

**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,		IMMEDIATE RELIEF SOUGHT
v.		
CITY OF PHILADELPHIA; and BLANCHE	:	
CARNEY, in her official capacity as	:	
Commissioner of Prisons,	:	
Defendants-Respondents.		

**PLAINTIFFS-PETITIONERS' REPLY BRIEF IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The evidence before this Court makes clear that Plaintiffs-Petitioners continue to be exposed to grave and unjustified risks of serious illness or death from COVID-19. While Defendants deserve credit for taking some steps to address the COVID-19 health crises in PDP facilities, a number of those actions came *after* counsel for the Philadelphia Department of Prisons (“PDP”) was on notice that Plaintiffs would initiate this action. In any event, Defendants’ actions are far from sufficient to resolve the ongoing violations of Plaintiffs’ constitutional rights. Defendants’ arguments are based in large part on documents that are not fully reflective of the current conditions in PDP facilities. As Plaintiffs will show by additional and updated evidence, there is a large gap between PDP’s stated policies and PDP’s actual practices. Absent a negotiated

resolution or ruling on the record presently before the Court, Plaintiffs request that the Court schedule a hearing to resolve factual disputes and to order appropriate relief.

As multiple federal and state courts have recognized in recent rulings in similar cases seeking to safeguard prison populations facing the unprecedented risks of COVID-19, the health and lives of the plaintiff class and others hang in balance, and further action is required.

## **I. PRELIMINARY STATEMENT**

Plaintiffs filed a Motion for Temporary Restraining Order and for a Preliminary Injunction (“Motion”) on April 23, 2020. Defendants filed a Response (ECF 22), and Plaintiffs file this Reply to address the arguments submitted by Defendants.

In the April 24, 2020 Court conference call, Plaintiffs informed the Court that they had served Defendants with discovery requests that were targeted to the issues presented by the Motion, but had agreed to provide Defendants with a narrower request limited to priority items. Defendants agreed to produce the relevant documents and information during the week of April 27, 2020. As of this filing, Plaintiffs have received one production that did not nearly provide the necessary information, notwithstanding a follow-up request for the relevant documents. Ex. D, Email from Plaintiffs re: Discovery, May 1, 2020.<sup>1</sup> In a follow up telephone conference between counsel on May 4, 2020, the parties agreed to advise the Court of discovery status in a conference call scheduled for May 7, 2020.

In the Motion, Plaintiffs sought injunctive relief to remedy perilous conditions of confinement in the PDP due to COVID-19. The Motion was supported by twelve declarations

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<sup>1</sup> Plaintiffs reference their three previous Exhibits by ECF Number and new exhibits beginning with Exhibit D. Plaintiffs have also attached an index of each Exhibit for the Court’s convenience. See Ex. AA.

appended to Plaintiffs' Complaint, one from each of the ten Plaintiffs, and two from Plaintiffs' experts in the fields of public health and correctional health care, Dr. Joseph J. Amon, and Dr. Robert L. Cohen. The Motion was further supported by a Memorandum of Law that addressed the legal claims in the Complaint and Plaintiffs' entitlement to preliminary relief. Plaintiffs sought relief narrowly tailored to ensure constitutional conditions of confinement, with the claim for releases under either 28 U.S.C. § 2241 or 42 U.S.C. § 1983 to be considered only if Defendants did not comply with court orders regarding conditions of confinement.

In this Reply, Plaintiffs first address the current state of the factual record. Plaintiffs then address the legal claims to demonstrate why Plaintiffs continue to be entitled to relief.

## **II. UPDATED FACTUAL BACKGROUND**

In Plaintiffs' Memorandum in Support of the Motion, Plaintiffs detailed the effects of COVID-19. As of May 4, 2020, 1,152,372 cases had been confirmed in the United States, and over 67,456 Americans had died.<sup>2</sup> Philadelphia County has reported 13,316 of the Commonwealth of Pennsylvania's 50,092 cases of COVID-19, and 424 of its 2,458 deaths, with the number of people infected with COVID-19 growing by 20% every day.<sup>3</sup> As all experts have acknowledged, these numbers underestimate the impact of the virus, given the lack of testing. The rate of infection in the PDP far exceeds the infection rate overall in the City of Philadelphia. Over the past two months, 192 prisoners in the PDP have contracted the virus—more than five times the rate of infection in Philadelphia as a whole.<sup>4</sup>

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<sup>2</sup> Centers for Disease Control and Prevention (CDC), Cases in the US (last updated May 4, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>3</sup> Pennsylvania Department of Health (PA DOH), COVID-19 Data for Pennsylvania (May 4, 2020), available at <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

<sup>4</sup> The infection rate in the PDP is discussed below. *See infra* § II.A.

The most effective strategy for limiting the spread of the disease is social distancing—deliberately keeping at least six feet of space between persons to avoid spreading the illness—combined with a vigilant hygiene regimen, including washing hands frequently and thoroughly with soap and water, and disinfecting surfaces. Amon Dec., ECF 1-4, ¶¶ 23–25; Cohen Dec., ECF 1-5, ¶ 6. Following the recommendation of public health experts, government officials across the country have taken extraordinary measures to implement social distancing.

The CDC has issued guidance for limiting the spread of COVID-19 in correctional facilities which reflect safety measures for jails and prisons.<sup>5</sup> At the heart of the Motion was the claim, supported by declarations, that Defendants had failed to adequately implement these guidelines, and had also had failed to take other measures necessary to protect the plaintiff class, including:

- Failing to provide for and enforce social distancing protections;
- Failing to adequately, consistently, and freely provide necessary hygiene products to incarcerated people in PDP, leaving some without soap for days at a time;
- Failing to provide for adequate cleaning, sanitizing and disinfecting of shared common areas including toilets, sinks, showers, and phones;
- Failing to provide and mandate the use of adequate personal protective equipment, with prison staff inconsistently using masks and often interacting with people, including those in “quarantine,” without wearing masks; and
- Failing to provide for adequate isolation or quarantine measures.

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<sup>5</sup> See Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) available at <https://bit.ly/2UKYGES>; see also Amon Dec., ECF 1-4, ¶¶ 30–33, 44–49, 58–59; Cohen Dec., ECF 1-5, ¶¶ 24(a), 40–41, 50 (discussing CDC guidance).

Defendants' Response takes issue with these factual allegations, claims that all necessary protective measures have been adopted and are being implemented at the PDP, and argues that, under the relevant law, their actions eliminate the necessity for injunctive and declaratory relief. Plaintiffs set forth their legal response below, but, at the outset, highlight four points that demonstrate how Defendants' submissions do not rebut Plaintiffs' claims.

First, the rate of infection at PDP facilities and the continued threat of COVID-19 transmission remains a critical issue, with constitutional implications. Second, even taking the protocols that have been adopted by Defendants at face value, there remain substantial gaps between the policies and what is needed in terms of protective measures. Third, and of great legal significance, most of the policies directed towards incarcerated people, which Defendants rely upon to claim adherence to CDC recommendations, were promulgated or implemented after Defendants received notice of Plaintiff's intent to file this lawsuit. And fourth, Defendants' contention that they have in fact successfully employed necessary protective measures on a system-wide basis is far from persuasive, as the evidence suggests that implementation has been, at best, uneven and inconsistent.

#### **A. PDP's Rate of Infection and the Continued Threat of COVID in PDP Facilities**

Defendants assert that their actions have resulted in reduced COVID-19 transmission rates within their facilities. Defs.' Resp. at 5. The data belies this assertion. Despite testing approximately only 7 percent of the total population, a cumulative total of 192 people have tested positive for COVID-19; in other words, 75 percent of those tested were positive for the virus.<sup>6</sup>

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<sup>6</sup> Max Marin, *Over 75% of people tested in Philly jails are positive for COVID-19*, BillyPenn (May 4, 2020), <https://billypenn.com/2020/05/04/over-75-of-people-tested-in-philly-jails-are-positive-for-covid-19/>.

Thus, PDP's infection rate is 5.47 times greater than the infection rate in Philadelphia, and 13.95 times greater than Pennsylvania's infection rate as a whole. *See Ex. E.*

Even when compared with other Pennsylvania correctional facilities, PDP's infection rate is troubling. The rate of infection within PDP facilities is 3.12 times greater than the rate in SCI Phoenix, the state correctional facility with the *largest* reported number of cases. When compared with the infection rate at *all* SCI facilities,<sup>7</sup> the rate of infection in PDP facilities is 31.18 times greater. *See id.*<sup>8</sup>

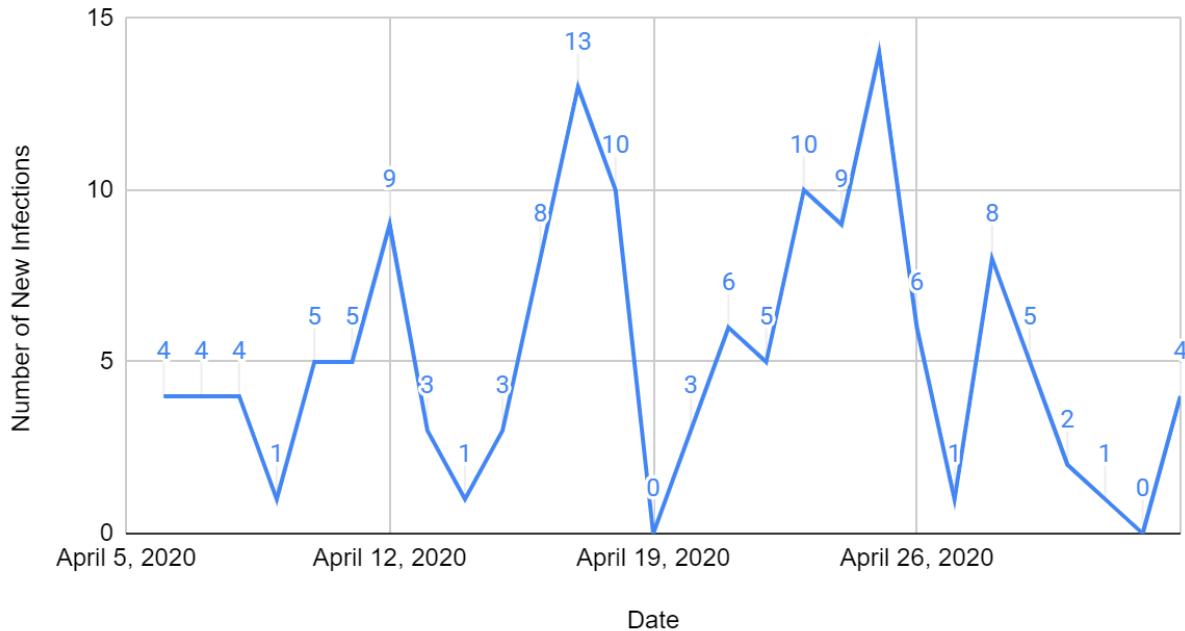
Even if Defendants tested all symptomatic people within their facilities, a slight dip in new infections over two days does not mean the infection is under control. While PDP reported only one positive test on May 1, 2020 and zero positive tests the following day, this is, as shown in the following chart, consistent with an established pattern over the past month, with the number of positive test results rising and falling on a daily basis:

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<sup>7</sup> The Pennsylvania Department of Corrections, unlike PDP, publishes a daily log with the cumulative number of COVID19 test results for both inmates and employees. *See* <https://www.cor.pa.gov/Pages/COVID-19.aspx> (last accessed May 3, 2020).

<sup>8</sup> As noted below, the reported infection rate in PDP likely dramatically undercounts the number of actual infections. *See infra* § II.B.

## PDP Daily Reported New COVID19 Infections



The absence of an established downward trend is confirmed by the City's report on May 3, of four new positive results.<sup>9</sup> Defendants' reliance on a narrow snapshot of positive test results fails to accurately reflect what is actually occurring in PDP's facilities: the continued spread of COVID-19 among the incarcerated population.

### B. PDP's Policies are Not Adequate to Prevent the Spread of COVID-19

Defendants contend that the protocols they have put in place demonstrate their effective satisfaction of their constitutional obligations. Putting aside serious questions about the implementation of these policies, *see infra* § II.D, there are significant deficiencies in PDP's practices. *See* Cohen Supp. Dec., Ex. F. Those deficiencies fall into three categories.

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<sup>9</sup> *City Provides Update on COVID-19 for Sunday, May 3, 2020*, City of Philadelphia (May 3, 2020), <https://www.phila.gov/2020-05-03-city-provides-update-on-covid-19-for-sunday-may-3-2020/> (last accessed May 5, 2020).

First, Defendants' policies do not provide for sufficient COVID-19 testing. Current practice in the PDP calls for very limited testing, and only where an incarcerated person presents with a small set of symptoms. Herdman Dec., ECF 22-1, at 4-5, ¶¶ 34, 41. As Dr. Cohen states, these practices are "not sufficient to protect the staff and residents of PDP from the spread of COVID-19." Cohen Supp. Dec., Ex. F, ¶ 2. In short, because asymptomatic people transmit COVID-19 to others, it is difficult, if not impossible, to develop an effective plan to limit the spread of COVID-19 without mass testing of incarcerated people and PDP staff. *Id.* ¶ 8. PDP's protocols are resulting in significant gaps in protective measures with no testing of all new admissions and with no testing before removing people who had previously tested positive for COVID-19 from isolation. *Id.* ¶¶ 3-4.

Testing conducted to date in PDP facilities has almost certainly resulted in a severe undercount of the actual rate of infection. *Id.* ¶ 7. Experience in testing of entire jail populations in other jurisdictions indicates that mass testing can be expected to show infection rates far greater than what is shown without such testing. For example, testing of the entire population of incarcerated people at the Montgomery County Correctional Facility showed an infection rate 30 times greater than that identified before testing began. *Id.* Indeed, statistics just publicized on May 4 show an extremely high positive rate in PDP facilities, with 75% of those tested found (or presumed) positive.<sup>10</sup>

For this reason, an adequate prevention protocol requires testing of all people newly admitted to PDP's facilities, and, ultimately, the entire population. *Id.* ¶¶ 3, 5. While such measures are time consuming, they can and should be done by prioritizing vulnerable populations,

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<sup>10</sup> Max Marin, *Over 75% of people tested in Philly jails are positive for COVID-19*, BillyPenn (May 4, 2020), <https://billypenn.com/2020/05/04/over-75-of-people-tested-in-philly-jails-are-positive-for-covid-19/>.

including all persons over the age of 50. *Id.* ¶¶ 5-6.<sup>11</sup> Testing data—including data concerning correctional and medical staff—should be publicized so that the effectiveness of PDP’s measures can be assessed. *Id.* ¶ 9. And, critically, PDP must address a significant gap in its handling of those who have tested positive for COVID-19. Current practices merely require an assessment of symptoms before removing someone who has tested positive from isolation. *Id.* ¶ 4. This practice results in a substantial risk that people who are still infected and contagious are returned to areas of PDP’s facilities where they can infect other people. To counter this risk, PDP should be required to adopt a two negative COVID-19 test protocol before removal from isolation. *Id.*

Second, the parties are in full agreement that social distancing is the most important component of a prevention plan. *See* ECF 18-1 at ¶ 13; ECF 22 at 2. Yet Defendants do not mandate sufficient social distancing. In particular, Defendants have allowed numerous incarcerated people housed in PDP’s Detention Center facility to continue residing in dormitory settings where they sleep in close proximity to others. While Defendants have instituted “head-to-toe” sleeping arrangements in those facilities, these practices are not sufficiently protective. Cohen Supp. Dec., Ex. F, ¶ 10. As Dr. Cohen states, there is “no scientific study which has shown that these arrangements prevent respiratory spread of disease.” *Id.* PDP also engages in double celling of incarcerated people.<sup>12</sup> It is not possible to engage in required social distancing in such

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<sup>11</sup> Data from other jurisdictions, including New York City, demonstrate that the need for hospitalization increases dramatically with age. Cohen Supp. Dec., Ex. F ¶ 6.

<sup>12</sup> *See* Williams Dec., ECF 22-6, at 2, ¶ 8 (reporting that most cells hold two people to identify any physical or mental health concerns); *compare* Vetter Dec., ECF No. 22-4, at 2, ¶ 11 (noting that double cells may be used to prevent self-harm and help address medical emergencies) *with* Doyle Dec., Ex. G, ¶ 3 (most men on B-unit at CFCF are double-celled), Skinner Dec., ECF 1-6, at 25, ¶ 6 (most people on block at CFCF are double-celled). It is also true at the women’s facility, RCF. *Compare* McCants Dec. ECF 22-7, ¶ 10 (single celling as much as possible) *with* Diaz Dec., ECF 1-6, at 6, ¶ 6, Walker Dec., ECF No. 1-6, at 10, ¶ 6 (reporting many people on the unit are double-celled).

arrangements. *Id.* ¶ 11. Cells in PDP facilities are simply too cramped to allow for social distancing when people are double-celled:<sup>13</sup>



**Photo of cell at CFCF**



**Photo of cell at RCF**

The failure to implement appropriate social distancing results in increased risk of infection and undermines all other efforts to prevent the spread of infection. *Id.* ¶ 11.

Third, PDP’s stated efforts to streamline the availability of medical services to focus on the prevention of COVID-19 transmission are likely to have the opposite effect. PDP’s protocols note that, for medical complaints, “only urgent services should be conducted,” with the degree of urgency to be determined at the discretion of a medical provider. COVID-19 Need to Know Intake Procedure, Apr. 14, 2020, Ex. H. This stark limitation on medical services will result in medical providers not responding to conditions and illnesses that, at first blush, might appear benign, such as minor cold symptoms or skin infections. Cohen Supp. Dec., Ex. F, at ¶ 12. But, based on emerging developments and understanding of COVID-19 symptoms, all medical complaints—

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<sup>13</sup> The photographs were taken as part of the discovery process pursuant to F.R.C.P. 34(a)(2) in *Baur v. Laughinghouse*, No. 16-cv-2281 (E.D. Pa.) (CFCF photo taken on September 13, 2017), and *I.Z. v. Philadelphia*, No. 17-cv-1517 (RCF photo taken on August 14, 2018).

fever, fatigue, sore throat, rash, loss of taste or smell, cough, shortness of breath—are potential symptoms of COVID-19 and must be treated as such. *Id.*<sup>14</sup>

### C. **PDP's Current Policies and Practices are in Response to this Litigation**

PDP's current policies and practices, in large part, have been adopted in response to this litigation. On April 14, 2020, Plaintiffs' counsel sent Defendants' counsel an email informing them that they had received and were investigating complaints from people incarcerated in PDP facilities about the unsafe conditions and health risks arising from the COVID-19 pandemic. Email from Plaintiffs' Counsel, Apr. 14, 2020, Ex. I. On April 16, 2020, Plaintiffs' counsel informed Defendants' counsel of an intent to sue, and Plaintiffs' Complaint was filed on April 20, 2020. The evidence submitted with Defendants' Response to Plaintiffs' Motion shows that many of PDP's efforts to address the spread of COVID-19—increasing social distancing, enforcing and monitoring of previously adopted policies, and documenting cleaning and hygiene practices—occurred or were implemented after this date.<sup>15</sup>

First, Dr. Kristen Feemster of the Philadelphia Department of Public Health toured PDP facilities and recommended several policy revisions on April 24, 2020—four days after Plaintiffs filed their complaint. Dr. Feemster Email, Apr. 24, 2020, ECF 22-38, at 4. These recommendations included the “increase[d] presence of hand hygiene supplies” and “faster case identification through adoption of the point of care testing platform.” *Id.* Notably, Dr. Feemster also recommended PDP should limit “one inmate per bunk bed to increase social distancing.” *Id.*

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<sup>14</sup> Further, and self-evidently, PDP's medical providers' stated plans not to provide medical care in all situations except for those subjectively deemed urgent, will have the impact of limiting the adequacy of care for all incarcerated people and result in negative health (and mental health) outcomes for the incarcerated population. Cohen Supp. Dec. ¶ 12.

<sup>15</sup> A chronological timeline of PDP's practices and policies based on the limited document discovery produced by Defendants is attached hereto as Exhibit J.

