

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

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

**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 February 18, 2021. The Parties outline below the issues that we respectfully request be discussed at this Court conference.

**I. OUT-OF-CELL TIME PROCEDURES**

**Plaintiffs’ Report**

The Court has ordered that as of February 10, 2021, all incarcerated persons are entitled to two (2) hours out-of-cell time on a daily basis (with certain exceptions pursuant to the Order of January 28, 2021), and that as of February 24, 2021, that out-of-cell time will be extended to three (3) hours per day. Plaintiffs have requested that the Philadelphia Department of Prisons (PDP) provide a statement of the protocols or procedures that will be implemented to ensure compliance with the Court’s Orders. The City of Philadelphia (City) has responded that there are

no “specific plans for each of the different facilities,” but that “facility-level management” have been advised of the Court’s Order on out-of-cell time. Further, the City states that they will address any lack of staffing due to “inclement weather” or “use of leave” by deploying staff in a manner that does not negatively impact a particular housing unit.

Plaintiffs request that the Court require Defendants to promptly produce a plan for each facility that addresses cohorting for out-of-cell time, correctional officer assignments, and PDP recordkeeping sufficient to enable the Court and Plaintiffs’ counsel to monitor this process and compliance with the Court’s prior Orders.

Plaintiffs are still assessing the information received through legal mail and legal calls as to the compliance by the PDP in providing two (2) hours of out-of-cell time, as this new requirement only recently took effect. However, preliminary reports indicate that the increase to two hours of daily out-of-cell time has not been consistently implemented. Concerningly, Plaintiffs’ counsel have received reports from multiple housing units that, when incarcerated individuals asked staff members about why the Court-ordered increase has not been effectuated, staff have responded that they are unaware that the Court Order exists.

As to the 45 minutes out-of-cell time that was ordered pursuant to the Court’s Order of January 13, 2021, Plaintiffs have received reports that the PDP is providing 45 minutes out-of-cell to many, but not all, units. Plaintiffs do receive select complaints regarding individuals not receiving 45 minutes out-of-cell time, often where it appears that the PDP is short-staffed. Per the City’s request, Plaintiffs have provided to the City the list of units where we received such reports.

The following chart catalogs the reports on out-of-cell time Plaintiffs' counsel have received from February 2-16, 2021 (with an "X" indicating receipt of at least one pertinent report of insufficient out-of-cell time):

Facility	Unit	Reports of less than 45 min out-of-cell time	Reports of less than 2 hours of out-of-cell time from February 10-16, 2021
CFCF	A1P3	X	X
CFCF	A2P2	X	
CFCF	A2P3	X	
CFCF	B1P1	X	X
CFCF	B2P4	X	
CFCF	C1P4	X	
CFCF	D1P3	X	
CFCF	D1P4	X	X
CFCF	D2P4	X	
DC	A		X
PICC	B		X
PICC	C		X
PICC	F2	X	
PICC	H1	X	
PICC	H2	X	
RCF	D	X	X
RCF	E	X	X
RCF	F	X	

### **Defendants' Report**

Defendants submit that the Court should consider the context of Plaintiffs' representations about the provision of out of cell time, notably that presently there are seventy-three (73) housing areas currently in use across the PDP system, and that numbers of those housing units are episodically in quarantine, a status that can affect out of cell time. The above chart reflects housing units from which there is at least one report of insufficient out of cell time, presumably of a day on which insufficient out of cell time was afforded to the individuals on that housing unit. Of the fifteen housing units associated with such a report when the mandated time

was forty-five minutes, six of them were on quarantine at the time of the report. Similarly, of the eight housing units from which a report of failing to provide two hours of out of cell time, two were on quarantine during the operative time period. To reiterate, these reports are from 9 and 6 of the 73 housing units presently in operation. As stated in Plaintiffs' report, senior management across the facilities has been repeatedly advised that the provision of out of cell time is mandated by the Court, and must be provided so long as it is operationally feasible. Management has further been directed to ensure that, to the extent there are operational impediments to providing that time, no housing unit will bear a greater imposition on their out of cell time than any other. In other words, management responds to any staffing limitations by shifting staffing across the housing units in order to provide as limited an imposition on out of cell time as possible.

