

**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 telephonic court conference scheduled for April 8, 2021. While the Parties respectfully request that all the issues outlined below be discussed during the April 8th Court conference, counsel for Plaintiffs are particularly concerned about daily out-of-cell time, the substantial evidence that Defendants are not complying with the Court’s Order of January 28, 2021 mandating three hours of daily out-of-cell time, and the current lack of an effective plan from Defendants to remedy these issues and ensure compliance with the Court’s Order.

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

Plaintiffs' Report

As of April 4, 2021, approximately 4,670 people are currently incarcerated in Philadelphia Department of Prison (PDP) facilities.¹ Of these incarcerated persons, approximately 93 percent² (or 4,300 people) are pre-trial detainees. As is evident from reports Plaintiffs' counsel have received from incarcerated people, as well as Defendants' own reports certified by the Deputy Wardens, many people incarcerated in PDP's facilities 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). A summary of these reports is attached as Exhibit A to this Joint Report. *See also* Exhibit C: Brown Decl. ¶¶ 3-10, Gupton Decl. ¶¶ 3-12, Miles Decl. ¶¶ 6-7.

The most recent set of certifications from the PDP Deputy Wardens make plain that out-of-cell time is not being provided because of insufficient staffing. *See* Exhibit B. Although these certifications vary in terms of the detail provided, they show that (1) multiple PDP facilities

¹ Philadelphia Department of Prisons, *Daily headcount and census*, Census for April 4, 2021 at <https://www.phila.gov/departments/philadelphia-department-of-prisons/daily-headcount-and-census/> (noting 4408 adult males, 230 adult females, 31 juvenile males, and 1 juvenile female in facility headcount on April 4, 2021).

² Prior to March 2021, the City of Philadelphia published monthly reports on the jail population that provided information on the number of incarcerated people, the average length of stay, and the reasons for their incarceration. *See* www.phila.gov/documents/philadelphia-jail-population-snapshot-reports/. Last month, the City removed the reports from December 2020 through February 2021 from their public website and now only displays the reports through November 2020. The latest report Plaintiff's counsel obtained indicates that at the end of December 2020, only 6.5% of the total jail population has been sentenced, while over 93% of the total population was pretrial (either on detainees or bail). *See* <https://www.phila.gov/media/20210121085348/Full-Public-Jail-Report-December-2020.pdf>, page 12. As the jail population continued to rise since January 2021 without any significant movement by the Court to expedite criminal cases and reduce the population, Plaintiffs estimate the total numbers of people detained pretrial is likely over 4,300.

are not in compliance with this Court's Order and (2) the reason for that violation is the plainly insufficient staffing. *See* Exhibit B (stating that CFCF has a "strenuous staff shortage," multiple units at PICC did not receive out-of-cell time because of a "severe staff shortage," and out-of-cell time was not provided in RCF "due to staffing issues"). These certifications also verify information previously provided by Defendants' counsel that correctional officers who are "drafted" to extend their work shifts to cover for other absent correctional officers are claiming to be sick at that time and simply leaving at the end of their original scheduled shift. *See* Exhibit B at pp. 1, 2, 3.

At the same time, the population of the PDP continues to increase. There are now over 1,000 more people incarcerated in PDP than there was one year ago at the start of this litigation. This upward trend is likely to increase as we near the summer months, with the courts still operating under a highly restricted schedule. Within months, it is likely that the staffing crisis will be even more serious, and will prevent the PDP from returning to normal operations even if the COVID-19 conditions would so permit. Without discounting the management challenges posed by these issues in the context of a pandemic and negotiations with employees operating under a collective bargaining agreement, Defendants' current operations are not sufficient and there is no realistic prospect for the hiring of addition correctional officers that will remedy these issues in the near-term. The price for this failure is being borne by incarcerated persons.³

³ As the Court may be aware, on March 27, 2021, there was a homicide in an apparently unsupervised section of CFCF. *See* Samantha Melamed, *The Philly jail unit where a man was killed was left unsupervised for hours, records show*, PHILADELPHIA INQUIRER (March 30, 2021), available at <https://www.inquirer.com/news/philadelphia-prisons-jail-armani-faison-homicide--20210330.html> ("The staffing log for B1 unit at the Curran-Fromhold Correctional Facility indicates that, at 5:04 a.m. on March 27, the lone officer was called away, 'detailed to kitchen.' When another officer arrived at 7:58, he found the pod unattended, a sprinkler going off, and 35-year-old Armani Faison, naked and unresponsive, on the floor of his cell.").

Given the substantial evidence that Defendants are not in compliance with the Court's Order of January 28, 2021 and, in an effort to resolve this issue consistent with the Court's prior orders in this matter, Plaintiffs' counsel request that the Court order Defendants to provide the Court and Plaintiffs' counsel by April 15, 2021, with an updated plan to address the chronic staffing issues at PDP facilities. Absent clear and concrete progress to address these issues in that updated plan, counsel for Plaintiffs anticipate filing a motion with the Court for enforcement of the Partial Settlement Agreement with measures that would include the imposition of monetary sanctions, until such time when Defendants are in compliance with this Court's Order and all incarcerated persons are provided three hours of out-of-cell time each day.