Despite Dr. Feemster's recommendation, as described above, *supra* § II.B, PDP has maintained its practice of, among other things, double-celling, making it impossible for Plaintiffs to maintain a distance of six feet from all other persons at all times.<sup>16</sup> Moreover, it appears that Dr. Feemster's conclusory comments regarding PDP policies were not informed by any discussions with any of those incarcerated at PDP, and it is not even clear if she had the ability to determine whether protocols and policies were being implemented throughout the PDP, as she appeared to tour only isolation and quarantine units.

Second, PDP began enforcing its own COVID-19 policies only after Plaintiffs' Complaint was filed. For example, on April 28, 2020, a Detention Center correctional officer received a written warning for failing to hand out cleaning supplies. ECF 22-20. Based on the entirety of Defendants' production, this was the first time PDP documented and enforced any of its COVID-19 related policies.

Finally, Plaintiffs have not received documentation that PDP's current practice of logging and documenting its compliance with its COVID-19 related policies was in place prior to receiving notice of impending litigation. To date, Defendants have produced *one* log from *one* unit—out of 64 total PDP units—that documented cleaning of any kind prior to April 14, 2020. *See* ECF 22-17.<sup>17</sup> Other produced logs recorded other activity, such as laundry service, but failed to document cleaning cells, telephones, tables, or any other surfaces frequently touched by Plaintiffs. *See, e.g.,* ECF 22-25 (logs from April 9 and April 14 documenting laundry service).

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<sup>16</sup> Further, while Plaintiffs maintain that “head-to-toe” sleeping arrangements do not constitute appropriate social distancing, Cohen Supp. Dec., Ex. F ¶ 10, it is notable that this practice was not adopted before Plaintiffs initiated this action. Maj. McCants Announcement, Apr. 23, 2020, ECF 22-27.

<sup>17</sup> Prior to that date, of course, Plaintiffs' unrebutted evidence shows a near uniform lack of necessary cleaning. ECF 18-1 at 8-9.

**D. PDP has Failed to Ensure System-Wide Implementation of its Stated Policies**

Defendants have submitted logs and records purporting to show a concerted effort to implement protocols to protect the incarcerated population. Those materials, however, provide only a superficial view of current conditions. Defendants have provided information and logs from just ten of PDP's 64 housing units, less than 16 percent. Further, and more concerning, Defendants' evidence, in tandem with evidence produced by Plaintiffs, shows that Defendants' implementation is, at best, uneven—a situation that is deeply problematic, as it undermines the ability of a COVID-19 prevention program to succeed. Cohen Supp. Dec., Ex. F ¶ 13.

Plaintiffs have conducted a comprehensive review of Defendants' evidence, including the declarations of City employees and PDP administrators and the documentary support cited in those declarations, and have contrasted the assertions of Defendants' witnesses with other evidence. Charts illustrating inconsistencies between the declarations of PDP's deputy wardens and current conditions in PDP facilities are provided at Ex. K, and a chart illustrating inconsistencies between the declarations of PDP's medical supervisory staff and current conditions is provided at Ex. L. Below, Plaintiffs highlight a selection of the most significant and problematic disparities between stated practices and the reality in PDP facilities:

***The availability of soap.*** PDP reports that free bar soap is available to incarcerated persons upon request.<sup>18</sup> However, multiple incarcerated people still do not have free access to soap.<sup>19</sup> On April 30, 2020, an incarcerated person with no money in his prison account reported:

I asked CO's for soap and they told me that only people who have no money on their books can get free soap. They told me I had to ask a sergeant or lieutenant for soap and that the sergeant or lieutenant would then check to see whether I had money on my

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<sup>18</sup> See Vetter Dec., ECF 22-4, at 5, ¶ 40; Lacombe Dec., ECF 22-5, at 5, ¶ 35; Williams Dec., ECF 22-6, at 5, ¶ 44; McCants Dec., ECF 22-7, at 5, ¶¶ 34-35.

<sup>19</sup> See Doyle Dec., Ex. G, ¶ 5; Remick Dec., Ex. P, ¶ 3; Abdullah Dec., Ex. R, ¶ 4.

books. I asked a sergeant or lieutenant for soap and he told me he would check my books, but I never heard back from him. I still have no soap.

Doyle Dec., Ex. G, ¶ 5. This person had been without soap for two days. *Id.* This observation is consistent with the observation of Dr. Feemster's discussed above, *supra* § II.C, that PDP required the “increase[d] presence of hand hygiene supplies.”<sup>20</sup>

***The cleaning of individual cells and common areas.*** PDP states that individuals are able to clean and disinfect their cells daily or routinely<sup>21</sup> and that common areas are cleaned multiple times per day, with phones and showers cleaned between each usage.<sup>22</sup> Yet, there are multiple reports of persons not being able to clean their cells on a regular basis, having requested and been denied cleaning supplies,<sup>23</sup> and only daily cleanings of common areas.<sup>24</sup> Indeed, the logs which PDP claims show thorough cleaning practices, also reflect violations of PDP policies. An April 21, 2020, cleaning log from the Prison Health Services Wing in the Detention Center that supposedly showed the cleaning of cells every shift actually showed that only “desk, keys, computer, [and] door knobs” (all areas used by staff) were cleaned and that no showers, phones, or cells (areas used by incarcerated people) were cleaned.<sup>25</sup> Another log purporting to document the cleaning of “showers, phones, toilets, and sinks” in the Detention Center dormitories showed only the cleaning of bars, rails, floors, the correctional officers’ station, and the correctional

<sup>20</sup> See Feemster email, Apr. 24, 2020, ECF 22-38, at 3-4.

<sup>21</sup> See Vetter Dec., ECF 22-4, at 3, ¶ 20; Lacombe Dec., ECF 22-5, at 3, ¶ 16; Williams Dec., ECF 22-6, at 3, ¶ 24.

<sup>22</sup> See Vetter Dec., ECF 22-4, at 3, ¶ 22; Williams Dec., ECF 22-6, at 3, ¶ 22; McCants Dec., ECF 22-7, at 3, ¶ 16; Lacombe Dec., ECF 22-5, at 3, ¶ 17.

<sup>23</sup> See, e.g., Weiss Dec., Ex. M, ¶ 6; Skinner Dec., Ex. N, ¶ 5; Dantzler Dec., ECF 1-6, at 16, ¶ 6; Bethea Dec., Ex. O, ¶ 5.

<sup>24</sup> See, e.g., Doyle Dec., Ex. D, ¶ 11-12; Bethea Dec., ECF 1-6, at 33, ¶¶ 14-15.

<sup>25</sup> See Lacombe Dec., ECF 22-5, at 3, ¶ 18; PHSW Log, Apr. 21, 2020, ECF 22-18, at 1.

officers' bathroom.<sup>26</sup> According to that log, the phones were cleaned on only one out of the five days documented.<sup>27</sup>

***Using population reduction to increase physical distancing.*** PDP claims that it has taken advantage of a decrease in population to increase physical distancing between incarcerated people.<sup>28</sup> In the first instance, while Defendants note that PDP population is at historically low levels, the Philadelphia Police Department has announced practices which are likely to reverse this downward trend.<sup>29</sup> Further, defendants have not provided the Court with information about housing unit capacity and detailed population of all housing units, limiting the ability to evaluate the implementation of social distancing. In any event, Plaintiffs' declarations establish that social distancing has not been fully implemented. They report sharing of cells with up to three other people, double-celling even when there are empty cells available for single-celling, consolidation of incarcerated people on a bottom tier to facilitate the closing of a top tier, transfer from a more sparsely populated dorm to a more densely populated dorm, and being housed in a unit that is at full capacity.<sup>30</sup>

***Implementation of out-of-cell time.*** PDP states that it is attempting to increase social distancing by imposing “shelter-in-place” conditions that greatly limit everyone’s total out-of-cell

<sup>26</sup> See Lacombe Dec., ECF 22-5, at 3, ¶ 17; Cleaning Log, Apr. 12-16, ECF 22-17, at 1.

<sup>27</sup> *Id.*

<sup>28</sup> See Vetter Dec., ECF 22-4, at 2, ¶¶ 9-11; Lacombe Dec., ECF 22-5, at 3, ¶ 21.

<sup>29</sup> See Ellie Rushing & Robert Moran, *Philly police resume pre-coronavirus arrest procedures for some non-violent crimes*, Philadelphia Inquirer (May 1, 2020), available at <https://www.inquirer.com/news/philly/coronavirus-philly-police-arrests-theft-burglary-covid-19-20200501.html> (stating that Philadelphia police will “immediately end” practice of scaled-back arrests put in place in response to the COVID-19 pandemic).

<sup>30</sup> See Weiss Dec., Ex. J, ¶ 5; Diaz Dec., ECF 1-6, at 6, ¶ 6; Walker Dec., ECF 1-6, at 10, ¶ 6; Remick Dec., Ex. P, ¶ 4; Abdullah Dec., ECF 1-6, at 29, ¶ 7.

time and by allowing only a few individuals out of their cells at any given time.<sup>31</sup> Even with these lockdown conditions, under which many people receive significantly less than one hour of out-of-cell time per day,<sup>32</sup> incarcerated people are standing within a few feet of each other in order to use phones to contact family and lawyers.<sup>33</sup> Further, lockdown conditions have resulted in some units receiving no daily out-of-cell time.<sup>34</sup>

***Treatment of those with COVID-19 symptoms and/or positive tests.*** PDP asserts that incarcerated people with COVID-19 symptoms are to be placed in quarantine or isolation and are tested,<sup>35</sup> and that individuals who have tested positive are not to return to general population until the symptoms abate.<sup>36</sup> However, those living within the PDP attest to a different picture, such as developing COVID-19 symptoms and not being isolated or tested for nine days,<sup>37</sup> or developing symptoms and not being tested at all.<sup>38</sup> One person who tested positive said she was returned to

<sup>31</sup> See Vetter Dec., ECF 22-4, at 3, ¶ 20; Williams Dec., ECF 22-6, at 3, ¶ 21; Lacombe Dec., ECF 22-5, at 2, ¶ 13.

<sup>32</sup> See, e.g., Diaz Dec., ECF 1-6, at 6, ¶ 8; Walker Dec., ECF 1-6, at 10, ¶ 9.

<sup>33</sup> See, e.g., Matthews Dec., Ex. Q, ¶ 15 (even when only every other phone is used, people are still only two feet apart).

<sup>34</sup> See Abdullah Dec., Ex. R, ¶ 3; Bethea Dec., Ex. O, ¶ 6; see also DC Log, ECF 22-15 (a log from A-block in DC showing no one was given out-of-cell time on 4/19, 4/20, and 4/21).

<sup>35</sup> See Herdman Dec., ECF 22-01, at 6, ¶¶ 8, 34, 41.

<sup>36</sup> See Herdman Dec., ECF 22-01, at 6, ¶ 44.

<sup>37</sup> See Benn Dec., Ex. S, ¶¶ 4-7 (reporting symptoms starting March 25, 2020, putting in 5-6 sick call slips, but not being tested until April 3, 2020, and learning a few days later that she was positive).

<sup>38</sup> See Abdullah Dec., ECF 1-6, at 29, ¶ 4 ; Remick Dec., Ex. P, ¶¶ 5-6; Diaz Dec., ECF 1-6, at 6, ¶ 15; see also Walker Dec., ECF 1-6, at 10, ¶ 16 (“I know that two women on my unit had fevers but the staff did not take them off the unit. Instead, they were just told to stay in their cells.”).

general population without being quarantined for a full 14 days, still feeling ill, and without a new test to see if she was negative.<sup>39</sup>

### **III. ARGUMENT**

#### **A. Plaintiffs and Members of the Proposed Class Are Entitled to Equitable Relief to Prevent Infection, Illness or Death From COVID-19**

Plaintiffs have previously set forth the standards for the issuance of a temporary restraining order or preliminary injunction, ECF 18-1 at 11, and Defendants do not dispute the standards discussed as established by the Supreme Court and Third Circuit. Courts have broad power to fashion equitable remedies to address constitutional violations in prisons. *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978); *Brown v. Plata*, 563 U.S. 493, 511 (2011). The parties agree that the Eighth Amendment protects those serving criminal sentences from cruel and unusual punishment and requires jails and prison officials to protect people in their custody from known risks of serious harm. *Farmer v. Brennan*, 511 U.S. 285, 834 (1994).<sup>40</sup>

With respect to the governing standards under the Fourteenth Amendment for pretrial detainees, Plaintiffs take this opportunity to make clear that the Fourteenth Amendment affords these detainees even greater protection from dangerous conditions of confinement than the Eighth Amendment affords to sentenced prisoners. See *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473-74 (2015) (for pretrial detainees challenging their conditions of confinement, requiring “only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective” rather than “proof of intent (or motive) to punish”); see also *Hubbard v.*

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<sup>39</sup> See Benn Dec., Ex. S, ¶¶ 4-7, 9; see also Matthews Dec., Ex. Q, ¶ 12 (reporting that after he tested positive, he was removed from isolation without an additional test and while still coughing).

<sup>40</sup> There is also no disagreement between the parties with respect to the standards under the ADA and for that reason Plaintiffs rest on their previous arguments. The parties disagree whether application of those standards mandate relief in this case.

*Taylor*, 399 F.3d 150, 166-67 (3d Cir. 2005) (“*Hubbard I*”) (reversing and remanding because the district court wrongly analyzed pretrial detainees’ conditions-of-confinement claim under the Eighth Amendment deliberate indifference standard). In contrast to convicted prisoners, who only have a right not be subjected to *cruel and unusual* punishment, pretrial detainees are protected by the Fourteenth Amendment from being punished at all, including by being held in conditions that amount to punishment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). When “a condition of confinement is [not] reasonably related to a legitimate governmental objective, [courts] may infer ‘that the purpose of the governmental action is punishment that may not be constitutionally inflicted upon detainees *qua* detainees.’” *E.D. v. Sharkey*, 928 F.3d 299, 307 (3d Cir. 2019) (quoting *Hubbard v. Taylor*, 538 F.3d 229, 232 (3d Cir. 2008) (“*Hubbard II*”)).

Most significantly, the Supreme Court has ruled that there are substantive differences in the way the two Amendments operate in the jail and prison contexts. In *Kingsley*, the Supreme Court ruled that claims for excessive force made by pretrial inmates are to be judged by a purely objective standard and a plaintiff need not prove malicious intent or a similar subjective state of mind of the defendant official. *Kingsley*, 135 S. Ct. at 2473-74 (2015). The same is true for other claims of unconstitutional conditions of confinement, including those alleged here, which center on Defendants’ duty to protect the plaintiff class from the risk of a communicable disease. *See Aruanno v. Corzine*, 687 F. App’x 226, 230 (3d Cir. 2017) (citing *Kingsley* for the governing standard for a Fourteenth Amendment conditions-of-confinement claim); *Hardeman v. Curran*, 933 F.3d 816, 823 (7th Cir. 2019) (“*Kingsley*’s objective inquiry applies to all Fourteenth Amendment conditions-of-confinement claims brought by pretrial detainees.”); *Colbruno v. Kessler*, 928 F.3d 1156, 1163 (10th Cir. 2019) (explaining that *Kingsley*’s objective standard applies to all Fourteenth Amendment conditions-of-confinement claims); *Gordon v. County of*

*Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018) (holding that *Kingsley*'s objective standard applies to pretrial detainees' claims for violations of the right to adequate medical care); *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) (holding that defendants can be liable under the Due Process Clause even when they did not have subjective awareness that their acts or omissions subjected pretrial detainees to a substantial risk of harm); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (holding that *Kingsley*'s objective standard applies to pretrial detainees' failure-to-protect claims).

Just this past week, in *Mays v. Dart*, Case No. 620 C 2134, 2020 U.S. Dist. LEXIS 73230, 2020 WL 1987007 (N.D. Ill. April 27, 2020), where the plaintiffs have challenged conditions of confinement in the Cook County Jail with claims mirroring those raised by Plaintiffs in this case, the court ruled in an 87-page opinion that *Kingsley* mandated a test of “objective reasonableness” in assessing the constitutionality of conditions.<sup>41</sup> As the court stated:

[B]ecause this is a case involving persons detained prior to an adjudication of their guilt or innocence, the Sheriff's good intentions are not dispositive of the plaintiffs' claims. There is a critical difference between a claim regarding conditions of confinement brought by pretrial detainees like the plaintiffs and one brought by a convicted prisoner under the Eighth Amendment who unlike a pretrial detainee can constitutionally be subjected to punishment. . . . The standard by which a court evaluates a claim by a pretrial detainee like the plaintiffs “is solely an objective one.” *Kingsley*, 135 S.Ct. at 2473. The plaintiffs are not required to show that the Sheriff had an intent to punish or to harm them, *id.*; indeed, they need not show any sort of malicious or bad intent at all. Rather, what they are required to show—actually, on a preliminary injunction, simply establish a reasonable likelihood of showing—is that the Sheriff's conduct with respect to the particular condition has been objectively unreasonable in one or more respects. . . . In applying this standard, a court “focus[es] on the totality of facts and circumstances” the defendant faced “to gauge objectively—without regard to any subjective belief held by the [defendant]—whether the response [to the conditions] was reasonable.”

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<sup>41</sup> Defendants fail to cite to *Kingsley*, and while it cites to the earlier ruling in *Mays v. Dart*, 2020 WL 1812381, at \*8 (N.D. Ill. April 9, 2020) (issuance of TRO on claim of unconstitutional conditions of confinement in Cook County jail), it does not cite or discuss this latest and far more comprehensive opinion.

*Mays*, 2020 WL 1987007 at \*25 (quoting *McCann v. Ogle Cty.*, 909 F. 3d 881, 886 (7th Cir. 2018)). The court ruled that the failure of jail officials to provide sufficient protective measures of social distancing and testing, and their failure to eliminate unnecessary double celling and dormitory housing violated the Fourteenth Amendment. *Id.* at \*27. The court also ordered a continuation of other policies put into effect as a result of the earlier TRO. *Id.* at \*29. Other courts have applied similar standards in granting preliminary relief to persons in jails on COVID-19 issues. See *Banks v. Booth*, No. CV 20-849 (CKK), 2020 WL 1914896, at \*11 (D.D.C. April 19, 2020) (granting TRO with respect to conditions in D.C. jails); see also *Gayle v. Meade*, No. 20-21553-Civ, 2020 U.S. Dist. LEXIS 76040, at \*18 (S.D. Fla. Apr. 30, 2020) (finding that conditions in three Florida immigration detention facilities violated detainees' due process rights and granting injunctive relief).<sup>42</sup>

Applying the governing standards under the Fourteenth Amendment, Plaintiffs are entitled to preliminary relief.<sup>43</sup> On the central issue of whether they are likely to prevail on the merits of these claims, the question is whether the policies and the practices of Defendants with respect to necessary protective measures at the PDP are "objectively reasonable." The record on this Motion includes evidence that: (1) PDP's official policies are insufficient to protect the rights of the plaintiff class as they fail to provide sufficient safeguards from the deadly consequences of

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<sup>42</sup> Defendants cite to the few cases denying preliminary relief, see Defs.' Resp. at 10, 17-19, but all of them involved sentenced inmates and therefore were decided on the far more demanding standard of "cruel and unusual" punishment. See *Plata v. Newsom*, No. 01-CV-01351-JST, 2020 WL 1908776, at \*6 (N.D. Cal. Apr. 17, 2020); *Nellson v. Barnhart*, No. 20-CV-00756-PAB, 2020 WL 1890670, at \*6 (D. Colo. Apr. 16, 2020); *Money v. Pritzker*, No. 20-CV-2093, 2020 WL 1820660, at \*18 (N.D. Ill. Apr. 10, 2020); *Baxley v. Jividen*, No. CV 3:18-1436, 2020 WL 1802935, at \*6 (S.D.W. Va. Apr. 8, 2020).

<sup>43</sup> As Plaintiffs argued in the Motion, the Eighth Amendment also protects the rights of those in the plaintiff class who are serving county prison sentences, but since relief under the Fourteenth Amendment for the large majority of pre-trial inmates at PDP would provide protections for the sentenced inmates as well, Plaintiffs rest on our earlier Eighth Amendment arguments.

