarantine policy that is more restrictive than CDC guidelines?
 - c. May quarantine orders be challenged on constitutional grounds even where they reasonably bear a relationship to the public health emergency and do not result in a plain and clear invasion of fundamental rights?
 - i. If yes, what level of scrutiny should be applied to the court's review, whether rational, intermediate or strict?
 - d. May a court grant a request for release from quarantine on the basis of amenities provided in quarantine facilities?
 - e. May a court modify a lawful quarantine order issued by DPHSS or does such modification impinge on the Governor's power and duties to quarantine and protect against the spread of disease and interfere with the operations of the Executive Branch? Under what circumstances may a court modify a lawful quarantine order issued by DPHSS?

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VII. PETITIONER'S LEGAL POSITION

17. Petitioner submits that CDC guidelines are not mandates on local governments, and it is the statutory duty of the DPHSS, as the designated Public Health Authority, to consider such guidelines in light of Guam's actual circumstances. Guam's quarantine policy is appropriately informed by CDC guidelines, science, data, and recommendations from the medical and public health communities, but it is ultimately the purview of the executive branch to set the policy, while remaining within the parameters of the law. When Courts review DPHSS policies to ensure that it is utilizing the "least restrictive means" available for quarantine, that review should include a grant of deference to the DPHSS with regard to the totality of circumstances – including the resources necessary to properly monitor individuals subject to quarantine.

18. When DPHSS files a petition for quarantine or isolation of an individual or group of individuals, the reviewing court's obligation is to grant such petition where such quarantine or isolation is "reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others." 10 G.C.A. § 19605(b)(5). DPHSS's burden is a preponderance of the evidence. *Id.*

19. Under 10 G.C.A. § 19604, DPHSS is required to ensure that "the needs of persons isolated and quarantined [are] addressed in a systematic and competent fashion[.]" A reviewing court is obligated to ensure that basic needs are provided

for, but not, as has occurred in at least one of the quarantine cases, to set the standard for wifi connectivity.

VIII. PRAYER FOR RELIEF

WHEREFORE Petitioner Governor Leon Guerrero respectfully requests the Court issue a Judgment declaring the following:

1. Guidelines issued by the CDC for the quarantine of individuals are not mandates imposed on the local government, but rather serve as recommendations that must be considered in the totality of the circumstances.

2. The DPHSS is statutorily authorized to implement quarantine conditions that are more restrictive than CDC guidelines where local conditions, including the availability of medical resources and personnel and the comorbidities of the population, warrant.

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3. When reviewing quarantine orders issued under the *Islan Guåhan* Emergency Health Powers Act, the appropriate standard of review is one of rational basis and where such order bears a reasonable relationship to the public health emergency and there is no plain and clear invasion of fundamental rights, such orders should be allowed to stand.

Respectfully submitted this 24th day of December, 2020.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel

By: 

SOPHIA SANTOS DIAZ
LESLIE A. TRAVIS
Attorneys for Petitioner
Lourdes A. Leon Guerrero,
Governor of Guam

VERIFICATION

GUAM U.S.A,)
) ss:
Territory of Guam)

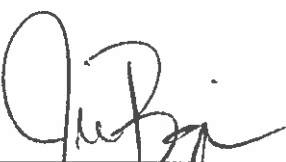
The undersigned, deposes and says: That she is the petitioner in the foregoing Request for Declaratory Judgment, that the facts contained therein are true and correct to the best of his knowledge and belief, except as to the matters stated upon information and belief, and as to those matters, she believes them to be true.

Dated this 24th day of December 2020.



LOURDES A. LEON GUERRERO

SUBSCRIBED and SWORN to before me on the day and year first above-written.



NOTARY PUBLIC

JUNE M.C. BORJA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **MARCH 26, 2022**
456 Chalan Canton Tutujan, Sinajana, Guam 96910



EXHIBIT 1



**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

Executive Order No. 2020-03

**RELATIVE TO DECLARING A STATE OF EMERGENCY TO
RESPOND TO NOVEL CORONAVIRUS (COVID-19)**

WHEREAS, the United States Centers for Disease Control and Prevention (“CDC”) has identified COVID-19, a respiratory disease that is a new strain of coronavirus not previously identified in humans, as posing a significant public health risk;

WHEREAS, on January 30, 2020, the World Health Organization (“WHO”) declared a Global Health Emergency with regard to the COVID-19 outbreak;

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19;

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency over the COVID-19 outbreak in the continental United States;

WHEREAS, while no cases of COVID-19 have been identified on Guam, an emergency situation exists such that in order to safeguard the community and general welfare of the island, it is critical that timely precautions be taken and that resources be immediately identified, mobilized and prepositioned; and

WHEREAS, *I Maga’hågan Guåhan*, pursuant to Section 1421g of the Organic Act of Guam, is obligated to provide for the public health of Guam including protecting against the spread of COVID-19.

NOW, THEREFORE, I, LOURDES A. LEON GUERRERO, Governor of Guam, by the authority vested in me by the Organic Act and laws of Guam, and for the purpose of marshalling all of the island’s resources and appropriate preparedness, response, and recovery measures, hereby order the following:

1. **Declaration of State of Emergency.** A state of emergency pursuant to Section 19401 of Article 4, Chapter 19, Title 5, Guam Code Annotated is hereby declared for Guam as a result of the effects of COVID-19 on the island.
2. **Primary Public Health Authority.** The Department of Public Health and Social Services, through its Director and with the approval of *I Maga’hågan Guåhan*, shall be authorized to exercise all powers enumerated in Chapter 19 of Title 10, Guam Code Annotated.
3. **Geographic Areas Applicable to the Declaration.** All geographic areas with confirmed cases of COVID-19 shall be applicable to this declaration. The authority of this Executive Order shall pertain to all of Guam.



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4. **Suspension of Statutes, Orders, Rules and Regulations That Prevent, Hinder or Delay Necessary Action to Respond to the Emergency.** Pursuant to Section 19403(a)(1), of Chapter 19, Title 10 Guam Code Annotated, statutes, orders, rules, and regulations that prevent, hinder or delay necessary action to prepare for or respond to this public health emergency, including but not limited to, purchases and hiring, are hereby suspended.
5. **Price Gouging.** Effective immediately and throughout the duration of this Executive Order or within any time period allowed by law, whichever is longer, it shall be an unfair trade practice for any merchant or landlord to increase the price of any goods, services, or dwelling rentals on the basis of shortage anticipated or caused by this public health emergency.
6. **Personnel and Procurement.** Pursuant to Sections 19505 and 19803 of Chapter 19, Title 10, Guam Code Annotated, this Executive Order shall authorize, hiring, overtime and any procurement related to this public health emergency for all government of Guam agencies responding to the emergency.
7. **GHS/OCD to be Lead Agency for Logistics.** GHS/OCD shall be the lead agency for the logistical organization and direction of resources and procurement of any goods and services relative to this Executive Order. Any procurement pursuant to this Executive Order is not being used solely for the purpose of avoidance of the provisions of the Guam Procurement Law.
8. **Authorization For Overtime.** Authorization is given for the payment of overtime for non-exempt Government of Guam employees, to work in excess of forty (40) hours a week to mitigate and respond to the effects of **COVID-19**. The Office of Civil Defense Administrator is authorized to determine the eligibility of overtime expenditures resulting from work performed by the government agencies, and approval from the Bureau of Budget Management & Research shall be obtained prior to incurring any overtime or expenses. Failure to obtain prior approval shall be grounds for denying reimbursement.
9. **Documentation of Expenses.** All departments and agencies are instructed to keep appropriate documentation on all emergency expenses authorized by this Executive Order for inspection by the Executive and Legislative Branches and by the Public Auditor of Guam, and in anticipation of federal disaster assistance approval by the President of the United States to be administered by any federal agency.
10. **Activation of Guam National Guard.** The Adjutant General is authorized to issue active duty orders for the mobilization of such National Guard personnel and equipment as she may determine to protect life and safety, to continue essential public services, and to prevent undue loss and suffering.



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11. **Severability.** If any provision of this executive order or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this order that can be given effect without the invalid provision or application, and to this end, the provisions of this order are severable.

Signed and Promulgated at *Hagåtña*, Guam, this 14th day of March, 2020.

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Attested by:

JOSHUA F. TENORIO
Sigundo Maga'låhen Guåhan
Lieutenant Governor of Guam



EXHIBIT 2



**ISLAND OF GUAM
OFFICE OF THE GOVERNOR
HAGÁTÑA, GUAM 96932
U.S.A.**

EXECUTIVE ORDER NO. 2020-04

**RELATIVE TO RESPONDING TO CONFIRMED CASES OF NOVEL
CORONAVIRUS (COVID-19)**

WHEREAS, on March 14, 2020, I, Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, acting pursuant to the power provided to me by the Organic Act and the laws of Guam, declared a public health emergency in the island of Guam due to the potential dangers posed by the 2019 novel coronavirus ("COVID-19"); and

WHEREAS, since the declaration of a public health emergency, Guam has confirmed three cases of COVID-19; and

WHEREAS, it is of the utmost importance that *I Maga'hågan Guåhan* utilizes all available resources of the government of Guam to respond to this public health threat evidenced by these newfound cases; and

WHEREAS, the Director of the Guam Department of Public Health and Social Services ("DPHSS") and members of the Federal Centers for Disease Control and Prevention ("CDC") have advised that Guam undergo an "investigatory period" to detect and track the potential spread of COVID-19; and

WHEREAS, as a community, we place special emphasis on care for those most vulnerable among us, especially the *mandåmko'*, who, along with those with pre-existing medical conditions, are most at risk of severe effects from COVID-19; and

WHEREAS, the CDC and DPHSS recommend implementation of community mitigation strategies, including limiting government operations to essential services and the prohibition of large gatherings in an effort to further prevent the transmission of COVID-19.

NOW, THEREFORE, I, LOURDES A. LEON GUERRERO, *I Maga'hågan Guåhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do hereby order:

- 1. CLOSURE OF NON-ESSENTIAL GOVERNMENT OF GUAM OFFICES.** Effective immediately and through March 30, 2020, all non-essential government of Guam offices are closed and such services are suspended. Essential personnel shall be identified and contacted by their appropriate supervisors.
- 2. CLOSURE OF ALL SCHOOLS.** Pursuant to Section 3317, Article 3, Chapter 3, of Title 10, Guam Code Annotated, beginning March 17, 2020, all public and private schools on Guam serving prekindergarten through 12th grade students must close for educational purposes through March 30, 2020. The definition of habitual truancy pursuant to Article 4, Chapter 6, of Title 17, Guam Code Annotated, is



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suspended. And student absences due to school closures and absences connected to the transmission of COVID-19 during the effect of this Executive Order shall not contribute to the calculation of habitual truancy.\

3. **PROHIBITION ON LARGE GATHERINGS.** Pursuant to Section 3317, Article 3, Chapter 3, of Title 10, Guam Code Annotated, effective immediately and through March 30, 2020, gatherings of 50 people or more in a single room or single space at the same time for social, spiritual and recreational activities, including, but not limited to, community, civic, public, leisure, faith-based, or sporting events, parades, concerts, festivals, fiestas, conventions, fundraisers and similar activities are prohibited throughout the island of Guam.
4. **EMERGENCY MEASURES CONCERNING FACILITIES AND MATERIALS.** Effective immediately and through March 30, 2020, any place of business or public accommodation for which attendance is anticipated to be fewer than 50 people, shall operate at no greater than 50% occupancy, and no greater than 50% of seating capacity.