Defendants' Report

As relayed in prior reports, Defendants continue to make every effort to provide as much out-of-cell time as is safely possible across all 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, noted by Plaintiffs' counsel. As modified, there are seven 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.

Second, as in prior reports, Defendants are vigorously working to address insufficient out of cell time caused by shortages of staff reporting to work. Shortages of staff reporting to work is the main contributor to the insufficient out of cell time and when appropriate staff are being disciplined. In an attempt to address the shortages of staff reporting to work, Defendants have approval for continuous hiring and recruiting processes to fill their current vacancies. In addition,

a class of 23 cadets are scheduled to graduate on May 5th and begin assignments on May 6th. Defendants continue in their efforts to onboard additional staff to fill vacancies and will remain committed to this process. However, it is imperative that the current complement of staff report for duty to provide security to allow for out of cell time. Defendants want to make it abundantly clear that staff attendance based on the current staffing complement impacts out of cell time, not staffing vacancies. Specifically when staff fail to report to work, it requires staff on location to be stretched and when incidents arise requiring greater attention, such as, violent activity, shakedowns and investigations, staff need to be pulled from other locations, which directly impacts those locations' out of cell time.

Lastly, Defendants have approached the newly elected union leadership to request a change to PDP staffing operations - 12 hour shifts - that would result in additional correctional officers being in the facilities. At this time, Defendants are awaiting a response.

Defendants continue to work with the First Judicial District on facilitating preliminary hearings at Municipal Court, in hopes that the operation of this should help alleviate some of the tensions that arise due to increased population and a general sense that the criminal process has stalled indefinitely.

II. **VACCINATIONS**

Plaintiffs' Report

Counsel for Plaintiffs have drafted a letter that will be provided to all incarcerated persons containing information about the COVID-19 vaccines being offered at PDP facilities. Although acceptance of the vaccine is a personal decision, Plaintiffs' counsel strongly believe that the vaccines offer the best protection for the health of all incarcerated persons. Plaintiffs' counsel have reached out to community groups, advocacy organizations, and other groups

involved with incarcerated persons, and several organizations have agreed to be signatories to the letter, along with Plaintiffs' counsel.⁴ Plaintiffs' counsel are working with Defendants' counsel to manage the distribution of the letter to all incarcerated persons in PDP facilities.

Meanwhile, Plaintiffs' counsel continue to receive reports of inadequate provision of information about the vaccines. *See, e.g.*, Exhibit C: Brown Decl. ¶ 20, Gupton Decl. ¶¶ 33-35. Concerningly, Plaintiff's counsel have now also received multiple reports that one reason some incarcerated people are opting not to get vaccinated is that PDP staff are telling them that *they* (correctional officers or other prison staff) are choosing not to get vaccinated; this is, understandably, causing some incarcerated people to doubt the efficacy and/or safety of the vaccines. *See, e.g., id.*: Miles Decl. ¶ 22 ("I am still unsure if I want to take [the vaccine] because a CO told me that she was not taking it. Now I am not sure whether it is safe.").

Defendants' Report

Pursuant to the Court's request, PDP has enlisted chaplains from all religious faiths to assist in promoting the benefits of being vaccinated and distributing relevant information. In order to increase accessibility to the information contained within the informational flyer across the incarcerated population, it has been translated into Spanish and Russian and is being distributed. In addition, PDP dedicated available televisions to airing PSA information for a thirty-day period, beginning March 17, 2021. Streamed uniformly, this allowed all individuals, regardless of the time at which they were out of cell, to see the PSAs. Based on complaints

⁴ The additional signatories are the Philadelphia Bail Fund, the Reentry Think Tank, Put People First – PA, Broad Street Ministry, Sisters Returning Home, the Pennsylvania Prison Society, the Dignity Act Now Collective, the Village of Arts and Humanities, Reclaim Philadelphia, the West Philly Participatory Defense Hub, and Philly Muslim Freedom Fund.

received by Plaintiffs' counsel, the incarcerated population requested that the airing of the PSAs be discontinued and regular programming be returned.

At this point, one hundred percent of the eligible incarcerated population has been seen by medical staff and offered the vaccine. All were advised that they are welcome to request vaccination at any point, even if, in the first instance, they decline. At this juncture, given the extent to which the incarcerated population has declined the offer of vaccination, Defendants welcome Plaintiffs' counsel suggestion that they write to their clients, supporting the acceptance of vaccination.

As to Plaintiffs' reports regarding comments by staff as to their personal choice not to receive the vaccine, Defendants do not have the ability to restrict these types of generalized comments, but have undertaken great efforts to distribute educational materials stressing the importance of being vaccinated to all persons within the prison facility.

