

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

THOMAS REMICK, NADIYAH WALKER,	:	
JAY DIAZ, MICHAEL ALEJANDRO,	:	No. 2:20-cv-01959-BMS
MICHAEL DANTZLER, ROBERT	:	
HINTON, JOSEPH WEISS, JOSEPH	:	
SKINNER, SADDAM ABDULLAH, and	:	
JAMES BETHEA, on behalf of themselves	:	
and all others similarly situated,	:	
	:	
Plaintiffs-Petitioners,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA; and BLANCHE	:	
CARNEY, in her official capacity as	:	
Commissioner of Prisons,	:	
	:	
Defendants-Respondents.	:	

JOINT STATUS REPORT

The Plaintiffs and Defendants City of Philadelphia and Commissioner Blanche Carney (“City”) submit this Status Report in advance of the conference scheduled for December 9, 2020. Since our last report, PDP facilities have experienced an increase in the number of incarcerated people who contracted COVID-19. On December 6, 2020, PDP reported 151 incarcerated people currently positive for the coronavirus. That cumulative number reflects all symptomatic and asymptomatic individuals completing a ten-day period of isolation after having returned a positive test, and was 135 as of December 8, 2020. In light of this increased number of positive test results, Plaintiffs renew their request for mandatory staff testing and for increased testing of incarcerated people, and suggest other measures that the City should consider. Plaintiffs also report concerns regarding access to counsel. Finally, we discuss the status of PDP compliance

measures, including Deputy Warden certifications in the context of continued reports of non-compliance with the June 3, 2020 Consent Order.

A. COVID-19 Testing Issues

Plaintiff's Report

At the last conference with the Court, the parties discussed two issues related to COVID-19 testing. First, Plaintiffs requested mandatory testing for all correctional officers (COs). At this point, CO testing is entirely voluntary in terms of employment conditions (with free testing offered by the City). At our last conference, the Court deferred determination regarding Plaintiffs' request for mandatory testing. The Court did however ask Commissioner Carney to consider the issue of mandatory testing in discussions with the CO union. We await the Commissioner's position on this issue.

As noted above, on December 6, 2020, PDP reported 151 incarcerated people who tested positive for the coronavirus, a sharp increase of over 100 since the last Court conference. This number is only a fraction of the total population tested. In light of the current outbreak at PDP facilities, we renew our request that the Court order mandatory CO testing.

Plaintiffs have also requested information regarding the number of COs who have been tested and the number who have refused. In light of the significant increase in infections in the PDP and in the City (see discussion below), and with all experts warning of a deadly winter season, all mitigation measures should be considered and universal testing of COs should be part of that set of protective actions. Moreover, consideration of this issue may be useful on an equally important question that will soon be presented when a vaccine is available, both for staff

and incarcerated persons. Further consideration and resolution of the CO testing issue may provide a roadmap as well for vaccination protocols.¹

Second, and again, in light of the increased rates of infection at PDP and in the City, Plaintiffs have requested additional testing of incarcerated persons, starting with those in dormitory housing and on a random basis in other housing units. The Court deferred any ruling on this issue, but it requested information on infection rates and any signs of a “COVID outbreak.” We report the following relevant information:

1. Currently, the testing protocol at PDP requires testing all new admissions, any person with COVID-19 symptoms, and any person who, by reason of housing classification, may have been exposed to someone with COVID-19.
2. All new admissions are also quarantined for 14 days before being placed in general population, and this quarantine measure is also ordered for all incarcerated persons who may have been exposed to COVID-19 on their housing units, pending results of testing. Further, all persons who test positive are currently placed in medical isolation for ten days to ensure that they no longer present a risk of infecting others in PDP.
3. Over the past several weeks, the number of incarcerated persons who have tested positive on this limited testing protocol has risen sharply. The PDP publishes a count of “current” COVID-19 cases in the PDP (“current” defined as individuals who are in medical isolation due to positive COVID tests). Exhibit A is a spreadsheet of the published current cases in the PDP since November 18, 2020, along with select screenshots of the City’s website. While the City reported **41** current positive cases on November 18, 2020,

¹ We have had initial discussions with counsel for the City about vaccination protocols for incarcerated people. It is not clear at this point how the CDC and the City will prioritize vaccine distribution beyond the first phase for health care workers.

that number increased to **86** current positive cases on December 4, 2020, and then increased again to **150** on December 5, 2020 and **151** on December 6, 2020. Thus, under current limited testing protocols, 3.6% of the PDP population has been identified as COVID19 positive. In May, when PDP conducted *universal* testing, they reported 223 positive results, or **6%** of the total population. The rate of infection is currently moving in a dangerous direction at PDP facilities and reflects what all experts have predicted for the December-March period.

