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

LEE BOWERS, et al.	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 06-CV-3229
	:	
CITY OF PHILADELPHIA, et al.	:	

SURRICK, J. **JANUARY 25, 2007**

MEMORANDUM & ORDER

In July 2006, Plaintiffs Lee Bowers, Brandon Bucci, Darius McDowell, and James Walker filed a class action Complaint against the City of Philadelphia and City officials, seeking injunctive and declaratory relief and damages. The Complaint alleges that the conditions of confinement at local Police Districts[1], the Police Administration Building ("PAB") and at the intake unit of the Philadelphia Prison System ("PPS") are "harsh and degrading, and so dangerous to the health and safety of the inmates, as to constitute cruel and unusual punishment under the Eighth Amendment and a denial of liberty without due process of law under the Fourteenth Amendment." (Doc. No. 1 at 2.) Presently before the Court is Plaintiffs' Motion For Preliminary Injunction (Doc. No. 2). An evidentiary hearing was held October 3, 2006 through October 6, 2006. In addition, on December 12, 2006, we toured the intake unit at the Curran Fromhold Correctional Facility ("CFCF"), the holding cells at the PAB, and the holding cells in the 9th Police District. For the reasons that follow, Plaintiffs' request for declaratory and injunctive relief will be granted.

[1] The parties have referred to the Police Districts as CCTV locations.

I. BACKGROUND AND PROCEDURAL HISTORY

This action commenced on July 24, 2006 with the filing of Plaintiffs' Complaint against Defendants City of Philadelphia, Leon A. King II, individually and in his official capacity as Commissioner of the Philadelphia Prisons, Sylvester Johnson, individually and in his official capacity as Commissioner of the Philadelphia Police Department, and John Doe and Richard Roe, unknown Prison and Police Officials and Officers, in their individual capacities. (Doc. No. 1.)[2] At the same time, Plaintiffs filed the Motion for Preliminary Injunction seeking relief in the form of a judgment, declaring that the practices, policies, and conditions as alleged in the Complaint are unconstitutional, and an injunction prohibiting the implementation of such unconstitutional conditions. Plaintiffs request that Defendants be required to "either provide the plaintiff class with constitutionally acceptable conditions of confinement, medical care, screening, and medication, access to legal counsel, placement in habitable cells, with adequate showers, toilets and other necessary personal hygiene, and protection from assaults or other dangers to their life or safety, or discharge the members of the class from custody." (Doc. No. 1 at 12-13.)

On August 17, 2006, District Attorney Lynne Abraham filed a Motion to Intervene. (Doc. No. 9.) The Motion was granted by Memorandum and Order dated September 8, 2006. (Doc. No. 20.) Plaintiffs filed a Motion For Leave to Amend the Complaint on September 6, 2006. (Doc. No.19.) This Motion was granted on September 13, 2006. (Doc. No. 33.) Plaintiffs' Amended Complaint added nine named Plaintiffs to represent the interests of the

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[2] This case was originally assigned to the Honorable Legrome M. Davis. It was reassigned to this Judge on July 31, 2006 after Judge Davis recused. (Doc. No. 5.)

plaintiff class.[3] (Doc. No. 34.) On September 12, 2006, Plaintiffs filed a Motion for Class Certification. (Doc. No. 29.) On September 28, 2006, we certified a class for purposes of declaratory and injunctive relief consisting of:

> All persons who have been or will in the future be held post-preliminary arraignment in the custody of the Philadelphia Police Department, including its districts or the Police Administration Building, or anywhere in the Philadelphia Prison System, pending intake/admissions processing, at the Philadelphia Prison System, who have been or will in the future be subjected to the conditions of confinement as set forth in Plaintiffs' Complaint.

(Doc. No. 51 at 15.) On September 26, 2006, Defendants and District Attorney Abraham filed their Joint Motion to Dismiss under Rule 12(b)(1) and Rule 12(b)(6) or for Summary Judgment (Doc. No. 44), arguing first, that the Court lacks subject matter jurisdiction to adjudicate the injunctive relief claims, because Plaintiffs are no longer incarcerated in the short-term detention facilities at issue in the Complaint, and second, that the Prison Litigation Reform Act, 42 U.S.C. § 1997e *et seq.* ("PLRA"), precludes any civil action by these incarcerated Plaintiffs because of their failure to exhaust their administrative remedies.[4] (Doc. No. 44 at 1-2.) Based upon the evidence and testimony presented at the evidentiary hearing, the tour on December 12, 2006, our assessment of the credibility of the witnesses, and after a thorough review of the applicable law, we make the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52(a).

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[3] The additional nine named Plaintiffs are: Jerome Bullard, Jerome Hayes, Dennis Jones, Nathaniel Kennedy, Raymond Leventry, Michael Little, Gihad Topping, Timothy Weglicki, and Manuel Williams. (Doc. No. 34.)

[4] City Defendants and District Attorney's Joint Motion to Dismiss or for Summary Judgment will be addressed in this Memorandum.

II. FINDINGS OF FACT

A. Background of the Overcrowding Crisis

Litigation against the City of Philadelphia over unconstitutional conditions in the PPS has a long history. For more than thirty years, from 1971 through 2002, state and federal courts have wrestled with the problem. The state court litigation began in 1971 with the filing of the *Jackson v. Hendrick* case in which prisoners in the City's prison system alleged that their conditions of confinement violated their constitutional and statutory rights. *See Jackson v. Hendrick,* 764 A.2d 1139, 1141 (Pa. Commw. Ct. 2001). In 1972, the trial court held that conditions in the prison amounted to cruel and unusual punishment and ordered the City to take immediate action to rectify the situation. *Id.* Over the next twenty years, the parties entered into a series of consent decrees that laid out specific measures that the City was obligated to take in order to provide constitutionally adequate conditions. *Id.* The final consent decree was approved in 1991. *See Jackson v. Hendrick*, No. 2437, slip op. at 3 (Phila. Ct. Com. Pl. July 1, 2002). Over the course of the litigation, the following remedial measures were taken either by court order or through negotiated agreements between the parties: identification of population capacities for the various prison facilities, issuance of proscriptions against housing inmates in uninhabitable cells, single cell occupancy mandates that were transformed into bans on triple-celling, implementation of pretrial bail release review mechanisms, qualified admissions moratoriums, limits on housing of state and out-of-county inmates at the PPS, and the extraction of promises to increase bed capacities. *Id.* at 5.

The *Jackson* litigation was terminated in 2002 with the approval of a final settlement agreement between the parties. *Id.* at 1. The settlement required the City to continue to monitor

the PPS with regard to its policies and procedures on maintenance, environmental issues, social service to inmates, medical and mental health treatment of inmates, and use of force. *Id.* at App. A, p. 4 (Agreement and Memorandum of Understanding). In addition, the agreement mandated that the City would notify plaintiffs' counsel of any triple-celling or use of non-housing areas for housing of inmates within twenty-four hours of such action. *Id.* at App. A, p. 6. The settlement indicated that if plaintiffs believed such housing to be in violation of the law, their remedy would be to commence a separate and independent lawsuit. *Id.* Finally, the City agreed to reduce its prison population through the opening of the new Women's Detention Center and the Cambria Correctional Center but specified that if the population exceeded specific levels (950 female inmates and 6,850 male inmates) and the City was unable to reduce the population, the City and plaintiffs' counsel would meet and discuss the issue of housing inmates. *Id.* at App. A, pp. 6-7.