The preceding directive shall not apply to retail establishments providing basic food and necessities (e.g. grocery and convenience stores), hospitals, pharmacies, or other medical offices/facilities. This Order is not intended to prohibit routine business gatherings held at the place of business.

5. **MANDATORY SOCIAL-DISTANCING.** In all other instances not captured by this prohibition, it is strongly recommended that mitigation measures are implemented and enforced. These measures include but are not limited to social distancing of at least six feet; frequent cleaning of all surfaces; posting of signs; and permitting/encouraging teleworking. Older residents and those with pre-existing medical conditions are encouraged to limit excursions of any type.
6. **RESTRICTING ENTRY INTO GUAM.** Pursuant to Section 3333, Article 3, Chapter 3, of Title 10, Guam Code Annotated, all persons who are non-residents who have been in a country with confirmed COVID-19 cases for more than one (1) week and do not possess a DPHSS recognized and certified document that attests that they are not infected with COVID-19, shall be restricted entry into Guam. The date of the test must not be more than one (1) week from the date of attempted entry into Guam.

Any individual who enters into Guam without the proper documentation shall be quarantined pursuant to this Section and Sections 19604 and 19605 of Article 6, Chapter 19 of Title 10, Guam Code Annotated.

Any and all costs associated with the quarantine and/or treatment of individuals who are subject to restricted entry into Guam pursuant to this Executive Order shall be the responsibility of the individual and the carrier that the individual contracted with to travel to Guam.



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U.S.A.

7. **ENFORCEMENT.** DPHSS is directed to issue guidance, subject to my approval to implement the terms of this Order. DPHSS shall enforce this Order and, if necessary, may do so with the assistance of the Guam Police Department.

8. **SEVERABILITY.** If any provision of this executive order or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this order that can be given effect without the invalid provision or application, and to this end, the provisions of this order are severable.

SIGNED AND PROMULGATED at Hagåtña, Guam, this 16th day of March 2020.

LOURDES A. LEON GUERRERO
Maga'hagan Guåhan
Governor of Guam

Attested by:

JOSHUA F. TENORIO
Sigundo Maga'låhen Guåhan
Lieutenant Governor of Guam



EXHIBIT 3

The Court also rules on various allegations raised by Petitioners Chad Ikei, Chance Ikei, Rosalani Ikei, Tiare-Lynn Ikei, and the two minor Ikei children. The Court determines that DPHSS failed to comply with 10 GCA § 19605 in not issuing a directive to Ikeis, but that it did properly address their hardship application. The Court also includes a written memorialization of its ruling issued from the bench that the Ikeis should be released from home quarantine on their seventeenth day of quarantine, based on the facts provided as to the family's prior COVID-19 infection and Rosalani's release from isolation.

I. PROCEDURAL BACKGROUND

On September 22, 2020, on their sixth day in a government quarantine facility, the Ikeis filed an Order to Show Cause for a hearing on their Verified Petition for Habeas Corpus, Alternative Writ of Mandamus, and Injunctive Relief. *Ikei v. DPHSS*, SP0138-20 (Order to Show Cause (Sep. 22, 2020)). The next day, DPHSS filed a petition under 10 GCA § 19605 seeking the continued quarantine of the Ikeis and others. *In re Jones, et al.*, SP0141-20 (Pet. Order Auth. Cont. Quarantine or Isolation (Sep. 23, 2020)). On September 25, 2020, the Court appointed the Public Defender Service Corporation to represent all persons under government quarantine, which included the Ikeis. *See Igros v. DPHSS*, SP0127-20 (Gen. Order Appointing Pub. Def. Servs. Corp. Represent Persons in Quarantine and Entering Quarantine (Sep. 25, 2020)).

As there was an ongoing evidentiary hearing concerning DPHSS' quarantine of incoming passengers, the Court included the present cases as part of the consolidated hearing. The Court therefore incorporates testimony and evidence heard before the Court on September 17-19, 22-26, and 28-30, and October 1-3, 2020.

II. FACTUAL FINDINGS

The Court makes the following findings by a preponderance of the evidence. The Court bases its findings on the testimonies of Chima Mbakwen, Containment and Infection Control Branch Lead for DPHSS; Arthur San Agustin, Director of DPHSS; Dr. Felix Cabrera, admitted by the Court as an expert in infectious disease and a member of the Governor's Physician's Advisory Group ("PAG"); COL. Dr. Michael Cruz, leader of the PAG and the governor's chief medical advisor; DPHSS' epidemiology fellow Stephanie Kern-Allely; and Chad Ikei.

A. COVID-19: Viability and Contagiousness

Between mid-March and late July 2020, Guam had recorded approximately 348 cases of COVID-19. Within the two months thereafter and by late September when these lawsuits were heard, the number surged sevenfold to 2,488 cases. *See* Ex. 4 (chart reflecting rise in local cases); *see also* Ex TT (Situation Rep. 157). In response to the exponential rise of cases, Governor Lourdes Leon Guerrero placed Guam in Pandemic Condition of Readiness 1 ("PCOR1") on August 14, 2020. *See* Executive Order No. ("EO") 2020-27. The Centers for Disease Control (CDC) has also placed Guam on Risk Level 3.¹ Positive cases continue to accumulate at a high rate; as of the date of these Findings of Fact and Conclusions of Law, Guam has now had over 4,000 positive COVID-19 cases.²

COVID-19 is a novel virus. As evident by evolving CDC and public health policies, doctors and scientists continue to adjust their recommendations of safe practices as they learn

¹ *COVID-19 in Guam*, CENTERS FOR DISEASE CONTROL AND PREVENTION: TRAVELERS' HEALTH (Aug. 6, 2020), <https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-guam#:~:text=COVID%2D19%20in%20Guam%20%2D%20Warning,Notices%20%7C%20Travelers'%20Health%20%7C%20CDC>.

² Joint Information Center Release No. 411 (Oct. 23, 2020) available at <http://dphss.guam.gov/covid-19-jic-releases-executive-orders/>.

more about the virus. However, one recommendation that has remained constant since the beginning of the pandemic is a fourteen-day quarantine, which spans the period in which one may be infectious.

Infectiousness and symptoms vary over the fourteen days. For instance, when a person is infected with COVID-19, they are not likely infectious on the first and second days. *See Ex. XX* (chart tracking infectiousness over a period of fourteen days). On day three, infectiousness begins to rise then reaches its greatest potential of transmission between days four and nine. Similarly, a person may not show symptoms on those initial days after an infection. Symptoms may start to show by day five, although many people remain completely asymptomatic throughout the fourteen days.³ In fact, of all positive cases, 50% receive the virus from persons who do not display symptoms.

A person's infectiousness also varies depending on whether he or she is symptomatic or asymptomatic. If an individual is infected and asymptomatic, by day ten they have little to no infectiousness. *See Ex. XX*. But a symptomatic individual may remain more infectious through days thirteen and fourteen. *See Id.*

The same variations that affect infectiousness also impact testing. For instance, the optimal time to test for COVID-19 is between days five and seven, which aligns with when one is most infectious. *See Ex. XX*. Before day five, however, testing is less accurate and consistent. The reason is that the virus takes time to develop within the body. Testing prior to day five risks what DPHSS referred to as a "false negative"--in other words, when someone is infected but obtains a negative test result.

³ DPHSS does not track how many of the thousands of persons who tested positive on Guam since March 2020 were asymptomatic.

The manner of testing is also affected by the novelty of COVID-19. When testing persons in government quarantine facilities, DPHSS primarily uses a RT-PCR/molecular test (“PCR test”). This is the “nose-swab test” and it works by detecting the presence of the virus in one's nose. When used on persons not previously infected with COVID-19, a PCR test yields a 99% accuracy rate. However, this method of testing has its limits. PCR tests are not recommended on persons who have recovered from COVID-19 within three months, as it may detect dead virus particles and reflect a positive test result even though the person may be fully recovered from COVID-19. *See* Exs. JJ (CDC guidance stating that retesting someone in the three months following initial infection is not necessary unless that person is exhibiting the symptoms of COVID-19 and the symptoms cannot be associated with another illness) and KK. This is referred to as a “false positive.” *See* Ex. JJ. A serology test better reflects the condition of these individuals. Rather than a swab in the nose, a serology test measures for virus antibodies in the blood. Depending on the level of antibodies measured, the test determines whether the individual previously had COVID-19.

Most important, as is widely known, persons infected with COVID-19 are highly contagious. Absent precautionary measures such as social distancing, mask-wearing, or the regular washing of hands, the rate of COVID-19's spread is 1:2.5, that is, one person can infect up to 2.5 persons. Those 2.5 persons then may each infect another 2.5 persons, and so on. Under this model, after a period of one week, the impact of one positive and infectious person would result in 250 infections. However, when the standard precautionary measures are taken, the contagiousness rate decreases to about 1:1.7. The Court also notes that individuals who have recovered from COVID-19 within three months are much less likely to be reinfected.

The rate of infection in a community has a correlative effect on the community's mortality rate; though the evidence regarding Guam's mortality rate presents issues. At the hearing, DPHSS represented that Guam's mortality rate is approximately 2%--lower than the World Health Organization's estimated 3.4% mortality rate. The rate, however, is partially based on those individuals in the community that test positive for COVID-19; and notably, not every person that is infected with COVID-19 has been tested.⁴ Nonetheless, at the ratio discussed above of 1:2.5, one person's infection could lead to the deaths of five to eight people. Even at a rate of 1:1.7, within ten days, one person's spread may infect close to 200 persons. At a mortality rate of between 2% to 3.4%, one person's infection could result in two to seven deaths. Beyond the potential fatal outcome of a COVID-19 infection, many will suffer long term effects of COVID-19 including neurological complications, foggy memory/concentration issues, and cardiac involvement.

