

**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, (“the City”) submit this Status Report in advance of the conference scheduled for March 18, 2021. The Parties respectfully request that the following issues outline below be discussed at this Court conference.

I. OUT-OF-CELL TIME AND OTHER COMPLIANCE ISSUES

Plaintiffs’ Report

As is evident from reports Plaintiffs’ counsel have received from incarcerated people as well as Defendants’ own reports, many people incarcerated in PDP’s jails continue to receive less than the three hours of daily out-of-cell time mandated by the Court’s Order of January 28, 2021 (ECF No. 63). Some people continue to experience days with no time out of their cells at all. This is particularly concerning given the lasting mental health effects of shelter-in-place’s prolonged periods of lockdown. Insufficient staffing continues to be the primary reason reported

by incarcerated people—and PDP administrators—to account for failures to meet out-of-cell requirements.

On Friday, March 12, 2021, Defendants again provided Plaintiffs’ counsel with Deputy Wardens’ certifications that listed units that received less than three hours of out-of-cell time. Defendants’ list of noncompliant units includes every single unit at CFCF over the course of the week of March 1–5, 2021. These reports do not include weekends, days on which out-of-cell time is consistently limited or denied completely. Defendants identified “strenuous staff shortages” as the reason for the failures to meet out-of-cell requirements. Combining the reports in the Deputy Wardens’ certifications and reports received by Plaintiffs’ counsel, at least **40 housing units received less than the Court-ordered amount of out-of-cell time** from March 1–15, 2021. *See* Exhibit A. During that same two-week period, Plaintiffs’ counsel received reports that **10 housing units experienced days with no out-of-cell time at all.** *Id.*

It is apparent that the PDP has no adequate contingency plans to comply with the January 28, 2021 Court Order. Plaintiffs’ counsel requests the Commissioner provide to the Court plans to assure out-of-cell time this Thursday.

On Friday, March 12, 2021, Plaintiffs’ counsel provided Defendants’ counsel with a list of 36 units from which Plaintiffs’ counsel have received reports of toilet paper and cleaning supply shortages in the past 4 weeks. We are awaiting a response.

Defendants’ Report

Defendants continue to do as much as possible to provide out-of-cell time across the PDP facilities. Several issues bear addressing and clarification. First, as in prior reports, the chart submitted by Plaintiffs’ counsel includes multiple units that have been in quarantine for some or all of the time period covered by the period of the chart, March 1-15. Defendants have attached,

as Exhibit B, the chart with those quarantine units blocked out to better show the reports that are not associated with a quarantined unit, the impositions of which do not permit three hours of out of cell time. As modified, there are eleven housing units from which Plaintiffs' counsel has received reports of less than three hours of out of cell time, and five units from which they have received a report of at least one day on which there was no out of cell time. The Defendants' self-reporting includes more housing units, all of which got some out of cell time but not the three hours.

Second, and as stated in the prior status reports, Defendants are working assiduously to provide out of cell time within the operational constraints to which they are subject. On a daily basis, the facilities require staffing for coverage of each of the housing units, for escort between housing units and appointments, for escort offsite if medical care – emergent or scheduled – requires it, and for roving details to respond as security needs arise. And Defendants consistently schedule the necessary number of staff to cover all of these duties. Unfortunately, numbers of staff have developed a pattern of calling out, particularly on weekends and even without accrued leave, thus failing to come to work when they are scheduled to do so. This behavior is encouraged by Union leadership, who have publicly told membership that if they have sick time, they should use it. The same leadership was described, in a January 20, 2021 article, as laughingly acknowledging that staff do not report to work. When security staff do not report, Defendants extend the prior shift, drafting necessary individuals to work a mandatory minimum of an additional four hours. As Plaintiffs' counsel have noted, staff call out in higher numbers on the weekend – this suggests that many callouts are not related to anything but a lack of interest in working on weekend shifts. Defendants refer the Court to Exhibit C, a chart showing the cumulative staff callouts by month, facility, and shift. These issues are limited to

the security staff. By comparison, the contracted, medical staff is not making the same choices. Defendants are pursuing discipline against those staff who, without legitimate cause, fail to report, and are training a new class to supplement the current workforce. The additional new hires serve to fill vacancies, but the PDP is otherwise adequately staffed so long as staff report to work. PDP completed another round of orientations on March 13th and will begin the process to determine the next eligible class of cadets.