PDP operations are complex, requiring responses day by day to any number of factors, and as such are not amenable to reduction to a Court-ordered operations plan. Examples of the issues for which front line management need flexibility include the number of staff detailed to area hospitals for oversight of individuals receiving offsite care; the staffing requirements attendant to issues on housing units – medical emergencies or otherwise; the assignment of staff for movement and transportation of incarcerated persons to medical or behavioral healthcare onsite or court appearances offsite; the assignment of staff for transportation of individuals to their scheduled calls with counsel; and the assignment of security staff across the campus based upon the numbers that report to work any given day. In order to meet the myriad of changing daily scheduling and security needs, both onsite and offsite, PDP management require discretion and flexibility to manage this logistically complex enterprise. Entry of a Court order mandating compliance with set schedules would not further the work of running the PDP, but instead impede the complex functioning of the system.

However, Defendants are mindful of Plaintiffs' report – heard for the first time via this status report process – that their clients are relaying a lack of understanding by correctional officers of the Court's mandate. Defendants commit to reiterating the court-ordered necessity of out of cell time with all personnel at roll call.

## II. MASKS

### **Plaintiffs' Report**

With the new risks attendant to the emergence of multiple virus variants and higher rates of transmissibility, the CDC and public health officials have issued updated medical recommendations for masks, which specifies: (1) the masks should fit snugly around the face; and (2) the masks should have multiple layers, which could be achieved by double masking, or at least a single mask with double layers of fabric.<sup>1</sup>

Specifically, on February 13, 2021, the CDC updated its recommendations relating to masks, based on new studies, noting that “not all masks provide the same protection.”<sup>2</sup> Cloth masks should be “made of multiple layers of tightly woven, breathable fabric,” and the CDC specifically noted that “[p]oorly fitting masks may have gaps around the sides of the face or nose. Gaps may allow respiratory droplets containing the virus to leak in and out around the mask.”<sup>3</sup> This is particularly notable because Plaintiffs have received consistent complaints from incarcerated people in the PDP that the currently-issued masks are extremely thin, like a bedsheet material, and have large gaps on the side with a poor fit.

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<sup>1</sup> Centers for Disease Control and Prevention (CDC), Improve How Your Mask Protects You, February 13, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/your-health/effective-masks.html>

<sup>2</sup> CDC, *Improve the Fit and Filtration of Your Mask to Reduce the Spread of COVID-19*, February 13, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/mask-fit-and-filtration.html>.

<sup>3</sup> *Id.*

As for layering, the CDC states, “Adding more layers of material to a mask (layering) is a good way to reduce the number of respiratory droplets containing the virus that come through the mask,” specifically citing a study that demonstrated that “this ‘double mask’ combination provided much better protection to the wearer and to others as compared with a cloth mask by itself or a medical procedure mask by itself.”<sup>4</sup>

The City reports that it “has increased the provision of masks to seven, so that incarcerated persons have the option available to wear two masks [and that] the current mask design includes three layers of fabric and ear loops.” We request an Order from the Court reflecting these changes and a requirement that PDP management advise all incarcerated persons and staff that double masking provides greater protection from COVID-19 and from any new variants of the virus.

### **Defendants’ Report**

Defendants submit there is no need for the Order requested by the Plaintiffs. Over the past several months, Defendants have modified the design of the masks produced onsite. The masks now issued to all persons include three layers of fabric, and are fitted to the face with ear loops. Photographs of the masks are attached to this Report for the Court’s edification. *See* Ex. A, Mask Photographs. These new masks are distributed to individuals upon their admission to PDP, and are available to the incarcerated population as a replacement for any previously-used and now damaged masks. Defendants have sent a message to staff regarding the CDC guidance suggesting two masks should be worn for greater protection, and will post this information on the housing units.

