

**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 March 4, 2021.

The Parties outline below the issues that we respectfully request be discussed at this Court conference.

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

Plaintiffs’ Report

Plaintiffs’ counsel continue to receive reports of people receiving less than the daily out-of-cell time mandated by the Court’s Order of January 28, 2021 (ECF No. 63). For the most part, it does seem as though out-of-cell time has greatly improved since the shelter-in-place period ended. However, Plaintiffs’ counsel still receive reports of people experiencing days with no out-of-cell time at all. This is particularly concerning given the lasting mental health effects of

shelter-in-place’s prolonged periods of lockdown.¹ 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, February 26, 2021, Defendants provided Plaintiffs’ counsel with Deputy Wardens’ certifications that listed the units where insufficient out-of-cell time was provided. Defendants listed numerous CFCF units that did not receive the court-ordered amount of out-of-cell time due to staff shortages, with some units listed for several days in a row. The following table compiles information reported by incarcerated people and the Defendants:

Reports on Out-of-Cell Time (from Feb. 17, 2021–March 1, 2021)

Facility	Unit	Reports of days with no out-of-cell time	Reports of less than 2 hours of out-of-cell time (prior to 2/24/21)	Reports of less than 3 hours of out-of-cell time (since 2/24/21)	PDP reports of less than the court-ordered amount of out-of-cell time ²
CFCF	A1P3				X
CFCF	A1P4				X
CFCF	A2P2	X			
CFCF	A2P3		X	X	
CFCF	B2P2				X
CFCF	C1P1				X
CFCF	C1P2	X	X		
CFCF	C1P3				X
CFCF	C2P3		X	X	X
CFCF	C2P4				X
CFCF	D1P1				X
CFCF	D1P2	X	X		X
CFCF	D1P3				X
CFCF	D1P4	X	X		X
CFCF	D2P1	X	X		X
CFCF	D2P3				X
CFCF	D2P4	X	X		X

¹ See, e.g., Exhibit A: Sprual Decl. ¶ 6, Nicholas Decl. ¶ 10, Bell Decl. ¶ 25.

² The data in this column comes from the Deputy Wardens’ certifications provided to Plaintiffs’ counsel on February 26, 2021.

DC	B		X		
PICC	B		X		
PICC	G1		X		
PICC	G2		X		
RCF	D	X	X		X
RCF	E			X	
RCF	F	X	X	X	

The above table omits data from February 19, 2021, a day on which Defendants report that only one unit at CFCF received the required two hours of out-of-cell time, due to “shortage of staff, Open Wards and Trips.”³ Plaintiffs’ counsel urge Defendants to develop contingency plans that will enable them to comply with the Court’s Order even when facing these sorts of operational challenges.

Plaintiffs’ counsel continue to receive reports of shortages of necessary hygiene supplies, especially cleaning supplies and toilet paper.

Defendants’ Report

Defendants note, at the outset, that ten of the units identified as being a source of a complaint of inadequate out of cell time were on quarantine during or just before the time period during which reports were made to counsel. Of the remaining reports, the PDP makes every effort to ensure that any effects of limited staffing are spread across as many housing units as possible, and, in so doing, reduce the effect on any specific housing unit. In other words, PDP seeks to ensure that no specific housing unit experiences consistently less out of cell time than any other. There is a minimum number of staff required to safely open a housing unit for out of

³ The CFCF Deputy Warden certification also notes that, on February 18, 2021, there was a major snow storm and a lot of staff did not come to work. The implication is that no units received two hours of out-of-cell time that day, but it is unclear.

cell time, and when a sufficient number of people do not report to work, PDP is left without options to safely open all the housing units for the mandated period of out of cell time.