4. The actual number and percentage of infected persons is likely far greater than the 151 and 3.6% currently reported, given that: (a) under current policy, so few persons in the PDP population are tested, and (b) there are more infected persons who are asymptomatic than symptomatic. Thus, if one compares a housing unit with one symptomatic person, where all will be tested, with another housing unit with no symptomatic persons, we will get an accurate report of the infection rate in the first unit, due to testing of all those residents (plus the benefit of quarantine or isolation). By contrast, the other unit may well have asymptomatic persons and there currently is no way of detecting those who are infected.
5. Based on the new infection rates and the general conditions in the Philadelphia area, the PDP has issued a “shelter-in-place” protocol that provides: “that inmates will only leave their cell for showers, phone calls and virtual visits with attorneys, and, when it becomes available on December 15, virtual visits with family and loved ones.”
6. As of December 5, 2020, in connection with this new protocol, there will be no bring-downs of defendants for court hearings, although some few remote hearings may be conducted. The population at the PDP, 4,246 as of December 6, 2020, is 16.5% higher

than it was in May 2020 (with 3,645 being the lowest population on May 8, 2020). This number will continue to increase as there are very few trials and preliminary hearings being conducted in state court.

7. Recent reports show that more tests are available, and at lower costs and are less invasive, than in May 2020 when the PDP tested all incarcerated persons. Thus, there are options to do regular testing which can help identify COVID positive cases more rapidly and to isolate those individuals more promptly. Regular testing can also make up for the risk of false negatives.

Accordingly, we renew our request for expanded testing, starting with dormitory areas and random testing of other housing areas in each of the PDP facilities. This will allow the Court and the parties to determine the true extent of infections and to decide whether additional mitigation measures are necessary. The risks are real, and the modest expansion of testing suggested by Plaintiffs is an essential step in preventing further outbreaks of COVID-19. We also suggest that the City should consider re-instating the policy of this past Spring of not arresting those charged with minor crimes.

Defendants' Report

Defendants have a robust testing protocol in place, that is guided by clinical necessity. Plaintiffs' recitation above is incomplete, and does not reflect the extent to which testing is taking place in PDP facilities. PDP recently modified its testing protocol, to include subsequent rounds of universal testing of housing units on which a Covid-positive patient has been identified.

As noted above, all individuals are tested upon admission to PDP facilities, and are housed in quarantine for fourteen days. Subsequently, any individual presenting with symptoms

is tested. During the pendency of those test results, that individual is placed in isolation and their housing unit is placed in quarantine. Should the individual's test return as negative, the unit is released from quarantine. Should the individual's test return as positive, all individuals housed on the unit are tested. Any individuals who return a positive result are placed in isolation. Seven days later, the entire unit is tested again, as an assurance to identify those individuals who might have converted from negative to positive over the seven-day period. If there are no positive results, the unit is released from quarantine. If anybody's subsequent test result is positive, that person is placed in isolation and the unit remains in quarantine, with another round of unit-wide testing performed seven days later. This process continues until no positive tests are returned.

The recent increase in positive tests are associated with a small number of housing units – there is no outbreak across the facilities and no evidence of transmission between housing units. However, there does appear to have been transmission between incarcerated individuals on three housing units. As a result of this finding, the Commissioner reinstated a shelter-in-place status across the PDP facilities. PDP had last been in this status in March and April of this year, during the early days of the pandemic. While community transmissions rates went down during the spring and summer months, PDP modified the terms of restricted movement across the facilities. However, in recent weeks community transmission rates have increased. According to public data, the testing positivity rate reported on December 4, 2020 in the broader community was 10.7%, a number subject to modification as some test results are delayed. *See City of Philadelphia Covid-19 Testing and Data, available at <https://www.phila.gov/programs/coronavirus-disease-2019-covid-19/testing-and-data/#/>* (last viewed Dec. 8, 2020).