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<sup>4</sup> *Id.*; see also CDC, *Maximizing Fit for Cloth and Medical Procedure Masks to Improve Performance and Reduce SARS-CoV-2 Transmission and Exposure, 2021*, February 10, 2021, available at [https://www.cdc.gov/mmwr/volumes/70/wr/mm7007e1.htm?s\\_cid=mm7007e1\\_x](https://www.cdc.gov/mmwr/volumes/70/wr/mm7007e1.htm?s_cid=mm7007e1_x)

### III. CORRECTIONAL OFFICER STAFFING

#### **Plaintiffs' Report**

Complaints from the Plaintiff class as to lack of out-of-cell time point to correctional officer staffing shortages as the main reason for the failure to meet the requirement to provide 45-minutes of out-of-cell time on a daily basis. Plaintiffs have advised the PDP that staffing problems could adversely impact compliance with the two- and three-hour requirements for out-of-cell time. The City has recognized this issue, but maintains that at least in recent months staffing is not a reason for lack of out-of-cell time, and further that a new class of 27 officers will be starting on February 22, 2021. Plaintiffs request that the PDP report on a weekly basis all incidents where individuals or housing units were not afforded the two- or three-hour out-of-cell time, and whether it was caused by staff shortages or other institutional reasons.

#### **Defendants' Report**

Defendants are examining whether they can readily report this information to Plaintiffs on a weekly basis, and should be able to discuss that further with the Court. Defendants note that additional individuals have opted not to pursue employment with PDP, and so the starting class now numbers 24 persons.

### IV. VACCINATIONS

#### **Plaintiffs' Report**

The parties agree that the vaccination process is the most effective route to protection of both incarcerated persons and staff and that it provides a path for the resolution of this case. Plaintiffs' counsel have requested any new information as to the number of vaccinations provided to the PDP and its distribution to staff and incarcerated people, on a weekly basis, both a breakdown of how many doses distributed that week, along with the total number of doses

overall. Plaintiffs have also requested a report, on a confidential basis, on the current refusal rates of those incarcerated persons and staff who have been offered the vaccine, to enable the parties to address refusal issues at the appropriate time.

Plaintiffs' also make a request that the information and data about vaccinations of incarcerated people and staff be included in this Joint Status Report, so that the information is publicly available.

### **Defendants' Report**

Defendants remain committed to the provision of vaccines on an equal basis to staff and to the incarcerated population. Defendants can supply the refusal rate among the incarcerated population to Plaintiffs' counsel. As for staff, all staff are asked (and very much encouraged) to request vaccination. As a result of this process, calculation of a staff refusal rate is not possible. Defendants are sending vaccination teams to each facility to make staff access to vaccination as convenient as possible. To date about 25% of all staff have been vaccinated. Defendants note that delivery of vaccines has been delayed this week by the storms across the country, but Defendants continue to administer those vaccines on hand.

## **V. DATA REPORTING**

As the City reported in a letter of February 15, 2021 to the Court:

For the week ending February 14, 2021, 692 incarcerated persons were tested, resulting in 36 positive tests and 656 negatives. The cumulative numbers for testing and results are 20,674 tests administered, with 1,285 returning positive and 19,072 returning negative. Six of the positive results were for individuals tested during intake quarantine.

Also, over the past week the following housing units were removed from quarantine:

- In CFCF: A1P3, C1P3, D2P3
- In DC: PHSW 220

- In PICC: D, F2

The following units were placed in quarantine this week, or are currently completing a quarantine:

- In CFCF: A1P4, A2P2, A2P3, C1P4, D2P2
- In PICC: A, C
- In RCF: C, D

The following units are used for intake quarantine:

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

No incarcerated persons are presently hospitalized due to Covid-19 or being treated for Covid-19 in the infirmary.

Respectfully submitted,

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**DATE: February 18, 2021**