COVID-19; (2) to the extent that policies are currently sufficient, most of them were adopted—or at least implemented—in response to this lawsuit, and therefore this Court has the power to order Defendants to continue to enforce and implement these policies; and (3) in practice, several of these policies have not been properly implemented or enforced, thereby denying the plaintiff class the necessary protective measures they were intended to provide.

### **1. The Current Policies and Protocols Do Not Provide the Protections Necessary Under the Fourteenth Amendment**

While Plaintiffs credit Defendants with responding to some of the claims set forth in the Complaint and Motion through its changes in protocols and policies, several are still deficient.<sup>44</sup> Specifically, PDP’s policies fail to provide for adequate social distancing or to provide adequate testing of class members.

With respect to social distancing, Defendants still house people in dorms in numbers that prevent them from maintaining six feet of distance and Defendants still practice routine double-celling. In *Mays*, the court was faced with a similar challenge and found that policies regarding social distancing did not adequately address housing configurations. Similar to what Defendants assert here, the prison officials in *Mays* argued that their policies were in line with CDC guidelines and thus passed constitutional muster. However, the court found that while the CDC guidelines are an important piece of evidence to consider in assessing defendants’ conduct, they are not

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<sup>44</sup> It is important to note that there are gaps in the record that are due to Defendants’ failure to provide documents and other information critical to the resolution of the Motion, as agreed to at the conference with the Court on April 24, 2020. At that time, Plaintiffs had served comprehensive discovery requests (Interrogatories, Requests for Admissions, and Requests for Production of Documents), but had agreed to narrow the request to “priority” information. Plaintiffs immediately provided Defendants with these requests, Ex. W, and Defendants agreed to provide the documents during the week of April 27, 2020. Yet, Defendants provided only one set of documents and notwithstanding a follow-up demand, Ex. D, and have not provided any additional documents or responses, though they did rely on documentation not provided earlier in its Response to the Motion for TRO. Defendants have stated that they will continue with production starting May 5.

dispositive. 2020 U.S. Dist. LEXIS 73230 at \*86. The court looked specifically at social distancing as a critical issue, finding that the current policies and practices relating to housing made social distancing “impossible or unduly difficult.” *Id.* at \*87. Accordingly, the court ruled that “plaintiffs are reasonably likely to succeed on their contention that *group housing or double celling* of detained persons is objectively unreasonable given the immediate and significant risk to their life and health from transmission of coronavirus.”<sup>45</sup> *Id.* at \*89 (emphasis added).

Finally, and of significant consequence, one change in policy, has the risk of *increased* harm to the plaintiff class. As Exhibit H shows, PDP has recently limited medical care *for all illnesses and injuries* to so-called “urgent” circumstances. That standard for access to medical care, whether COVID-19 related or for any other medical condition, fails to provide the care mandated by the Eighth and Fourteenth Amendments.<sup>46</sup> The settled standard requires medical care for *any* illness or injury that has been diagnosed by a doctor or that a lay person would easily recognize as warranting medical attention. *See Monmouth Cty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987). PDP policies have long adhered to this standard (though of course there has been litigation in cases where incarcerated people have claimed lack of care), and a new policy of proving only “urgent care” is a deviation from required standards of care necessitating injunctive relief.

In addition to social distancing, and as described above, *supra* § II.B, PDP’s protocols for COVID-19 testing have resulted in a situation where incarcerated people and staff remain at

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<sup>45</sup> Defendants argue that Plaintiffs “cannot have it both ways” in seeking both social distancing and out-of-cell time to enable access to necessary service. Defs.’ Resp. at 14 n.9. Defendants justify the lockdown solitary confinement conditions as the only way to implement social distancing, but there is no evidence that staggering of out of cell times is not possible; indeed, the PDP protocols permit just such movements.

<sup>46</sup> This policy also is likely to have the opposite effect of its intentions, resulting in the failure to address potential COVID-19 symptoms. Cohen Supp. Dec., Ex. F, at ¶ 12.

serious risk of infection. In light of current conditions in PDP, mass testing of the incarcerated population is a necessary component of an infection prevention program. For exactly this reason, prisons and jails across the country are engaging in large scale testing. The following is a non-exhaustive list of locations where such mass testing has occurred or will take place:

- The Tennessee Department of Corrections announced that it would begin testing of all incarcerated people and staff after 1,299 of 2,444 inmates tested positive at one prison in the state.<sup>47</sup>
- New Jersey Governor Phil Murphy has announced that the New Jersey Department of Corrections will be universal testing for all staff and incarcerated people.<sup>48</sup>
- The Ohio Department of Corrections tested, or plans to test, all staff and incarcerated people at three of its facilities.<sup>49</sup> After testing all inmates at one facility, 73% of the population tested positive.<sup>50</sup>
- A federal facility in California tested all 1,055 incarcerated people in the facility and found 570 to be positive.<sup>51</sup>

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<sup>47</sup> John Matisse, *1,299 inmates test positive for virus at Tennessee prison*, AP News (May 1, 2020), <https://apnews.com/5d0dde8eaa0385c9fd97e1545a5857da> (last visited May 5, 2020).

<sup>48</sup> *New Jersey Department of Corrections to Begin Universal COVID-19 Testing and Launches Non-Congregate Housing Program for First Responders*, Official Site of the State of New Jersey (May 1, 2020), <https://www.nj.gov/governor/news/news/562020/approved/20200501a.shtml>.

<sup>49</sup> COVID-19 Inmate Testing, Ohio Department of Rehabilitation & Correction (Apr. 19, 2020); <https://drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-19-2020%20%201305.pdf>.

<sup>50</sup> Bill Chappell, *73% Of Inmates At An Ohio Prison Test Positive For Coronavirus*, NPR (Apr. 20, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/838943211/73-of-inmates-at-an-ohio-prison-test-positive-for-coronavirus>.

<sup>51</sup> Miriam Hernandez, *COVID-19 infects more than half of inmates at Terminal Island prison in San Pedro*, ABC (Apr. 29, 2020), <https://abc7.com/terminal-island-prison-coronavirus-covid19-bureau-of-prisons/6138903/>.

- The Vermont Department of Corrections has completed at least two rounds of mass testing at one of its facilities. It embarked on its first round of mass testing after a single incarcerated person tested positive.<sup>52</sup>
- Individual facilities in Arkansas, North Carolina, and Michigan have also conducted mass testing.<sup>53</sup>

These examples, as well as the example of Montgomery County Correctional Facility, *see supra* § II.B (citing Cohen Supp. Dec., Ex. F, at ¶ 7), demonstrate that large scale testing is both feasible and highly informative. In most cases, testing shows larger infection rates than what prison officials previously anticipated and, therefore, provided key information to effectively isolate and quarantine individuals and prevent further spread. Without such testing, PDP will not be able to provide (as it claims it already has) safe conditions of confinement for the Plaintiff class.

## **2. The Policies Currently in Effect Were Adopted in Response to This Lawsuit and Therefore This Court has the Authority to Order Continued Application and Enforcement of the Policies**

It has long been settled that a federal court has the power to grant injunctive relief even *after* the defendant ceases its unlawful conduct, where the defendant may otherwise reverse course. *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). “[I]t is well established that the voluntary cessation of a challenged practice will not automatically render a case moot.” *United States v. Virgin Islands*, 363 F.3d 276, 279 (3d Cir. 2004). The defendant bears the “heavy burden” of persuading the court that it is “absolutely clear that the [ ] wrongful behavior could

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<sup>52</sup> Department of Corrections COVID-19 Retesting in St. Albans Update, State of Vermont Department of Corrections (May 4, 2020); <https://doc.vermont.gov/sites/correct/files/documents/NWSCF%20Retesting%20Press%20Release%20FOR%20APPROVAL%205.4.20.pdf>.

<sup>53</sup> Radley Balko, *Stopping covid-19 behind bars was an achievable moral imperative. We failed*, Washington Post (May 1, 2020); <https://www.washingtonpost.com/opinions/2020/05/01/stopping-covid-19-behind-bars-was-an-achievable-moral-imperative-we-failed/>.

not reasonably be expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

Numerous courts have echoed these principles. See *DeJohn v. Temple Univ.*, 537 F.3d 301, 309 (3d Cir. 2008) (“The burden for the party alleging mootness [i]s heavy, even formidable.”) (quotation marks and citation omitted); *United Air Lines, Inc. v. Air Line Pilots Ass’n, Int’l*, 563 F.3d 257, 275 (7th Cir. 2009) (where the changes in policies or practices occurred “only after a lawsuit has been filed [a district court] is within its discretion” to find that the cessation was “not voluntary and that even a voluntary cessation is not determinative”); *Burns v. Pa. Dep’t of Corr.*, 544 F.3d 279, 284 (3d Cir. 2008); *Mays*, 2020 U.S. Dist. LEXIS 73230, \*94-95; *Inmates of the Northumberland Cty. Prison v. Reish*, No. 08-cv-345, 2009 U.S. Dist. LEXIS 126479, at \*48-51 (M.D. Pa. Mar. 17, 2009) (a lawsuit alleging violations of prisoners’ constitutional rights is “a quintessential instance where a court should employ the voluntary cessation exception”); *Bowers v. City of Philadelphia*, No. 06-CV-3229, 2007 U.S. Dist. LEXIS 5804, at \*106-07 (E.D. Pa. Jan. 25, 2007) (finding that the timing of the defendant’s cessation decision—a week prior to a preliminary injunction hearing—“strongly suggests that the cessation was connected in large part to the instant litigation, a circumstance that does not favor a finding that the conduct is unlikely to recur” and that defendant’s continued defense of the challenged conditions “does not engender confidence that [it] will not revert to these conditions again”); *Victory v. Berks Cty.*, No. 18-5170, 2020 U.S. Dist. LEXIS 6528, at \*50-67 (E.D. Pa. Jan. 15, 2020) (entering a permanent injunction against a county jail despite prison policy changes after finding no assurances that the alleged violations would not recur).

Plaintiffs have detailed above, *supra* § II.C, the relevant chronology of events, including changes in protocols and practices (even in the absence of the necessary discovery requested by

plaintiffs) that demonstrate beyond reasonable question, that the current policies were adopted in large part in response to notice of this litigation, the allegations in the Complaint, and the pending Motion. These include policies regarding quarantine, isolation, cleaning agents, and access to soap and other personal hygiene supplies. As in *Mays*, 2020 U.S. Dist. LEXIS 73230 at \*94-95, where the court issued a preliminary injunction after finding that defendants' compliance with the original TRO with respect to sanitation, soap and cleaning supplies, facemasks and virus testing was not "entirely voluntary,"<sup>54</sup> this Court should similarly enter a TRO or preliminary injunction to protect the plaintiffs from suffering further harm.

### **3. Inconsistent Implementation of PDP Protocols Warrants Injunctive Relief**

Even if Defendants' policies at this time are in compliance with constitutional standards (they are not), Plaintiffs would be entitled to injunctive relief if the practices "on the ground" demonstrate that the policies are not being adequately applied and enforced. *See Mays v. Dart*, 2020 U.S. Dist. LEXIS 73230 at \*76, 88-89. Plaintiffs have summarized above, *supra* § II.D, and have provided detailed accounting in attached exhibits, Ex. K, Ex. L, that current conditions in PDP's facilities depart significantly from what Defendants' policies appear to require and, importantly, from what Defendants' witnesses claim to have observed. In short, conditions "on the ground" demonstrate that Plaintiffs are exposed to a continued and ongoing threat of harm from COVID-19.

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<sup>54</sup> The *Mays* court also had no trouble in finding that in these circumstances the plaintiffs had satisfied the requirements of showing irreparable harm, no adequate remedy at law, and a promotion of the public interest in protecting the health and lives of the plaintiff class. 2020 U.S. Dist. LEXIS 73230 at \*113-14. Plaintiffs need not establish that they have suffered injury, as opposed to likelihood of serious illness, to establish irreparable harm. *See Helling*, 509 U.S. at 33.

At a minimum, there are substantial and material factual disputes which the Court may assess through a review of the documentary evidence or at a hearing before issuing injunctive relief.

**4. The Balance of Equities and the Public Interest Favors Granting Relief to the Proposed Class**

The balance of equities weighs heavily in favor of granting the requested injunctive relief. The preliminary injunction Plaintiffs request will not substantially injure other interested parties. *See Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526 (3d Cir. 2018) (preliminary injunction warranted where relief “will not result in even greater harm to the nonmoving party”). Given the nature of the COVID-19 pandemic, *not* issuing preliminary relief would cause significant injury to the parties and the public at large. There is also a strong public interest in minimizing the spread of COVID-19 and courts have consistently ordered injunctive relief where prisoners face serious threats to their health. *See, e.g., Castillo v. Barr*, No. 20-00605, 2020 WL 1502864, at \*6 (C.D. Cal. Mar. 27, 2020).

**5. Release of Plaintiffs and Members of the Class Is Necessary if Defendants do not Provide Constitutional Conditions of Confinement**

As noted earlier, the issue of release of any incarcerated persons at the PDP is not before the Court at this juncture and therefore Plaintiffs do not address Defendants’ arguments regarding this Court’s powers to order release under 28 U.S.C. § 2241 or its equitable powers under 42 U.S.C. § 1983 and the PLRA. Plaintiffs rely on our previous submissions on these issues, and reserve the right to supplement those arguments at the appropriate time.

## B. **Requests for Injunctive Relief**

Plaintiffs request a TRO and a preliminary injunction for current and future persons held in custody within the PDP, as follows:<sup>55</sup>

1. *Ensuring proper social distancing by:*

- a. Implementing a program of six-foot separation of class members in their daily activities at PDP, including in their access to showers, phones, and recreation and in their interactions with correctional officers and other staff, except where such interactions necessitate closer proximity or physical contact, e.g., provision of health care services.
- b. Limiting double-celling to situations in which having two persons sleeping in the same cell is required by the health or mental health needs of these persons or other safety reasons.
- c. Limiting dormitory populations to ensure six-foot separation at all times, including sleeping hours.

2. *Ensuring enhanced personal hygiene by:*

- a. Providing unrestricted, free access to soap and disposable hand towels to facilitate hand washing.
- b. Providing the opportunity to shower daily, without forcing a choice between showers and other activities.

3. *Ensuring clean and hygienic living spaces by:*

- a. Providing ready access to cleaning supplies, including bleach-based cleaning agents and CDC-recommended disinfectants in quantities sufficient to facilitate cleaning and disinfecting of floors and all surfaces in cells and housing areas as currently required by PDP protocols.
- b. Requiring and ensuring that all common areas and frequently touched surfaces, including common-use items such as toilets, sinks, showers, phones television controls, books, door handles, light switches, and recreational equipment are cleaned at regular intervals throughout the day, as currently required by PDP protocols. Phones should be cleaned after each use.

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<sup>55</sup> The injunctive relief sought by Plaintiffs has been slightly modified, and therefore is listed here for clarification.

- c. Providing gloves and masks on a daily basis to those who are cleaning, cooking, or performing janitorial or other services.
  - d. Providing clean sheets and clothing twice per week.
4. *Ensuring consistent usage of personal protective equipment (PPE) by:*
- a. Providing all class members and prison staff members with masks that are cleaned and/or exchanged on a daily basis.
  - b. Mandating that prison staff wear masks while working, and that class members wear masks outside of their cells (except when showering, eating, or for medical or other safety reasons).
5. *Implementing testing and medical isolation by:<sup>56</sup>*
- a. Testing all class members, including those newly admitted, for COVID-19, prioritizing those who are medically vulnerable.
  - b. Ensuring that any incarcerated person who tests positive or displays symptoms consistent with COVID-19 is medically isolated and remains medically isolated until they test negative. Individuals in isolation should have multiple daily temperature checks and monitoring of blood oxygen levels to ensure stability in accord with current PDP protocols.
  - c. On a daily basis, testing of staff who enter PDP facilities, and requiring any staff member who tests positive to medically isolate themselves and to test negative prior to entering a PDP facility.
6. *Ensuring access to necessary services by:*
- a. Providing four hours of out-of-cell time on a daily basis for showering, cleaning, recreation, and phone calls. Two of these hours should be permitted for large-muscle recreation. Out-of-cell time should be provided on a staggered basis to allow for social distancing.
  - b. Providing medical care for non-COVID-19-related medical and mental health needs based on prevailing community standards as provided by PDP protocols

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<sup>56</sup> The term “medical isolation” is defined in the CDC’s Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities Medical (March 23, 2020) (“CDC Guidance for Detention Facilities”). Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term “medical isolation” to avoid confusion.

and directives in effect, pre COVID-19. Medical care shall not be limited to “urgent” situations.

- c. Providing free calls to families or loved ones.
- d. Providing free, unrecorded, and confidential phone calls to legal counsel.

7. *Ensuring education, transparency, and information dissemination by:*

- a. Providing all incarcerated people with (i) general updates and information about the COVID-19 pandemic; (ii) information on how incarcerated people can protect themselves from contracting COVID-19; and (iii) instructions on how to properly wash hands, in accordance with current PDP protocols or practices.
- b. Providing a daily public report on the *current* and *cumulative* numbers of:
  - class members and correctional and health staff who have confirmed COVID-19;
  - those who have been tested;
  - those over the age of 55;
  - people in infirmary status;
  - pregnant women in custody;
  - those in quarantine and medical isolation status;
  - those awaiting test results;
  - COVID-19 positives in cohorted housing;
  - those hospitalized;
  - those who have died from COVID-19.

#### **IV. CONCLUSION**

This Court should grant Plaintiffs-Petitioners’ Motion for a Temporary Restraining Order and Preliminary Injunction, and order that Defendants immediately enact policies implementing mitigation efforts within the PDP to prevent the spread of COVID-19.