B. Government of Guam & DPHSS Quarantine of Incoming Passengers

Since March 2020, DPHSS has implemented a quarantine of incoming travelers to protect Guam against the importation and spread of COVID-19. *See In re Travelers arriving in Guam from Manila, Philippines on or about March 19, 2020* ("In re Travellers arriving from Philippines"), SP0049-20 (Apr. 1, 2020). Quarantine procedures have fluctuated since then, with a more lenient policy implemented during the summer months when Guam's COVID-19 numbers flattened. From June to mid-August 2020, DPHSS permitted various exceptions to the fourteen-day quarantine, including bypassing government facility quarantine for home quarantine depending on whether the passenger presented a recent negative test and the number

⁴ Accordingly, Dr. Cabrera, who testified that he had COVID-19 but tested negative, is not accounted for in the calculation of the percentage. *See* Test. Dr. Felix Cabrera.

of COVID-19 cases reported from their place of origin. DPHSS Guidance Memo 2020-11 Rev6 (“Rev6”).⁵ On or about August 21, 2020, however, Governor Leon Guerrero issued a series of Executive Orders reinstating a fourteen-day government-facility quarantine of incoming passengers to Guam. EO 2020-28; EO 2020-29. DPHSS followed the orders with Guidance Memo 2020-11 Rev7 (“Rev7”), which detailed the administration of the quarantine. *See Ex. C.*

With limited exceptions, Rev7 forced all incoming passengers to enter a mandatory fourteen-day quarantine at a government facility regardless of where a person arrived from or if they received a negative test before arriving. While not explicitly stated in Rev7, on approximately day twelve, DPHSS would issue a PCR test and upon the receipt of a negative test and the completion of the fourteenth day, the individual would be released from the government facility. *See Test. Chima Mbakwem.*

This policy remained in place until September 25 when DPHSS issued Guidance Memo 2020-11 Rev10 (“Rev10”) following EO 2020-33.⁶ Rev10 carved out a broad exception to spending the entire fourteen-day in government facility quarantine.⁷ Under the new policy, individuals in a government quarantine facility may receive a COVID-19 test upon their consent on the sixth day. For those who choose to test, if the individual receives a negative result, they may transfer to home quarantine for the remainder of their fourteen-day quarantine. Persons who test positive, on the other hand, are subject to isolation protocols established by DPHSS,

⁵ DPHSS Guidance Memo, 2020-11 Rev6, available at <https://dphss.guam.gov/wp-content/uploads/2020/08/1-DPHSS-GUIDANCE-MEMO-2020-11-REV6-COVID-19-08.05.2020-003.pdf>. Rev6 was in place during this Court’s consideration of *Shawl v. DPHSS*, SP0123-20 (Order after Hearing (Aug. 28, 2020)).

⁶ In EO 2020-33, Governor Leon Guerrero maintained the quarantine but appeared to have lifted language from the prior Executive Orders that specified quarantine was to occur under certain statutory provisions.

⁷ Rev10 was not introduced as an exhibit at trial, but it was referenced during the testimonies of Dr. Cabrera and Dr. Cruz.

including home isolation if the home is deemed suitable by DPHSS.

When an individual tests positive for COVID-19 while in government facility quarantine, DPHSS separates the person from any others they may have been quarantined with. Once separated, DPHSS “resets the quarantine clock” of those who tested negative. In other words, they must quarantine for an additional fourteen days, with the potential to remain in a government facility for at least the first six additional days.

While not explicitly stated in Rev10, persons who refuse to take a COVID-19 test stay under quarantine in a government facility for the entire fourteen days. Interestingly, because asymptomatic individuals are unlikely to be infectious by day ten, persons who test positive but show no symptoms may be released from isolation on the tenth day. *See* Ex. TT at 4. This policy, however, is not extended to asymptomatic individuals who remain in government facility quarantine until day ten because they refuse to take a test.

C. The Ikei Family

On September 16, 2020, six members of the Ikei family traveled from Arizona to Guam to attend the funeral of a close family member who had passed away from COVID-19. The family consisted of the father (Chad), three adult children (Chance, Rosalani, Tiare-Lynn), and two minor children. Racquel Dizon-Ikei, the spouse of Chad and mother of the five children, arrived in Guam prior to their arrival and spent fourteen days under government-facility quarantine. Racquel had attempted to be transferred out of or released from government quarantine early under a hardship exemption but was unsuccessful. Based on his wife’s experience in a government quarantine, Chad understood before his arrival that Guam’s public

health authorities were placing incoming travelers into quarantine at a government facility.⁸

According to Chad, all members of the Ikei family contracted COVID-19 in mid- to late-June 2019 and all suffered various symptoms including fever and body aches. At trial, Chad provided copies of test results for himself and Chance demonstrating positive COVID-19 tests in late June 2019. *See* Ex. OO. Chad testified that a doctor in Arizona advised him not to have the remaining Ikeis tested, as it was not necessary to confirm their contraction of COVID-19.

When the Ikeis arrived at the A.B. Won Pat International Airport, they were approached by two women asking them to fill out a Voluntary Quarantine Letter and a Voluntary Quarantine Order. They informed Chad to leave the address information blank as they would fill that part out. Chad felt threatened to sign the voluntary quarantine paperwork. The Ikeis were not provided with a directive to quarantine. Chad obtained paperwork for his application for a hardship exemption from quarantine and was informed that the application would be rushed. No one advised Chad that he could object to being placed in government quarantine or that he had the right to counsel.

On September 18, 2020, while still under government quarantine, the Ikei family lost another close relative to COVID-19.

On September 20, 2020, on their fourth day of quarantine, the Ikeis agreed to be tested for COVID-19. It appears the test issued was in response to the Ikeis' pending hardship exemption application, because, during this time, DPHSS only offered tests on a traveler's

⁸ Chad did not attempt to secure negative COVID-19 tests for himself and his children in the days prior to his arrival in Guam. His wife had secured two negative test results before her arrival but was still required to quarantine for fourteen days. Chad therefore believed that securing negative test results would not have impacted an earlier release from government quarantine; moreover, he had only a few days to prepare for the trip and did not have sufficient time to procure tests.

twelfth day in quarantine. DPHSS used a PCR test and the test results for Rosalani came back positive; all other family members received negative test results.

As previously mentioned, on September 22, 2020, the Ikeis filed an Order to Show Cause for a Hearing on their Verified Petition for Habeas Corpus, Alternative Writ of Mandamus, and Injunctive Relief. *See supra* at page 2. The Ikeis also moved the Court to enjoin transferring Rosalani to an isolation facility, citing the recent family deaths and Rosalani's mental health. They asked to isolate together at their family home in Maina. On September 22, 2020, the Court denied the request for an injunction but allowed a family member to accompany Rosalani into isolation. *Ikei*, SP0141-20 (Order Denying Request for Inj. (Sep. 22, 2020)). On September 23, 2020, the Ikeis reiterated at the consolidated hearing that because of their close quarters in a government quarantine, it was unlikely that only one member of the family would test positive for COVID-19, and it was more likely that Rosalani's positive test result was a false positive.

On or about September 24, 2020, the Ikei family advised the Court that Rosalani would transfer to isolation with Chad. Because this would leave the two minor children unaccompanied by a parent, DPHSS agreed to transfer the two minor children to home quarantine with their mother, Racquel. The adult children were to remain in government facility quarantine. However, after the hearing, the Ikei family's attorney asked DPHSS to hold off on removing Rosalani, and the Ikei family remained together in a government quarantine facility. On September 25, 2020, the Ikeis renewed their request to be transferred to the family home. The Court asked DPHSS to consider the family's request using its normal procedures for assessing home isolation and quarantine facilities.

On September 26, 2020, the parties advised the Court that a resolution had been reached

and that the Ikeis could quarantine at home separate from Rosalani, who would be in a neighboring unit for isolation purposes. The transfer to home quarantine and home isolation is the first point of separation between Rosalani and the rest of her family. Accordingly, DPHSS restarted the remaining Ikeis' fourteen-day quarantine.

DPHSS re-assessed the family on October 1, 2020. DPHSS' Dr. Meadows cleared Chad and Chance from quarantine because they furnished proof of their prior COVID-19 infections within three months, which indicated that they did not pose a substantial risk of transmitting COVID-19. Dr. Meadows also cleared Rosalani from isolation as she did not show any symptoms for at least ten days. However, three Ikei family members, including two minors, remained under quarantine but in the same residence as their family members who have been released. Because they had not furnished proof of positive COVID-19 infections, DPHSS took the stance that they possibly could have contracted COVID-19 from the positive family member and that they must endure the full fourteen days to determine if they have symptoms as they may be contagious.

None of the Ikeis demonstrated symptoms of COVID-19 since their arrival on Guam. *See Ex. LL* (Ikei children transformed the quarantine hotel room into a workout facility). Also, none of them have experienced the same symptoms they experienced in June when they were afflicted with COVID-19.

III. CONCLUSIONS OF LAW

A. Government's Petition

The Court first turns to the petition filed by DPHSS pursuant to section 19605 asking the Court for an order permitting the continued quarantine of individuals or groups of individuals,

including the Ikeis. Over the course of the consolidated proceedings, the government quarantine procedures have changed; though generally, a fourteen-day quarantine, whether in a government facility or a home, remains in place. As DPHSS now operates under Rev10, the Court analyzes the procedures therein.

Under Guam law, the Court shall grant the petition if, by a preponderance of the evidence, the quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious disease to others. *See* 10 GCA § 19605(b)(5). Guam law also employs certain principles that DPHSS must adhere to when isolating or quarantining individuals or groups of individuals. First, “isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others.” 10 GCA § 19604(b)(1). If a person no longer poses a “substantial risk” of transmitting a contagious or possibly contagious disease to others, then the person is to be immediately released. 10 GCA § 19604(a)(5).

Along with what Guam’s statutory standards mandate for quarantines, the Court also must take into account established caselaw governing quarantine and government restrictions as well as caselaw developing in light of the ongoing pandemic. In the COVID-19 era, a majority of courts have applied a 1905 case, *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11 (1905), to evaluate challenges to state restrictions to curb the spread of the virus. *Carmichael v. Ige*, 2020 WL 3630738 at *5 (D. Haw. July 20, 2020) (collecting cases). *Jacobson* considered whether Massachusetts could mandate vaccination against smallpox. According to *Jacobson*, the liberties secured by the Constitution do “not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every

person is necessarily subject for the common good.” 197 U.S. at 26. When a pandemic threatens a society, it “has the right to protect itself” and “to enact quarantine laws and health laws of every description.” *Id.* at 25, 27. Such laws should stand unless having “no real or substantial relation” to the health crisis or are “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” *Id.* at 31.

In a matter regarding whether California's Executive Orders limiting the operation of churches during the current pandemic violated constitutional rights, Chief Justice John Roberts cited *Jacobson* in support of deferring to public officials. In his concurrence, Roberts stated that courts must afford broad latitude to public officials dealing with medical and scientific uncertainties. *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020) (Mem.) (Roberts, CJ., concurring).