The Commissioner did not make this decision lightly, as it requires all incarcerated individuals to remain in their cells, with of out-of-cell time for showers and phone calls. Trips to the CJC, which substantially increase an incarcerated individual's contact with outside persons during a time of higher community transmission, have also been stopped for the time being. Though in-person appearances at the CJC have to be held in abeyance during the imposition of shelter-in-place, PDP has committed to ensuring that individuals are available for video hearings, including preliminary hearings, bench warrant hearings, and bail hearings. As these hearings go forward, PDP anticipates there will be an associated reduction in the census.

PDP has taken additional appropriate measures to reduce the risk of transmission of Covid-19 within its facilities as community infection rates increase. As recent experience seems to demonstrate, any spread has been limited to specific housing units, and is not, as intimated by Plaintiffs, an outbreak across the facilities. Shelter-in-place should further reduce transmission between incarcerated individuals. While one reporting day does not make a trend, Defendants note that in the results returned on Tuesday, December 8, of 81 tests just 2 were positive. This snapshot of mass testing results indicates that there has not been spread in housing units. PDP is routinely in contact with the Philadelphia Department of Public Health, and its decisions are guided by those conversations and by the clinical expertise of medical personnel.

B. Access to Counsel

Plaintiff's Report

GTL v. Zoom videoconferences

Defendants will phase-out attorney-client video conferences via Zoom by December 31, 2020. Instead, Defendants plan to use the GTL system for all attorney-client video conferences in all facilities. Plaintiffs strongly urge the PDP to reconsider this plan and to maintain an option

for Zoom attorney-client conferences. The addition of the GTL system was welcome at CFCF where there had been month-long delays in scheduling Zoom video conferences. However, the Zoom attorney-client videoconferences have been highly effective in the other facilities, where there was no such delay. In a many respects, GTL videoconferences are inferior to Zoom. On GTL, videoconferences are limited to 15 minutes increments, between which the call is dropped and there is a delay prior to reconnection. Moreover, there is no way to share documents via GTL, whereas on Zoom attorneys are able to share documents on screen with their clients. The inability to share documents can make providing legal advice at critical points difficult or ineffective. Finally, while attorneys can use Zoom on their cell phones, tablets, or computers, the specific GTL system adopted by the City can only be used on a smartphone or tablet. Plaintiffs ask that Defendants preserve the Zoom option for legal videoconferences.

Quarantine units

With the rise in COVID cases and the delay in receiving testing results, a greater number of housing units are kept on quarantine status for a longer period of time. In these circumstances, the PDP must provide individuals in quarantine status a means of communicating with their attorneys.

For example, CFCF-D1P1 has been quarantined since October 27, 2020. An attorney scheduled a video visit with a client on that unit who has a trial scheduled for December 18, 2020, but was informed by a PDP Lieutenant that the client would not be brought down because his unit was on quarantine. The attorney has been unable to discuss the upcoming trial with the client, where there is a good possibility that the proceeding will result in the client being released.

Another individual has been held on an intake quarantine unit, CFCF-B1P4, since October 23, 2020, when he arrived at the jail. The attorney scheduled a video visit with the client, but PDP failed to bring him to the scheduled videoconferences. The result is that this individual has been detained for approximately six weeks without being interviewed by his court-appointed attorney.

Defendants should ensure that there is a policy permitting calls and videoconferences with people on quarantine units and that staff complies with this policy.

Defendant's report

After having spent months lambasting Defendants' efforts to expand the access incarcerated persons have to their attorneys, Plaintiffs now take issue with the solution that they themselves acknowledge has successfully increased access to counsel across PDP facilities. Stated again, the GTL system has substantially increased the volume of attorney calls that are available to the incarcerated population. The laptops are utilized for virtual court hearings, and the GTL system is dedicated to contact with counsel. PDP has also maintained that it will make individuals available for attorney visits through the dedicated portals to the First Judicial District. PDP has been advised that the hours those are available have increased to allow for virtual visits between 7 and 10 p.m. Starting December 15, PDP will also offer GTL access to the family of incarcerated persons, so that social visits and family contact, which have not been available since March, can resume.