Respectfully submitted,

/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)\*

/s/ Witold J. Walczak

Witold J. Walczak (PA 62976)

/s/ Hayden Nelson-Major

Hayden Nelson-Major (PA 320024)

/s/ Ali Szemanski

Ali Szemanski (PA 327769)\*

AMERICAN CIVIL LIBERTIES UNION  
OF PENNSYLVANIA  
P.O. Box 60173  
Philadelphia, PA 19102  
(215) 592-1513  
ntaylor@aclupa.org  
vwalczak@aclupa.org  
HNelson-Major@aclupa.org  
aszemanski@aclupa.org

*Attorneys for Petitioners/Plaintiffs*

DATE: May 5, 2020

/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/ 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  
Mary.Kim@dechert.com  
Nicolas.Novy@dechert.com  
Theeya.Musitief@dechert.com

\* indicates counsel who will seek  
admission or *pro hac vice* admission

**Exhibits to Class Action Complaint for Declaratory and  
Injunctive Relief and Petition for Writs of Habeas Corpus**

Description	Complaint Exhibit Letter	ECF Number
Expert Declaration of Joseph J. Amon, Ph.D. MSPH, April 19, 2020	Exhibit A	1-4
Expert Declaration of Robert L. Cohen, M.D., April 20, 2020	Exhibit B	1-5
Declaration of Thomas Remick, April 16, 2020	Exhibit C	1-6 at 2
Declaration of Jay Diaz Remick, April 19, 2020		1-6 at 6
Declaration of Nadiyah Walker, April 19, 2020		1-6 at 10
Declaration of Michael Alejandro, April 15, 2020		1-6 at 13
Declaration of Michael Dantzler, April 16, 2020		1-6 at 16
Declaration of Robert Hinton, April 16, 2020		1-6 at 19
Declaration of Joseph Weiss, April 16, 2020		1-6 at 22
Declaration of Joseph Skinner, April 15, 2020		1-6 at 25
Declaration of Saddam Abdullah, April 19, 2020		1-6 at 29
Declaration of James Bethea, April 17, 2020		1-6 at 33

**Exhibits to Plaintiffs-Petitioners' Reply Brief in Support of Motion for  
Temporary Restraining Order and Preliminary Injunction**

Description	Brief Exhibit Letter	ECF Number
Email from counsel for Plaintiffs to counsel for Defendants regarding discovery, May 1, 2020	Exhibit D	
Comparisons between the rate of infection within the PDP and the surrounding community, SCI Phoenix, and the Pennsylvania Department of Corrections overall	Exhibit E	
Supplemental Declaration of Robert L. Cohen, M.D, May 5, 2020	Exhibit F	
Declaration of Don Doyle, April 30, 2020	Exhibit G	
“Coronavirus (COVID-19) Need to Know,” Quarantine Intake Procedure, (D0103-D0105), April 14, 2020	Exhibit H	
Email from counsel for Plaintiffs to counsel for Defendants regarding investigation, April 14, 2020.	Exhibit I	
Timeline of PDP’s practices and policies	Exhibit J	
Chart comparing the declarations of PDP’s deputy wardens and current conditions in PDP facilities	Exhibit K	
Chart comparing the declarations of PDP’s medical supervisory staff and current conditions in PDP facilities	Exhibit L	
Declaration of Joseph Weiss, April 30, 2020	Exhibit M	
Declaration of Joseph Skinner, April 28, 2020	Exhibit N	
Declaration of James Bethea, April 29, 2020	Exhibit O	
Declaration of Thomas Remick, April 29, 2020	Exhibit P	
Declaration of Jermaine Matthews, April 30, 2020	Exhibit Q	

Declaration of Saddam Abdullah, May 1, 2020	Exhibit R	
Declaration of Yavette Benn, April 30, 2020	Exhibit S	
Declaration of Jay Diaz, April 30, 2020	Exhibit T	
Declaration of Nadiyah Walker, April 30, 2020	Exhibit U	
Declaration of Robert Hinton, April 30, 2020	Exhibit V	
Email from counsel for Plaintiffs to counsel for Defendants regarding discovery priorities, April 24, 2020	Exhibit W	

**Remick v. City of Phila. - Discovery**

1 message

**Novy, Nicolas** <Nicolas.Novy@dechert.com>

Fri, May 1, 2020 at 6:57 PM

To: "craig.straw@phila.gov" <craig.straw@phila.gov>, Anne Taylor <Anne.Taylor@phila.gov>  
Cc: "EXT drudovsky@krlawphila.com" <drudovsky@krlawphila.com>

Craig and Anne,

We are writing with respect to the City's initial document production on April 27, 2020. Unfortunately, the initial production was inadequate and we did not receive the supplemental production you promised us last evening. We agreed to informal discovery and to a submission of only priority documents to enable the parties to see if a settlement was possible. The most important discovery gaps which must be immediately addressed are outlined below:

- ***COVID Testing and Tracking:*** We received no COVID data or tracking information, including the number of tests administered at each facility, the results of these tests, or daily logs tracking suspected or confirmed COVID-cases.
- ***Quarantine and Isolation Units:*** We received no information on each facility's designated quarantine and isolation space, including capacity, physical size, and population.
- ***Information Provided to Incarcerated Persons:*** We received no information, memos, handouts, or otherwise, regarding information that PDP provided to incarcerated persons.
- ***Guidelines and Policies:*** We received several policies and guidelines with no effective date, no time stamp, and no indication to whom they were distributed.
- ***Dr. Herdman Recommendations:*** We were not provided any communications between Dr. Herdman and specific PDP facilities related to his recommendations. We also have not received any other data or information on which PDP relied in creating its COVID policies.
- ***Facility Information:*** We received no information on the physical dimensions of housing areas in each facility, the number of double-celled occupancy at each facility, the rated capacity of each of the dorm rooms and the spacing between the bunk beds, and the number of bunk beds where both beds are occupied, all of which is necessary to assess social distancing protocols. To the extent our request was not sufficiently detailed on these housing issues, please provide the additional information.
- ***Vulnerable Population:*** We received no information on the number of incarcerated persons that are medically vulnerable and where those individuals are located within PDP.

Beyond these gaps in production, the documents reference other documents that are necessary at this phase of the case:

1. Bates 12 refers to protocols on handwashing and robust cleaning. If not in the produced documents, please provide.
2. Provide any additional protocols or directives relating to social distancing.
3. There were references to quarantine areas in some of the facilities but not for the D.C. Please update.
4. Bates 95-96. As we read these documents, inmates who test positive can be released from isolation without additional testing. Please confirm if this is true, and also provide the number of inmates who have been placed in isolation and how many have been released without new testing.

5. Bates 103-107 refers to health care services only for “urgent” conditions. State who authorized this limitation on health care and provide all documents that define or explain “urgent.” Please also provide the effective date of these policies.

6. Bates 108-109 reference cleaning procedures and state that for each shift in each housing area requires an entry in a Sanitation Book in “RED” documenting that the required cleaning has been completed. Please clarify the date of creation of each of the documents and which facilities each policy refers to. For each housing area in each facility provide the Sanitation Books for the following days: April 16, 19, 22, 25, 29.

7. Aside from the Sanitation Books we did not see any references to internal audits or monitoring of other protocols. Please state whether there are any and provide samples.

8. You provided a few emails in Bates 114-118. Please provide all emails from March 1, 2020 to present.

9. For each redacted document please provide the basis for the redaction. For documents withheld in whole or in part because of the attorney-client privilege, the Federal Rules of Civil Procedure require a privilege log sufficient to allow us to test the privilege claimed.

10. Document D-0027 links to a Google drive link that is no longer accessible; please provide the document referenced in the link.

We trust that that City will remedy these discovery deficiencies as soon as possible. Please let us know when you will do so and provide any supplemental document productions. If the City is unable to complete its production of documents responsive to the above categories, please provide an explanation as to why this information is not being provided. If no explanation is provided, we will assume that we currently possess all of Defendants’ responsive documents that exist for the specific categories set out in our discovery requests.

Thank you in advance for your immediate attention to these issues.

-Nick

**Nicolas A. Novy**

Associate

**Dechert LLP**

Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
+1 215 994 2529 Direct  
+1 215 655 2222 Fax  
[nicolas.novy@dechert.com](mailto:nicolas.novy@dechert.com)

delete the e-mail and any attachments. Thank you.

### PDP Rate of Infection Compared with Surrounding Community

*Note: "Total cases" only includes incarcerated people, as PDP has only reported new positive cases in that population, excluding employees.*

#### 1. PDP v. Philadelphia

$$\text{PDP: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{192}{3,584} = .054 \text{ (as of 5/4/2020)}$$

$$\text{Philadelphia: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{15,527}{1,600,000} = .0097 \text{ (as of 5/2/2020)}$$

$$\frac{\text{PDP}}{\text{Philly}} = \frac{.054}{.0097} = 5.52 \text{ [The rate of infection in PDP is } \mathbf{5.52} \text{ times the rate in Philly.]}$$

#### 2. PDP v. Pennsylvania

$$\text{PDP: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{192}{3,584} = .054 \text{ (as of 5/4/2020)}$$

$$\text{PA: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{49,267}{12,800,000} = .0038 \text{ (as of 5/3/2020)}$$

$$\frac{\text{PDP}}{\text{PA}} = \frac{.054}{.0038} = 13.92 \text{ [The rate of infection in PDP is } \mathbf{13.92} \text{ times the rate in Pennsylvania.]}$$

### PDP Rate of Infection Compared with SCI Phoenix and DOC Overall

*Note: "Total cases" only includes incarcerated people, as PDP has only reported new positive cases in that population, excluding employees.*

#### 1. PDP v. SCI Phoenix (the SCI with the highest known rate of infection)

$$\text{PDP: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{192}{3,584} = .054 \text{ (as of 5/4/2020)}$$

$$\text{SCI Phoenix: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{\text{Pos inmates+deaths+recovered}}{\text{Total Population}} = \frac{29+3+20}{2,985} = \frac{52}{2,985} = .017 \text{ (as of 5/4/2020)}$$

$$\frac{\text{PDP}}{\text{SCI Phoenix}} = \frac{.054}{.017} = 3.08 \text{ [The rate of infection in PDP is } \mathbf{3.08} \text{ times the rate in SCI Phoenix.]}$$

#### 2. PDP v. SCI Huntingdon (SCI with a significant outbreak of COVID-19)

$$\text{PDP: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{192}{3,584} = .054 \text{ (as of 5/4/2020)}$$

$$\text{SCI Huntingdon: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{\text{Pos inmates+deaths+recovered}}{\text{Total Population}} = \frac{51+0+0}{1,981} = \frac{51}{1,981} = .026 \text{ (as of 5/4/2020)}$$

$$\frac{\text{PDP}}{\text{SCI Huntingdon}} = \frac{.054}{.026} = 2.08 \text{ [The rate of infection in PDP is } \mathbf{2.08} \text{ times the rate in SCI Huntingdon.]}$$

#### 3. PDP v. DOC Overall

$$\text{PDP: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{192}{3,584} = .054 \text{ (as of 5/4/2020)}$$

$$\text{DOC Overall: Rate of infection} = \frac{\text{Total cases}}{\text{Total Population}} = \frac{\text{Pos inmates+deaths+recovered}}{\text{Total Population}} = \frac{84+3+20}{43,186} = \frac{107}{43,186} = .0025 \text{ (as of 5/4/2020)}$$

$$\frac{\text{PDP}}{\text{DOC Overall}} = \frac{.054}{.0025} = 21.62 \text{ [The rate of infection in PDP is } \mathbf{21.62} \text{ times the rate in DOC Overall.]}$$

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

JAY DIAZ, NADIYAH WALKER,	:	
MICHAEL ALEJANDRO, MICAHEL	:	Civil Action No. 20-1959
DANTZLER, THOMAS REMICK, ROBERT	:	
HINTON, JOSEPH WEISS, JOSEPH	:	(Schiller, J.)
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.		:

**SUPPLEMENTAL DECLARATION OF ROBERT L. COHEN, M.D.**

ROBERT L. COHEN, M.D. declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration concerning my opinions and conclusions as an expert in correctional health was given on April 20, 2020 and was attached as Exhibit B to Plaintiffs' Complaint. Since that time, I have reviewed materials provided by the Defendants to Plaintiffs' counsel in discovery and materials filed with the Defendants' May 1, 2020, submission to the Court. I provide this supplemental declaration to offer opinions based on my review of these materials and also based on the national and local experience which has accumulated over the past several weeks related to COVID-19.

## **COVID-19 Testing**

2. It appears that PDP is only conducting limited testing for COVID-19 based upon evaluation of a small set of symptoms and self-reporting of recent contact with a person who has tested positive for COVID-19. This practice is not sufficient to protect the staff and residents of PDP from the spread of COVID-19.
3. All persons newly admitted to the PDP's jails should be tested for the presence of COVID-19. Persons performing the swab tests should have PPE training, including N-95 fit test, and be provided with a face screen, surgical mask over N-95 mask, gown, gloves, and booties. Gloves should be replaced between each test. All patients should still be quarantined for 14 days except those found positive, who should be isolated according to current procedures. I understand that the Philadelphia Police Department has announced that it is retracting the practice it put into place to reduce arrests due to the pandemic.<sup>1</sup> If this change in practice results in increased admissions to PDP facilities, it will be even more important to conduct comprehensive testing on newly admitted people.
4. For those individuals already admitted to PDP facilities who have tested positive for COVID-19 infection and are placed in isolation, the PDP employs a symptom-based strategy, as opposed to a test-based strategy, to end isolation for these individuals. The CDC has expressed a clear preference for test-based strategies as "Practical application of a symptom-based strategy cannot prevent all infection."<sup>2</sup> While a symptom-based

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<sup>1</sup> Ellie Rushing & Robert Moran, Philly police resume pre-coronavirus arrest procedures for some non-violent crimes, Philadelphia Inquirer (May 1, 2020), <https://www.inquirer.com/news/philly/coronavirus-philly-police-arrests-theft-burglary-covid-19-20200501.html>

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html> (last visited May 3, 2020).

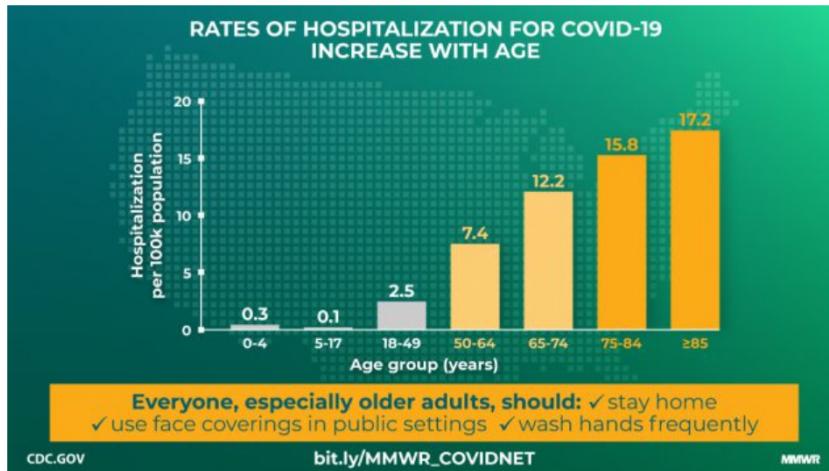
strategy for ending isolation may be appropriate for many recovered persons who are not incarcerated, a test-based strategy should be employed for those who may transmit infections to high-risk individuals, those who are immunocompromised, and *those who reside in congregate living facilities, including correctional/detention facilities.*<sup>3</sup> The PDP should not release incarcerated individuals from isolation without two negative COVID-19 tests for viral shedding.

5. Beyond testing at the time of intake and for people who have previously tested positive, testing should be expanded to include all persons in the PDP's facilities. This is of course a time-consuming process, but a schedule of testing should be established and presented. Medically vulnerable persons, including all persons over 50 should be prioritized, along with persons in quarantine status who have been exposed to someone with COVID-19.
6. The testing of all persons over 50 is essential due to the fact that vulnerability to hospitalization and death increases dramatically with age. CDC data from 12 states published on April 17, 2020 showed the rate of hospitalization for persons age 50-64 was three times the rate of those 18-49.<sup>4</sup>

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

<sup>4</sup> <https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm>



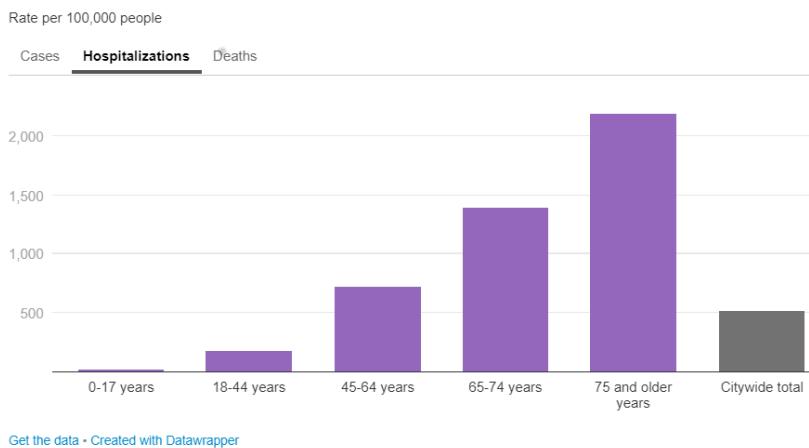
More striking is New York City Department of Health data published May 1, 2020, which shows that between March 3, 2020 and May 5, 2020, the rate of hospitalization for persons aged 45-64 was 726 per 100,000, four times the rate of hospitalization for those 18-44. Critically, the death rate for the population 45-64 was 150 per 100,000, nine times higher than the death rate of 16 per 100,000 for those under 45.<sup>5</sup> Based on New York City data, age greater than 50 is a substantial risk factor for hospitalization and death from COVID-19 infection:

AGE_GROUP	Cases	Hospitalizations	Deaths
0-17 years	239.56	17.14	0
18-44 years	1874.03	181.14	16.29
45-64 years	3070.06	725.52	149.7
65-74 years	3058.57	1411.92	486.76
75 and older years	3582.98	2228.8	1222.54
Citywide total	2044.63	516.54	163.41

Note (numbers are rates per 100,000)

<sup>5</sup> <https://www1.nyc.gov/site/doh/covid/covid-19-data.page> accessed 5/5/2020

## Rates by Age



7. A number of jails and prisons across the country have conducted testing of all incarcerated persons in their facilities, including in Arkansas, North Carolina, Ohio and Virginia,<sup>6</sup> and, locally, at the Montgomery County Correctional Facility.<sup>7</sup> These tests have shown that current estimates of COVID-19 prevalence and incidence are undercounted. Testing in Montgomery County showed that of the 948 incarcerated people tested, 177 (18%) tested positive, resulting in an infection rate 30 times greater than that identified before testing was begun. These high positivity rates are themselves

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<sup>6</sup> Linda So & Grant Smith, In four U.S. state prisons, nearly 3,300 inmates test positive for coronavirus -- 96% without symptoms, Reuters (April 25, 2020), <https://www.reuters.com/article/us-health-coronavirus-prisons-testing-in/in-four-u-s-state-prisons-nearly-3300-inmates-test-positive-for-coronavirus-96-without-symptoms-idUSKCN2270RX>.

<sup>7</sup> Jeremy Roebuck & Allison Steele, Montgomery County's jail tested every inmate for COVID-19 — and found 30 times more cases than previously known, The Philadelphia Inquirer (April 28, 2020), <https://www.inquirer.com/news/coronavirus-testing-montgomery-county-jail-asymptomatic-philadelphia-prisons-20200428.html>

undercounts, because, as recent reports have shown, the current COVID-19 nasopharyngeal testing may have significant number of false negative tests.<sup>8 9</sup>

8. Because of the fact that asymptomatic people transmit COVID-19 to others, it is difficult, if not impossible, for a jail to develop an effective plan to protect incarcerated people and staff members from the spread of COVID-19 without mass testing as there is no way to ensure proper quarantine and isolation practices. Mass testing will allow facilities to isolate individuals who are COVID-19 positive and asymptomatic until they are ready to be discharged or readmitted to the general population, and to quarantine people exposed to them. CDC guidance specifically recognizes the special case of jails, and recommends, with regard to discharging persons from COVID-19 isolation status, “more stringent” criteria for “people normally residing in congregate living facilities (e.g., correctional/detention facilities, retirement communities, ships) where there might be increased risk of rapid spread and morbidity or mortality if spread were to occur.”<sup>10</sup> The CDC in this instance recognizes that the likelihood of viral spread in a jail is extremely high, and the need for isolating infectious persons is critical. CDC states specifically in an FAQ answering the question of an incarcerated person “Do I have a greater chance of getting COVID-19?” by stating: “People in correctional and detention facilities are at greater risk for some illnesses, such as COVID-19, because of close living arrangements

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<sup>8</sup> <https://www.npr.org/sections/health-shots/2020/04/21/838794281/study-raises-questions-about-false-negatives-from-quick-covid-19-test>

<sup>9</sup> West CP, Montori VM, Sampathkumar P. COVID-19 testing: the threat of false-negative results [published online ahead of print April 9, 2020]. *Mayo Clin Proc.*, <https://doi.org/10.1016/j.mayocp.2020.04.004>

<sup>10</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html>

with other people.”<sup>11</sup> Given these obvious risks, testing of all persons in jail facilities is necessary to avert preventable morbidity and mortality.

9. For the testing that it has conducted, PDP has not provided sufficient information to the public. For instance, the PDP has not explained the breakdown of positive tests by facility. Further, the PDP has continued to decline any public reporting on positive tests among correctional staff and jail health workers—a practice inconsistent with many jail facilities around the country.<sup>12</sup> Without reports on this important data, it is not possible to assess whether the spread of COVID-19 infection has been effectively addressed.