Courts critical of *Jacobson's* applicability to the present-day crisis cite the fact that *Jacobson* predates the U.S. Supreme Court's development of standards for assessing government actions that curb fundamental due process rights. Under a traditional due process analysis involving the infringement of civil liberties, a government restriction must be examined for being “narrowly tailored to further a compelling state interest.” *Reno v. Flores*, 507 U.S. 22, 301-02 (1993). While many courts have opted to automatically defer to public health authorities rather than strictly scrutinize such conduct, at least one court has found that the “judiciary cannot abrogate its own critical constitutional role by applying an overly deferential standard.” *County of Butler v. Wolf*, 2020 WL 5510690 (W.D. Pa. Sep. 14, 2020). Also, as Justice Samuel Alito has recently explained, “we have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility.” *Calvary Chapel Dayton Valley v. Sisolak*,

140 S. Ct. 2603 (2020) (Mem.) (Alito, J., dissenting). *Jacobson* does appear to recognize that courts can make a determination when there is “a plain, palpable invasion of rights” in which case “it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.” 197 U.S. at 28.

Furthermore, as the COVID-19 crisis has extended from weeks to months, courts have been skeptical to maintain the deference under *Jacobson*. While courts should entrust public health authorities’ decisions when an emergency first arises, “when a crisis stops being temporary, and as days and weeks turn to months and years, the slack in the leash eventually runs out. While the law may take periodic naps during a pandemic, we will not let it sleep through one.” *Capitol Hill Baptist Church v. Bowser*, 2020 WL5995126, *9 (D.D.C. Oct. 9, 2006) (citing *Roberts v. Neace*, 958 F.3d 409, 414-15 (6th Cir. 2020) (per curiam)). Justice Alito also commented on the durational effect of state quarantine measures, explaining that “at the outset of an emergency, it may be appropriate for courts to tolerate very blunt rules. . . . [but] [a]s more medical and scientific evidence becomes available, and as States have time to craft policies in light of that evidence, courts should expect policies that more carefully account for constitutional rights.” *Calvary Chapel Dayton Valley*, 140 S. Ct. at 2065 (Alito, J., dissenting); *see also County of Butler*, 2020 WL 5510690 (“It is no longer March. It is now September and the record makes clear that Defendants have no anticipated end-date to their emergency interventions. Courts surely may be willing to give in a fleeting crisis. But here, the duration of the crisis--in which days have turned into weeks and weeks into months--already exceeds natural disasters or other episodic emergencies and its length remains uncertain.”).

While this Court continues to give the benefit of the doubt to DPHSS when it administers

measures to fight a pandemic, it cannot help but find that there is no end to the present public health emergency. What may have initially been a quick, temporary measure to stop a pandemic from reaching Guam's shores has now become perhaps the longest and most restrictive quarantine of any U.S. jurisdiction.⁹ When examining whether DPHSS has lawfully quarantined individuals for any term, the Court must carefully analyze the "reasonably necessary," "least restrictive means," and "substantial risk" tests to determine if DPHSS has satisfied the legislative principles announced in section 19604.

With that in mind, the court first turns to an issue raised by the Ikeis –whether, based on the evidence presented, government-facility quarantine is reasonably necessary, and if so, whether the current policy of testing after six days is the least restrictive means.¹⁰

1. Whether DPHSS may mandate the quarantine of arriving passengers at a government facility until a test is administered?

As mentioned above, DPHSS' policy of mandating government facility quarantine for all

⁹ The unsuccessful challenges to Hawaii's fourteen-day home quarantine policy came from tourists with disturbed vacation plans. *Bannister v. Ige*, 2020 WL 4209225 (D. Haw. July 22, 2020); *Carmichael* 2020 WL 3630738. Unlike Guam, Hawaii did not implement a government-facility quarantine. On the mainland, the mostly unsuccessful challenges to state quarantine efforts concerned citizens' rights to interstate travel. *See, e.g., Bayley's Campground Inc. v. Mills*, 2020 WL 2791797 (D. Me., May 29, 2020); *Page v. Cuomo*, 2020 WL 4589329 (E.D.N.Y. Aug. 11, 2020). The Court has found no recent case examining a state or territory's policy of shuttling residents of a jurisdiction straight from the airport to a hotel for seven- to fourteen-day government-facility quarantine.

¹⁰ DPHSS argued that the issue of government quarantine became moot when the Ikeis transferred to home quarantine. On October 2, 2020, the Court denied DPHSS' Motion to Dismiss from the bench. The Court determined that although the Ikeis had transferred to home quarantine and have now been released from all forms of quarantine, the issue is not moot. Instead, a great public interest remains at stake. In its decision, the Court cited *People v. Blas*, 2016 Guam 19 ¶ 23 in which the Guam Supreme Court declared mootness to be a flexible doctrine, "not a mechanical rule that is invoked automatically whenever the underlying dispute between the particular parties is settled or otherwise resolved." The Guam Supreme Court further explained that "A court has authority to decide cases that are 'functionally justiciable' and present 'important public issues of statewide significance that should be decided immediately. Thus, [the] court may exercise its discretion to 'reach the merits of a technically moot issue' when that issue falls within the public interest exception." *Id.* Based on the reasoning in *Blas*, the Court ruled that whether the government may require quarantine in a government facility is of one of vital significance to the island community, and despite the Ikeis' transfer to home isolation and home quarantine, the Court would determine whether DPHSS had the authority to place the Ikeis in government quarantine.

incoming passengers regardless of prior test results and place of origin, signals a departure from its previous policy. DPHSS argues that the policy change is reasonably necessary because of the correlation between COVID-19 cases imported to Guam by incoming passengers and the increase in cases locally beginning in June. According to DPHSS, the cause of correlation is the unreliability of testing and the ineffectiveness of home-quarantine. DPHSS contends that government-facility quarantine addresses these causes and ensures that the healthcare infrastructure is not overwhelmed.

DPHSS first points to the unreliability of testing. DPHSS contends that it stopped accepting pre-travel tests because of the risk that the test may not accurately advise if a person is infected. DPHSS claims that this test represents a single point in time and an infection occurring while en route to Guam will not be reflected on a pre-travel negative test. Furthermore, as explained above, symptoms often take four days or more to appear and testing is most accurate and consistent on the fifth, sixth, and seventh days after infection.

Next, DPHSS explained that it stopped allowing incoming passengers to quarantine at home because of the rates of unsuccessful home quarantines and non-compliance with DPHSS home quarantine policies. According to DPHSS, unsuccessful home quarantine indicates that the individual could not be located while home quarantining (e.g., due to a false address); whereas non-compliance indicates that an individual did not comply with DPHSS' quarantine procedures (e.g., not answering DPHSS house calls or leaving their house). DPHSS combined these classes of individuals and found that during June, July, and August, roughly 30% of persons on home quarantine were either non-compliant or unsuccessful. *See Ex. 5*. This 30% translates to about 1,500 people who were unmonitored or under-monitored by DPHSS. *See id.*

DPHSS attributes these rates of non-compliance and unsuccessful quarantine as a factor in the rise in cases in August.

Dr. Cabrera also spoke to how the mindset of a person in quarantine differs from a person in isolation. When a person tests positive and is asked to isolate, their positive diagnosis imports greater conscientiousness not to spread the infection. Thus, a person in isolation is more likely to abide by restrictions in order to avoid transmitting the virus. On the other hand, Dr. Cabrera explained that when a person has not been tested and is asymptomatic but unknowingly infected, their personal suspicion of being uninfected will cause them to be more willing to break quarantine protocols. DPHSS argues that this could be one reason many individuals decided not to comply with quarantine.

According to DPHSS, mandating government facility quarantine ensures that no incoming traveler that is asymptomatic and infected with COVID-19 enters the local population. DPHSS claims that this is essential considering the lack of intensive care unit (“ICU”) capacity at the Guam Memorial Hospital (“GMH”). Dr. Cabrera testified that the response to the novel virus must be quick and nimble, otherwise GMH’s capacity may become overwhelmed.¹¹

The Ikeis counter that DPHSS’ justification for government facility quarantine--that the increase of positive cases is correlated to incoming passengers spreading COVID-19--is not supported by its data. Specifically, the tracing that DPHSS conducts of positive cases to incoming passengers who test positive within government quarantine is unreliable as it contains potentially duplicative entries. *See Ex. SS.* Also, overall, persons who test positive while in quarantine represent less than 1% of all persons who test positive on Guam. These two figures,

¹¹ The Court notes that while this may be the current state of the island’s healthcare infrastructure, capacity concerns may be alleviated due to an incoming tent hospital.

according to the Ikeis, raise questions about whether the recent local spread of COVID-19 can be truly attributed to imported cases of COVID-19.

Looking deeper at DPHSS' data, the Court shares the concern about whether incoming passengers on home quarantine actually resulted in the current local spread of COVID-19. For instance, in the six months between mid-March and September 21, 2020, only ninety-four total cases have been traced to 138 travelers with COVID-19. *See Ex. SS* (DPHSS chart which indicates contract tracing outcomes for persons who had prior travel within fourteen days of a positive test result). Moreover, the ninety-four total cases could also include traced persons who were counted twice if they had contact with more than one positive traveler. *See Test. Stephanie Kern-Allily.*

When put into context of Guam's total COVID-19 cases, the tracing data indicate that incoming travelers represent a statistically insignificant portion of cases. For instance, compared with the total number of COVID-19 cases as of late September--roughly 2,500--the figure of ninety-four total cases traced directly from incoming travelers is less than 1% of total positive cases. Also, examining 138 infected travelers against 25,000 total travelers during the same period indicates that far less than 1% of total travelers have brought COVID-19 onto the island. Finally, Guam has continued to see a high number of positive cases on a daily basis two months after DPHSS implemented a stricter quarantine procedure, which calls into doubt whether travelers continue to cause the rise in cases.

That being said, because it cannot be accurately determined in the first five to six days if a person is infected or symptomatic, the Court determines that the current DPHSS policy which mandates an initial quarantine at a government facility for incoming passengers is reasonably

necessary. That initial quarantine period serves two primary purposes that are rendered more difficult if persons immediately head home from the airport: (1) it allows DPHSS to closely monitor for symptoms; and (2) it offers DPHSS an opportunity to assess for less restrictive alternatives beyond the initial term. Because most persons develop symptoms by day five or six, and because PCR testing does not reach its maximum accuracy rate until those same days, a government-facility quarantine for an initial five- to seven- day period is reasonably necessary to ensure returning residents and visitors have little to no risk of importing the virus.

2. Whether the current government facility quarantine is the least restrictive means?

The Court next examines whether there are less restrictive alternatives in lieu of an initial government-facility quarantine, and for persons who refuse to take the day six test, a continued quarantine at the government facility up to the fourteenth day.

Due to the reliability of testing on the sixth day and improvements in managing the COVID-19 spread in Guam, DPHSS changed its prior fourteen-day mandatory government facility quarantine policy to one that tests on the sixth day. Based on the reliability of testing, the Court agrees that the administration of a voluntary test on the sixth day is appropriate as the virus may not be detectable the moment a person arrives on island and a test may not be accurate until at least the fifth day. Also, once a person tests negative on or about the sixth day, they are much less of a risk to transmit the virus and should be immediately transferred to home quarantine. Having already determined that the initial government facility quarantine is reasonably necessary, the Court also finds that it is the least restrictive option as day six represents the floor in determining whether such persons are infectious or symptomatic.