Federal litigation involving conditions in the PPS began in 1982 with the filing of *Harris v. City of Philadelphia*, No. 82-1847 (E.D. Pa. 1982). In *Harris,* the inmates at the Holmesburg Prison filed a class action complaint against the City of Philadelphia and individual Philadelphia officials, alleging overcrowded conditions that violated the First, Eighth, Ninth, and Fourteenth Amendments. *See Harris v. City of Phila.*, No. Civ. A. 82-1847, 2000 WL 1239948, at *1 (E.D. Pa. Aug. 30, 2000). That litigation led to court-approved consent decrees in 1986 and 1991 as well as a Ten-Year Plan approved by the court in 1996. *Id.* at *1-4. The litigation also resulted in a series of orders beginning in 1994 and ending in 1999 that approved over 250 policies and procedures in the prisons that were a product of negotiations between the City and the plaintiff class, under the supervision of a Special Master. *Id.* at *4. Throughout the eighteen-year litigation, the consent decrees and orders mandated various measures in an effort to address the

crisis conditions that had developed. These measures included: construction of new detention centers and renovation of old facilities, contracts with private agencies for additional beds for work-release inmates and minimum security pretrial detainees, limitations on the number of inmates in PPS facilities, a qualified admissions moratorium on admitting additional inmates, implementation of a house arrest/electronic monitoring program for selected inmates, and ultimately, the release of certain non-violent inmates when the maximum allowable population was exceeded. *Id.* at *2-4. Between 1991 and 2000, the City paid a total of $864,000 in penalties for violating court orders. *Id.* at *5. In 2000, a final settlement was approved by the court, and federal supervision of the PPS came to an end. *Id.* at *11.

The instant action, like *Jackson* and *Harris*, deals with unconstitutional conditions in the prison system. It also deals with unconstitutional conditions in the Police Districts and at the PAB. Specifically, the Complaint alleges overcrowded and degrading conditions in the intake unit of the PPS, in the holding cells in local Police Districts, and at the PAB. The evidence presented by Plaintiffs at the hearing focused on the conditions that existed between May and September of 2006. However, it is clear that overcrowding and its consequences have plagued the PPS at-large and its intake units, in particular, for years. For example, during the course of the *Harris* litigation, the Court appointed a Special Master to oversee the City's compliance with consent decrees. In January 1997, the Special Master presented his report to the Court on aspects of the City's Compliance with the 1986 Consent Decree during the month of September 1996. (Doc. No. 74 at App. A.) The Court directed the Special Master to assess the City's compliance with Paragraph 2(c) of the 1986 Consent Decree, which required that: (1) every inmate held in the receiving area overnight receive a mattress; (2) within twenty-four hours of

arrival, each inmate receive a bed and mattress in intake housing; (3) every inmate be assigned to a long-term housing area within seventy-two hours of arrival at the prisons; and (4) areas including gymnasium space, corridors, bench areas, or any areas not set up for permanent housing would not be used for housing. (*Id.* at App. A, pp. 1-2.) After four visits during the month of September 1996, the Special Master reported that he did not once observe mattresses distributed to inmates in the receiving areas although many inmates were held in intake for longer than twenty-four hours. (*Id.* at App. A, p. 2.) In addition, a large portion of the male inmates observed by the Special Master were not assigned long-term housing within seventy-two hours, and many spent between two and six days in the receiving area at CFCF. (*Id.* at App. A, pp. 7-10.)

Despite policies mandated by the 1991 Consent Decree that inmates in intake were to be provided with soap, toothpaste, and toothbrushes, inmates testified in 1996 that they were deprived of basic personal hygiene items and sanitary conditions because of the large numbers of inmates. (*Id.* at App. A, pp. 25, 37-38.) Testimony from inmates and from the then-Commissioner of the PPS described overcrowding as a consistent problem in the intake unit in 1996. The Commissioner indicated that there were days when the intake population exceeded 150 inmates and, on occasion, exceeded 200 inmates. (*Id.* at App. A, p. 30.) An inmate testified that he was placed in the main holding cell at CFCF with seventy to eighty other detainees. (*Id.* at App. A, p. 36.) When asked if he slept, he reported that it was impossible because of the overcrowded conditions: "I mean everybody's under the bench, on top of the bench, all zig-zagged on the floor. . . . [Y]ou couldn't move nowhere . . . everybody's all over the place, there's just not enough room." (*Id.* at App. A, pp. 39-40.)

Federal court supervision of the PPS terminated in 2000 with a final settlement agreement approved by the Court, in which the City promised to monitor compliance with a variety of PPS policies through independent and expert consultants and promised to make specific renovations to the PPS facilities to improve conditions.[5] *Harris*, 2000 WL 1239948, at *18-19. Nevertheless, six years later, this case raises nearly identical claims of overcrowding, resulting in unsafe and unsanitary conditions. Since the termination of the *Harris* litigation, the prison population has continued to grow from roughly 7,000 inmates in 2000, *see id.* at *5, to nearly 9,000 inmates at this time.[6] (Hr'g Ex. P-24; Tr. 3 at 106 (King).)[7]

B. The Arrest Process and Admission to the PPS in 2006

Because the instant action deals specifically with overcrowding conditions in the intake unit of the PPS, Police Districts, and the PAB, we received evidence regarding the arrest process and the way in which inmates enter the system. In general, when arrested, a detainee is initially taken to one of seven local Police Districts or to the police detention unit of the PAB. (Tr. 6 at

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[5] It is clear that the 2000 settlement was reluctantly approved and jurisdiction was relinquished after eighteen years of litigation not because the court was satisfied that the job had been successfully completed but rather because of the limitations imposed on the court by Congress with the enactment of the PLRA in 1996. *Harris*, 2000 WL 1239948, at *10.

[6] *See* Hr'g Ex. P-42 (Graph of PPS Average Daily In-House Population 1999-2006).