Defendants are executing contingency plans on a daily basis, notably responding in real time to the attendance decisions made by security staff. In triaging a constantly changing situation, Defendants are making every effort to ensure that all incarcerated persons receive three hours of out of cell time. Providing three hours of out of cell time requires releasing half of a tier at a time. Where staffing shortages do not permit that number of people to be safely released, Defendants work to ensure that the burden of fewer hours out of cell is widely shared, i.e., that as many people as possible have as small an imposition as possible on that out of cell time.

Defendants have worked with the First Judicial District to establish a space in which preliminary hearings can take place for Municipal Court, which should be opening on March 29. Defendants hope that the operation of this should help to alleviate some of the tensions that arise due to increased population and a general sense that the criminal process has stalled indefinitely.

Regarding supply availability, the issues flagged by counsel were investigated by the wardens of each facility. At PICC, general inspection cleaning is done twice a week and the incarcerated population has been advised through Town Hall meetings that if they wish to do additional cleaning they should ask the housing unit officer. That message was reiterated by the Warden at the block representative meeting. Given the complaints, PICC is instituting a practice of announcing, at the start of each recreation period, that individuals can request cleaning

supplies for their cells. At CFCF, toilet paper is restocked weekly and has been distributed across the population. To the extent there are additional needs, the Unit Managers can request more.

II. VACCINATIONS

Plaintiffs' Report

Plaintiffs' counsel appreciate that Defendants have prepared an informational flyer about the COVID-19 vaccines to distribute to incarcerated people. This action is essential to the vaccination process as it permits informed choices by the incarcerated population. There appear to be some problems regarding distribution, as several clients have reported that they have still not received the informational flyer. One individual reported that the flyer was given to block workers on his unit but that the block workers never distributed it to the other men on the unit. Plaintiffs' counsel urge Defendants to ensure full distribution to all people incarcerated in PDP, including new admissions to the jails and request that the next round of Deputy Wardens' certifications verify that the vaccine informational flyers have actually been distributed to each individual on each housing unit.

The video produced by the Black Coalition Against COVID, linked in Defendants' March 12, 2021 letter to the Court, addresses many common concerns and questions about the vaccines; but Plaintiffs' counsel continue to hear that many have not seen this video. In their letter to the Court, Defendants referenced another video highlighting a Corizon nurse's experiences with COVID-19, and Plaintiffs request that they and the Court have the ability to view this video.

In terms of vaccine distribution, Plaintiffs request that Defendants provide this information in this report. However, at the City Council hearing on March 15, 2021, Chief of

Medical Operations Dr. Herdman testified that as of the morning of March 15, 2021, 882 PDP staff out of approximately 2400 staff (which includes healthcare as well as correctional staff) had received the first dose of the vaccine, and 1441 people incarcerated in the PDP had received the first dose.

While Defendants have indicated that they keep track of staff who have received the vaccine through their own clinics and report those numbers to the Department of Health, they have also indicated that they do not know how many staff have received the vaccine on their own. Plaintiffs request that Defendants obtain this information from staff and that staff inform the PDP if received the vaccine. This would be an important tool for Defendants in assessing the health and safety risks for their own staff as well as to the people incarcerated in the PDP.

Defendants' Report

Defendants ensured that the informational flyer was distributed by the block workers across the housing units. Defendants recognize that some individuals who may have been asleep at the time of distribution might not have received it, but other than that the information was widely distributed as intended. Each of the block workers affirmed the distribution for which they were responsible, and the signature sheets attesting to this distribution are attached here as Exhibit D. In order to increase accessibility to the information contained within the informational flyer across the incarcerated population, it is being translated into Spanish and Russian.