The Court now considers those who refuse to take the day six test. Many travelers before

this Court claim that they decline the test because they question the accuracy of the results and wish not to be forced into isolation based on an inaccurate result.¹² Others assert that they wish to maintain their privacy--which DPHSS respects, as it tests after obtaining consent. Many of these persons, however, wish to quarantine at home. They also repeatedly pose the following question: if incoming passengers represent such a small portion of the spread of COVID-19, why are they treated so much more harshly? DPHSS is not mandating persons on-island to quarantine or isolate in a government facility; to the contrary, DPHSS permits them to quarantine and isolate at home. At least with those required to isolate, it is only when DPHSS concludes that their home is unsuitable for home isolation that transfer to a government facility is utilized.

Incoming travelers do not have the same option. Whether they sign voluntary consents to quarantine or not, incoming travelers all end up in government facilities on the presumption of exposure. Unless such persons apply for a hardship exemption, DPHSS makes no effort to verify whether the travelers' home is suitable for home quarantine. Instead, it presumes that incoming passengers will not adhere to quarantine protocols when they arrive in Guam.

In response to these points, DPHSS argues that there are still risks associated with allowing home quarantine for individuals who choose not to test on day six. DPHSS points to the rates of unsuccessful home quarantine and non-compliant persons in the months of June, July, and August--in which up to 1,500 people who promised to comply with home quarantine protocols were instead in violation. DPHSS also intimates that it does not have the manpower to assess and monitor every incoming passenger's home to determine if it is suitable for home

¹² This is particularly true for persons who previously had a COVID-19 infection and recovered, such as Rosalani Ikei. As already noted, a PCR test may detect dead virus particles and result in a false positive test. If such persons do test positive, DPHSS does not take into account the prior infection before forcing the person into isolation. It is only after entry into isolation that DPHSS may elect to have these individuals' medical history reviewed by a medical professional. For Roslani Ikei, that occurred after seventeen days in quarantine/isolation.

quarantine. Finally, DPHSS contends that a full fourteen-day term will allow DPHSS to survey if symptoms develop.

On the issue of compliance, the presumption that all incoming passengers will not comply with DPHSS' home quarantine protocols runs counter to the evidence presented at the hearing. According to DPHSS' statistics, a majority of travelers were indeed compliant. Also, DPHSS does not make the same presumption for positive COVID-19 persons. The Court finds that rather than run on presumptions, DPHSS has less restrictive alternatives when considering persons who refuse to test. In fact, DPHSS already executes a measure to determine whether a person can be compliant--it conducts a home assessment for persons who wish to isolate at home. There is no sound reason placed before the Court why the same home assessment performed on positive COVID-19 patients cannot also be used for incoming travelers who refuse to test. If the traveler meets the same criteria used by DPHSS for home isolation and poses no additional risk for transmitting COVID-19 as a result of his or her travel, then home quarantine with active monitoring by DPHSS does present less restrictive means than government-facility quarantine to prevent the spread of COVID-19 while at the same time not unnecessarily intruding on individual liberties.

Respecting individual liberties while balancing risks of exposure can be achieved through these assessments done at the administrative level. At the judicial level, the Court has heard from countless persons who refuse to test but have shown both the suitability of their home and their commitment to comply with DPHSS' home quarantine protocols. The Court does not doubt that these persons will indeed abide by DPHSS' quarantine regulations even at home, as the majority of incoming travelers did during the months of June, July, and August. But the

“least restrictive means” evaluation is not relegated solely to judicial disputes; it is a factor DPHSS must take into account when it implements any form of quarantine upon individuals or groups of individuals. *See* 10 GCA § 19604. As such, DPHSS must afford these individuals an opportunity to demonstrate their ability to comply with DPHSS policies rather than ignore that step altogether.

On the issue of DPHSS staffing, the Court notes three indications that DPHSS may have enough staff to monitor incoming travelers at home beyond the sixth day.¹³ First, performing home assessments is not an arduous process. According to DPHSS, the assessment does not involve a physical visit; rather, it requires a DPHSS representative interviewing the person over the phone. The instant case proves that home assessments do not take extensive effort. After a home assessment was conducted over Zoom, DPHSS allowed Rosalani Ikei to isolate at home and the remaining Ikeis to transfer to home quarantine. Second, also during the course of this litigation, DPHSS instituted Rev10 on its own accord and transferred hundreds of people to home quarantine within a short period. This demonstrates that DPHSS possesses a much higher operational capacity than in March when the Court heard *In re Travellers arriving from Philippines*, SP0049-20 (Apr. 1, 2020). Third, through the filing of section 19605(b) petitions over the past few weeks,¹⁴ the Court sees that a majority of travelers opt to test and transfer to home quarantine after the sixth day. Daily, there is only a handful who refuse to test and remain

¹³ There seems to be no reason why a home assessment cannot commence within the initial six-day period.

¹⁴ The following non-confidential information was extracted from filings presented under seal as they included the names of persons quarantined by DPHSS: in SP0173-20, 15 out of 162 passengers arriving on September 30, 2020, remained at the government facility on the tenth day; in SP0174-20, 27 out of 203 passengers arriving on October 1, 2020, remained at the tenth day; in SP0176-20, 2 out of 137 passengers arriving on October 2, 2020, remained at the tenth day; in SP0179-20, 14 out of 119 passengers arriving on October 4, 2020, remained at the tenth day; and in SP0181-20 23 out of 181 passengers arriving on October 5, 2020, remained at the tenth day.

in the government quarantine facility until the fourteenth day.

Furthermore, a fourteen-day term of government quarantine for asymptomatic travelers makes little sense when compared with the term imposed on asymptomatic, positive COVID-19 persons--such persons are released from isolation on day ten because they are not likely infectious. Since the worst-case scenario for an individual that is asymptomatic and refuses to test on day six is that they are infected with COVID-19, the Court does not see any reason for the distinction. Again, the evidence presented before the Court demonstrates that asymptomatic persons have a low rate of infectiousness on day ten, and virtually no infectiousness beyond that day. In other words, at day ten, they do not pose a substantial risk of transmitting the virus.

Accordingly, the court finds that requiring asymptomatic individuals who refuse to test to remain in a government facility quarantine beyond day ten is not the least restrictive means necessary to prevent the spread of COVID-19. On day ten, these individuals no longer pose a substantial risk of transmitting COVID-19. They must be permitted to finish their last four days of quarantine at home if they so choose. They must also be afforded a home assessment to determine whether a home quarantine is suitable prior to day ten.

Finally, the Court makes an important distinction here--persons who are symptomatic and refuse to test fall under a different category. As explained above, symptomatic individuals remain infectious until at least day thirteen. When it comes to persons who display symptoms of a COVID-19 infection, there are no less restrictive alternatives to government-facility quarantine. Accordingly, unless DPHSS determines that the untested individual has COVID-19, a person who refuses to test but displays symptoms consistent with a COVID-19 infection should be transferred to isolation or remain in quarantine for the full fourteen days.

To summarize, the Court accepts DPHSS' current policy that transfers to home quarantine persons who test negative on the sixth day. The Court also finds there are less restrictive alternatives for persons who are asymptomatic and refuse to test--they pose no substantial risk of transmitting COVID-19 by day ten and should be transferred home by that day if not sooner if they pass a home assessment. Accordingly, the Court also finds that any policy or government action requiring asymptomatic persons to remain under government facility quarantine after day ten is not reasonably necessary under section 19605.

B. Ikei Allegations

1. Whether DPHSS violated section 19605 by not providing a directive?

The Ikeis asked the Court for a ruling on whether DPHSS violated their due process rights under section 19605 by not issuing them a directive before commencing their quarantine. The Court has twice ruled in a companion case, *Igros*, that quarantine during this relevant period was mandatory and that DPHSS is required to adhere to the due process protections afforded by section 19605, including issuing directives upon quarantining individuals pursuant to section 19605(a) or petitioning the Court to quarantine incoming travelers under section 19605(b). *See Igros*, SP0127-20 (Findings Of Fact and Concls. Of Law, Sep. 12, 2020); *Id.* (Dec. and Order re Mot. Reconsideration (Oct. 15, 2020)).

The same procedures governing the Igroses remained in place when the Ikeis arrived, and thus, this same analysis applies to the Ikeis. By not issuing the Ikeis a directive, DPHSS failed to comply with Guam law governing mandatory quarantine. DPHSS failed to adequately inform the Ikeis of the nature of their quarantine, their rights to challenge the quarantine, or their right to court-appointed counsel.

2. Whether DPHSS failed to adequately entertain the Ikeis' request for a hardship exemption; and whether it violated the Ikeis' rights in subjecting them to testing as a condition of the hardship exemption application?

The Ikeis seek a ruling that DPHSS violated their rights in not entertaining their hardship exemption application. As mentioned above, it appears DPHSS responded to the hardship exemption application by testing the members of the Ikei family on their fourth day of quarantine rather than the twelfth. However, when a member of the family tested positive, the Ikeis were no longer eligible for the exemption. When DPHSS moved to dismiss this issue due to mootness, the Court initially indicated that it agreed with DPHSS. In addition to now confirming that the issue is moot, the Court also rules at this time that in conducting testing of the Ikeis within four days, it adequately entertained their request for a hardship exemption.

During their closing arguments, the Ikeis also asked the Court to rule that DPHSS violated their rights by not advising the Ikeis of their right to object to testing as a condition of their hardship exemption application. The Ikeis further claim that because DPHSS was aware that members of the Ikei family previously had COVID-19, it knowingly administered a test that would generate a false positive.

The Ikeis presented no testimony to support these claims. While Chad Ikei testified that they received tests on their fourth day of the quarantine, he did not testify regarding any compulsion by DPHSS upon the Ikeis. On the contrary, DPHSS maintains that testing is done only with consent. Moreover, there is no evidence that DPHSS attempted to trick the Ikeis by offering a PCR test as opposed to a serology test.

The Court therefore determines that DPHSS did not test the Ikeis without their consent, and their rights in this regard were not violated.

3. Whether the Ikeis should be released from home quarantine?¹⁵

The final issue before the Court is whether the remaining Ikeis should be released from home quarantine even though they did not furnish proof of a positive COVID-19 test from June. Due to the time-sensitive nature of these petitions, the Court ruled from the bench on October 2, 2020, and is now memorializing that ruling in this written decision. As explained above, DPHSS released Chad and Chance from home quarantine because they presented evidence of a positive COVID-19 test from June and displayed no symptoms. The Ikeis that remained under home quarantine displayed no symptoms but did not present a positive test.