### **Social Distancing**

10. I have reviewed documents provided by the defendants describing “head-to-toe” sleeping arrangements in dormitory facilities. Although these practices are referenced in CDC Guidance materials, they are deeply problematic. Such sleeping arrangements do not provide the physical distancing required to prevent respiratory transmission of coronavirus. Training models mention head-to-toe positioning to maximize separation between patients’ heads, but this recommendation is made when physical distancing of six feet is “not possible.” Such practices condemn incarcerated persons to high risk of exposure by allowing facilities to ignore the critical element of physical distancing in the prevention of COVID-19 infection. I know of no scientific study which has shown that these arrangements prevent respiratory transfer, and indeed, common sense predicts the opposite give movement during sleep and at the time of waking. These recommendations, in line with the general tone of the CDC guidance, assume that the

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<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/faq.html>

<sup>12</sup> The Federal Bureau of Prisons reports all staff infections on its website. *See* <https://www.bop.gov/coronavirus/>. The Pennsylvania Department of Corrections does the same. *See* <https://www.cor.pa.gov/Pages/COVID-19.aspx>

actual conditions within jails will not allow adequate physical distancing, including separation of beds, and suggests unproven alternatives. Head to toe sleeping is “better than nothing,” but that cannot be the standard when we know that physical distancing does prevent contagion with this virus. PDP should eliminate the need for head-to-toe sleeping in all cases.

11. It is my understanding based on review of PDP’s materials that PDP is continuing to house incarcerated people in double cells. As I have explained before, it is not possible to engage in mandatory social distancing in such housing arrangements. This is of special concern in situations, explained in some of the declarations I have reviewed, where a single person has had numerous cellmates rotated in and out of the cell. Such practices are counterproductive to social distancing efforts.

### **Implementation of PDP’s Stated Policies**

12. Based upon the declarations of incarcerated persons at PDP, I have great concern that Corizon medical staff are not responding to complaints which are consistent with symptoms of COVID-19 illness because they have declared that “only urgent services should be conducted” at the provider’s discretion. During this pandemic, all complaints of fever, fatigue, sore throat, rash, loss of taste/smell, cough, shortness of breath must be discussed urgently with a health professional and vital signs and appropriate physical examination, including pulse oximetry, must be obtained. Hospitals are routinely reporting serious infection without the presence of fever, and severe pneumonia with respiratory failure without complaints of shortness of breath.<sup>13 14</sup> Further, given the

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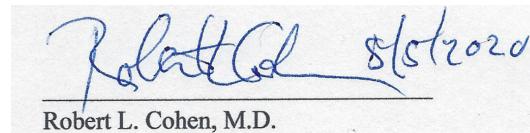
<sup>13</sup> [https://jamanetwork.com/journals/jama/fullarticle/2765184?guestAccessKey=906e474e-0b94-4e0e-8eaa-606ddf0224f5&utm\\_source=For\\_The\\_Media&utm\\_medium=referral&utm\\_campaign=ftm\\_links&utm\\_content=tfl&utm\\_term=042220](https://jamanetwork.com/journals/jama/fullarticle/2765184?guestAccessKey=906e474e-0b94-4e0e-8eaa-606ddf0224f5&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfl&utm_term=042220);

responsibility of jail medical professionals to provide adequate health care to all incarcerated people, there is significant risk that limiting access to medical care will result in negative health (including mental health) outcomes for the incarcerated population.

13. I understand that PDP has stated that it has made comprehensive efforts to address the spread of COVID-19 through ensuring that incarcerated people have access to, among other things, soap, cleaning supplies, and cloth masks. I have, however, observed from the declarations provided by people incarcerated in PDP that there are very serious gaps in the implementation of these practices. Such uneven application of COVID-19 prevention measures prevents a serious problem as any prevention program can only be successful if its proper implementation is ensured.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of May, 2020 in New York, New York.



The image shows a handwritten signature in blue ink, which appears to read "Robert L. Cohen" followed by the date "5/5/2020". Below the signature, the name "Robert L. Cohen, M.D." is printed in a smaller, black, sans-serif font.

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<sup>14</sup>[https://www.google.com/search?q=hypoxia+covid&rlz=1C1CHBF\\_enUS867US867&oq=hypoxia+covid&aqs=chrome..69i57j69i60.5894j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=hypoxia+covid&rlz=1C1CHBF_enUS867US867&oq=hypoxia+covid&aqs=chrome..69i57j69i60.5894j0j7&sourceid=chrome&ie=UTF-8)

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		:
:		

**DECLARATION OF DON DOYLE OF APRIL 30, 2020**

DON DOYLE hereby declares that the following is true and correct to the best of his knowledge and belief:

1. I am fifty-seven years old and have been incarcerated at the Curran-Fromhold Correctional Facility (“CFCF”) for approximately six months.
2. I am being held as a pretrial detainee because I cannot afford to pay my bail.
3. I am currently housed on Unit B-1-1, along with approximately 57 other men. Most of the men on my unit are in cells with one other person. I had a cellmate until a few days ago, when my cellmate was released. There are a couple empty cells on the unit.
4. Staff are telling people with cellmates to sleep on their bunk beds in the opposite direction of their cellmates.
5. I have had no soap since April 28, 2020.

6. I have no money on my books, so I cannot purchase soap from commissary.
7. I asked CO's for soap and they told me that only people who have no money on their books can get free soap. They told me I had to ask a sergeant or a lieutenant for soap and that the sergeant or lieutenant would then check to see whether I had money on my books. I asked a sergeant or lieutenant for soap and he told me he would check my books, but I never heard back from him. I still have no soap.
8. There is a sink in the dayroom, but there is no soap at that sink.
9. We generally get out of our cells once a day, for 15-30 minutes. Fifteen people are released from their cells at a time.
10. There are 7 phones, all right next to each other, and we are permitted to use all of them at the same time. The phones are so close that you have to stand sideways to avoid touching the person using the phone next to you.
11. Inmates wipe the phones down with bleach between each group being released from their cells but not between each use.
12. The showers are not bleached or disinfected between uses.
13. I was given a mask approximately 3 weeks ago, and I received a second mask on or around April 23, 2020.
14. We were told to wear our masks when we are out of our cells, but once we are out, staff do not enforce mask-wearing. Men sit on chairs right next to each other without masks on, playing cards or watching television.
15. Staff are generally wearing masks or bandanas on their faces.
16. On Wednesdays and Saturdays, we are given a spray bottle and a mop to clean our cells with. We all use the same mop, with the same handle, and we do not have gloves.

17. Staff come to do temperature checks once a week, but they do not check everyone's temperature. The last time they checked temperatures was April 26, 2020, but they only checked people on the bottom tier. The last time my temperature was taken was about a month ago.

I, Matthew A. Feldman, certify that Don Doyle relayed the above information to me over the phone on April 30, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Doyle is incarcerated, the finished declaration has not been reviewed with Mr. Doyle.

/s/ Matthew A. Feldman

Matthew A. Feldman (PA 326273)  
PENNSYLVANIA INSTITUTIONAL  
LAW PROJECT  
718 Arch St., Suite 304S  
Philadelphia, PA 19106  
T: 215-925-2966  
mfeldman@pailp.org

Dated: April 30, 2020

## **CORONAVIRUS (COVID-19) NEED to KNOW**

### **Quarantine Intake Process:**

- All inmates entering the facility will be screened for COVID-19
  - Security will ask at the front door prior to accepting into the facility
  - Medical will ask at the time of the intake screening
- All intake staff members should be wearing appropriate PPE (mask, eye protection, outwear protection, gloves) during these encounters
  - You will be given one mask to keep on your person
  - You may wear until visibly soiled
  - CDC recommends placing mask in warm, dry, location when not worn
  - Be sure to keep your mask on person at all times within the facility
    - Supply is limited and will be tightly managed
- If an inmate comes through medical intake and is an emergency referral, then admitted to PHSW, the inmate will quarantined there for 14 days
  - The inmate and staff must wear appropriate PPE during transport (eg. mask for inmate and mask and gloves for staff)
  - Each day of quarantine, the inmate will have daily symptom and temperature check rounds
- If the inmate answers yes to a combination of questions on the screening tool, please follow the directions noted. Speak to the provider for direction if inmate reports exposure, respiratory symptoms and fever 100.0 or greater, then
  - Call the Regional Infection Control Coordinator
  - If off hours, call your site Administrator
  - The provider will reach out to the CFCF SMD in order to discuss case and determine disposition for the inmate
- If the inmate states that they have had previous exposure, please get the following information:
  - Name of person exposed to
  - Address of inmate
  - Case number, if known
  - Date of known exposure
    - The above information has been updated as mandatory fields on the screening smart form
    - This is the information that will be shared with the Philadelphia Department of Public Health (PDPH)
- All inmates, who do not screen positive at intake will then be placed on B building *quarantine* if at CFCF and D Building at RCF
  - Inmates will remain here for 14 days in order to monitor for symptoms

- Only essential services will be conducted eg. Medications, emergency services, withdrawal assessments, twice daily symptom and temperature checks
- Essential services should be done cell side and in the unit management/dispensary areas if necessary
- Inmates in quarantine must not be escorted down to medical unless absolutely necessary, and must don a surgical mask upon transport
- Each day of quarantine, the inmate will have twice daily symptom and temperature check rounds
  - The symptom info (respiratory symptoms and fever 100.0 or above) noted during rounds should be documented on the segregation flow sheet
  - Documenting “COVID-19 assessment-no concerns noted” in the notes section should occur
  - You will need to document each individual temperature on the flowsheet
  - While conducting the assessment, appropriate PPE should be donned eg. Mask, eye protection, outerwear protection and gloves

#### **Isolation: Designated area at each facility**

- If an inmate is suspected of having COVID-19 after assessment by a provider and discussion with the CFCF SMD, clear direction on what to do will be given
  - All male inmates who fall into this category will be placed on *isolation* at their respective facilities until deemed cleared and all appropriate PPE must be donned eg. Respirator (surgical mask if none available), eye protection, outwear protection, and gloves
  - There are specific Nasopharyngeal test kits that will be used to test for the virus and sent to the lab
  - More frequent rounds will be conducted noting any respiratory symptoms and temperature result. This information should be documented on the segregation flow sheet. The SMD of the facility will determine
    - Appropriate NET should be used when applicable
  - *Isolation* Discharge criteria:
    - For those who have COVID **positive** results, being in quarantine for 14 days since the first onset of symptoms, no fever for 3 days, and have improving respiratory symptoms
    - For those who have COVID **negative** results, being in quarantine for 7 days since first onset of symptoms, no fever for 3 days and have improving respiratory symptoms
- Once the inmate is released from isolation, he/she will then be transitioned into general population where social distancing will still be enforced

**General Population:**

- If a general population inmate presents with COVID-19 like symptoms
  - Complete the COVID-19 screening tool, inform the provider on call and follow the directions on the bottom of the smart form
- At discharge, those inmates who are entering into a community program or are a payoff should also be screened for symptoms prior to release
  - The screening questions have been added as mandatory fields to the structured data section on the final plan of the discharge summary
- If there is a trending suspicion of COVID on any one block or dorm, a decision may be made to place that area on quarantine. If so, the above intake quarantine procedures will be put in place
- Only urgent services should be conducted. Providers have the discretion what needs to be completed. If an appointment can be deferred at this time, it should be. Documentation must be noted in the health record under disposition
- Areas and surface cleaning should occur at least three times per shift

**COVID 19 Containment:**

- **SOCIAL DISTANCING** at all times in quarantine and general population is expected
  - No groups greater than 10
  - Keep at least 6 feet apart from any individual unless providing inmate care
  - No hugging, shaking hands, sharing personal items
- **HAND HYGIENE** is essential
  - Washing hands for at least 20 seconds or using an alcohol based hand sanitizer is expected
- **Health Alert** document should be given to all those who are being discharged that are under quarantine or COVID +
  - Those under quarantine or COVID + will not remain in custody if they are to be released from the jail
  - The RICC will inform the Philadelphia Department of Public Health



Susan Lin &lt;slin@krlawphila.com&gt;

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**(no subject)****David Rudovsky** <drudovsky@krlawphila.com>

Tue, Apr 14, 2020 at 9:12 PM

To: "Craig.Straw@phila.gov" &lt;craig.straw@phila.gov&gt;, craig.verato@prisons.phila.gov, Susan Lin &lt;slin@krlawphila.com&gt;, Jon Feinberg &lt;jfeinberg@krlawphila.com&gt;

Dear Craig and Greg,

For the past two weeks, we, along with our colleagues at the ACLU of Pennsylvania and the Institutional Law Project have been investigating complaints about conditions in the Philadelphia Department of Prisons in relation to the spread of COVID-19. As part of those efforts, we have attempted to schedule legal phone calls with a number of prisoners. These attempts, however, have been frustrated by a mixture of unresponsiveness and advisories that it is not possible for prison staff to arrange confidential attorney-client calls. We write to request your assistance in ensuring that people incarcerated in the City's prisons are provided with appropriate access to counsel.

Over the past several days attorneys from each of our organizations have sent prison administrative staff multiple emails in attempts to schedule phone calls. We have been told that the calls will not be confidential in that social workers will be monitoring the calls and will be able to hear either one or both sides of the conversation. Out of the approximately 15 calls that we have requested so far, none has been scheduled.

While we understand that the prisons are technically "open" for legal visits, it is unreasonable to expect that attorney-client communications take place in person when doing so would violate CDC guidance and state and local stay-at-home orders. Additionally, while we understand that the administration requires some notice in order to set up phone calls, our first attempts to schedule calls were made last week and we still have not had confidential calls with the individuals requested.

The recent death of a female prisoner from RCF has increased the urgency of our efforts. Additionally, the fact that only 88 inmates have been tested and over 60 of those tested have been positive indicates that the number of inmates with the virus is likely far greater than have tested positive.

Accordingly, we ask that you assist us in scheduling phone calls within the next 24 hours. Should you indicate your ability to assist on this issue, we will provide you with a list of individuals, their PP numbers, and their institutions.

Thank you for your assistance.

David, Jon and Susan

**Exhibit J: Timeline of PDP's Practices and Policies**

Bates/Exhibit #	Date	From	Content
D0101-D0102	1/30/2020	Unclear	Coronavirus screening document.
D0008-D0009	3/3/2020	(PDP) Jennifer Brennan on behalf of Health Department	Guidelines on reducing the transmission of COVID-19 for staff.
	3/6/2020	Governor declares the existence of a disaster emergency.	
D0010-D0012	3/9/2020	(PDP) Jennifer Brennan on behalf of Shawn Hayes (Spokesperson for PDP)	Poster on handwashing best practices.
D0013-D0017	3/11/2020	(PDP) Jennifer Brennan on behalf of Commissioner Carney	Policy Statement for all Philadelphia workers exhibiting symptoms of COVID-19.
D0018	3/12/2020	(PDP) Jennifer Brennan on behalf of Commissioner Carney	Note to staff members that PDP leadership is monitoring the situation and have instituted protocols at PDP facilities.
D0019-D0021	3/16/2020	(PDP) Devin Jackson	Request to PDP staff members to update their personal and emergency contact information.
D0022-D0026	3/18/2020	(PDP) Jennifer Brennan on behalf of Mayor's Chief of Staff	New policy statement from the Philadelphia Chief of Staff that relates to COVID-19 guidelines for all Philadelphia workers.
D0027	3/19/2020	(PDP) Devin Jackson	Link to a Google Drive document titled "Coronavirus PSA" (inaccessible).
D0028	3/19/2020	(PDP) Jennifer Brennan on behalf of Deputy Commissioner Clark	Email informing staff that all roll calls will be conducted in facility gymnasiums to allow for social distancing.
	3/23/2020	Governor orders Philadelphia, among other counties, to stay at home.	
D0029	3/24/2020	(PDP) Jennifer Brennan on behalf of Deputy Commissioner Beaufort	Email informing staff that the Cannery workout facility is closed until further notice.
	3/26/2020	First confirmed PDP inmate case of COVID-19.	
D0030-D0056	3/26/2020	(PDP) Jennifer Brennan on behalf of Deputy Commissioner Beaufort	Information and tips for PDP staff on how to manage stress and anxiety during the COVID-19 crisis.
D0057	3/27/2020	(PDP) Jennifer Brennan on behalf of Commissioner Carney	Announcement that as a result of one PDP staff member testing positive, that tracing had begun in accordance with CDC guidelines for both staff and inmates and that staff or inmates that were within 6 feet of the positive staff member for more than 10 minutes will self-quarantine for 14 days.
D0058-D0060	4/1/2020	(PDP) Jennifer Brennan on behalf of Commissioner Carney	Announcement that all PDP events had been canceled.
	4/1/2020	Governor enacts the stay-at-home order statewide.	
D0061-D0064	4/2/2020	(PDP) Jennifer Brennan on behalf of Deputy Commissioner Beaufort	Poster on the Families First Coronavirus Response Act.
D0065-D0067	4/3/2020	(PDP) Chacko Abraham on behalf of Human Resources	Email providing HR and Safety department contact numbers for staff members with questions on COVID-19 guidelines.
D0114-D0115	4/3/2020	(Corizon) Lalitha Trivikram	Email outlining outstanding recommendations made by doctors Feemster, Alles, and Lewis after they had toured the PICC facility. The remaining recommendations included, among other things, that all inmates and staff inside of facilities wear PPE and recommendations for sanitation protocols when oral thermometers are used.

**Exhibit J: Timeline of PDP's Practices and Policies**

Bates/Exhibit #	Date	From	Content
D0068	4/7/2020	(PDP) Jennifer Brennan on behalf of Deputy Commissioner Beaufort	Email informing staff members that they cannot wear masks that have been altered with drawings or other colors other than white, blue, teal green, or yellow. N95 masks are only permissible in those colors.
D0069-D0075	4/8/2020	(PDP) Jennifer Brennan on behalf of Human Resources	Respiratory protection guidance for employees.
D0001-D0007	4/9/2020	PDP	Draft COVID Protocols which include guidelines on social distancing practices, intake guidelines, quarantining and isolation guidelines for inmates and PPE guidelines for staff and inmates.
D0076-D0079	4/9/2020	(PDP) Jennifer Brennan on behalf of Commissioner Carney	Executive order regarding the issuance of N95 masks to staff members assigned to areas with potential exposure.
D0103-D0105	4/14/2020	PDP	Guidelines for the quarantine intake process for inmates, isolation procedures, and policies and procedures for the general inmate population and COVID-19 containment.
	4/14/2020	Plaintiffs' counsel emails Crag Straw regarding investigating complaints from PDP-incarcerated people about COVID-19-related conditions.	
	4/14/2020	First PDP inmate dies from COVID-19	
D0080-D0081	4/15/2020	(PDP) Jennifer Brennan on behalf of Commissioner Carney	Email from Jennifer Brennan on behalf of Commissioner Carney to staff members regarding the first confirmed inmate death from COVID-19 and instructing staff members to practice universal caution by wearing PPE, washing hands frequently and not touching their faces.
Remick - 22-25 Ex. 18	4/15/2020	PDP	Log from unnamed facility recording activities related to COVID-19 including laundry service.
D0082-D0094	4/17/2020	(PDP) Jennifer Brennan on behalf of Human Resources	HR update on emergency sick leave under the Families First Coronavirus Response Act.
D0108	4/17/2020	PDP	Protocols for sanitizing the detention center inmate housing. The guidelines require all inmate housing areas, cells on the block and all dormitories to undergo cleaning twice daily.
Remick - 22-19 Ex. 12	4/17/2020	PDP	Detention Center Chronology for April 17-18, 2020 which includes the dissemination of memo information regarding COVID-19. Unclear if this was read to staff only.
Remick - 22-15 Ex. 8	4/18/2020	PDP	Log from unnamed facility showing the staggered release of inmates from cells for unnamed activities and tracking when areas/items are sanitized.
Remick - 22-17 Ex. 10	4/20/2020	PDP	Log from unnamed facility showing the staggered release of inmates from cells for unnamed activities and tracking when areas/items are sanitized.
	4/20/2020	Governor extends stay-at-home order until May 8.	
	4/20/2020	Remick lawsuit filed.	