Defendants will attempt to download and share the additional PSA with counsel for Plaintiffs and with the Court. Given the reports to Plaintiffs' counsel that individuals have not seen this material, Defendants will dedicate the available televisions to airing this information for

the next thirty days. Streamed uniformly, this will allow all individuals, regardless of the time at which they are out of cell, to see the PSAs.

At this point, eighty percent of the incarcerated population has been seen by medical staff and offered the vaccine; the other 20% is scheduled to do so next week. All are advised that they are welcome to request vaccination at any point, even if, in the first instance, they decline. In addition, all new admissions are seen by medical staff at the end of their intake quarantine period, and offered the vaccine then. At this juncture, given the extent to which the incarcerated population has declined the offer of vaccination, Defendants welcome Plaintiffs' counsel suggestion that they might write to their clients, supporting the acceptance of vaccination.

As to Plaintiffs' request regarding tracking staff, any such request is premature and, as indicated by the results from the last round of testing in which the staff rate of infection was well below the community rate, not warranted by the available data.

III. MASKS

Plaintiffs' Report

Plaintiffs renew their request, made in the March 4, 2021 Joint Status Report, that the City conduct a round of comprehensive mask distribution of the newer-designed masks so that all incarcerated people have at least the 4 masks provided for by the Court's Order of June 3, 2020. PDP Sgt. David Robinson, testifying before Philadelphia City Council on March 15, 2021, confirmed what incarcerated people have been reporting to Plaintiffs' counsel for months: rather than distributing new masks to incarcerated people, PDP gives people masks that have

previously been used by other individuals. According to Sgt. Robinson, even staff are not provided with new masks.¹

Defendants' Report

The contentions regarding provision of used masks are, unfortunately, entirely false. Masks are manufactured on site, and distributed across the facilities. Each incarcerated person becomes responsible for laundering their cloth masks. The mechanism by which this happens is that masks are placed inside the mesh bag specifically assigned to that person, a bag which is then returned to them after having been washed and dried. Each person, then, maintains control over the masks that have been provided to them. Masks that are submitted for replacement due to damage or wear and tear are discarded. There is no mass washing of used masks, by which those used masks are dissociated from the person that used them and distributed to somebody else. To reiterate, PDP does not recycle masks. Dirty masks have not been issued, and, given the process by which masks are manufactured, distributed, and cleaned, they could not be issued.

Touching specifically on Sergeant Robinson's testimony, as a supervisor, Sergeant Robinson is required to take the proper action while on duty, and assert proper authority, to carry out rules and directives and report any deficiencies through the chain of command to be promptly addressed. He is also responsible for supervising inmates to look after their welfare and ensure that inmates obtain proper and sufficient food, clothing and medical attention, the last of which includes access to masks. PDP has no record that Sergeant Robinson, through the chain of command, sought to rectify the alleged issues about which he testified.

¹ Sgt. Robinson also testified that it is extremely difficult for staff—even those working on quarantine units—to obtain N95 masks. To do so, they must go through several layers of supervisors.

Regarding Plaintiffs request for a universal distribution, Defendants have 4,128 three-ply masks on hand, an inventory that is constantly being distributed and then supplemented by ongoing production. Defendants ensure that every individual going to Court is equipped with a three-ply mask, and every Wednesday those masks are exchanged for the earlier designs, which, upon collection, are discarded. And every new admission is provided four of the new masks – if those individuals are not held for long, they depart with their masks. All that to say, Defendants are rolling out the new masks as expeditiously as possible.

IV. FREE PHONE TIME

Plaintiffs' Report

Plaintiffs' counsel is concerned that Defendants have unilaterally made the decision to reduce the daily free phone time provided to Plaintiffs from 15 minutes, as required by the Court's Order of June 3, 2020, to 10 minutes. Blanche Carney, testifying before Philadelphia City Council on March 15, 2021, stated that this decrease in phone time is due to PDP now providing free 15-minute video "visitations" twice per week. However, these potentially bi-weekly video calls are not an appropriate replacement for daily phone calls or in-person visitation.

Plaintiffs' counsel received multiple reports that facilities do not have an adequate number of tablets on each unit to ensure that every individual is actually able to make two video calls per week and over 30 individuals are required to share one or two tablets. The limited number of tablets, and restrictions on out-of-cell time, result in frequent competition for access to the tablets.