[7] We will refer to the hearing transcripts by numbers 1 through 7 as follows with the last name of the witness in parentheses following the citation:

Tr. 1 - Oct. 3, 2006, A.M. Session (Doc. No. 67)
Tr. 2 - Oct. 3, 2006, P.M. Session (Doc. No. 66)
Tr. 3 - Oct. 4, 2006, A.M. Session (Doc. No. 65)
Tr. 4 - Oct. 4, 2006, P.M. Session (Doc. No. 68)
Tr. 5 - Oct. 5, 2006, A.M. Session (Doc. No. 69)
Tr. 6 - Oct. 5, 2006, P.M. Session (Doc. No. 70)
Tr. 7 - Oct. 6, 2006, A.M. Session (Doc. No. 71)

88 (Johnson).) Following processing, detainees await their preliminary arraignments, which should ideally occur within twenty-four (24) to twenty-eight (28) hours of arrest. (*Id.*) The Public Defenders' office sends a non-attorney representative to preliminary arraignments who tags cases assigned to that office so that files can be opened on those individuals who will be represented by the Public Defender. (Tr. 4 at 103 (Innes).) At the preliminary arraignment, bail is set. If it appears to the police that a detainee will be able to make bail, they will hold him in police custody for up to four hours to allow him to make bail before taking him to the prison. (Tr. 6 at 88-89 (Johnson).)

If a detainee is housed at the PAB, he or she is typically seen by a nurse within twenty-four (24) to thirty-six (36) hours of arrest. (Tr. 6 at 44 (Cohen).) The nurse asks questions about the detainee's well-being and reviews a medical checklist. (*Id.*) The nurse can also distribute some medication and provide minimal medical care. (*Id.* at 91 (Johnson).) If a detainee is at a local Police District, he is asked a series of questions about his mental and physical health, and the questioner fills out a form detailing his or her observations of the detainee, including whether the person appears to be in pain, whether the person appears to be under the influence of alcohol or drugs, and whether the person is carrying medication. (*Id.* at 30-31 (Cohen).) In addition, if detainees at the local Police Districts require any medical attention, from distribution of medication to emergencies, they must be taken to the local hospital. The local Police Districts are not authorized to administer any medical treatment at all. (*Id.* at 90 (Johnson).)

If a detainee does not make bail within four hours after the preliminary arraignment, the Police Department sends the detainee to CFCF. Detainees should, in general, be in police custody for no more than twenty-four (24) to twenty-eight (28) hours. (*Id.* at 88 (Johnson).) As

a result, the police detention facilities are designed for short-term holding purposes. (*Id.* at 89 (Johnson).) The police detention facilities are not equipped to provide detainees with warm water or soap to wash their hands. They do not provide detainees with showers and do not provide an opportunity for detainees to change clothes. (*Id.* at 90 (Johnson).)

Once a detainee is sent to the CFCF prison, he begins the intake process. Initially, detainees are placed in a main holding cell that is approximately 26-by-14 feet and should hold twenty-five to thirty inmates. (*Id.* at 122 (DiNubile); Tr. 1 at 19 (Bowers).) Detainees are then called out of the main cell individually, surrender their property, have their photographs taken, and then move through a series of up to fifteen smaller holding cells in the intake area. (Tr. 6 at 122 (DiNubile); Tr. 1 at 18, 21 (Bowers).) The smaller cells are approximately 9-by-13 feet in size and contain metal benches sufficient for twelve to fifteen people to sit. (Tr. 1 at 22, 25 (Bowers); Tr. 6 at 123 (DiNubile).) During this time, detainees wear the street clothes in which they were arrested. (Tr. 3 at 119 (King).) At the end of this process, each detainee has an opportunity to shower, undergoes a medical examination, is given bedding and a jumpsuit, and is then moved to the quarantine unit to await medical clearance and an assignment to a permanent housing location in the prison. (Tr. 1 at 31 (Bowers); Tr. 3 at 121 (King).) At that point, detainees are classified by the type of offense for which they have been arrested so they can be housed with other similar detainees. (Tr. 6 at 112 (DiNubile).) In general, the PPS goal is to move people through the intake process from admission to quarantine within seventy-two hours. (*Id.* at 119 (DiNubile).)

C. Summer 2006 Overcrowding Crisis and Moratorium on Admissions

In the summer of 2006, the PPS began to experience serious overcrowding problems. (Tr. 3 at 106 (King).) In May 2006, the population of the receiving room went above 100, a cause of concern to prison officials. (Tr. 6 at 120 (DiNubile).) In response, prison officials opened sixty beds in the garment shop at the Detention Center ("DC") and added forty-eight more beds in the B Building at CFCF. (*Id.* at 124 (DiNubile); Hr'g Ex. P-5.) Nevertheless, the population of the receiving room continued to go beyond its capacity, reaching a high of 140 or 150.[8] (*Id.* at 120 (DiNubile).) On June 28, 2006, Commissioner King sent a memo to the Honorable C. Darnell Jones II, President Judge of the Philadelphia Court of Common Pleas, the Honorable James J. Fitzgerald III, Trial Division Administrative Judge, and The Honorable Louis J. Presenza, President Judge of the Municipal Court of Philadelphia, in which he wrote: "Currently the population at the Prisons is 8877. We reached a high of 8897 on Saturday, June 24, 2006. The jails are full! The atmosphere at the Philadelphia Prison System is just too tense to allow the flow to increase." (Hr'g Ex. P-1.) On that day in June 2006, the receiving room of CFCF intake was full. Inmates were refusing to eat, staff was refusing to come to work, and the atmosphere was becoming extremely tense. (Tr. 3 at 111 (King).)

As a result of this overcrowding crisis, Commissioner King instituted a new policy called the Strategic Admissions Policy (the "OSA" or "Operation Strategic Admissions"). (*Id.* at 105 (King).) This policy involved a partial moratorium on admissions. (Hr'g Ex. P-1.) The PPS put a hold on the admission of new arrestees who were being held at the PAB and in the local Police

[8] Commissioner King testified that early in his tenure as Prison Commissioner, the population in the receiving room reached 200. (Tr. 3 at 126-27 (King).)

Districts. (Tr. 3 at 105 (King).) During this time, the prisons continued to accept juveniles, female inmates, people picked up by the bench warrant unit, and people from the sheriff. (*Id.* at 104 (King).) However, under the OSA, the bulk of new inmates, those arriving from the Police Department, were delayed and held in police custody in the Police Districts until the population decreased such that the prison had sufficient bed space to accept them.[9] (*Id.* at 104-05 (King).) Before implementing this policy, Commissioner King called Judge Presenza, Judge Fitzgerald, Police Commissioner Johnson, and the City Managing Director. (*Id.* at 109 (King).) The Managing Director acquiesced in Commissioner King's decision to implement the OSA because the Commissioner had indicated that this was necessary from a correctional standpoint. (Tr. 3 at 115-16 (King).)

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[9] It is particularly significant that similar problems occurred and were met with a similar solution in May through October 2005. Throughout those months, because of overcrowded conditions at the prisons, there were days when the prison informed the Police Department that it would have to delay admission of prisoners who were then held at the Police Districts until the prison was capable of accepting new arrestees. (Hr'g Tr. 6 at 62 (Keown); Hr'g Tr. 3 at 104 (King).) A memorandum from Lt. Gabriel Keown, written on July 19, 2006, indicated the following about the 2005 moratorium situation:

> The prison closed around the same time last year (May 30[], 2005) and the problem continued until October of 2005. The volume and number for the backlog of prisoners awaiting transportation is approximately 3 times higher than the problem last year. A previous meeting was conducted with the prison in the fall of 2005, which was attended by Deputy Commissioner Gaittens, Chief Inspector Davis, Inspector Sykes, Captain Ryan, Lieutenant Keown, Lieutenant Clark, Deputy Commissioner Murphy, Prisons, and Major Dinuble [sic], Prisons, in which they stated that they had plans in place to correct the problem. As of this time, no updates to what has been done [have] been provided.