PDP is using the tools available to reduce the substantial absenteeism among its staff. In addition to consistently encouraging staff to report to work, often to no avail, PDP administrators are employing progressive disciplinary action to address patterns of absence and abuse of leave and collective bargaining agreements. Notably, PDP has initiated disciplinary proceedings against individuals who are found to be in violation of applicable leave policies. Anecdotally, of the average of six disciplinary hearings that occur every week, three or four of those hearings arise out of allegations of leave abuse. In addition to taking these steps to encourage its staff to report to work as scheduled, PDP has also completed its process of onboarding an additional 25 candidates, who are commenced training on February 22, 2021. PDP is also seeking to further expand its ranks with additional correctional officer staff, planning to issue an announcement for correctional officer positions. PDP is holding an orientation the next two Saturdays for another cadet class, and is requesting a new Correctional Officer exam to allow for the creation of a new eligibility list.

Briefly commenting on the allegations about a failure to provide services, Defendants note that the declarations submitted by Plaintiffs, closely read, illustrate that the services and products are, in fact, being offered. Notably, Defendants direct the Court's attention to the Declaration of Sean Nicholas, who notes that laundry exchanges are performed on his unit but that he has not been awake at the time it is done. Ex. A, Decl. of Sean Nicholas, ¶ 15. Similarly, Kareem Sprual explains that soap is offered cell to cell, but that those offering it do not wake up sleeping individuals at the time of distribution. *Id.*, Decl. of Kareem Sprual, ¶ 9.

II. VACCINATIONS

Plaintiffs' Report

Plaintiffs' counsel have received consistent reports contradicting Defendants' assertion that all incarcerated people in PDP custody have received educational information about the COVID-19 vaccine. Over two dozen individuals, from each of the PDP facilities, have reported that they received no information at all about the benefits, risks, production process, scientific studies, or side effects of the vaccine.⁴ It is clear from Plaintiffs' counsel's conversations with incarcerated people that there has not been a system-wide distribution of information about the vaccines. Not one incarcerated person has reported receiving such information prior to being presented with the choice about whether to accept the vaccine.

As for Defendants' claim that informational videos have been airing on PDP's internal television channel, some incarcerated people report not being aware that such a television channel even exists.⁵

Others have reported that they know there is a PDP internal channel but that the televisions in the common areas are never tuned to it and that they were not aware there was information about the vaccine available on it. Channels are limited for what can be broadcast.

Some incarcerated people have reported seeing a notice about the vaccine on the tablets that they use for video visits, but the only actual information included in this notice was about how to get a second dose of the vaccine in the community should they be released after getting their first dose. The remainder of the notice consisted of Commissioner Carney encouraging people to accept the vaccine, without providing any actual information about it:

⁴ See *e.g.*, Exhibit A: Sprual Decl. ¶ 22, Nicholas Decl. ¶ 21, Becker Decl. ¶ 19, Hepburn-Ellis Decl. ¶ 15, Bell Decl. ¶ 22.

⁵ See, *e.g.*, Exhibit A: Taylor Decl. ¶ 6.

If you have not accepted the vaccine, I encourage you to do so to protect yourself and your loved ones from Covid-19. I acknowledge your concerns and apprehension based on a long history of mistrust related to treatment and the timeliness of vaccine production. Take advantage of the opportunity now. Please continue to review the information about Covid-19 provided to you in paper form and information that runs on the PDP television system. Sincerely, Commissioner Carney.⁶

Incarcerated people have reported being rushed into making a decision on whether to accept the vaccine without having received sufficient information to make an informed decision.⁷

One incarcerated person reported receiving factually incorrect information about the vaccine from a Corizon worker.⁸

Given that Defendant's latest vaccine distribution report described a sharp increase in incarcerated people refusing the vaccine, it is important that Defendants ensure that all incarcerated persons are provided educational information about the vaccine. Plaintiffs' counsel urge Defendants to implement this commitment by providing written information about the vaccine in advance of the time when the vaccine is offered.⁹

Plaintiffs request that the City provide copies of the materials, videos, and/or information that has been provided to incarcerated people on vaccinations. Plaintiffs also request that the information relating to vaccination administration to prison staff and people incarcerated in the PDP be included in this report.

⁶ *Id.* ¶ 5.

⁷ *See, e.g., id.* ¶¶ 8–19.