**Exhibit J: Timeline of PDP's Practices and Policies**

Bates/Exhibit #	Date	From	Content
Remick - 22-18 Ex. 11	4/21/2020		Log from PHSW showing the staggered release of inmates from cells for unnamed activities and tracking when areas/items are sanitized.
Remick - 22-27 Ex. 20	4/23/2020	(PDP) Major McCants	Undated Memo from Major McCants informing PDP staff to announce to inmates that they should sleep head opposite of cell mates and that the announcement should be documented in the Center Log & Chronological Report.
D0116-D0118	4/24/2020	(City) Dr. Kristen Feemster	<p>Draft COVID Protocols which include guidelines on social distancing practices, intake guidelines, quarantining and isolation guidelines for inmates and PPE guidelines for staff and inmates.</p> <ul style="list-style-type: none"> <li>● Promoting hand hygiene for inmates</li> <li>..</li> <li>● Limiting one inmate per bunkbed in dorms</li> <li>● Continuing to encourage frequent distancing and handwashing in dorm settings</li> <li>● Exploring options to increase ventilation in units</li> <li>● Faster case identification through the adoption of the point of care testing platform</li> </ul>
Remick - 22-23 Ex. 16	4/24/2020	PDP	Log from unnamed facility recording the social distancing of inmates and tracking when areas/items are sanitized.
Remick - 22-13 Ex. 6	4/26/2020	PDP	Quarantine intake log from unnamed facility.
Remick - 22-12 Ex. 5	4/27/2020	PDP	Hand written log with redactions from unnamed facility tracking what sanitization items are provided to inmates and when and cell phone usage and when phones wiped down.
Remick - 22-24 Ex. 17	4/27/2020	PDP	PICC Daily Chronology
Remick - 22-24 Ex. 17	4/27/2020	PDP	PICC Daily Chronology
			Log from unnamed facility recording the social distancing of inmates and tracking when areas/items are sanitized.
Remick - 22-20 Ex. 13	4/28/2020	PDP	Employee warning record for a employee that failed to hand out cleaning supplies during roll call on April 12, 2020 to E-dorm during the 0700-1500 shift.
D0110-D0113	4/29/2020	PDP	Inmate population charts.
Remick - 22-22 Ex. 15	4/29/2020	PDP	Log from unnamed facility recording the social distancing of inmates and tracking when areas/items are sanitized.
D0095-D0098	Undated	Unclear	COVID-19 quarantine and isolation protocols.
D0099-D0100	Undated	CDC	CDC guidelines for donning PPE.
D0106-D0107	Undated	Unclear	Testing technique, storage and transport directions for COVID-19.
Remick - 22-08 Ex. 1	Undated	PDP	Housing Availability Matrix for FCF, including capacity cells by unit.

**Exhibit J: Timeline of PDP's Practices and Policies**

Bates/Exhibit #	Date	From	Content
Remick - 22-10 Ex. 3	Undated	PDP	Image of Thermo-Monitoring Station
Remick - 22-11 Ex. 4	Undated	PDP	Undated Memo from Deputy Warden Vetter informing PDP staff to announce to inmates that they should sleep head opposite of cell mates and that their masks will be laundered no less than twice a week.
Remick - 22-14 Ex. 7	Undated	PDP	Images of posted signs regarding COVID-19 throughout the Detention Center.
Remick - 22-21 Ex. 14	Undated	PDP	Images of posted signs regarding COVID-19 throughout PICC.
Remick - 22-26 Ex. 19	Undated	PDP	Images of posted signs regarding COVID-19 throughout unnamed facility.
Remick - 22-33 Ex. 26	Undated	PDP	COVID-19 staff screening questionnaire.
Remick - 22-34 Ex. 27	Undated	PDP	Attachment to inmate questionnaire containing COVID-19 questions.
Remick - 22-35 Ex. 28	Undated	PDP	A COVID-19 screening questionnaire.
Remick - 22-39 Ex. 32	Undated	(City) Department of Health	Department of Public Health Form of Order to Compel Isolation for COVID patients.
Remick - 22-40 Ex. 33	Undated	(City) Department of Health	Department of Public Health Home Care Instructions for COVID-19.

**Declaration of Curran Fromhold Correctional Facility  
Deputy Warden of Operations William Vetter**

<b>Factual Assertion</b>	<b>Response</b>
All inmates at are currently housed in single or double cells. (Vetter Decl. ¶ 11).	<p>On B-Unit, most of the men are double-celled. (Doyle Decl. ¶ 3, Apr. 30, 2020).</p> <p>After 17 days in quarantine, I was moved into a room with 3 other men. After 4 or 5 days there, I was moved to a cell with a cellmate. (Weiss Decl. ¶ 5, Apr. 30, 2020).</p> <p>Most people on my block are double-celled (Skinner Decl. ¶ 6, Apr. 16, 2020).</p> <p>I have had 5 new cellmates since this outbreak started. (Skinner Decl. ¶ 8, Apr. 28, 2020).</p>
In March, markings were placed on the floor 6 feet apart throughout the facility in an effort to enforce social distancing. (Vetter Decl. ¶ 17).	There is no way to maintain a distance of 6 feet apart from your cellmate at all times. (Skinner Decl. ¶ 7, Apr. 16, 2020).
A “minimum of three cells” are allowed out at a time in order to practice social distancing. Inmates are able to shower, make phone calls, and clean their cells when out. This continues until all cells on the unit have been let out. (Vetter Decl. ¶ 20).	<p>15 people are released from their cells at a time. (Doyle Decl. ¶ 9, Apr. 30, 2020).</p> <p>We have been in lockdown for the past month. We were told that we would be let out twice a day for 15 minutes at a time, this has rarely happened because of staffing shortages. (Skinner Decl. Decl. ¶ 8).</p> <p>Staff let more than 3 cells out at a time on multiple occasions. (Respondents’ Exs. 5-6, CFCF Logs).</p>
Inmates are able to clean their cells. (Vetter Decl. ¶ 20).	<p>On Wednesday and Saturdays, we are given a spray bottle and a mop to clean our cells with. We all use the same mop, with the same handle and do not have gloves. (Doyle Decl. ¶ 16, Apr. 30, 2020).</p> <p>Every couple days, the guards pass out spray bottles so we can clean our cells. (Hinton Decl. ¶ 6, Apr. 30, 2020).</p>

	<p>We have not received any supplies to clean our cell. (Weiss Decl. ¶ 6, Apr. 30, 2020).</p> <p>I am still not able to clean my cell. Last time I cleaned my cell was in March. (Skinner Decl. ¶ 5, Apr. 28, 2020)</p> <p>Sanitation/recreation log indicates that during the 3 to 11 shift on April 27, 2020, neither the phones, showers or common areas were cleaned, nor were inmates provided with cleaning materials. (Respondents' Ex. 5, CFCF Log).</p>
Officers keep paper logs to document cleaning of the housing units, as well as inmate out of cell rotations. (Vetter Decl. ¶ 21 citing Respondents' Ex. 5, General Population Log for Apr. 27, 2020 and Ex. 6, Intake/Quarantine Log for Apr. 26, 2020).	The only logs provided for 3 days, April 26, 27, and 28th for 2 units of CFCF. These logs indicate regular cleaning did not occur on April 27, 2020. (Respondents' Ex. 5, CFCF Log).
Inmate workers on each block are given bleach solution and rags and consistently sanitize hard surfaces in the area (tables, door handles, phones, etc). Cleaning is completed no less than 3 times during a shift. (Vetter Decl. ¶ 22)	<p>Common areas are cleaned once a day. (Hinton Decl. ¶ 5, Apr. 30, 2020).</p> <p>Block workers clean the block 2 to 4 times per day. (Skinner Decl. ¶ 11, Apr. 16, 2020).</p>
Showers and phones are cleaned after each use and logged. (Vetter Decl. ¶ 23)	<p>Phones and showers are not bleached or disinfected between uses. (Doyle Decl. ¶¶ 11-12, Apr. 30, 2020).</p> <p>Phones are cleaned once a day, not between uses. (Hinton Decl. ¶ 5, Apr. 30, 2020).</p> <p>Showers are not cleaned with disinfectant. (Hinton Decl. ¶ 6, Apr. 16, 2020)</p> <p>8 showers are shared by 70 people. The showers are cleaned once per week, not after each use. (Skinner Decl. ¶ 17, Apr. 28, 2020)</p> <p>Logs confirm that showers and phones are not routinely cleaned after use. (Respondents' Exs. 5-6).</p>

To maintain social distancing, only the first and last phones are used. (Vetter Decl. ¶ 24).	There are 7 phones right next to each other, we are permitted to use all of them at the same time. We have to stand sideways to avoid touching the person using the phone next to us. (Doyle Decl. ¶ 10, Apr. 30, 2020).  Everyone uses the phones at the same time, standing right next to each other. (Hinton Decl. ¶ 4, Apr. 30, 2020).  Sometimes all 6 phones are in use and that means 6 people are standing right next to each other. (Weiss Decl. ¶ 8, Apr. 30, 2020).
Officers also reinforce these messages [about hygiene and social distancing] to inmates during their shifts. (Vetter Decl. ¶ 29).	No one talked to me about maintaining distance from other people. (Weiss Decl. ¶ 5, Apr. 30, 2020).  Logs do not indicate that officers reinforce these messages during their shifts. (Respondents' Exs. 5-6, CFCF Logs).
Inmates are only permitted to leave their cell if wearing masks. (Vetter Decl. ¶ 37).	We are told to wear masks out of our cells, but staff do not enforce this. When out of their cells, men play cards and watch television without masks. (Doyle Decl. ¶ 14, Apr. 30, 2020).
Inmates must put their masks in their mesh laundry bags to be washed. Laundry is collected twice a week from inmates, and is done at high heat with bleach to disinfect laundered materials. (Vetter Decl. ¶ 39).	I have not received clean laundry since March. I have to clean my own clothes and bedsheets by hand. (Skinner Decl. ¶ 4, Apr. 28, 2020).
CFCF has a large supply of antibacterial bar soap that is issued to inmates free of charge when requested. (Vetter Decl. ¶ 40).	I have not had soap since April 28, 2020 and I do not have money to purchase soap from the commissary. When I asked a guard for soap, they told me to ask a sergeant or a lieutenant so they could "check my books." (Doyle Decl. ¶ 5, Apr. 30, 2020).  I receive one small bar of soap per week, it does not last a week. (Hinton Decl. ¶ 7, Apr. 30, 2020).

	<p>To get soap to wash my hands and body, I have to purchase it from commissary. (Skinner Decl. ¶ 15, Apr. 16, 2020).</p> <p>Last week, my cellmate got a free bar of soap, before that he could not get free soap. (Skinner Decl. ¶ 2, Apr. 28, 2020).</p>
Members of the medical staff round on the units daily, as medical services are being provided at cell-side. This provides the inmates an opportunity to be seen routinely by medical providers. (Vetter Decl. ¶ 41)	<p>I put in three sick calls about severe pain in my abdomen. I did not get a response. I also reported it to the nurse who passes out medications daily, no one followed up. (Hinton Decl. ¶¶ 8-9, Apr. 30, 2020)</p> <p>I put in medical slips asking for a new nebulizer, despite being told I would receive one. I have not received a new nebulizer and the current one is almost empty. (Skinner Decl. ¶ 7, Apr. 28, 2020).</p>
The medical professionals decide the process by which quarantine is implemented. Medical staff identify which individuals and/or units are placed in quarantine and when those individuals and/or units are taken off of quarantine. (Vetter Decl. ¶ 44)	<p>Staff check temperatures once a week, and do not check everyone on the unit. The last time I had my temperature checked was a month ago. (Doyle Decl. ¶ 17, Apr. 30, 2020).</p> <p>I was not seen by a doctor or medically evaluated before being released from quarantine. (Hinton Decl. ¶ 2, Apr. 30, 2020)</p>
CFCF has a capacity of 2976. The current population is 1787. (Vetter Decl. ¶ 5-6). B-1 is the intake area for newly admitted inmates. Each unit within B-1 is able to hold 108 inmates. CFCF has 32 housing units - each of which has 32 cells and 3 multi-purpose rooms. (Vetter Decl. ¶ 9-11)	The exhibits to Respondents' brief do not demonstrate how inmates are housed within each unit. People appear more closely housed in C and D pod - where between 50 and 80 people are listed as being in each pod. ( <i>See</i> Respondents' Ex. 23).

**Declaration of Detention Center Deputy Warden of Operations and Acting Warden Pierre Lacombe**

Factual Assertion	Response
On A, B, and C block, one cell of two inmates is allowed out at a time to shower and make phone calls. This is done to allow for social distancing. Inmates sign a logbook to document this. (Lacombe Decl. ¶ 13 citing Respondents' Ex. 8, A-Block Logbook).	People were not allowed out of their cell at all on April 19, 20, and 21, 2020. (Respondents' Ex. 8).  3 to 4 inmates were allowed out at the same time. (Respondents' Ex. 8)
Inmates are routinely provided disinfectant to clean their cells. (Lacombe Decl. ¶ 16)	No one has cleaned his cell since he has been there. No access to cleaning products. (Dantzler Decl. ¶ 6, Apr. 16, 2020)
In the dormitories, dayrooms and annexes, disinfectant spray bottles are given to each section at the beginning of each shift to disinfect the section, including showers, phones, bathroom toilet, and sinks. This is documented in the Sanitation Book. (Lacombe Decl. ¶ 17 citing Respondents' Ex. 9, DC General Inspection Cleaning Protocol, Apr. 17, 2020; Ex. 10, Sanitation Book Sample)	Showers and toilets are only cleaned once in the morning. Phones are not cleaned between each usage. (Alejandro Decl. ¶¶ 9, 10, Apr. 15, 2020)  My dorm is cleaned once in the morning. Phones are cleaned one or two times per day. No access to cleaning supplies because he is not a block worker. (Remick Decl. ¶ 7, Apr. 29, 2020).  DC cleaning protocol implemented 4/17 -- after we asked to talk to 30 plus people. (Respondents' Ex. 9)  Logs reveal that inmate showers, toilets, and phones were not cleaned on April 12, 13, and 14, 2020. (Respondents' Ex. 10).
On the blocks and first and second floors of the Health Services Wing, at the beginning of each shift, spray bottles are given to each cell to be disinfected. Ten cells at a time are provided with spray bottles and each cell has approximately 30 minutes to clean their cells. This is documented in the Sanitation Book. (Lacombe Decl. ¶ 18 citing Ex. 9, DC General Inspection Cleaning Protocol, Apr. 17, 2020; Ex. 11, PHSW Cleaning Log Sample).	No one has cleaned his cell since he has been there. No access to cleaning products. (Dantzler Decl. ¶ 6, Apr. 16, 2020).  Nothing documented regarding provision of cleaning products to inmates on April 22, 2020. (Respondents' Ex. 11).

<p>Social distancing within DC has been considerably assisted by the decrease in population. (Lacombe Decl. ¶ 21).</p>	<p>Even at only half of capacity, the beds in Q-dorm are still within three feet of each other and it is impossible for us to stay 6 feet apart from each other. (Remick Decl. ¶ 7, Apr. 16, 2020). Everyone in Q-dorm was recently moved to I-dorm, making social distancing even more difficult. (Remick Decl. ¶ 4, Apr. 29, 2020).</p> <p>I am currently housed with 31 other inmates and it is still not possible to stay 6 feet apart. (Alejandro Decl. ¶ 5, Apr. 15, 2020).</p>
<p>A laundry officer makes rounds weekly. The officer collects all masks for laundering and in exchange provides a clean mask to each inmate. (Lacombe Decl. ¶ 34).</p>	<p>There has not been laundry for the past week and a half. (Remick Decl. ¶ 8, Apr. 29, 2020).</p> <p>The Philadelphia Department of Health recommends that masks be laundered every day. (Discovery D0075).</p>
<p>DC has a large supply of antibacterial bar soap that is issued to inmates free of charge when requested. (Lacombe Decl. ¶ 35).</p>	<p>Officers have never given me soap; I have to buy it myself. (Dantzler Decl. ¶ 8, Apr. 16, 2020).</p> <p>Soap handed out only once per week and if it does not last. (Remick Decl. ¶ 17, Apr. 16, 2020). More soap has been handed out recently but it is still inconsistent. I heard guards denying someone's request for soap. (Remick Decl. ¶ 3, Apr. 29, 2020)</p> <p>Everyone is supposed to get soap on Monday, but it doesn't actually happen. I asked for soap once and was told that I couldn't get it. (Alejandro Decl. ¶ 12, Apr. 15, 2020).</p>
<p>On March 31, 2020, cloth masks were first distributed to DC staff. On April 2, 2020, a second mask was distributed to DC staff. (Lacombe Decl. ¶ 37).</p>	<p>A doctor comes to my cell every week but does not always wear a mask. Officers do not always wear masks. (Dantzler Decl. ¶¶ 10, 11, Apr. 16, 2020).</p> <p>Officers sometimes remove their masks when they are on the dorm. (Remick Decl. ¶ 15, Apr. 16, 2020).</p>
<p>Medical staff at DC decide how quarantine is implemented. Medical staff identify which</p>	<p>People who had been housed with sick people are moved between dorms without quarantine</p>

individuals and/or units are placed in quarantine and when those individuals and/or units are taken off of quarantine. (Lacombe Decl. ¶ 38).	of the entire dorm. A newly admitted person was brought to my unit after only 7-10 days in quarantine. (Remick Decl. ¶¶ 9-11, 16, Apr. 16, 2020).  I have had symptoms of coronavirus but was told that I would not be tested because I did not have a fever. I have heard that other sick people are not being tested. (Remick Decl. ¶¶ 5-6, Apr. 29, 2020).
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**Declaration of Philadelphia Industrial Correctional Center  
Deputy Warden of Operations Norman Williams**

Factual Assertion	Response
Most of the cells in PICC hold two people. People are double celled for physical or mental health reasons. (Williams Decl. ¶ 10).	<p>I am currently on H-1 unit with approximately 100 other people on the unit. The unit is mostly full and generally, we are all double-celled. (Abdullah Decl. ¶ 7, Apr. 16, 2020).</p> <p>Most of the people on the block are double-celled. (Bethea Decl. ¶ 10, Apr. 17, 2020).</p>
Tape was placed on the floor in the housing areas to help with social distancing. (Williams Decl. ¶ 14).	<p>I have not received any information on how to stay safe from the coronavirus. (Bethea Decl. ¶ 23, Apr. 17, 2020).</p> <p>When we are out of our cells, there is no enforcement of social distancing. (Abdullah Decl. ¶ 16, Apr. 16, 2020).</p> <p>The phones are very close together, close enough that when I am standing in front of one phone, I can touch the phone next to it. Whenever I use the phone, I am within 2 feet of another person. (Abdullah Decl. ¶ 17, Apr. 16, 2020).</p> <p>When you use the phone, you are locked in a cage with the phone. You are about 3 feet away from the person next to you who is in his own cage with a phone. Every time you use the phone, you are within 6 feet of another inmate. (Bethea Decl. ¶ 14, Apr. 17, 2020).</p> <p>When we use the phones, we are required to leave an empty phone between us, but we are still only about 2 feet apart from each other. (Matthews Decl. ¶ 15).</p> <p>When we are out of our cells, there is no enforcement of social distancing. (Abdullah Decl. ¶ 16, Apr. 16, 2020).</p>

<p>In order to ensure that inmates remain physically distant from each other, four cells are released at a time for phone calls and showers. This is designed to permit fifteen minutes for each activity, and it is logged at the unit level. (Williams Decl. ¶ 21).</p>	<p>We are only allowed out of our cells for 15-20 minutes once every 3-4 days. (Abdullah Decl. ¶ 10, Apr. 16, 2020).</p> <p>Due to a staffing shortage, there are many days that the officers have not let us out of our cells at all. I last showered 4 days ago. I last used the phone 2 or 3 days ago. (Bethea Decl. ¶ 12, Apr. 17, 2020).</p> <p>When there are enough officers, we are allowed out 5 cells at a time. (Bethea Decl. ¶ 13, Apr. 17, 2020).</p> <p>We are now getting out of our cells almost every day, generally for about 30 minutes. The last day I did not get out of my cell was one day last week. (Abdullah Decl. ¶ 3, May 1, 2020).</p> <p>As of the date of my release [April 28, 2020], the people on my block were getting out-of-cell time for only 20 minutes per day and that did not occur every day due to staffing shortages (so we were told). We had to choose between using the shower and using the phone. (Bethea Decl. ¶ 6, Apr. 29, 2020).</p>
<p>Inmates who work as cleaners are directed to clean the showers and phones after each use. (Williams Decl. ¶ 22).</p>	<p>Phones are cleaned only once per day. They are not cleaned between each usage. (Bethea Decl. ¶ 14, Apr. 17, 2020).</p> <p>The showers are cleaned only once per day and not between each usage. (Bethea Decl. ¶ 15, Apr. 17, 2020).</p> <p>The phones are sometimes, but not always, wiped down between each use. (Abdullah Decl. ¶ 8, May 1, 2020).</p>
<p>Staff clean the cells with disinfectant or assign inmates to do so. To the best of my knowledge, this is done daily. (Williams Decl. ¶ 24 citing Ex. 16, PICC FGH1 AUX 3 Cleaning Log for Apr. 27, 2020)</p>	<p>I have not been able to clean my cell for the entire time I have been on lockdown. I have not received any cleaning supplies for my cell. (Abdullah Decl. ¶ 15, Apr. 16, 2020).</p>

	<p>Before the lockdown began, we were able to clean our cell once every week. For the past month, we have not been able to clean our cells. I asked the officers for bleach and disinfectant and they refused to give any to me. (Bethea Decl. ¶ 11, Apr. 17, 2020).</p> <p>My cell on K-Block was filthy, and the walls were very dirty. I was given a small amount of disinfectant spray and some paper towels to clean it with. I asked staff for additional materials to clean my cell with but was not given anything else. (Matthews Decl. ¶ 13, Apr. 30, 2020).</p> <p>As of the date of my release [April 28, 2020], I had not cleaned my cell in approximately two months. I asked if I could have cleaning supplies and clean my cell, but was told that I could not because there were not enough guards. (Bethea Decl. ¶ 5, Apr. 29, 2020).</p>
Staff “are adamant about wearing their masks.” (Williams Decl. ¶ 32).	<p>Staff sometimes, but not always, wear masks. Some staff approach and talk to inmates without masks on. (Abdullah Decl. ¶ 19, Apr. 16, 2020).</p> <p>On April 15, while I was on the phone, a Major approached me without a mask on. He got right in my face, close enough to touch me, and told me to get off the phone. (Abdullah Decl. ¶ 20, Apr. 16, 2020).</p> <p>Most staff members are wearing masks, but some of them pull them down when they talk to inmates. (Abdullah Decl. ¶ 9, May 1, 2020).</p>
Inmates are reminded about safety measures like proper handwashing, wearing masks and maintaining social distance. PSAs are played on the PDP channel from 8:30-10:00am every day. Announcements are also broadcast every two hours over the PA system. (Williams Decl. ¶¶ 33-35).	I have not received any information on how to stay safe from the coronavirus. (Bethea Decl. ¶ 23, Apr. 17, 2020).