(Hr'g Ex. P-6.) Thus, the PPS was aware that overcrowding was a constant problem of increasing seriousness and that the summer months were particularly problematic. The lack of action by PPS over the course of a year to prevent this problem from re-occurring is evident.

From a statistical perspective, the OSA had the effect of decreasing the average time it took the PPS to move detainees through the intake process. In the ten days before the OSA was implemented, the average processing time from arrival to quarantine was seventy-five (75) hours. (Tr. 7 at 141 (Heroex).) In the ten days that followed implementation of the OSA, the processing time dropped from seventy-five (75) hours to thirty-six (36) hours. (*Id.*) In August 2006, the average processing time decreased again to thirty (30) hours. (*Id.*)[10]

The OSA, while relieving the overcrowding pressure in the intake unit of the PPS, also had the effect of creating overcrowding, dangerous, and unacceptable conditions in the Police Districts and at the PAB. When the OSA was initially instituted, Commissioner King believed that inmates would be held only for a few more hours in police custody after their preliminary arraignments. (Tr. 6 at 93 (Johnson).) This would give the prison the needed additional time to properly process inmates through intake. (*Id.*) However, as the OSA continued, prisoners were held in police custody far longer than a few extra hours. Eventually, arrestees were held in police custody for days beyond the time when they should have been sent to the prison. (*Id.* at 95 (Johnson).) In fact, detainees were held for three to six days in holding cells in the Police Districts before they began the intake process at the prison. (*Id.*) In addition, some arrestees

[10] Defendants' statistician acknowledged that statistics distort reality because averages do not indicate the outliers—that is, the figure representing the average amount of time in the intake process does not make clear that numerous individuals in the sample spent far more or far less time in intake than the average. While the average processing time may have been thirty-six (36) hours after the OSA, that does not mean that some inmates were not being held in intake for seventy-five (75) hours or more. As was noted during the hearing, "[F]or the person who is an outlier, for example, who spent let's say just hypothetically eight days instead of two, it's no comfort to him, is it, that he was an outlier in your statistical study?" (Tr. 7 at 147 (Heroex).) Defendant's statistician conceded that the study of statistics "does [not] take the human element into consideration." (*Id.*)

were transferred to several Police Districts within the division before being admitted to the prison.[11] (*Id.* at 69-70 (Keown).) In July 2006, the Police Districts became so overcrowded that the police were forced to send arrestees to the Criminal Justice Center ("CJC") where they remained for several days before they could be sent to the prison.[12] (*Id.* at 80-81 (Keown).) As a result of the overcrowding crisis in the Police Districts, Police Commissioner Johnson decided to discuss the problem with his supervisor, the City Managing Director, Pedro Ramos. As Commissioner Johnson put it: "[I]t was a concern . . . that we had people inside the holding cells of our districts that we [were not] really set up for." (*Id.* at 96 (Johnson).) When Commissioner Johnson spoke with the Managing Director, he informed the Managing Director that while the Philadelphia Police Department was willing to work with the prison system to address the overcrowding problem, "people should not be held in the police facilities, because [the Police Department does not] have the facilities for showers, for bed[s] and for anything else like that.

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[11] On July 14, 2006, Lieutenant Gabriel Keown of the Police Department sent the following e-mail to Major James DiNubile of the PPS regarding the problems that the OSA was causing for the police:

> We need to talk, yesterday we had [a] wagon from the PDU with 2 prisoners turned away. CCTV is working very hard to help coordinate the transportation of prisoners, we will run into safety issues if wagons are turned away. I thought we had an understanding this would not happen and if you have [a] problem with shipping or any other problems you would accept prisoners and we would work with you to correct the problem. We scheduled several prisoners to be shipped on Wednesday 7-12-06. The last group of prisoners that was shipped at 5 PM was rejected. We need to move more prisoners, some locations are at their maximum capacity.

(Hr'g Ex. P-2.) Despite the fact that such concerns were expressed as early as July 12, 2006, the OSA was not terminated for another two months. (Tr. 7 at 21-22 (Ramos).)

[12] The District Attorney characterized Commissioner King's OSA policy as a "genuine but misguided attempt[] to reduce the overall prison population." (Doc. No. 79 ¶ 28.)

[The police facility is] basically a holding cell." (*Id.* at 96-97 (Johnson); *see also id.* at 70 (Keown) (asserting that the police holding cells are not designed to hold people beyond preliminary arraignment).)

On September 11, 2006, the City Managing Director, over the objection of Prison Commissioner King, ordered the termination of the OSA. (Tr. 7 at 21-22 (Ramos).) Ramos made this decision when it became clear to him that people were being held for days, and not hours, in police custody post-preliminary arraignment. (*Id.* at 21 (Ramos).) Ramos testified that the consequences of the OSA, the holding of arrestees for extended periods of time in police custody before they were admitted to the prisons, were "not what I had expressed support for a few months before." (*Id.*) Coincidentally, the decision to terminate the OSA was made one week before the scheduled preliminary injunction hearing in this Court and on the same day that Defendants and intervenor filed a motion to continue the preliminary injunction hearing. (Doc. No. 26.) Ramos was aware that the preliminary injunction hearing was scheduled for the following week when he made the decision to terminate the OSA on September 11, 2006. (Tr. 7 at 27 (Ramos).)

Between June 2006 when the OSA was implemented and September 11, 2006 when it was terminated, very little had occurred to eliminate the overcrowding problem at the prisons. (Tr. 3 at 178-79 (King).) At some point, the City created a 24-Point Plan (discussed *infra* pp. 33-34) that included steps that the City would consider in an attempt to reduce prison overcrowding. Moreover, the PPS contracted with a prison in Monmouth County, New Jersey for 100 prison beds in an effort to free some bed space at the PPS. (*Id.*) However, nothing had really changed in terms of the number of prisoners in the PPS. (*Id.*) In order to deal with the additional

detainees who would be coming through intake when the OSA was lifted, the prison put an additional sixty (60) bunk beds in day room areas in the A Building at CFCF. (*Id.* at 179-80 (King).) The union of correctional officers and workers protested the additional bed space in the day rooms. (*Id.* at 180 (King).) As a result of discussions with the union, the prison decided to place 197 blue boats, or plastic cots that sit six inches off the floor, in the B Building of CFCF, creating cells holding three inmates, two in beds and one in a blue boat (triple-celling). (*Id.* at 181 (King).) The B Building of CFCF is the quarantine area of intake in the prison. (*Id.*) This triple-celling increased the quarantine area by at least 197 people. (*Id.*) Commissioner King, had considered this option in June prior to instituting the OSA but chose not to implement triple-celling at that time, because he made a correctional determination that "the cells are made for two people, not three people."[13] (*Id.* at 182 (King).) Nevertheless, King instituted triple-celling in September 2006 because the Managing Director ordered him to terminate the OSA and because he had to find beds for the influx of additional detainees who would be arriving at the prison. (*Id.* at 183-84 (King).) The effect of using the 197 blue boats was to triple-cell almost 600 inmates. (Tr. 6 at 133 (DiNubile).)