The Court credits the testimony of Chad Ikei that back in June, every member of his family contracted COVID-19 and exhibited symptoms. He testified that because the family lives in close quarters in Arizona, because they all demonstrated symptoms, and because two of them tested positive, doctors said tests need not be done on the remaining family members. Chad Ikei offered further witnesses to vouch for his character, and DPHSS attorneys said they did not need further witnesses to confirm his credibility. Based on Mr. Ikei's testimony, the Court finds that all members of the Ikei family had COVID-19 in June.

Because Chad and his son were cleared from quarantine because they had a prior infection from which they recovered, the Court finds that the remaining members of the family still under quarantine ought to benefit from that same release from quarantine. Again, this is a ruling that all family members have now recovered from COVID-19 based on the evidence

¹⁵ As part of their closing arguments, the Ikeis contended that DPHSS violated their rights in separating Rosalani from her family. The Court already addressed this issue in its September 23, 2020 Order Denying Request for Injunction. *See Ikei*, SP0141-20 (Order Denying Request for Inj. (Sep. 22, 2020)). In that Order, the Court recognized that Guam law mandated the separation of persons to be isolated due to a confirmed infection from persons to be quarantined. 10 GCA § 19604(b)(2). Due to other issues raised concerning Rosalani's well-being, the Court permitted a family member to accompany her into isolation.

provided to this Court, and based on the scientific evidence presented at trial, they do not pose a substantial risk of transmitting COVID-19 three months after their infection. On that basis, all members of the Ikei family should be released from quarantine as they are not infectious.

IV. CONCLUSION

At present, Guam is at a critical juncture in containing COVID-19. Despite two months of being under a strict government lockdown, the island continues to see high rates of positive cases. The Court agrees with DPHSS that COVID-19 arrives on Guam’s shores through one primary vector: incoming travelers. Because of Guam’s remote geographic location, incoming infected travelers may continue to bring COVID-19 into Guam and have the potential to spread it to hundreds of Guamanians within days.

The risks associated with the reliability of testing and of asymptomatic, incoming travelers spreading COVID-19 are mitigated by requiring government facility quarantine for an initial term of six days, which matches when a PCR test is most accurate and when symptoms are most likely to appear. Once a person is tested on or about day six and receives a negative test, they are not substantially at risk of spreading COVID-19 and must be immediately transferred to home quarantine. Asymptomatic persons who refuse to test must be afforded a home assessment and transferred home no later than day ten, which is when the evidence shows they have little to no infectiousness. Finally, DPHSS may continue to quarantine persons who demonstrate symptoms in a government facility for the full fourteen days.

SO ORDERED this 27th day of October 2020.

Elyze M. Iriarte

HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

SERVICE VIA E-MAIL

I acknowledge that an electronic copy of the original was e-mailed to:

1) *Mr. J. T. Taitavotekajep*

2) *PASC*

Date: *10/27/20* Time: *5:11*

[Signature]

Deputy Clerk, Superior Court of Guam

Appearing Attorneys:

Jacqueline Taitano Terlaje, Esq., Law Office of Jacqueline Taitano Terlaje, P.C., and Assistant Public Defender John Morrison, Public Defender Services Corporation, for Chad Ikei, Chance Ikei, Rosalani Ikei, Tiare-Lynn Ikei, and two Ikei minors
Deputy Attorney General James L. Canto, II, Esq., Office of the Attorney General, for DPHSS

EXHIBIT 4

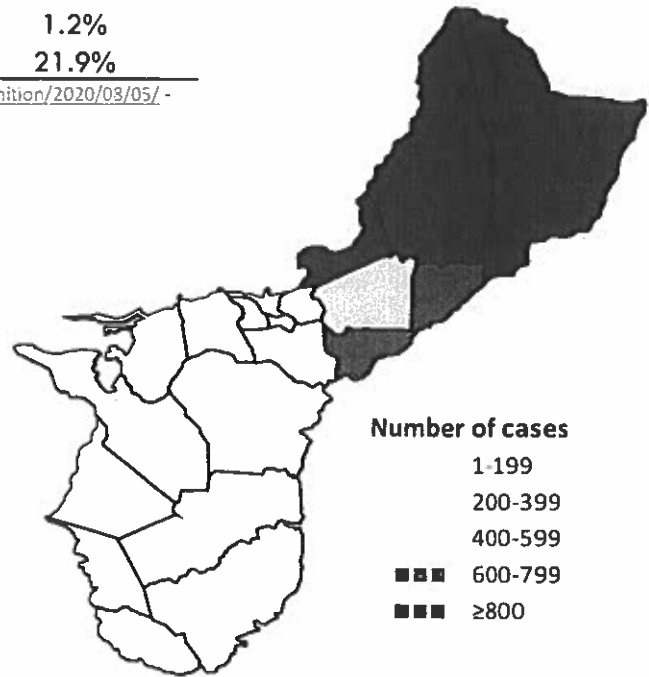


Guam COVID-19 Situation Report - 191

March 12–December 18, 2020

COVID-19 Case Count*	Total	Past 7 days	% Increase
COVID-19 Cases	7,193	114	1.6%
Confirmed cases	7,026	84	1.2%
Probable cases	167	30	21.9%

COVID-19 Cases
Primary Reported Residence



*<https://www.cdc.gov/nndss/conditions/coronavirus.disease.2019-covid-19/case-definition/2020/03/05/> - CSTE/CDC COVID-19 case definition (August 5, 2020)

Summary

As of December 18, 2020, there have been 7,193 cases of COVID-19 reported on Guam. One hundred and fourteen (114) new cases of COVID-19 were reported to DPHSS from December 11–December 18: 84 confirmed cases and 30 probable cases. Four COVID-19 cases were reported deceased since the last situation report, 119 total.

Confirmed cases - past 7 days: 84 cases tested positive by molecular testing - 57 at GPHL, seven at GMHA, seven at DLS, five at DoD, four at GRMC, three at Guam Radiology Consultants, one at AMC.

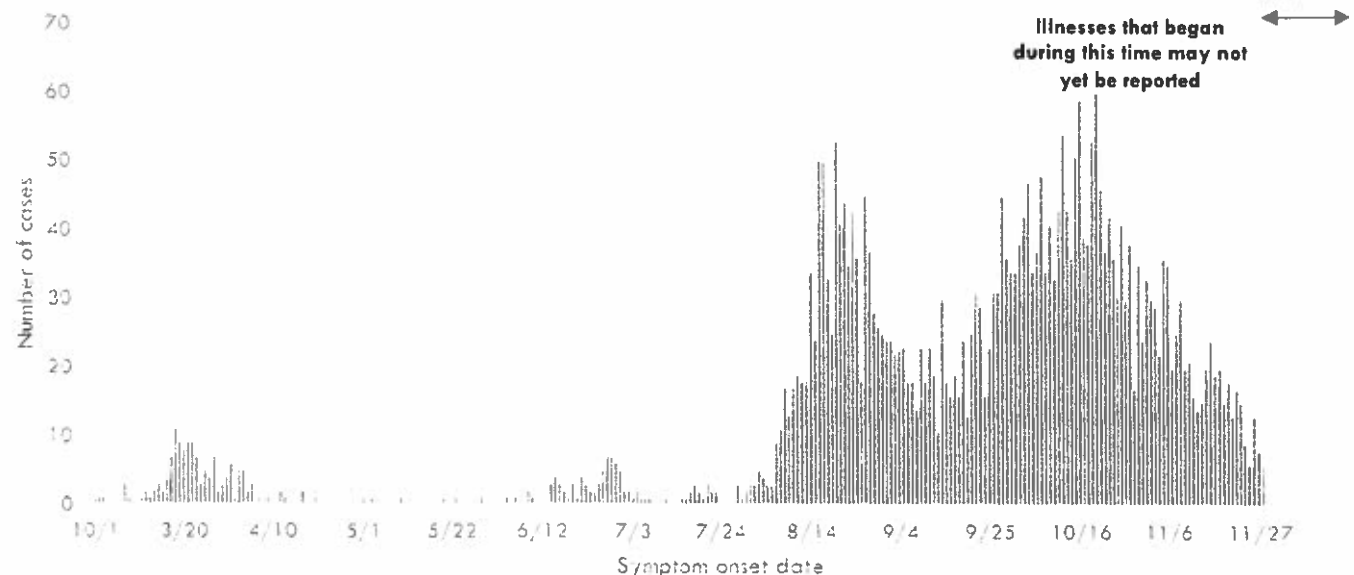
Probable cases - past 7 days: 30 cases tested positive by antigen testing - 22 at GPHL, seven at ExpressCare and one at AMC.

Forty-seven (47) cases were identified through contact tracing. 11 cases reported recent travel—ten from the US and one from Philippines—and were identified in quarantine. Two hundred (200) cases were reported released from isolation.

COVID-19 Testing on Guam**	Total	Tests reported past 7 days	% pos. past 7 days***
COVID-19 Tests	97,771	4,973	2.8%
Molecular Tests	92,574	3,496	2.6%
Antigen Tests	4,876	1,402	3.3%
Serology Tests	321	75	2.7%

See COVID-19 Testing Breakdown for all testing definitions. New tests reported reflects the number of tests reported to DPHSS since the previous report and does not necessarily indicate the number of specimens run in the same time frame. *7-day rolling average of positive tests as a percentage of tests

COVID-19 cases by symptom onset date, Guam





Guam COVID-19 Situation Report - 191

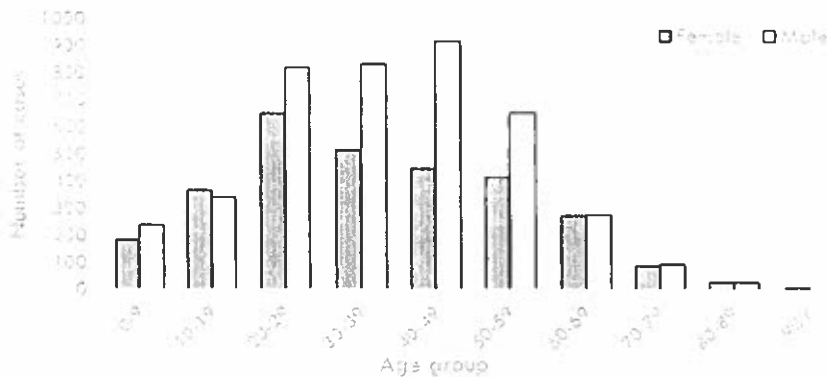
March 12–December 18, 2020

Case Breakdown

Status	Sex	Current isolation location
COVID-19 deaths	Female	Hospital
Cases in active isolation†	Male	Home
Cases not in isolation§	Age Group	Isolation facility
Civilian	0-9	Military
Military service member	10-19	Epi-Link to COVID-19 case**
Travel History¶	20-29	Household contact
US	30-39	Workplace contact
Dubai	40-49	Community contact
Japan	50-59	Healthcare contact
Mexico	60-69	Residence
Philippines	70-79	North
Singapore	80-89	Central
Identified in quarantine	90+	South
		Homeless
		Non-resident

Note: Data for recent cases are preliminary and are updated based on findings from case investigations. Residence unknown for 273 cases.