Additionally, the GTL video visit program requires that Plaintiffs' loved ones have both a device capable of downloading the video visitation application and the technological ability to

navigate the system. Restricting phone calls in favor of this more complicated system discriminates against poorer families and families with less technological literacy. Plaintiffs' counsel experienced firsthand the glitches in this system and note that video visits often take place in areas that are often louder, more distracting, and less private than phone calls.

Finally, Plaintiffs may need to use their free phone time to contact their attorneys to discuss their criminal cases. These necessary calls are typically not possible through the video system. Due to restrictions on out-of-cell time, access to counsel has already been limited and should not be limited further. Plaintiffs urge the Defendants to reconsider their decision to violate the Court's order mandating fifteen minutes of free phone time.

Defendants' Report

The June 3, 2020 Order provides that, while visits are suspended, individuals would be provided with 15 minutes of free calls per day, amounting to 105 minutes of free communication time a week. The pivot to 10 minutes of free phone time and 30 minutes of free video visit time is functionally the same, allowing 100 minutes of free, arguably better, contact between the incarcerated population and their friends and family. Since initiating video visits with family and friends, 237,017 such visits have occurred. As for counsels' expressed concern about privacy, the phones and the tablets are both utilized on the housing units. Furthermore, the tablets have supplemented the methods by which calls can take place during out of cell time; with more communication mechanisms available to a similar number of people, the stated concern about competition for communication resources should lessen.

Incarcerated individuals and their attorneys have access to legal visits, video visits, and analog phone calls. PDP provides all these mechanisms for legal visits at no cost to the

incarcerated person or their counsel. Since initiating legal video visits, there have been 9,152 legal virtual visits and 7,914 in-person legal visits.

V. TESTING

Plaintiff's Report

Plaintiffs again raise the issue of regular ongoing testing of prison staff and incarcerated people. With the developments and improvements in rapid or antigen testing, which are faster, less invasive, and less costly than PCR testing, regular ongoing testing is a vital tool in mitigating COVID-19 spread because it provides immediate information on people who have COVID-19 but are asymptomatic at that time. The City recently announced it would start rapid testing of PDP incarcerated individuals prior to bringing them to court for their criminal case proceedings, starting on March 5, 2021.²

While vaccine distribution is important, ongoing testing remains an important tool because of new viral mutations, and because not everyone has been vaccinated. The CDC has noted that “[a]ntigen tests can be used for screening testing in high-risk congregate settings in which repeat testing could quickly identify persons with a SARS-CoV-2 infection to inform infection prevention and control measures, thus preventing transmission” and that “especially in settings where a rapid test turnaround time is required, there is value in providing immediate results with antigen tests, even though they may have lower sensitivity than NAATs.”³

² Ryan Briggs, *After COVID Scare, Philly Begins Rapid Testing Incarcerated People Ahead Of Courtroom Dates*, WHYY (March 5, 2021) at <https://whyy.org/articles/philly-moves-to-prioritize-court-workers-for-vaccination-after-covid-scare/>.

³ Centers for Disease Control and Prevention, *Interim Guidance for Antigen Testing for SARS-CoV-2*, updated Dec. 16, 2020, at <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antigen-tests-guidelines.html>.

Furthermore, the Philadelphia School District has recently announced a robust COVID-19 testing program, both asymptomatic and symptomatic testing of teachers and students, that includes mandatory weekly COVID-19 testing of all on-site staff.⁴ Therefore, Plaintiffs request that the PDP develop a program for regular ongoing testing of prison staff.

Defendants' Report

Defendants submit there is no basis for the request made by Plaintiffs. In the first instance, PDP has had risk mitigation measures in place since the onset of the Covid-19 pandemic, and has only added to those over time. In addition to screening all individuals who come onto the PDP campus and having masking requirements, PDP has installed plexiglass around the guard stations across its facilities. PDP has also upgraded the filters in its air systems across all PDP facilities, either by installing MERV-13 filters or by specifically treating the existing filters to better capture any aerosols. PDP is also engaged in substantial testing of the incarcerated population, via its ongoing serial testing process. In just the last two weeks, over 1,900 Covid-19 tests were performed by medical staff.