As of the time of the hearing in October 2006, the average time a detainee spends in police custody post-preliminary arraignment has decreased to normal levels, between four and six hours. (Tr. 6 at 107 (Johnson).) In addition, from a statistical perspective, the amount of time a detainee spends in the intake process at CFCF decreased in September to twenty-five

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[13] It is interesting to note that the settlement reached in the *Jackson* litigation in 2001 recognized the problems inherent in triple-celling. *See supra* pp. 4-5.

hours.[14] Prison officials testified that as of the date of the hearing, the average number of people in a cell in the intake area was ten. (Tr. 6 at 130 (DiNubile).)

D. Conditions in PPS Intake During Summer 2006

The City of Philadelphia prison population faces a yearly increase of three to four percent. This increase has occurred regularly for the last fifteen or twenty years. (Tr. 3 at 95 (King).) In 2006, the population at the PPS faced even more dramatic increases. (Hr'g Ex. P-5.) This higher population in the prison contributed to numerous troubling conditions in the intake unit between May and September 2006.

1. *Length of Time in Intake and Cell Progression*

As previously described, detainees in the intake unit of the PPS are typically placed first in a main holding cell that is approximately 26-by-14 feet and should hold twenty-five (25) to thirty (30) inmates. (*Id.* at 122 (DiNubile); Tr. 1 at 19 (Bowers).) Detainees are then called out of the main cell individually, surrender their property, have their photographs taken, and then move through a series of up to fifteen smaller holding cells in the intake area. (Tr. 6 at 122 (DiNubile); Tr. 1 at 18, 21 (Bowers).) The smaller cells are approximately 9-by-13 feet in size and contain metal benches sufficient for twelve to fifteen people to sit. (Tr. 1 at 22, 25 (Bowers); Tr. 6 at 123 (DiNubile).) The process concludes with a shower and a medical examination. The detainee is then given bedding and a jumpsuit and is moved to the quarantine unit to await medical clearance and an assignment to a permanent housing location in the prison. (Tr. 1 at 31 (Bowers); Tr. 3 at 121 (King).) The PPS's stated goal is to move detainees through

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[14] *See supra* note 9, addressing the admitted fact that the figure representing the average amount of time in the intake process does not make clear that numerous individuals in the sample spent far more or far less time in intake than the average.

this intake process and into quarantine within seventy-two hours or three days of their arrival at the prison. (Tr. 6 at 119 (DiNubile).)

In the summer of 2006, however, overcrowding caused this system to break down. The data demonstrates that the prison was not able to adhere to its own policy of moving detainees through intake to quarantine within three days. Between May 1, 2006 and July 25, 2006, 1,226 detainees spent more than three but less than four days in intake. During that time, 456 detainees spent more than four but less than five days in the intake process. In addition, forty-seven detainees spent more than five but less than six days in intake and five spent greater than six days in intake. (Hr'g Ex. P-39.)

In addition to the length of time spent in intake, the proper progression of cells outlined by prison officials was not adhered to, and many detainees were placed back into holding cells after the shower and medical examination. For example, after his medical examination, Plaintiff Darius McDowell was placed in a holding cell used for inmates who were scheduled to appear in court the following day instead of going to the quarantine area. (Tr. 1 at 78-79 (McDowell).) McDowell spent the night in that holding cell with no bed, sleeping on the floor with only a blanket. (*Id.*) The following morning, McDowell was not taken to quarantine but was instead placed back in the initial main holding cell in which he started the intake process. (*Id.* at 79-80 (McDowell).) McDowell was held in that cell for six to eight more hours with over thirty-five other detainees who had also showered and undergone medical examination. (*Id.* at 80 (McDowell).) Following his time in the main holding cell, McDowell was placed in a storage room that held tables and chairs. (*Id.* at 83 (McDowell).) He was held there overnight again with no bed and was finally taken to quarantine the following morning. (*Id.*) Similarly, Plaintiff

Nathaniel Kennedy, after making it through the shower and medical examination, was returned to several cells in the intake area and slept overnight there with no bed. (Tr. 2 at 22-23 (Kennedy).) Plaintiff Antonio Pedraza spent a day and night in a small room with chairs and no beds where he slept on the floor. This was after showering and going through medical clearance but before he was placed in the quarantine area. (*Id.* at 109-111 (Pedraza).) Finally, Plaintiff Jeffrey Jones spent approximately eight hours post medical clearance in a holding cell before he was moved to the quarantine area. (*Id.* at 134 (Jones).)

It is evident that overcrowding was so severe in the summer of 2006 that the intake process often lasted far longer than it should have. In addition, overcrowding conditions existed even in the quarantine area, a situation which resulted in prisoners being placed back in holding cells after they had completed the intake process.

2. *Overcrowded Conditions in Holding Cells*

In addition to spending excessive amounts of time in intake, detainees were also packed into the intake holding cells in numbers that far exceeded the capacity of these cells. While the main holding cell at the beginning of the intake process is capable of holding twenty-five (25) to thirty (30) men, the smaller cells used in the remainder of the intake process were capable of holding only twelve (12) to fifteen (15) people. Nevertheless, during the summer of 2006, prisoners were consistently placed in these smaller cells with thirty or more other inmates. (Tr. 1 at 25 (Bowers); *Id.* at 69 (McDowell); *Id.* at 119 (Bucci); Tr. 2 at 97 (Pedraza).) The smaller cells were so crowded that there was not enough room for all of the men to sit down, even if they used the metal benches and every inch of the concrete floor. (Tr. 1 at 119 (Bucci).) As a result, detainees who were held in the intake unit for four or five days were forced to endure long

periods of time standing and, if lucky, sitting or lying down overlapping with other men, under a bench, or huddled next to the toilet on the concrete floor. (Tr. 1 at 23-24 (Bowers) (describing inmates rotating sitting and standing positions); Tr. 1 at 64, 69 (McDowell) (describing lying on another inmate when tried to lie down); Tr. 1 at 117, 119 (Bucci) ("mostly it was standing"); Tr. 2 at 46-47 (Hayes); Tr. 2 at 97 (Pedraza) (describing rotating standing and sitting positions in an overcrowded cell); Tr. 4 at 91 (Bullard).)[15]

3. *No Beds*

While held in the intake unit of the PPS, detainees are not provided with any beds or bedding. The PPS does not provide inmates with sheets, blankets, and pillows until they complete the intake process. In addition, while in intake, inmates are not provided with beds or mattresses and must sleep on metal benches or on the concrete floor. (Tr. 3 at 120 (King); Tr. 1 at 75 (McDowell) (testifying that he and others used their shirts and shoes in place of sheets and pillows); Tr. 1 at 26 (Bowers).) Because of the overcrowded conditions during the summer of