⁸ *Id.* ¶ 12.

⁹ Attached as Exhibit B is an example of the type of information that should be provided to all incarcerated people as soon as possible. Plaintiffs' counsel provided this document to Defendants' counsel on January 20, 2021.

Defendants' Report

Defendants have steadily provided information about the availability and efficacy of available vaccines. With regard to the airing of public safety announcements, the following is the schedule pursuant to which information about vaccinations is aired in each of the PDP facilities:

- ASD Monday 9am & 10:30am, Tuesday 9am & 11am, Wednesday 9am & 10:30AM, Thursday 9am & 10:30am, Friday 9am & 10:30am
- CFCF Monday 9am & 10:30am, Tuesday 9am & 10:30am, Wednesday 9am & 10:30am, 11am, Thursday 10:30am, Friday 9am & 10:30am
- DC Monday 9am & 11am, Tuesday 9am & 11am, Wednesday 9am & 10:30am, Thursday 9am & 10:30am, Friday 9am & 10:30am,
- PICC Monday 9am & 11am, Tuesday 9am & 11am, Wednesday 9am & 10:30am, Thursday 9am & 10:30am, Friday 9am & 10:30am
- RCF Monday 9am & 11am, Tuesday 9am & 10:30am, Wednesday 9am & 10:30am, Thursday 9am & 10:30am, Friday 9am & 10:30am

One of the videos played at these times is a product of the Black Doctor's Covid-19 Consortium, and the other is a product of PDP itself (which includes a testimonial by a member of the PDP medical staff who experienced Covid-19). These videos can be shared with counsel and the Court, although they cannot be filed on the docket. The initial flyer circulated that encourages vaccination is attached with this report, as Exhibit C. Because PDP anticipates receiving doses of the Johnson & Johnson vaccine soon, medical staff is editing informational material that will be distributed to staff and the incarcerated population on or around March 5,

2021. The information contained in this material is reiterated in the notification contained on the tablets, in order to amplify the earlier-circulated information on the benefits of vaccination.

Regarding the degree of vaccine acceptance over time, Defendants caution that it is important to note that the initial offering was to hundreds of medically vulnerable patients, for example patients seen regularly in Chronic Care for diabetes, hypertension or congestive heart failure. This group of patients are much more likely to be concerned about their health than inmates not suffering chronic illness, and thus more likely to accept the offered vaccine in the first instance. For those individuals who initially reject vaccination, it is consistently available to them should they change their mind. Notably, individuals can submit a sick call request for vaccination should they reconsider their initial rejection of vaccination.

III. MASKS

Plaintiffs' Report

As Plaintiffs outlined in the Joint Status Report of February 18, 2021, the CDC has issued new studies and recommendations about the importance of wearing masks, and the benefits of wearing double masks and well-fitting masks. While Plaintiffs appreciate that the PDP masks have been re-designed, Plaintiffs have received numerous reports that incarcerated individuals do not have sufficient numbers of masks. Plaintiffs therefore request 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.

Defendants' Report

As advised in the last status report, there is not a sufficient inventory of the newly-manufactured masks on hand to do the requested distribution of several new masks to each of the 4,772 individuals currently incarcerated in PDP facilities. Instead, four of those masks are

provided to each individual upon admission to PDP. The remainder of masks are made available for exchange every Wednesday throughout the facilities.

IV. DATA REPORTING

As reported to the Court on March 1, 2021, for the week ending February 28, 2021, 785 incarcerated persons were tested, resulting in 19 positive tests and 766 negatives. The cumulative numbers for testing and results are 22,246 tests administered, with 1,324 returning positive and 20,922 returning negative.

Over that week the following housing units were removed from quarantine:

- In CFCF: A2P2
- In RCF: D

In turn, the following units were placed in quarantine that week, or are currently completing a quarantine:

- In CFCF: A1P4, A2P1, A2P3, C1P4, D1P1, D1P2, D2P1, D2P2
- In PICC: A, D2, E
- In RCF: C

The following units continue to be 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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