<p>Inmates received their first mask on April 3, 2020, and a second mask is being distributed at this time. Inmate laundry is done once a week. Inmates place their articles into mesh bags that are washed, dried and returned to them. (Williams Decl. ¶¶ 37-38 citing Ex. 18, PICC Laundry Exchange Log).</p>	<p>I received one cloth mask made out of bedsheet material. I received that mask on March 23. I received no instructions on how to clean this mask. (Abdullah Decl. ¶ 14, Apr. 16, 2020).</p> <p>I received one cloth mask about three weeks ago. I have not received a replacement. I have washed the mask as best I can in the sink in my cell. (Bethea Decl. ¶ 18, Apr. 17, 2020).</p> <p>A few days after I gave my declaration of April 17, I was given a second face mask. After I got the second mask, I was able to wear one mask while washing the other mask. I was only able to wash my mask in the sink in my cell using the same bar soap that I used to shower and clean myself. (Bethea Decl. ¶ 3, Apr. 29, 2020).</p> <p>As of the date of my release [April 28, 2020], I had been using the same towel and sleeping on the same sheets for roughly two months. There had been no laundry for roughly that time period. I even had to wash my underwear in the sink in my cell using the same bar soap that I bought from commissary. (Bethea Decl. ¶ 4, Apr. 29, 2020).</p>
<p>Medical care and meals are both provided on the unit. (Williams Decl. ¶ 43).</p>	<p>I have asthma, and had four asthma attacks during the week of April 6, 2020 alone. My inhaler is not working. After one of my asthma attacks, medical staff came and checked me but refused to give me a breathing treatment. They told me the droplets from the breathing treatment could spread the virus. (Abdullah Decl. ¶ 2, Apr. 16, 2020).</p> <p>Last week, I had chills. I could not taste or smell and had difficulty breathing. I put in a sick call request detailing my symptoms. Medical staff came and checked my temperature, but told me I did not have a fever. (Abdullah Decl. ¶ 4, Apr. 16, 2020).</p>

	I have asked to go to medical, but those requests have been denied. I understand that the medical staff have stopped taking all sick calls. (Bethea Decl. ¶ 5, Apr. 17, 2020).
Inmates have free access to bar soap. Any inmate can request a bar of soap and be provided with one. (Williams Decl. ¶ 44).	<p>I have one bar of soap that I purchased from commissary but no hand soap. The officers are supposed to give out soap every week but they do not do so. (Abdullah Decl. ¶ 13, Apr. 16, 2020).</p> <p>I have to buy soap from the commissary. Over the past 2 months, I have run out of soap 2 to 3 times. When that happened, I asked officers for soap but they said they did not have any. I had to wait for my family to put money on my books before I could get soap. During those times, I had to use just water to clean myself. (Bethea Decl. ¶ 16, Apr. 17, 2020).</p> <p>On April 23, 2020, everyone on my unit got 2 bars of soap. We did not receive any soap this week. (Abdullah Decl. ¶ 4, May 1, 2020).</p>

**Declaration of Riverside Correctional Facility  
Deputy Warden of Operations James McCants**

Factual Assertion	Response
RCF is single celling inmates as much as possible. Double-occupancy cells are necessary at times for mental and physical health issues. (McCants Decl. ¶ 10).	E Unit has about 60 other people. While the unit is less than half-full, the staff has moved us all into the bottom tier of the unit, leaving the top tier empty. Many people on the unit are double-celled. (Diaz Decl. ¶ 6, Apr. 16, 2020; Walker Decl. ¶ 6, Apr. 16, 2020).
In March, markings were placed on the floor 6 feet apart to ensure social distancing. These floor markings are in administrative and visiting lobbies, the area outside of our elevators, housing areas and social services. (McCants Decl. ¶ 13).	Some staff try to enforce social distancing but others do not. There are distance markers on the floor but no instructions on how to use them. (Diaz Decl. ¶ 10, Apr. 16, 2020).
Inmates are allowed out of their cells in small groups so there is safe social distancing. (McCants Decl. ¶ 15)	While most of us try to abide by social distancing, it is impossible do so when using the phones as they are less than 2 feet apart. When we use the phones we must stand elbow to elbow. (Diaz Decl. ¶ 11, Apr. 16, 2020). Cannot social distance when using the phones. Phones are less than 2 feet apart. (Walker Decl. ¶ 10, Apr. 16, 2020).
10 to 15 inmates are out of their cells at a time so we can ensure everyone has the opportunity to get out, shower, make phone calls and clean up. This is reflected in logs kept by correctional officers. (McCants Decl. ¶ 15 citing Respondents' Ex. 21, RCF Logbook Example, Apr. 27, 2020).	Generally, we are let out of cells for about 15-20 minutes. It has been weeks since we were let into the yard. (Diaz Decl. ¶ 8, Apr. 16, 2020; Walker Decl. ¶ 9, Apr. 16, 2020).
“Areas and surfaces” are cleaned “at least twice during a shift.” (McCants Decl. ¶ 16 citing Respondents’ Ex. 22, RCF Cleaning Book Examples, Apr. 26-27, 2020).	We generally try to clean the phones after every use with disinfectant that staff gives us. The staff do not require that we clean the phones, nor does the staff clean the phones for us, but we do it on our own initiative. (Diaz Decl. ¶ 11, Apr. 16, 2020).
	Showers are shared. Showers are cleaned twice a day, but not after every use. (Diaz Decl. ¶ 12, Apr. 16, 2020; Walker Decl. ¶ 11, Apr. 16, 2020).

	Logs indicate failure to clean showers and phones on several days. (Respondents' Ex. 22).
If an inmate would like to clean their cell, they are provided with cleaning supplies. (McCants Decl. ¶ 17).	Spray bottles are passed out every few days to clean cells. (Benn Decl. ¶10, Apr. 30, 2020).
Free soap is available to any inmate that requests it. In response to complaints about a lack of soap, the Warden directed that every inmate be provided a bar of soap without a request. (McCants Decl. ¶¶ 34-5).	I had to buy soap from commissary because the soap provided is not enough. (Walker Decl. ¶ 13, Apr. 16, 2020).
On March 31, 2020, cloth masks were distributed to RCF staff. On April 6, 2020, staff received a second distribution of cloth masks. Staff are instructed to launder their masks themselves between uses. (McCants Decl. ¶ 36).	Some staff wear masks and others do not. Multiple sergeants have visited our unit without masks. (Diaz Decl. ¶ 14, Apr. 23, 2020).  There are 2 sergeants who consistently do not wear a mask when they enter the unit. (Walker Decl. ¶¶ 5-6, Apr. 30, 2020).  Some COs are still not wearing masks. The week 4/30/20, I saw sergeants and lieutenants not wearing masks. (Diaz Decl. ¶ 7, Apr. 30, 2020).
Cloth masks were distributed to RCF inmates on a rolling basis. By April 15, 2020, every inmate had a mask, and by April 22, 2020, every inmate had two masks. (McCants Decl. ¶¶ 37-38).	We received masks but no instructions on how to clean them. (Diaz Decl. ¶ 13, Apr. 23, 2020).
As of April 29, 2020, there are not any quarantined units at RCF. The medical professionals decide the process by which quarantine and/or isolation are implemented. Medical staff identify which individuals and/or units are placed in quarantine and/or isolation and when those individuals and/or units are taken off. (McCants Decl. ¶ 41).	“At least four people on my unit have had symptoms of COVID-19, including loss of sense of taste, burning nostrils, and waking up in sweats. None of those people have been medically isolated or tested.” (Diaz Decl. ¶ 15, Apr. 23, 2020).  “I know that two women on my unit had fevers but the staff did not take them off the unit. Instead, they were just told to stay in their cells.” (Walker Decl. ¶ 16, Apr. 16, 2020).

	<p>I started to feel sick on March 25, 2020, starting with a dry cough and trouble breathing. I put in 5-6 sick call slips but was not taken seriously. Nine days later, on April 3, 2020, someone took her temperature. I was tested and a few days later learned that I had tested positive. (Benn Decl. ¶¶ 4-7, Apr. 30, 2020).</p> <p>I was brought back to general population after 13 days in medical quarantine, but did not feel completely healthy and still have bad headaches. (Benn Decl. ¶ 9, Apr. 30, 2020).</p>
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**Declarations of PDP Chief of Medical Operations, Bruce W. Herdman and Site Medical Director for Curran-Fromhold Correctional Facility, Dr. Lalitha Trivikram**

Factual Assertion	Response
All PDP staff must wear masks inside facility. (Herdman Decl. ¶ 17).	<p><b>Prior to Filing of Litigation</b></p> <p>Staff sometimes, but not always, wear masks. Some staff approach and talk to inmates without masks on. (Abdullah Decl. ¶ 19, Apr. 16, 2020). On April 15, while I was on the phone, a Major approached me without a mask on. He got right in my face, close enough to touch me, and told me to get off the phone. (Abdullah Decl. ¶ 20, Apr. 16, 2020).</p> <p>Doctor performing weekly visits “does not always wear a mask” and staff staff “do not always” wear their masks. (Danztler Decl. ¶¶ 10-11, Apr. 16, 2020).</p> <p>“The officers wear masks most of the time but there have been occasions when I have seen them interacting with incarcerated people while not wearing masks.” (Hinton Decl. ¶ 12, Apr. 16, 2020).</p> <p>“Some staff wear masks and others do not. Multiple sergeants have visited our unit without masks.” (Diaz Decl. ¶ 14 Apr. 16, 2020).</p> <p>“While I see officers with masks on when they are coming into or leaving our dorm, officers will sometimes remove their masks once they are on our dorm and are staying for a shift.” (Remick Decl. ¶ 15, Apr. 16, 2020).</p> <p><b>Updated Declarations</b></p> <p>Most staff members are wearing masks, but some of them pull them down when they talk to inmates. (Abdullah Decl. ¶ 9, May 1, 2020).</p> <p>Some staff members were still not wearing masks, and Diaz reported seeing “sergeants and lieutenants on my unit with no masks on” the week of April 30, 2020 (Diaz Decl. ¶ 7, Apr. 30, 2020).</p>

	<p>“There are two sergeants who almost never wear masks when they come on our unit. Some correctional officers also do not wear face masks. Right now, as I give this declaration, there is a correctional officer talking to the social worker with no mask on.” (Walker Decl. ¶¶ 5-6, Apr. 30, 2020).</p>
Staff in isolation areas must wear a respirator, gown, eye protection, and gloves. (Herdman Decl. ¶ 20).	<p>“On the isolation unit, the medical staff wore full-body protective gear and had their faces fully covered with masks, but some of the non-medical staff had only cloth masks and no other personal protective equipment.” (Matthews Decl. ¶ 9, Apr. 30, 2020).</p>
All incarcerated people must wear a mask outside of cell. (Herdman Decl. ¶ 23).	<p>“Some inmates are not wearing their masks when they’re out of their cells.” (Walker Decl. ¶ 4, Apr. 30, 2020).</p> <p>“We were told to wear our masks when we are out of our cells, but once we’re out staff do not enforce mask-wearing. Men sit on chairs right next to each other without masks on, playing cards or watching television.” (Doyle Decl. ¶ 14, Apr. 30, 2020).</p>
All new admits are quarantined for 14 days in designated housing units. (Herdman Decl. ¶ 38).	<p>“Someone came onto our block from the quarantine unit and told us he had been there for between 7 and 10 days. I thought people were supposed to be quarantined for 14 days when they arrived at the prison.” (Remick Decl. ¶ 16, Apr. 16, 2020).</p> <p>“The officers continually bring newly admitted people onto my block. I have heard that the jail would keep people in the quarantine unit for 14 days after they were admitted to the jail, but the officers brought 8 new people onto my block after only 7 days of being quarantined.” (Skinner Decl. ¶ 19, Apr. 15, 2020).</p>
<b>Assertions Regarding Onset of Symptoms</b> If someone in quarantine becomes symptomatic, they are placed in isolation and tested for COVID. If test positive, all others in their ‘cohort’	<p>Declarant observed that inmates were sick and people were moving between dorms with ill people without full isolation or quarantine of the entire dorm. (Remick Decl. ¶¶ 9–11, 16, Apr. 16, 2020).</p> <p>People in housing unit were getting sick and not being tested, nor were they being isolated or</p>

<p>must restart the 14-day quarantine period. (Herdman Decl. ¶ 41).</p> <p>The unit/cohort is released from quarantine after the last patient to test positive from the unit/cohort completes his/her fourteen day isolation.” (Trivikram Decl. ¶ 29).</p> <p>“Patients are placed in isolation when they present with either fever <i>or</i> symptoms consistent with possible COVID infection. A nasopharyngeal swab is obtained to test for COVID infection.” (Trivikram Decl. ¶ 9) (emphasis added).</p>	<p>quarantined from others on the unit. (Remick Decl. ¶¶ 5–6, Apr. 29, 2020).</p> <p>“Last week, I had chills. I could not taste or smell and had difficulty breathing. I put in a sick call request detailing my symptoms. Medical staff came and checked my temperature, but told me I did not have a fever. The staff offered me Tylenol and Robitussin, but I declined.” (Abdullah Decl. ¶ 4, Apr. 16, 2020). Declarant was neither tested for COVID-19 nor medically isolated (Abdullah Decl. ¶ 6, Apr. 16, 2020).</p>
	<p>“At least four people on my unit have had symptoms of COVID-19, including loss of sense of taste, burning nostrils, and waking up in sweats. None of those people have been medically isolated or tested.” (Diaz Decl. ¶ 15, Apr. 23, 2020).</p>
	<p>“I know that two women on my unit had fevers but the staff did not take them off the unit. Instead, they were just told to stay in their cells.” (Walker Decl. ¶ 16, Apr. 16, 2020).</p>
	<p>Yavette Benn started to feel sick on March 25, 2020, starting with a dry cough and trouble breathing. She put in 5-6 sick call slips but was not taken seriously. Nine days later, on April 3, 2020, someone took her temperature. She and several other women, running temperatures, were taken off the block. She was tested and a few days later learned that she tested positive. (Benn Decl. ¶¶ 4-7, Apr. 30, 2020).</p>
	<p>“On April 16, 2020, the officers took 3 men off the block on stretches and took 4 men off the block in wheelchairs. They all looked really sick. They were brought back onto the block after a few hours. I have no idea if they were tested for coronavirus.” (Bethea Decl. ¶ 20, Apr. 17, 2020).</p>
	<p>“I hear a lot of coughing in my unit and think at least 3 people may be sick. I have not seen or heard anything about the medical department evaluating them.” Also reports no testing on unit. (Alejandro Decl. ¶¶ 17-18, Apr. 16, 2020).</p>

	After moving into I-Dorm, Remick was told that “at least three people there were feeling sick and losing their sense of smell and taste.” (Remick Decl. ¶ 5, Apr. 29, 2020). The person who told Remick this was later sent to medical, but was never tested because he did not have a fever. (Remick Decl. ¶ 5, Apr. 29, 2020).
Asymptomatic individuals can be released from quarantine if no symptoms developed during 14 day period. (Herdman Decl. ¶ 44).	Hinton reports being released from quarantine without seeing a doctor or or being medically evaluated before being released from quarantine. (Hinton Decl. ¶ 2, Apr. 30, 2020)
Confirmed positive cases may be removed from quarantine after 14 days if their symptoms abate and they are afebrile for at least 3 days. (Herdman Decl. ¶ 44).	Benn was brought back to general population after 13 days in medical quarantine, at which time she did not feel completely healthy and still has bad headaches. (Benn Decl. ¶ 9, Apr. 30, 2020).
Those who test positive are placed in isolation for 14 days and must be afebrile for 3 days and have improving respiratory symptoms to be discharged from isolation. (Herdman Decl. ¶ 50).  “In all instances, medical staff determines whether the inmate can be discharged from isolation.” Trivikram Decl. ¶ 16.	“On April 28, 2020, after 14 days on the insolation unit, I was transferred back to K-Block. At this time, I was still coughing and experiencing some body soreness. I was not re-tested for coronavirus before being transferred out of the isolation unit.” (Matthews Decl. ¶ 12, Apr. 30, 2020).  “Two men on the block said they had been tested and tested positive for the coronavirus. They are still on my block and come out of their cells with others.” (Bethea Decl. ¶ 21, Apr. 17, 2020).  “I know one inmate who was transferred to our unit after being quarantined in the COVID trailers for only 14 days. He had tested positive for coronavirus and staff moved him to our unit without a second test to confirm that he was virus-free.” (Abdullah Decl. ¶ 20, Apr. 16, 2020).  “As of the date of my release, there were approximately 20 people on my unit who said they had tested positive for COVID-19. They received out-of-cell time with other people who had not tested positive.” (Bethea Decl. ¶ 7, Apr. 29, 2020).

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>	:	

**DECLARATION OF JOSEPH WEISS OF APRIL 30, 2020**

JOSEPH WEISS, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration was given on April 16, 2020, from the Curran-Fromhold Correctional Facility. I give this declaration as an update to my earlier declaration.
2. I spent seventeen days in quarantine. The first several days of quarantine, I was in a multipurpose room with two other men. After one of the other men ran a fever, I was transferred to a cell by myself.
3. After seventeen days, I was moved into general population. I was initially housed in a multipurpose room on a top tier with three other men. The other men had been in that multipurpose room for about week before I got there.

4. I complained about being on the top tier because of my injured leg and mobility issues.

After about four or five days, I was moved to a cell on the bottom tier. I have one cellmate.

5. No one has talked to me about maintaining distance from other people. I spend most of my time on my bunk because of my leg. My cellmate spends most of the day sitting at the desk. The desk is about three feet away from my bunk.