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[15] Significantly, the District Attorney acknowledged the existence of these conditions in her Proposed Findings of Fact, making the following statement with regard to the conditions at the intake facilities at the PPS, in the individual cells at the PAB, and in the Police Districts:

> Plaintiffs have presented extensive evidence relating to crowding in individual cells at the Police Administration Building, various police districts, and the intake facilities at the Philadelphia Prison System. *The evidence of these conditions was largely uncontested by the Defendants*. The Plaintiffs' evidence established that detainees were packed into cells far too small for the numbers of detainees. For example, the evidence showed that 30-35 inmates were crammed into a 9' x 13' cell. Often, there was insufficient room for the detainees to lie down and detainees were forced to maneuver for any available space to sit o[r] lie down.
>
> The Plaintiffs' evidence also showed that detainees were housed in these conditions for several days. . . .

(Doc. No. 79 ¶¶ 30-31 (emphasis supplied).)

2006, detainees were forced to sleep overlapping one another and on every inch of the concrete floors. (*Id.* at 69 (McDowell).) Prisoners slept huddled with their heads next to the toilets because "that was the only place to be." (Tr. 1 at 29 (Bowers); *Id.* at 69 (McDowell); *Id.* at 118 (Bucci).) In fact, a "good spot" for sleeping was apparently the small section of concrete floor under the metal bench "because no one's gonna step on you" in that space. (*Id.* at 33 (Bowers); *Id.* at 126 (Bucci) (also describing underneath the bench as a "choice spot"); Tr. 2 at 97 (Pedraza).) In the summer of 2006, as a result of the overcrowded conditions, detainees spent three, four, five, or six days in the intake unit of the PPS without any bedding provisions, sleeping, if they could, on metal benches or directly on the concrete floors if there was room.

4. *Lack of Hygiene and Bathroom Provisions*

While detainees are held in the intake area, they are not provided with any materials for personal hygiene. They have no access to warm water or soap for hand washing and no access to toothpaste or toothbrushes. (Tr. 1 at 26 (Bowers); Tr. 1 at 70 (McDowell); Tr. 1 at 119, 125 (Bucci); Tr. 2 at 70 (Jones); Tr. 2 at 95-96 (Pedraza); Tr. 4 at 70 (Scott); Tr. 4 at 95 (Bullard).) Consequently, during the summer months in 2006, inmates were held for up to six days with no soap, no warm water, no toothbrushes, and no toothpaste. They were provided with meals during this time but were given no opportunity to wash their hands before eating or after using the bathroom. The fact that there were large numbers of men packed together in these cells further exacerbated the hygiene problems. During this time, the detainees remained in their street clothes and were not provided a prison jumpsuit until the very end of the intake process. (Tr. 3 at 121 (King).)

In addition to the lack of hygiene materials, detainees in the intake unit were forced to share unsanitary sinks and toilets with up to thirty other men. Toilets had urine and rotten food in them, and the sinks often did not work. (Tr. 1 at 30 (Bowers); Tr. 1 at 66, 71 (McDowell); Tr. 1 at 118, 125 (Bucci) (describing urine covering toilet and sink).) Correctional officers occasionally permitted detainees to use toilet facilities in private cells. (Tr. 2 at 47-48 (Hayes).) However, this luxury was not provided on a regular basis, and officers often denied inmate requests to use toilet facilities. (Tr. 1 at 28 (Bowers); Tr. 1 at 121-22, 133 (Bucci) (describing guards ignoring his requests to use a private toilet); Tr. 2 at 48 (Hayes).) As a result of these conditions, inmates frequently went days without moving their bowels. (Tr. 1 at 122 (Bucci) (did not move bowels for four days in intake because guards ignored his requests).) When inmates finally reached the end of the intake process and were permitted to shower, they encountered unsanitary conditions there as well. (Tr. 1 at 35-36 (Bowers) (describing "disgusting" shower that was "slimy" and "had a stink about it"); Tr. 1 at 76 (McDowell) (same); Tr. 1 at 125 (Bucci) (same); Tr. 2 at 106-07 (Pedraza) (describing use of foam plates from food wrapper as shower shoes).)

5. *Denial of Medical Attention*

Detainees in the intake areas of the PPS were denied medical attention for major and minor problems. While medical staff are situated next to the intake area of CFCF and tour the area once per shift (Tr. 6 at 130 (DiNubile)), it is clear that medical concerns of detainees went untreated. For example, a detainee who was experiencing methadone withdrawal, despite repeated requests for assistance, was ignored by correctional staff for at least two to three hours. (Tr. 1 at 21-22 (Bowers).) Several older men asked for medical assistance and, in each instance,

correctional officers responded that if it was not life threatening or there was no blood, there would be no assistance. (Tr. 1 at 73-74 (McDowell).) Plaintiff Jones, while in the PAB, developed a sore in the area where a toe had been amputated. Despite constant requests for medical attention, or even a band aid to cover the affected area, the reply from prison officials was that he should not have gotten himself locked up. (Tr. 2 at 70 (Jones).) An inmate who fainted and had trouble breathing could not get a response from correctional officers for hours. (Tr. 2 at 103-04 (Pedraza).)

E. Conditions in Police Districts and the PAB in Summer 2006

As a result of the OSA, overcrowding and unreasonably dangerous conditions developed at the Police Districts and the PAB as more arrestees were held in police custody for extended periods of time. The cells in the Police Districts and the PAB are designed to hold prisoners for no more than twenty-four to thirty hours. (Tr. 6 at 67 (Keown); Tr. 6 at 88 (Johnson); *see also* Tr. 6 at 96-97 (Johnson) ("[B]asically I think that people should not be held in the police facilities, because we don't have the facilities for showers, for bed[s] and for anything else like that. We're basically a holding cell."); Tr. 5 at 24-27 (Benton) (facilities toured—the 9th and 24th/25th Districts and PAB—were designed to safely confine one detainee if used for more than 10 hours).)

1. *Overcrowded Holding Cells*

Detainees were held in small holding cells in numbers that far exceeded the regular capacity of the cell. (Tr. 1 at 149-50 (Leventry) (10-to-12 people held in cell measuring 8 feet by 10 feet); Tr. 2 at 9 (Kennedy) (describing crowded conditions forcing him to sit on the floor); Tr. 2 at 64-65 (Jones) (four prisoners rotating between position on bench, under bench, and next

to toilet on floor); Tr. 4 at 84-85 (Bullard); Tr. 5 at 25 (Benton) (stating that four inmates were held in cell measuring 6 x 7 feet at the PAB when he toured the facility on August 29, 2006).)