COVID-19 cases by age group and sex



† Cases that test positive for COVID-19 through follow-up molecular testing return to active isolation.

§ Cases not in isolation indicates the number of COVID-19 cases that are no longer in active isolation based on criteria outlined on page 4. Generally, the criteria assess time since COVID-19 symptom resolution and the date of their most recent positive diagnostic test to qualify for release from isolation.

¶ In the 14 days before symptom onset. Some cases traveled to more than one country.

** Some cases have more than one link to other COVID-19 cases.

Number of cases in active isolation, cases not in isolation, and COVID-19 deaths, Guam





Guam COVID-19 Situation Report - 191

March 12–December 18, 2020

COVID-19 TESTING BREAKDOWN

MOLECULAR TESTS	TOTAL	TOTAL POSITIVES*	NEW TESTS	NEW POSITIVES
Guam Public Health Laboratory	48,605	4,014	1,687	57
Diagnostic Laboratory Services	12,287	981	486	7
Department of Defense	11,433	614	364	5
Guam Memorial Hospital Authority	7,827	435	326	7
Guam Regional Medical City	6,459	352	301	4
Private Clinics**	5,946	568	332	4
Guam National Guard Laboratory	17	0	0	0
ANTIGEN TESTS	TOTAL	TOTAL POSITIVES	NEW TESTS	NEW POSITIVES
Private Clinics***	1,654	145	164	8
Guam Public Health Laboratory	3,222	79	1,238	22
SEROLOGY TESTS	TOTAL	TOTAL POSITIVES	NEW TESTS	NEW POSITIVES
Diagnostic Laboratory Services	300	16	66	2
Department of Defense	21	1	9	0

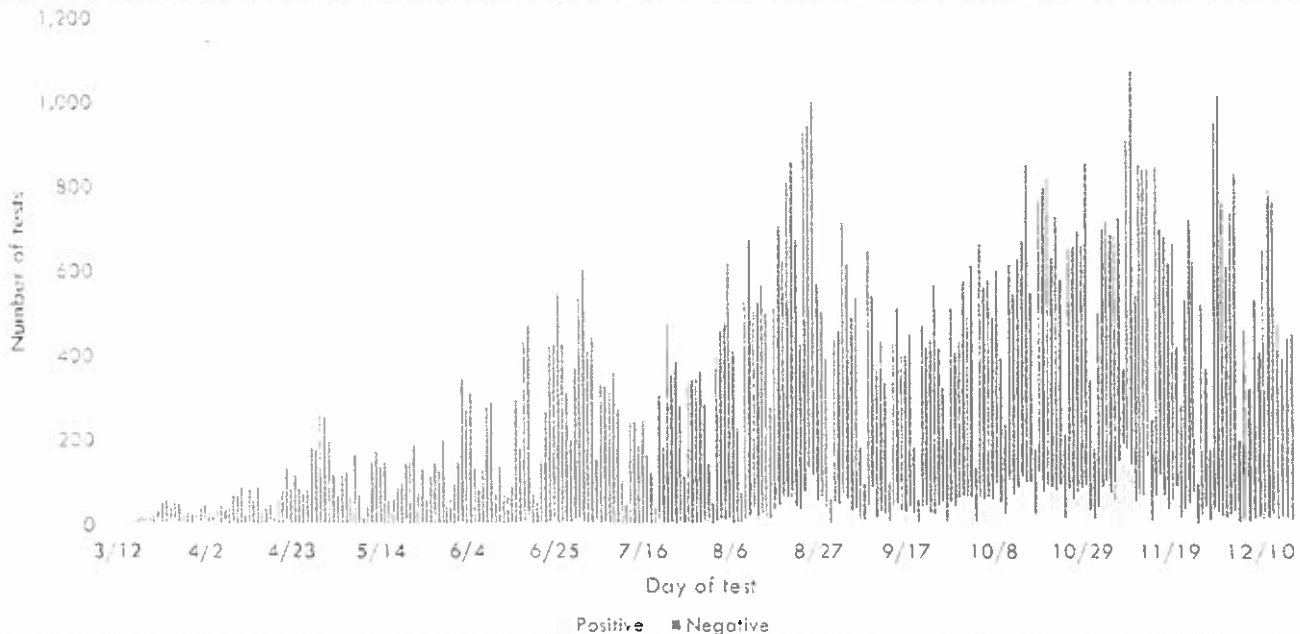
Total tests is defined as the number of specimens with conclusive results. New tests reported today is defined as the total tests reported to DPHSS since the last Situation Report. Percent positive is defined as number of positive specimens, out of all specimens tested. Total positives is defined as the number of positive specimens.

*Five additional confirmed cases tested positive through molecular testing at an out-of-state laboratory.

**Clinics included: American Medical Center, Guam Medical Care, Guam Radiology Consultants, and One Love Pediatrics.

***Clinics included: American Medical Center, Central Medical Clinic, ExpressCare, IHP Medical Group and Guam Medical Care.

COVID-19 testing by day of test, Guam



CONTACT INVESTIGATIONS	TOTAL	PAST 7 DAYS
Contacts identified by DPHSS	12,209	141
Contacts notified by DPHSS	6,239	132
Contacts tested by DPHSS	4,173	58
Cases identified through contact tracing	2,741	47

Note: Data for recent cases are preliminary and are updated based on findings from case investigations.

Source: Epidemiology and Laboratory Capacity Program and Office of Epidemiology and Research, Guam Department of Public Health and Social Services

Compiled by the Guam DPHSS COVID-19 Response Surveillance Team

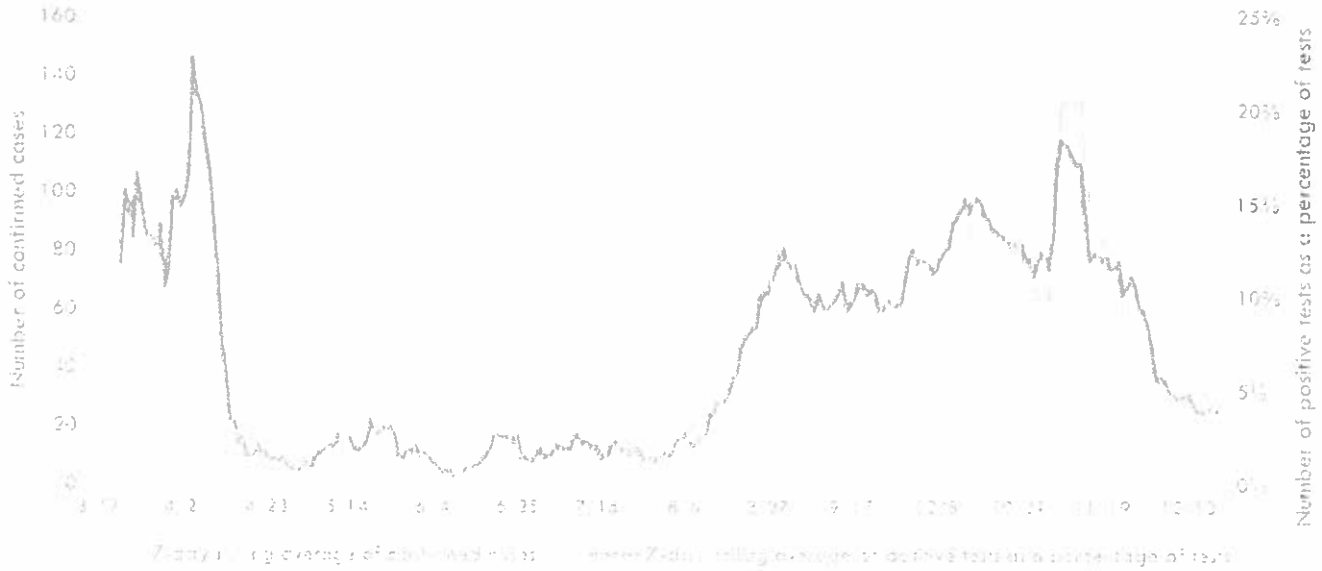


Guam COVID-19 Situation Report - 191

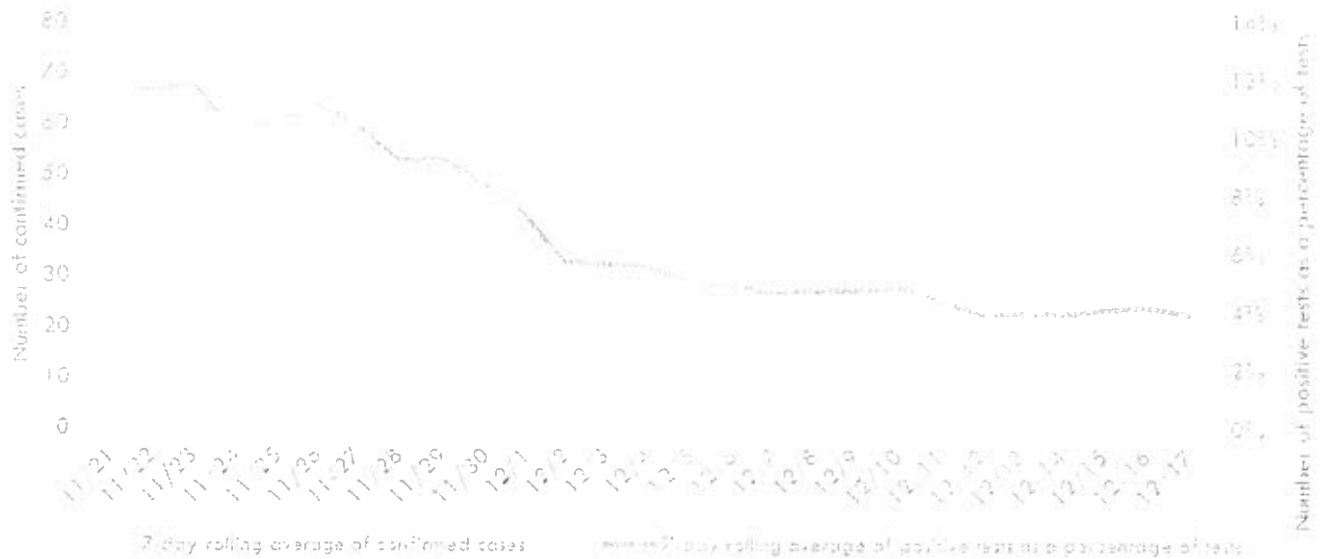
March 12–December 18, 2020

Pandemic Condition of Readiness Assessment

Triggers for PCOR - Cases, March 12–December 17, 2020



Triggers for PCOR - Cases, Previous 28 days



† Criteria for release from isolation

For persons with mild to moderate illness who are not severely immunocompromised.