6. We have not been given any supplies for cleaning our cell.

7. We are let out of our cells most days. We are usually let out for about fifteen minutes but today we were let out for almost twenty-five minutes.

8. They generally let out six people at a time. There are six phones and they are about a foot apart. Everyone rushes to use the phones to make sure that they have enough time to call their families. Sometimes all six phones are in use and that means that six people are standing right next to each other.

I, Hayden Nelson-Major, certify that Joseph Weiss relayed the above information to me over the phone on April 30, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Weiss is incarcerated, the finished declaration has not been reviewed with Mr. Weiss.

/s/ Hayden Nelson-Major  
Hayden Nelson-Major (PA 320024)  
AMERICAN CIVIL LIBERTIES  
UNION OF PENNSYLVANIA  
P.O. Box 60173  
Philadelphia, PA 19102  
T: 215-592-1513  
HNelson-Major@aclupa.org

Dated: April 30, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		:
:		

**DECLARATION OF JOSEPH SKINNER OF APRIL 28, 2020**

JOSEPH SKINNER, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration was given on April 15, 2020, from the Curran-Fromhold Correctional Facility (“CFCF”). I give this update as an update to that declaration.
2. Last week my cellmate was able to get a bar of free soap. Before that he could not get free soap.
3. Last week I was given a second face mask so I now have two cloth face masks. I was washing my mask by hand in my cell sink using the bar soap that I buy from commissary.  
This is the same soap I use to clean myself.

4. I have to clean my clothes and bedsheets by hand. We haven't had any clean laundry since March.
5. I still have not been able to clean my cell. I was last able to clean my cell in March.
6. We are getting out once or twice a day for 15 minutes only.
7. I have been trying to use my rescue inhaler sparingly because I'm worried about not being able to get another one. I've put in medical slips to ask for a new inhaler and I was told that I would receive one. However, I still have not and my current inhaler is almost empty.
8. I have had five new cellmates since this outbreak started.

I, Susan Lin, certify that Joseph Skinner relayed the above information to me over the phone on April 28, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Skinner is incarcerated, the finished declaration has not been reviewed with Mr. Skinner.

/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  
slin@krlawphila.com

Dated: April 28, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>	:	

**DECLARATION OF JAMES BETHEA OF APRIL 29, 2020**

JAMES BETHEA, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration was given on April 17, 2020, from the Philadelphia Industrial Correctional Center (PICC).
2. On the evening of April 28, 2020, I was released from custody. I give this declaration as an update to my last declaration.
3. A few days after I gave my declaration of April 17<sup>th</sup>, I was given a second face mask. After I got the second mask, I was able to wear one mask while washing the other mask. I was only able to wash my face mask in the sink in my cell using the same bar soap that I used to shower and clean myself. It was the same bar soap that I bought from commissary.

4. As of the date of my release, I had been using the same towel and sleeping on the same sheets for roughly two months. There had been no laundry for roughly that time period. I even had to wash my underwear in the sink in my cell using the same bar soap that I bought from commissary.
5. As of the date of my release, I had not cleaned my cell in approximately two months. I asked if I could have cleaning supplies and clean my cell, but was told that I could not because there were not enough guards.
6. As of the date of my release, the people on my block were getting out-of-cell time for only 20 minutes per day and that did not occur every day due to staffing shortages (so we were told). We had to choose between using the shower and using the phone.
7. As of the date of my release, there were approximately 20 people on my unit who said they had tested positive for COVID-19. They received out-of-cell time with other people who had not tested positive.

I, Susan Lin, certify that James Bethea relayed the above information to me over the phone on April 24, 2020 and April 29, 2020 and he gave me permission sign this declaration on his behalf.

/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  
slin@krlawphila.com

Dated: April 29, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		:

**DECLARATION OF THOMAS REMICK OF APRIL 29, 2020**

THOMAS REMICK, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration was given on April 16, 2020, from the Detention Center (“DC”). I give this declaration as an update to that declaration.
2. Shortly after giving my declaration of April 16, 2020, I received a second face mask.
3. The week of April 16, 2020, staff handed out free soap on two separate days. The following week, the week of April 20, 2020, staff handed out free soap once. On the Friday of that week, I heard another person ask a staff member for more free soap and the staff member refused. This week, the staff have not given out free soap yet.

4. On Friday, April 24<sup>th</sup>, everyone in my dorm, Q-dorm, was moved to a different dorm, I-dorm. While there were approximately 18 people in Q-dorm, there are approximately 40 people in I-dorm. I-dorm normally holds approximately 60 people. I am unable to stay six feet away from everyone else in I-dorm.
5. I was told by an inmate in I-dorm that at least three people there were feeling sick and losing their sense of smell and taste. This inmate went to medical but he was not tested because he did not have a fever. This inmate went home recently.
6. This past Saturday I started coughing and experiencing chills, headache and fatigue. I could not get out of bed on Sunday. I was told that I could not get tested because I do not have a fever. At least two other people in my dorm are suffering from chills.
7. I-dorm, including the toilets and showers, is only cleaned once in the morning. I have asked the staff for bleach and disinfectant, but I was told that I could not have it because I am not an I-dorm block worker. The phones are only cleaned one or two times per day.
8. We are supposed to be able to get clean laundry (including clean sheets) once a week. I do not always change my sheets because the fresh sheets are still dirty. We have not gotten clean laundry for the past week and a half.

I, Susan Lin, certify that Thomas Remick relayed the above information to me over the phone on April 29, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Remick is incarcerated, the finished declaration has not been reviewed with Mr. Remick.

*/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

slin@krlawphila.com

Dated: April 29, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		

**DECLARATION OF JERMAINE MATTHEWS OF APRIL 30, 2020**

JERMAINE MATTHEWS hereby declares that the following is true and correct to the best of his knowledge and belief:

1. I am thirty years old and am currently incarcerated at the Philadelphia Industrial Correctional Center (“PICC”). I have asthma.
2. I am being held as a pretrial detainee because I cannot afford to pay my bail.
3. I am currently housed on K-Block, which is a mental health unit.
4. I have diagnoses of Post-Traumatic Stress Disorder, Major Depressive Disorder, and Anxiety Disorder.
5. I contracted coronavirus (COVID-19) at PICC.
6. In mid-April, I began experiencing symptoms including body aches, coughing, and fever.

7. After my body temperature was measured at approximately 102 degrees, I was moved from K-Block to another housing unit, which was being used as an isolation unit.
8. I was tested for coronavirus later that day or the next day.
9. On the isolation unit, the medical staff wore full-body protective gear and had their faces fully covered with masks, but some of the non-medical staff had only cloth masks and no other personal protective equipment.
10. I continued to have a fever for the first few days I was in isolation.
11. I did not receive any medicine while I was on the isolation unit.
12. On April 28, 2020, after 14 days on the isolation unit, I was transferred back to K-Block.  
At this time, I was still coughing and experiencing some body soreness. I was not re-tested for coronavirus before being transferred out of the isolation unit.
13. The cell I was transferred into on K-Block was filthy, and the walls were very dirty. I was given a small amount of disinfectant spray and some paper towels to clean it with. I asked staff members for additional materials to clean my cell with but was not given anything else.
14. Prior to going to isolation and since returning from isolation, we are generally let out of our cells for 20-30 minutes twice a day, but sometimes we are only let out once a day. Six people are let out of their cells at a time.
15. When we use the phones, we are required to leave an empty phone between us, but we are still only about 2 feet apart from each other.
16. We are supposed to wear masks when we leave our cells. I received a second mask on April 29, 2020.
17. There is a sink in the dayroom, but there is no soap at this sink.

18. I have enough soap for my own use because I purchase it from commissary.
19. I have a cellmate and staff have instructed us to sleep on our bunk bed in opposite directions from each other, as a means of social distancing.
20. Being locked in my cell for more than 23 hours a day is making things much worse for me. I feel depressed, and I feel like I am jumping out of my skin.
21. I am very concerned about my physical health and my mental health if I remain at PICC.

I, Matthew A. Feldman, certify that Jermaine Matthews relayed the above information to me over the phone on April 30, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Matthews is incarcerated, the finished declaration has not been reviewed with Mr. Matthews.

/s/ Matthew A. Feldman

Matthew A. Feldman (PA 326273)  
PENNSYLVANIA INSTITUTIONAL  
LAW PROJECT  
718 Arch St., Suite 304S  
Philadelphia, PA 19106  
T: 215-925-2966  
mfeldman@pailp.org

Dated: April 30, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>	:	

**Defendants-Respondents.**

**DECLARATION OF SADDAM ABDULLAH OF MAY 1, 2020**

SADDAM ABDULLAH, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration was given on April 15 and April 16, 2020 from the Philadelphia Industrial Correctional Center (“PICC”). I give this declaration as an update to my earlier declaration.
2. I have received no response to the emergency grievance I filed.
3. We are now getting out of our cells almost every day, generally for about 30 minutes. The last day I did not get out of my cell was one day last week.
4. On April 23, 2020, everyone on my unit got 2 bars of soap. We did not receive any soap this week.

5. I got a second mask around the time that the Complaint in this lawsuit was filed, and I got a third mask this week.
6. If people ask to clean their cells, staff give them a spray bottle, and they can wipe down their cells with a paper towel. We are not given brooms or mops.
7. There are seven phones on the unit and, generally, we can only use four of them at a time. Some guards allow all seven to be used at once. Many men are not wearing their masks when they use the phones.
8. The phones sometimes, but not always, get wiped down between each use.
9. Most staff members are wearing masks, but some of them pull their masks down when they talk to inmates.
10. Staff are taking the temperature of everyone on my unit twice a day.

I, Matthew A. Feldman, certify that Saddam Abdullah relayed the above information to me over the phone on May 1, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Abdullah is incarcerated, the finished declaration has not been reviewed with Mr. Abdullah.

/s/ Matthew A. Feldman

Matthew A. Feldman (PA 326273)  
PENNSYLVANIA INSTITUTIONAL  
LAW PROJECT  
718 Arch St., Suite 304S  
Philadelphia, PA 19106  
T: 215-925-2966  
mfeldman@pailp.org

Dated: May 1, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		:
:		

**DECLARATION OF YAVETTE BENN OF APRIL 30, 2020**

YAVETTE BENN hereby declares that the following is true and correct to the best of her knowledge and belief:

1. I am fifty years old and have been held at Riverside Correctional Facility (“RCF”) since January of this year.
2. I am being held as a pretrial detainee charged with robbery. My bail on these charges is set at 10% of \$4,000. I am also being held on a probation detainer, as my new charges would constitute a violation of probation if I am found guilty of them.
3. I contracted coronavirus at RCF.

4. I started to feel sick on March 25, 2020. It started with a dry cough. Then I started having trouble breathing. I was very sick and scared. I put in five or six sick call requests but no one took me seriously.
5. On April 3, 2020, someone finally came and took my temperature. They moved me and several other women off the block to a different unit because we were all running temperatures. A nurse swabbed my nose for the coronavirus that day.
6. I was placed in a cell by myself. I was not allowed out of the cell for four days. It was terrible.
7. Several days later, I was told that the test came back positive.
8. The guards took one of the other women out of her cell in the middle of the night because she was so sick. We later found out that she died.
9. After thirteen days, I was brought back into general population. I did not feel completely healthy. I am still having bad headaches.
10. Every couple of days they pass out spray bottles so that we can clean our cells.
11. The other day, one of the nurses told me that he tested positive for coronavirus in early April.

I, Hayden Nelson-Major, certify that Yavette Benn relayed the above information to me over the phone on April 30, 2020 and that she gave me permission to relay this information in a declaration signed on her behalf. Because Ms. Benn is incarcerated, the finished declaration has not been reviewed with Ms. Benn.

/s/ Hayden Nelson-Major  
Hayden Nelson-Major (PA 320024)  
AMERICAN CIVIL LIBERTIES  
UNION OF PENNSYLVANIA  
P.O. Box 60173  
Philadelphia, PA 19102

T: 215-592-1513  
HNelson-Major@aclupa.org

Dated: April 30, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		

**DECLARATION OF JAY DIAZ OF APRIL 30, 2020**

JAY DIAZ, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration was given on April 16, 2020 from the Riverside Correctional Facility (“RCF”). I give this declaration as an update and correction to my earlier declaration.
2. The diagnosis I received in December 2018 was for “pre-cancer stage 3” on my cervix and ovaries, not “stage 3 cervical and ovarian cancer.” A LEEP procedure was performed to remove abnormal cells from my cervix.
3. A few days ago, I began experiencing extreme pain in my lower back and thighs, pain and hardness around my bladder, and blood in my stool. I was alarmed and told multiple

staff members about these symptoms. A correctional officer told a nurse, and the nurse told me, "There's nothing we can do for you."

4. Finally, today, in the afternoon, I was seen by a doctor. I was tested for a bladder infection and a urinary tract infection and was told I did not have either. Despite still experiencing pain, I was not given any treatment.
5. I am still in a cell by myself, but almost everyone else on my unit has a cellmate. They are being told to sleep in opposite directions on their bunk beds.
6. Within the last week or two, I was given a second mask.
7. Some staff members are still not wearing masks. This week, I have seen sergeants and lieutenants on my unit with no masks on.

I, Matthew A. Feldman, certify that Jay Diaz relayed the above information to me over the phone on April 30, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Diaz is incarcerated, the finished declaration has not been reviewed with Mr. Diaz.

/s/ Matthew A. Feldman

Matthew A. Feldman (PA 326273)  
PENNSYLVANIA INSTITUTIONAL  
LAW PROJECT  
718 Arch St., Suite 304S  
Philadelphia, PA 19106  
T: 215-925-2966  
mfeldman@pailp.org

Dated: April 30, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		

**DECLARATION OF NADIYAH WALKER OF APRIL 30, 2020**

NADIYAH WALKER, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of her knowledge and belief:

1. My last declaration was given on April 16, 2020 from the Riverside Correctional Facility (“RCF”). I give this declaration as an update to my earlier declaration.
2. Less than a week ago, I was given an asthma pump and started getting Dilantin for epilepsy. I was not receiving either of these medications at the time I gave my previous declaration.
3. I received a second face mask on or around April 22, 2020.
4. Some inmates are not wearing their masks when they are out of their cells.
5. There are two sergeants who almost never wear masks when they come on our unit.

6. Some correctional officers also do not wear face masks. Right now, as I give this declaration, there is a correctional officer talking to the social worker with no mask on.
7. My temperature has not been taken at all since the coronavirus lockdown began.

I, Matthew A. Feldman, certify that Nadiyah Walker relayed the above information to me over the phone on April 30, 2020 and that she gave me permission to relay this information in a declaration signed on her behalf. Because Ms. Walker is incarcerated, the finished declaration has not been reviewed with Ms. Walker.

/s/ Matthew A. Feldman

Matthew A. Feldman (PA 326273)  
PENNSYLVANIA INSTITUTIONAL  
LAW PROJECT  
718 Arch St., Suite 304S  
Philadelphia, PA 19106  
T: 215-925-2966  
mfeldman@pailp.org

Dated: April 30, 2020

**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>Civil Action No. 20-1959</b>
<b>MICAHUEL 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>Filed Via ECF</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>		:
:		

**DECLARATION OF ROBERT HINTON OF APRIL 30, 2020**

ROBERT HINTON, one of the Plaintiffs herein, hereby declares that the following is true and correct to the best of his knowledge and belief:

1. My last declaration was given on April 16, 2020 from the Curran-Fromhold Correctional Facility (“CFCF”). I give this declaration as an update to my earlier declaration.
2. I was released from quarantine about five days ago. I was not seen by a doctor or medically evaluated before being transferred out of quarantine.
3. I am currently housed on the C-2 unit. The unit is full and there are two people to every cell.
4. I am let out of my cell for fifteen to thirty minutes most days. They are letting six or seven people out at a time. Everybody wants to use the phones as soon as they are let out

to make sure they have time to make a call. We have to stand right next to each other when we make calls.

5. Common areas and phones are cleaned once a day. The phones are not cleaned between uses.
  6. Every couple of days, the guards pass out spray bottles so that we can clean our cells.
  7. We are given one bar of soap a week. It is a small bar and it does not last a week.
  8. I am still having a lot of pain on the side of my abdomen. I have put in three sick call requests. I stopped putting in slips because I did not get a response.
  9. A nurse comes by every day to pass out medications. When the nurse comes around, I tell the nurse about the pain and they say someone will come see me. No one has come to see me about the pain.
10. If I were released, I would live with my sister at her house. She lives alone.

I, Hayden Nelson-Major, certify that Robert Hinton relayed the above information to me over the phone on April 30, 2020 and that he gave me permission to relay this information in a declaration signed on his behalf. Because Mr. Hinton is incarcerated, the finished declaration has not been reviewed with Mr. Hinton.

/s/ Hayden Nelson-Major  
Hayden Nelson-Major (PA 320024)  
AMERICAN CIVIL LIBERTIES  
UNION OF PENNSYLVANIA  
P.O. Box 60173  
Philadelphia, PA 19102  
T: 215-592-1513  
HNelson-Major@aclupa.org

Dated: April 30, 2020

**From:** David Rudovsky <[drudovsky@krlawphila.com](mailto:drudovsky@krlawphila.com)>  
**Sent:** Friday, April 24, 2020 5:57 PM  
**To:** [Craig.Straw@phila.gov](mailto:Craig.Straw@phila.gov); Anne Taylor <[anne.taylor@phila.gov](mailto:anne.taylor@phila.gov)>; Su Ming Yeh <[smyeh@pailp.org](mailto:smyeh@pailp.org)>; Barnett, Ben <[Ben.Barnett@dechert.com](mailto:Ben.Barnett@dechert.com)>; Nyssa Taylor <[ntaylor@aclupa.org](mailto:ntaylor@aclupa.org)>; David Rudovsky <[drudovsk@law.upenn.edu](mailto:drudovsk@law.upenn.edu)>  
**Subject:** remick

Craig and Anne:

To follow up on our call this afternoon, I list below the steps which I believe the City agreed to take in this phase of the negotiations:

1. We requested the City to review the protective measures we proposed in the Settlement Proposal and inform us (a) which of the *general* measures listed the City agrees *in principle* should be in force at PDP; (b) which of these measures have been adopted by the City as official policy (and as noted below, send copies of policies), and (c) which have not been adopted, the reasons and what substitute measures have been implemented, if any. This will allow us to consult with our experts on this issue.

2. Discovery Issues.

The City agreed to preserve all electronically stored data and communications.

Plaintiffs' priorities for discovery:

All written policies and protocols related to COVID-19, all implementation memorandum and emails to staff, and all audits or reviews of implementation (RFP 2, 3)

Housing unit population for the 4 jails (dorm or cells; double or single cell occupancy) (Rog 5)

Quarantine and Isolation Units: where, capacity, current population (Rog 6, 7)

List of vulnerable population, with PP number

Dr. Herdman's and the City's Health Commissioner's recommendations on COVID-19 (RFP 14). This relates to a larger and very important issue that we discussed briefly: decision-making regarding placements in quarantine or isolation, who decides and on what criteria when people are released from quarantine and isolation, who decides on testing and under what criteria, and related health measures. You mentioned that Corizon controls or has input on a number of these matters, and that breakdown of responsibility should be provided. Presumably, all of these health related protocols are in policy form, or in protocols adopted by PDP and/or Corizon and therefore covered by our request as to all protocols and policies.

Given the short time frame that the Court ordered in terms of reporting back on our progress and the need to provide health and safety measures, we will need the above described discovery as soon as possible, and no later than Tuesday of next week. Let us know if that is not possible.

Discovery scope: The City should inform us by early next week which of the other discovery requests the City will not agree to provide and, for those requests that will be provided, a time frame for later disclosure.

We further discussed the need for effective means of ensuring and evaluating implementation of policies and compliance and we will provide suggestions for the monitoring process by early next week.

We also discussed your request for no press contacts during this settlement negotiation process and we agree and will not contact the media and, if asked about the case, we will refer them to what has been filed in court.

Thanks for your cooperation and let me know if you have questions about any of the above issues.

David