2. *No Sleeping Provisions*

Even though prisoners were detained in police custody for days after the OSA was implemented, they were not provided with beds, sheets, blankets, mattresses, or pillows. Inmates slept on metal or wooden benches or on the concrete floor of the holding cells. (Tr. 1 at 151-52, 157-58 (Leventry); Tr. 2 at 10, 16, 19, 21 (Kennedy) (provided with one blanket at the CJC); Tr. 2 at 42, 44-45 (Hayes) (explaining that he used a shoe to cushion his hip that grew sore from sleeping on the floor); Tr. 2 at 60, 62 (Jones) (stating that he used a cold pack meal as a pillow); Tr. 2 at 91 (Pedraza); Tr. 2 at 126-27, 131 (Jones) (describing use of sneakers as a pillow).)

3. *Unsanitary Conditions*

While detainees were held in police custody, they were provided with no materials for personal hygiene. They were not provided with soap or warm water for hand washing and had no access to toothbrushes or toothpaste. In addition, they remained in their street clothes and had no access to showers. While the OSA was in effect, detainees were held in police custody for days without access to personal hygiene materials. (Tr. 1 at 153, 156-57 (Leventry); Tr. 2 at 10, 12, 17, 20 (Kennedy); Tr. 2 at 59, 64, 66 (D. Jones); Tr. 2 at 91 (Pedraza); Tr. 2 at 127, 131 (J. Jones); Tr. 4 at 88 (Bullard).)

In addition to a lack of personal hygiene materials, detainees were also held in cells with dirty and sometimes inoperable sinks and toilets. (Tr. 1 at 152, 157 (Leventry) (toilet and sink were filthy and inoperable); Tr. 2 at 12, 20 (Kennedy); Tr. 2 at 63, 66 (D. Jones); Tr. 2 at 43-44 (Hayes) (stating that toilet had dirt and food debris in it and that he did not flush the toilet for

fear of it overflowing and flooding the floor on which he was forced to sleep); Tr. 2 at 125, 129 (J. Jones); Tr. 4 at 85 (Bullard) (attempt to draw water from sink resulted in appearance of little bugs).)

With regard to arrestees' use of a private bathroom to move their bowels, arrestees were at the mercy of police officials who sometimes permitted trips to private bathrooms but often ignored prisoner requests. (Tr. 2 at 63-64 (D. Jones) (describing arrestee at PAB who "begged" to use a private bathroom, but was denied and defecated on himself); Tr. 2 at 90 (Pedraza) (requested opportunity to move his bowels without response from officers).)

4. *Food Provisions*

While held in police custody, many detainees were provided minimal food and drink. They received one cheese sandwich and an 8-ounce container of water every eight to twelve hours. (Tr.1 at 59-60 (McDowell) (three times a day); Tr. 1 at 150-51, 156 (Leventry) (every ten hours at 24th/25th District and once in twenty-four hours at 26th District); Tr. 2 at 9, 20 (Kennedy); Tr. 2 at 41 (Hayes); Tr. 2 at 61, 65 (D. Jones) (cheese sandwich and water every twelve hours); Tr. 2 at 88-89 (Pedraza); Tr. 2 at 125-26, 129 (J. Jones). At some point during the OSA, as a result of a request by Lieutenant Gabe Keown of the Police Department, Major DiNubile from the PPS agreed to send cold package meals from the prison once a day to the Police Districts. (Tr. 6 at 129 (DiNubile).) Cold package meals include a salami sandwich, a sugar cookie, a piece of fruit, and a pint of iced tea. (Tr. 1 at 26 (Bowers).)

5. *Length of Time in Police Custody*

The cells in the Police Districts and at the PAB were intended to hold arrestees for twenty-four to thirty hours. (Tr. 6 at 67 (Keown); Tr. 6 at 88 (Johnson).) During the OSA,

detainees were held for two to seven days in police custody in the conditions described above before being transferred to the intake unit at the PPS. The following is a breakdown of inmates by total number of days in police custody.

Inmates with 7+ days police custody	6
Inmates with more than 6, but fewer than 7 days police custody	12
Inmates with more than 5, but fewer than 6 days police custody	49
Inmates with more than 4, but fewer than 5 days police custody	209
Inmates with more than 3, but fewer than 4 days police custody	563
Inmates with more than 2, but fewer than 3 days police custody	1,235

(Hr'g Ex. P-38; Doc. No. 74 at 20.)[16]

Following is a list of named Plaintiffs and members of the plaintiff class who testified at the hearing, or for whom stipulations were reached, and the number of days each arrestee spent in custody.

Plaintiff	**Number of Days in Custody Pre-Prison Housing or Release**

[16] This table was created by Plaintiffs and is based on data provided by Defendants.

Jeffrey Jones (in police custody and prison intake)	10.00 (based on testimony)
Khayan Flemming (in police custody alone)	7.21
Dennis Jones (in police custody and prison intake)	6.92
Eric Scott (in prison intake alone)	6.70
Antonio Pedraza (in prison intake alone)	6.02
Terrance Maxwell (in prison intake alone)	5.90
Darius McDowell (arrest on 6/14/06) (in police custody and prison intake)	5.38
Raymond Leventry (in police custody and prison intake)	5.17
Jerome Hayes (in police custody and prison intake)	5.13
Jerome Bullard (in police custody and prison intake)	5.13
Darius McDowell (arrest on 5/9/06) (in police custody and prison intake)	3.67
Nathaniel Kennedy (in police custody and prison intake)	3.63

(Doc. No. 74 at 21-22.)[17]

F. Fire Safety Issues at the PAB and Police Districts

[17] This list only includes plaintiffs who were held for three or more days either in prison intake areas or prison intake and police custody combined and was compiled by Plaintiffs based on data provided by Defendants.

As described above, numerous arrestees spent lengthy periods of time at the PAB. The building itself presents fire safety issues as do the emergency evacuation procedures and the emergency plan. (Tr. 3 at 17 (Corbett).)

The holding cells in the PAB are, in their current condition, dangerous and unsafe from a fire safety perspective. First, the PAB cells have no automated central unlocking system and must be manually unlocked individually. (*Id.* at 19.) This is a significant problem, because time is of the essence during a fire. (*Id.*) Combustible materials are present in areas surrounding the holding cells and in the exit areas. (*Id.*) In addition, maintenance appears to be poor. (*Id.* at 20, 25.) Plaintiff's fire safety expert observed no fire protection systems, including smoke detectors, automatic alarms, or sprinklers aside from manual fire alarm pull stations, and Defendants offered no testimony of the existence of such fire protection systems in the PAB. (*Id.* at 17-18.) In terms of the fire safety plan, the procedure for evacuation of detainees requires detainees to wait in a garage loading area until a police emergency patrol wagon arrives, causing delay during an emergency situation. (*Id.* at 20.) In addition, the emergency plan for the PAB requires semi-annual fire drills. (*Id.* at 23.) However, it appears that fire drills are not conducted in accordance with the plan. (Tr. 7 at 154 (Healy).) Moreover, in the Police Districts where prisoners were held for days during the OSA, there appear to be no emergency plans at all. (Tr. 7 at 151-52 (Healy) (stating that he does not know if the Police Districts have fire safety plans); Tr. 3 at 28 (Corbett) (Defense counsel acknowledging that fire safety plans for the Police Districts have not been found).)