For persons having symptoms: At least 3 days have passed since recovery defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath) and any other symptoms attributed to COVID-19 AND at least 10 days have passed since symptoms first appeared—or since recurrent symptoms appeared—AND at least 10 days have passed since the date of their first (or most recent) positive COVID-19 diagnostic test.

For persons without symptoms: At least 10 days have passed since the date of their first (or most recent) positive COVID-19 diagnostic test assuming they have not subsequently developed symptoms since their positive test.

For persons with severe to critical illness or who are severely immunocompromised.

For persons having symptoms: At least 10 days have passed since symptoms first appeared, up to 20 days.

For persons without symptoms: At least 10 days have passed since the date of their first positive COVID-19 diagnostic test, up to 20 days.

EXHIBIT 5

CASES ARE RISING. **ACT NOW!**



WEAR A MASK



STAY 6 FEET APART



AVOID CROWDS

When to Quarantine

Stay home if you might have been exposed to COVID-19

Updated Dec. 10, 2020 [Print](#)

Health departments: Detailed CDC recommendations for public health agencies on the duration of quarantine can be found [here](#).

Local public health authorities determine and establish the quarantine options for their jurisdictions. Quarantine is used to keep someone *who might have been exposed to COVID-19* away from others. Quarantine helps prevent spread of disease that can occur before a person knows they are sick or if they are infected with the virus without feeling symptoms. People in quarantine should stay home, separate themselves from others, monitor their health, and follow directions from their state or local health department.

Quarantine or isolation: What's the difference?

Quarantine keeps someone who might have been exposed to the virus away from others.

Isolation keeps someone who is infected with the virus away from others, even in their home.

Who needs to quarantine?

People who have been in close contact with someone who has COVID-19—excluding people who have had COVID-19 within the past 3 months.

People who have tested positive for COVID-19 do not need to quarantine or get tested again for up to 3 months as long as they do not develop symptoms again. People who develop symptoms again within 3 months of their first bout of COVID-19 may need to be tested again if there is no other cause identified for their symptoms.

What counts as close contact?

- You were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more
- You provided care at home to someone who is sick with COVID-19
- You had direct physical contact with the person (hugged or kissed them)
- You shared eating or drinking utensils
- They sneezed, coughed, or somehow got respiratory droplets on you

Steps to take

Stay home and monitor your health

- Stay home for 14 days after your last contact with a person who has COVID-19.

1/2

- Watch for fever (100.4°F), cough, shortness of breath, or other symptoms of COVID-19
- If possible, stay away from others, especially people who are at higher risk for getting very sick from COVID-19

Options to reduce quarantine

Reducing the length of quarantine may make it easier for people to quarantine by reducing the time they cannot work. A shorter quarantine period also can lessen stress on the public health system, especially when new infections are rapidly rising.

Your local public health authorities make the final decisions about how long quarantine should last, based on local conditions and needs. Follow the recommendations of your local public health department if you need to quarantine. Options they will consider include stopping quarantine

- After day 10 without testing
- After day 7 after receiving a negative test result (test must occur on day 5 or later)

After stopping quarantine, you should

- Watch for symptoms until 14 days after exposure.
- If you have symptoms, immediately self-isolate and contact your local public health authority or healthcare provider.
- Wear a mask, stay at least 6 feet from others, wash your hands, avoid crowds, and take other steps to prevent the spread of COVID-19.

CDC continues to endorse quarantine for 14 days and recognizes that any quarantine shorter than 14 days balances reduced burden against a small possibility of spreading the virus. CDC will continue to evaluate new information and update recommendations as needed. See [Options to Reduce Quarantine for Contacts of Persons with SARS-CoV-2 Infection Using Symptom Monitoring and Diagnostic Testing](#) for guidance on options to reduce quarantine.

Confirmed and suspected cases of reinfection of the virus that causes COVID-19

Cases of reinfection of COVID-19 have been reported but are rare. In general, reinfection means a person was infected (got sick) once, recovered, and then later became infected again. Based on what we know from similar viruses, some reinfections are expected.

Last Updated Dec. 10, 2020

EXHIBIT 6

FILED
SUPERIOR COURT
OF GUAM

2020 DEC -3 PM 4: 56

CLERK OF COURT

BY: 

IN THE SUPERIOR COURT OF GUAM

RONA BELLIS and on behalf of her minor
child, A.B,

Petitioners,

vs.

DEPARTMENT OF PUBLIC HEALTH AND
SOCIAL SERVICES

GOVERNMENT OF GUAM,

Respondents.

Superior Court Case No. SP0207-20

DECISION AND ORDER

Upon the conclusion of the evidentiary hearing on November 5, 2020, the Court found that in quarantining Rona Bellis and her minor child, A.B., Respondent Department of Public Health and Social Services (“DPHSS”) did not provide them with means of communication adequate enough for A.B. to attend school, in violation of 10 GCA § 19604(b)(6). This Decision and Order memorializes the Court’s ruling from the bench.

I. PROCEDURAL BACKGROUND

On November 4, 2020, Bellis petitioned for a writ of habeas corpus, pursuant to 48 USCA § 1421b(e) and (l), 8 GCA § 135.10, 7 GCA § 30201, 7 GCA. § 20301, and Chapter 19 of Title 10 Guam Code Annotated. On November 5, 2020, the Court held a hearing on an Order to Show Cause issued to DPHSS. DPHSS called Bellis to testify. The Court also incorporated evidence presented at a consolidated hearing involving related cases, including *Ikei v. DPHSS*,

ORIGINAL

SP0138-20. The Court therefore considers the testimony and evidence heard before the Court on September 17-19, 22-26, and 28-30, and October 1-3, 2020.

II. FINDINGS OF FACT

The Court makes the following findings of fact by a preponderance of the evidence:

1. A.B. is a ninth-grader at Harvest Christian Academy in Guam. Due to the COVID-19 pandemic, students at Harvest Christian Academy have been learning remotely since the Spring of 2020.
2. Distance learning at Harvest Christian Academy requires students to virtually attend class by using a personal computer connected to the internet.
3. On July 19th, 2020, Petitioners traveled to the Philippines. A.B. attempted to start the new school year while distance learning from the Philippines. While there, however, A.B. experienced problems with data and blackouts.
4. Bellis testified that A.B.'s grades suffered due to the inability to connect with her classes. As a result, Bellis decided to return to Guam with A.B.
5. On October 31, 2020, Petitioners arrived in Guam from the Philippines.
6. Upon arrival, DPHSS notified Bellis of her right to an attorney and then transported Petitioners to the Dusit Thani, a government quarantine facility, for a quarantine.
7. Once checked into their room, Petitioners unsuccessfully attempted to access the Dusit Thani wifi network.
8. After Bellis informed DPHSS of the issues with the internet, DPHSS moved Petitioners to a different room.

ORIGINAL

9. Petitioners could not connect to the internet in the new room consistently. Bellis testified that A.B. failed to connect to any of her classes on November 4, 2020. On November 5, A.B. was frozen out of at least one class.
10. Bellis testified that education is vital for A.B.'s future.
11. Petitioners live in Paradise Estates, Dededo. A.B. attended remote learning last school year from her home and had no issues connecting to the internet. Bellis also testified that they can quarantine at home safely and are willing to abide by home quarantine policies.
12. Bellis testified that neither she nor A.B. had experienced symptoms consistent with COVID-19.

III. LAW AND DISCUSSION

Under 10 GCA § 19604(b)(6), DPHSS must provide adequate "means of communication with those in isolation or quarantine and outside these settings." Connecting to the internet is undoubtedly one way quarantined individuals may communicate with those outside of a government facility; for students required to learn remotely, a stable internet connection is the only way to attend class and receive an education.

The Court addresses the adequacy of the internet connection provided by DPHSS to those in government facility quarantine, as contemplated by section 19604(b)(6), on a case-by-case basis. Here, the communication is between a student and her ninth-grade classes. The evidence presented at the hearing established that A.B. is required to use a personal computer connected to the internet to attend class. The evidence also established that the wifi connection at the Dusit Thani was inconsistent for A.B.'s educational purposes. When Petitioners informed DPHSS of the issue, DPHSS responded by changing their room. While this response may have been

ORIGINAL

appropriate,¹ it did not sufficiently improve A.B.'s ability to connect to the internet: A.B. could not connect to any of her classes on November 4 and was frozen out of one on November 5.

The Court finds that in order to comply with section 19604(b)(6), DPHSS was required to provide a consistent internet connection for A.B. to participate in distance learning. Also, A.B. had no other means but to rely on the internet connection supplied by DPHSS' chosen quarantine facility vendor in order to attend class. In failing to supply an adequate means of communication for A.B., DPHSS failed to quarantine her with the conditions set forth in section 19604(b)(6). *See Ikei*, SP0138-20 (Findings of Fact and Concls. of Law *15 (Oct. 27, 2020)) ("When examining whether DPHSS has lawfully quarantined individuals for any term, the Court must carefully analyze the 'reasonably necessary,' 'least restrictive means,' and 'substantial risk' tests to determine if DPHSS has satisfied the legislative principles announced in section 19604.")

A poor internet connection meant that A.B. could not receive an education while quarantined. In multiple petitions before this Court by quarantined students similarly prevented from participating in remote learning, the Court has emphasized to DPHSS that such persons have the fundamental right to receive an education even when quarantined by the government. When DPHSS cannot provide a stable internet connection but insists on keeping students under quarantine with no other point of access to school, it interferes with that right. An appropriate and less restrictive means of quarantine for students includes allowing them to quarantine at home if it can be done safely. Again, the Court urges DPHSS to conduct home assessments if it

¹ On October 29, 2020, in a separate but related proceeding, Chima Mbakwem testified that the Dusit Thani recently invested approximately \$10,000.00 in network upgrades which resulted in the wifi improving to 1 gig. Furthermore, he testified that many of the connectivity issues are due to the security settings on computers and other devices. Moreover, he explained that anyone facing issues with the wifi should inform the Dusit Thani and it would provide support. However, quarantined individuals continue to ask this Court for assistance due to unstable internet connections which prevent them from attending school or working.

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cannot provide a stable internet connection at its facility. Bellis and A.B. met that standard here by demonstrating that their home is suitable for home quarantine.

IV. CONCLUSION AND ORDER

Bellis stipulated that she agreed to quarantine at home with A.B. for the remainder of their fourteen-day quarantine. Furthermore, the evidence presented at the hearing established that A.B. can consistently connect to the internet at home. Accordingly, DPHSS is ORDERED to transfer Rona Bellis and A.B. to home quarantine as it violated section 19604(b)(6) in not providing adequate means to communicate with those outside of a government facility quarantine. Prior to their transfer, the Bellises shall be subject to testing for COVID-19 and to DPHSS' protocols for home quarantine or isolation, if appropriate.

SO ORDERED this 3rd day of December 2020 nunc pro tunc to 5 November 2020.

HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

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