Regarding counsel access in quarantine, individuals can have virtual visits as scheduled, but cannot if they are in isolation. Isolation is rendered as a medical lock and means that individuals cannot be relocated for virtual visits. For either status, an attorney must go through

the scheduling software. As to the referenced individual, without more information Defendants cannot identify and, if founded, remedy the scheduling issue.

C. Compliance

Plaintiff's Report

As reported at the last conference, the parties are in discussion on a proposed policy of having Deputy Wardens certify compliance with the mandates of this Court's Order on mitigation measures. Plaintiffs have suggested certification by unit managers tasked with ensuring delivery of required supplies and random checks by the Deputy Wardens. Without a credible system of monitoring by the PDP, this Court is without the means to effectively enforce its Order and in those circumstances, Plaintiffs would then renew our request for appointment of an independent monitor. We will report to the Court the status of these negotiations at the conference.

In the meantime, counsel for Plaintiffs continue to receive reports of widespread non-compliance with the terms of the Consent Order on Partial Settlement Agreement dated June 3, 2020 (ECF No. 35). All of the areas of noncompliance that Plaintiffs' counsel have focused on in prior reports remain serious concerns:

- (1) insufficient out-of-cell time;
- (2) staff not wearing face masks;
- (3) failure to distribute soap on a weekly basis;
- (4) failure to distribute cleaning supplies needed for twice-weekly cell cleanings;
- (5) failure to distribute sufficient numbers of face masks to incarcerated people;
- (6) insufficient access to laundry for linens and clothing; and
- (7) failure to clean common areas and frequently touched surfaces in housing units.

See generally Exhibit B; Exhibit C.

Protracted periods with no out-of-cell time are still being reported, especially during weekends. In particular, over Thanksgiving weekend, many housing units reported little to no out-of-cell time. This is particularly concerning as we approach the winter holiday season. Moreover, Plaintiffs' counsel are very concerned that PDP's recently reinstated "shelter-in-place" protocol will lead to even greater noncompliance with the Consent Order's out-of-cell-time provision. Plaintiffs' counsel will report on this more fully at the conference before the Court.

In particular, Plaintiffs' counsel have yet to hear of any significant improvement in the availability of cleaning supplies for cell cleaning, weekly General Inspection (GI) cleanings, and the enforcement of daily cleaning of common areas in housing units. Plaintiffs' counsel have received numerous reports across PDP's facilities of supply shortages, including masks, soap, disinfectant, and toilet paper.

Where there has been improved distribution of necessary supplies, namely soap and facemasks, the progress remains inconsistent across facilities and housing units. In addition, Plaintiffs' counsel have received many reports of distributions taking place some weeks, but not others, or only when certain staff members are working.

Signature Sheets

Plaintiff's counsel continue to receive numerous reports of falsified, inaccurate, and unreliable signature sheets. Some reports describe incarcerated people in PDP facilities being required to sign for items or services that they never received.² Others describe signature sheets

² *See, e.g.*, Exhibit B: Smith Decl. ¶ 16; Bryant Decl. ¶¶ 8-9; Rivers Decl. ¶ 18.

that inaccurately reflect the amount of out-of-cell time provided.³ Some report that the boxes that indicate the time frame are filled in after incarcerated people sign so they do not know if they are signing accurate representations of their out-of-cell time.⁴ Finally, Plaintiff's counsel continue to receive reports of PDP staff forging signatures and instructing incarcerated people to forge the signatures of other incarcerated people.⁵

In conclusion, we request that the Court consider all the compliance issues detailed in this report at this conference and that in the absence of the immediate implementation of effective PDP compliance processes and procedures, that the Court appoint an independent monitor to oversee compliance.

Defendants' Report

Plaintiffs' assertions regarding compliance and monitoring rely only on the averments that are submitted as exhibits to this status report. They do not submit any documentation, however, because they have not requested any since November 2, and on that date requested material generated between October 21 and October 27. Defendants refer the Court to the previous status report, ECF No. 52, in which the extent to which the averments in the declarations did not, in fact, substantiate the sweeping contentions about PDP's compliance with the obligations of the June Order. Consistent with that, PDP has not found information to substantiate Plaintiffs' contentions here. By way of example, PDP investigated the assertions that both Mr. Clark and Ms. Harris make regarding their medical care. Neither are substantiated by medical records.