Beyond the fact that PDP has, and continues to have, measures in place to reduce the risk of introduction of Covid-19 into its facilities, Plaintiffs' proposal would tax staff time. As discussed extensively above, Defendants are utilizing staff as much as possible to ensure that incarcerated persons are safely provided out of cell time. Furthermore, Plaintiffs' proposal rests upon an assumption that the source of risk for introduction of Covid-19 into the PDP is the staff, whereas the incarcerated population has more contact with a variety of persons during Court appearances. Defendants respectfully submit that the shared goal of reduction of risk would be

⁴ Philadelphia School District, Office of Employee Health Services, *COVID-19 Testing Program* (last modified March 14, 2021) at <https://www.philasd.org/employeehealth/covid-19-testing-program/>.

better served if all persons followed the lead of PDP and confirmed ahead of Court appearances, via rapid testing, that they are not a potential vector.

VI. DATA REPORTING

For the week ending March 14, 2021, 865 incarcerated persons were tested, resulting in 50 positive tests and 815 negatives. The cumulative numbers for testing and results are 24,019 tests administered, with 1,405 returning positive and 22,747 returning negative.

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

- In CFCF: A1P4, A2P1
- In PICC: A, E

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

- In CFCF: C1P4, D1P1, D1P2, D2P1, D2P2, D2P4
- In PICC: D, F

The following units are used for intake quarantine:

- Men: CFCF B1 pods 2, 3 and 4; B2 pods 1, 2, 3 and 4
- Women: ASD MOD III and D Unit; DC 207

One incarcerated person is presently hospitalized due to Covid-19 or being treated for Covid-19 in the infirmary.

Respectfully submitted,

/s/ David Rudovsky
David Rudovsky (PA 15168)
/s/ Jonathan H. Feinberg
Jonathan H. Feinberg (PA 88227)
/s/ Susan M. Lin
Susan Lin (PA 94184)
KAIRYS, RUDOVSKY, MESSING,

/s/ Craig M. Straw
Craig M. Straw
First Deputy City Solicitor
City of Philadelphia Department of Law
Office: (215) 683-5442
Cell: (215) 776-4528

FEINBERG, & LIN, LLP
718 Arch Street, Suite 501S
Philadelphia, PA 19106
(215) 925-4400
drudovsky@krlawphila.com
jfeinberg@krlawphila.com
slin@krlawphila.com

/s/ Su Ming Yeh
Su Ming Yeh (PA 95111)
/s/ Matthew A. Feldman
Matthew A. Feldman (PA 326273)
PENNSYLVANIA INSTITUTIONAL
LAW PROJECT
718 Arch St., Suite 304S
Philadelphia, PA 19106
(215)-925-2966
smyeh@pailp.org
mfeldman@pailp.org

/s/ Nyssa Taylor
Nyssa Taylor (PA 200885)
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
(215) 592-1513
ntaylor@aclupa.org
vwalczak@aclupa.org

/s/ Will W. Sachse
Will W. Sachse (PA 84097)
/s/ Benjamin R. Barnett
Benjamin R. Barnett (PA 90752)
/s/ Mary H. Kim
Mary H. Kim
/s/ Nicolas A. Novy
Nicolas A. Novy (PA 319499)
/s/ Theeya Musitief
Theeya Musitief (PA 327295)*
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-2496
Will.Sachse@dechert.com
Ben.Barnett@dechert.com

/s/ Anne B. Taylor
Anne B. Taylor, Esquire
Chief Deputy City Solicitor
Civil Rights Unit, Law Department
City of Philadelphia
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1595
215-683-5381 (office)
215-683-5397 (fax)
anne.taylor@phila.gov

Attorneys for Respondents-Defendants

Mary.Kim@dechert.com
Nicolas.Novy@dechert.com
Theeya.Musitief@dechert.com
Attorneys for Petitioners/Plaintiffs

DATE: March 18, 2021