III. MASKS

Plaintiffs' Report

As first requested a month ago in the March 4, 2021 Joint Status Report, Plaintiffs continue to seek another round of comprehensive mask distribution of the newer-designed masks so that all incarcerated people have at least the 4 masks as required by the Court's Order of June 3, 2020. Counsel for Defendants have advised Plaintiffs that PDP is now issuing new and improved cloth masks which are more effective and comfortable to wear. While this is a welcome development, Plaintiffs' counsel are still receiving reports of inadequate distribution of face masks. *See, e.g.*, Exhibit C: Brown Decl. ¶¶ 16-17, Gupton Decl. ¶¶ 26-31, Miles Decl. ¶¶ 14-15. To ensure that the new masks are systematically provided to incarcerated persons,

Plaintiffs request that the Court order Defendants to provide a plan, with a fixed date, for the distribution of 4 of the new masks to every incarcerated person.

Defendants' Report

On March 22nd, 2021, PDP received a donated shipment of 100,000 3-ply masks. On March 23rd, PDP began distributing two (2) 3-ply masks to all incarcerated persons and offering the 3-ply masks to all staff. At this time, PDP reports that all incarcerated persons have been provided with at least 2 of the 3-ply masks. For all concerned, the 3-ply masks can be used as part of double mask wearing protocol. In addition, PDP is offering the 3-ply masks to all incarcerated persons every Wednesday as part of the agreed upon exchange process.

IV. SUPPLY DISTRIBUTION

Plaintiffs' Report

Plaintiffs' counsel have received numerous reports regarding PDP's failure to provide basic hygiene supplies, including soap and toilet paper. *See, e.g.*, Exhibit C: Brown Decl. ¶ 11, Gupton Decl. ¶¶ 16-18, Miles Decl. ¶ 19. Multiple women at ASD have reported the facility operates with regular shortages of toilet paper. In addition, as has been reported consistently in the past, PDP fails to provide people with basic cleaning supplies to clean their cells. *See, e.g., id.*: Brown Decl. ¶¶ 14-15, Gupton Decl. ¶¶ 23-24, Miles Decl. ¶¶ 8-10.

On Friday, March 12, 2021, Plaintiffs' counsel provided Defendants with a list of 36 units where Plaintiffs' counsel had received reports of toilet paper and cleaning supply shortages in the prior 4 weeks. Since that time, Plaintiffs' counsel have received 17 more reports of toilet paper shortages. Although two of these reports came from CFCF and RCF, the vast majority have come from women housed in various units of ASDCU, with the largest number coming from A Unit. Several reports described going three or more days at a time without access to

toilet paper. Women at ASDCU have reported that staff instruct them to use rags or masks in lieu of toilet paper.

Defendants' Report

Defendants have continued to provide and distribute appropriate amounts of basic hygiene supplies, including soap and toilet paper. These items have continually been distributed without issue throughout all facilities. Based on the vast majority of reports coming from ASDCU and MOD3, Defendants are exploring options to confirm distribution is being conducted in accordance with the operational requirements of these facilities. PDP will continue to investigate these reports and monitor future distribution.

V. TESTING

Plaintiff's Report

Plaintiffs again raise the issue of regular ongoing testing of prison staff and incarcerated people. The CDC has issued a new Interim Guidance for COVID-19 testing in correctional and detention facilities which notes that “Frequent testing for [COVID-19] is an important prevention measure in correctional and detention facilities.”⁵ With the 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.⁶ As noted in the prior Joint

⁵ Centers for Disease Control and Prevention, Interim Guidance for SARS-CoV-2 Testing in Correctional and Detention Facilities, Summary of Recent Changes, Updates as of March 17, 2021 at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html>.

⁶ *See id.* (“Screening testing is a key component of a layered approach to prevent SARS-CoV-2 transmission. Screening testing allows early identification and isolation of persons who are asymptomatic or presymptomatic, or have only mild symptoms and who may be unknowingly transmitting virus.”)

Status Report of March 18, 2021, the City recently announced it would start antigen (rapid) testing of PDP incarcerated individuals prior to bringing them to court for their criminal case proceedings.

While vaccine distribution is important, ongoing testing remains an important tool because of new viral mutations, and because not everyone has been vaccinated. Further, 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.”⁷

Defendants’ Report

Defendants submit that PDP’s current mitigation efforts are resulting in an infection rate of 1%. 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 1,700 Covid-19

⁷ 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>.

tests were performed by medical staff with an infection rate of 1%, which clearly illustrates PDP's effective mitigation efforts.

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.

VI. DATA REPORTING

For the week ending April 4, 2021, 977 incarcerated persons were tested, resulting in 16 positive tests and 961 negatives. The cumulative numbers for testing and results are 26,852 tests administered, with 1,467 returning positive and 25,382 returning negative.

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

- In CFCF - A2P4, C1P1, D1P4 and D2P4
- In PICC – D, F1, F2 and G
- In DC - D dorm, E dorm, F dorm and B block
- In RCF – E and H units
- In ASD – B and C units

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

- In CFCF: A1P4, B1P1, B2P3, D1P2, D1P3, D2P1 and D2P2
- In PICC: C
- In RCF: B

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

There are no incarcerated persons who are 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,

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

/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

/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

/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

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

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