³ See, e.g., Exhibit B: Masterson Decl. ¶ 6; Bryant Decl. ¶ 11; Clark Decl. ¶ 10.

⁴ See, e.g., Exhibit B: Medina Decl. ¶ 7.

⁵ See, e.g., Exhibit B: Bryant Decl. ¶ 12-14; Rivers Decl. ¶ 7.

Defendants provided a model certification and continue to work with Plaintiffs on that. Given the difficulties attendant to operating in a shelter-in-place status, Defendants anticipate discussing whether incarcerated individuals should dedicate a portion of their daily out-of-cell time to the signature sheet process.

D. Request for Data Regarding COVID-19 Cases

This data on COVID-19 cases in the PDP is provided by Defendants:

Week ending December 6, 2020

- a. Inmates tested:
 - i. last week: 721
 - ii. cumulative: 12,176

- b. Test results:
 - i. last week: 121 positive and 600 negatives
 - ii. cumulative: 738 positives and 11,438 negatives

- c. Inmates in isolation last week:
 - iii. pending results: 13 (3 at weeks end)
 - iv. -confirmed positive: 263 (158 at weeks end)

- d-f. Housing units in quarantine – units **highlighted** are no longer in quarantine:

Intake quarantine units (14 days):

- i. Men: CFCF B1pods 2,3 and 4; B2 pods 1 and 2
- ii. Women: ASD MOD III and D Unit; DC 207

General population quarantine units:

- i. ASD

- ii. MOD 3 A unit 11/16 – TBD pending results of round 3 testing:
 - Round 1: 4 positives
 - Round 2; 5 positives
 - Round 3: pending

- iii. MOD 3 C unit 12/2 – TBD pending results of mass testing (symptomatic+ patient)

- iv. CFCF
 - a. A1P4 12/1 – TBD pending results for a symptomatic patient transferred from B1P4
 - b. B2P4 12/1 – TBD pending mass testing results (symptomatic+ patient)
 - c. D1P1 10/27 – TBD pending test results for a patient that refused testing
 - i. Round 1: 30 positives
 - ii. Round 2: 6 positives
 - iii. Round 3: 0 positives
 - d. D1P2 11/30 – TBD pending test results for a symptomatic patient
 - e. D1P4 12/1 – TBD pending result for an asymptomatic patient transferred from B1P4

- v. DC
 - a. D Dorm 11/20 – TBD pending mass testing results (symptomatic+ patient and employee)
 - i. Round 1: 22 positives
 - ii. Round 2: 5 positives
 - iii. Round 3: pending
 - b. E Dorm 12/1 - TBD pending mass testing results (symptomatic+ patient)

- vi. PICC
 - a. B 11/24 – TBD pending mass testing results (sickle cell patient hospitalized/tested positive)
 - i. Round 1: 5 positives
 - ii. Round 2: 7 positives
 - iii. Round 3: pending
 - b. E1 11/27 – TBD pending results for a symptomatic patient
 - c. F1 11/21 – 11/30 (symptomatic patient)
 - d. G2 11/21 – 12/2

- vii. RCF
 - a. B unit 11/19 – TBD pending results of mass testing (symptomatic+ patient)
 - i. Round 1: 4 positives
 - ii. Round 2: 7 positives
 - iii. Round 3: Pending
 - b. C unit 11/29 – TBD pending results for symptomatic patients
 - c. E unit 11/19 – TBD pending results of mass testing (symptomatic+ patient)
 - d. F unit 11/22 – TBD pending results of mass testing (symptomatic+ patient)
 - e. G unit 12/1 - TBD pending results of mass testing (symptomatic+ patient)

- f. H unit 11/17 – TBD pending results of mass testing (symptomatic+ patient)
 - i. Round 1: 27 positives
 - ii. Round 2: 26 positives
 - iii. Round 3: Pending

h. Patients hospitalized: 1 (none at week’s end)

i. Patients in infirmary: 1

Respectfully submitted,

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