The City is beginning to take some action on fire safety issues as a result of this lawsuit. (Tr. 7 at 148-49 (Healy) (acknowledging that he did not know of fire safety issues until tour of

facility with Plaintiffs' counsel).) The Police Department has made arrangements to have inspections of the PAB and Police Districts performed by the Fire Department. (*Id.* at 149.) In addition, executives from the State Correctional Facility performed a walk-through of the PAB to help the Police Department in its effort to self-identify problematic situations in the areas of sanitation, fire safety, and security. (*Id.* at 149-50.) Finally, on October 13, 2006, the Police Department issued a memo concerning fire drills to be conducted at unspecified times at the Police Detention Unit. (Doc. No. 82 at Ex. 40.)

G. Medical Issues

1. *Medically Troubling Conditions*

In 2004, the PPS was accredited by the National Commission on Correctional Health Care as meeting the Commission's standards for provision of medical services to inmates, training of staff, and maintenance of policies, rules, and regulations on health care and hygiene. (Tr. 7 at 116 (Healy).) The Commission performs site reviews every three years. (*Id.* at 117.) Following the prior litigation involving prison conditions, the prison retained the services of two physicians as outside consultants to monitor prison health services and provide quarterly reports to the prison. (*Id.* at 117-18.) The PPS responds to these reports with Corrective Action Plans. (*Id.*) Nevertheless, it is clear that the overcrowded conditions in the summer of 2006 created a situation in which detainees' medical concerns were not being promptly addressed.[18]

Furthermore, the hygiene issues previously discussed, along with the general overcrowding conditions, create serious problems from a medical perspective. The PPS procedures call for routine hand-washing with soap and warm water, regular showers, and clean

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[18] *See supra* p. 22 for a detailed discussion.

clothing and bedding as a means of preventing the spread of infectious diseases including Methicillin-Resistant Staphylococcus Aureus (MRSA), a disease that is prevalent in some prison populations. (Tr. 5 at 92-94 (Johnson); Hr'g Ex. P-44; Tr. 6 at 13-14 (Cohen) (describing tuberculosis, MRSA, and other diseases of concern in prisons).) However, in the intake unit of the PPS and in the PAB and Police Districts, these procedures were not adhered to in the summer of 2006.[19]

The mere fact that inmates were detained in large numbers in cells that were meant to hold far fewer people is a cause of concern from a medical perspective. The risk of spreading infectious diseases increases dramatically when people sleep within three feet of one another. (Tr. 6 at 24-25 (Cohen).) The overcrowded conditions at the Police Districts, the PAB, and the intake unit of CFCF led numerous detainees to spend several days in extremely close quarters, sometimes sleeping on top of one another because of a severe lack of space. In these circumstances, especially given the fact that detainees were not permitted to wash their hands, shower, or change clothes for days, the risk of diseases including E. coli infection, Hepatitis A, pneumococcal pneumonia, meningitis, shigella, salmonella, and diarrheal disease significantly increases. (*Id.*) In addition, triple-celling of inmates in the quarantine area, at a point in time when they have been tested for various diseases but have not yet received medical clearance is a problem. Triple-celling makes it very difficult to maintain a three-foot barrier between people when sleeping. As a result, triple-celling increases the likelihood of transmission of infectious diseases, particularly when it is inmates who have not yet been medically cleared who are held in triple cells. (*Id.* at 25-26 (Cohen).)

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[19] *See supra* pp. 21-22.

2. *Medical Injuries Suffered by Plaintiffs*

A number of arrestees who were detained in police custody or in the intake unit of CFCF for extended periods in the summer of 2006 developed medical problems or suffered exacerbation of already existing problems as a result of their detention. Plaintiff Bowers developed a blood clot in his leg as a result of being forced to sleep huddled under a bench on the concrete floor in the intake unit.[20] (Tr. 1 at 33-34, 41-43 (Bowers).) After being released from custody, Bowers was hospitalized for four days for his condition and continues to take medication for it. (*Id.* at 41-43.) Plaintiff Bucci lost fifteen pounds during the five day period in which he was in custody and suffered dehydration and soreness from sleeping on a concrete floor. (Tr. 1 at 127 (Bucci).) Plaintiff Leventry, who suffers from AIDS and Parkinson's Disease was denied medication with the exception of one dosage during the four days he spent in police custody before being transferred to CFCF. (Tr. 1 at 146-48, 153-55 (Leventry).) When Leventry was transported to the hospital on the one occasion during those four days to receive medication, the nurse informed the police who escorted him that it was crucial for him to take his medication every eight hours. (Tr. 1 at 155 (Leventry).) Despite this, Leventry was never taken back to the hospital and never again given his medication while in police custody. (*Id.*) In addition, Leventry developed a serious infection in his thumb that required surgery after he was

[20] It is worth noting that Bowers was not even charged with a crime. He was picked up on a bench warrant issued in a domestic relations matter when he failed to appear because he was ill. Bowers has been gainfully employed for the last fifteen years and has never had any contact with the criminal justice system. He was subjected to the conditions at CFCF as described above from Friday until Monday when the bench warrant was lifted. (Tr. 1 at 16-17 (Bowers).)

released from CFCF.[21] (*Id.* at 160-65 (Leventry).) Plaintiff Dennis Jones has diabetes and had part of his toe amputated in 2005. (Tr. 2 at 56-57 (D. Jones).) He was arrested in July 2006 wearing bedroom slippers and was not provided with a change of shoes while in police custody. (*Id.* at 58-59.) He developed a sore on the partially amputated toe and an infection on the other foot. Jones requested medical attention but was met with the response: "You shouldn't a been locked up, this is not a hotel." (Tr. 2 at 66-68, 77-78 (D. Jones) (answering Defense counsel's question that there was, in fact, red blood coming out of the sore on his foot).)

It is clear that both the prison and police department have policies and procedures for dealing with prisoner medical problems. Nevertheless, during the summer of 2006, the overcrowding and accompanying conditions resulted in the failure of both the prison and police to properly attend to the medical needs of those in their custody.

H. Grievance Procedures and Exhaustion of Administrative Remedies

Throughout their time in police custody and in the intake unit of CFCF, detainees did not have meaningful access to a grievance procedure through which they could have objected to the conditions of their detention. There is no grievance procedure for persons held in the receiving areas at CFCF, DC, or PICC. (Tr. 1 at 142 (Bucci); Tr. 2 at 34 (Kennedy); Tr. 2 at 119-20 (Pedraza); Tr. 4 at 72-73 (Scott) (denied a grievance form when he asked for one in CFCF intake).)

At the time of admission to the PPS, detainees must surrender their personal property, including any writing implements and/or paper. In addition, during the intake process, no

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[21] Leventry testified that he did see a nurse while in intake at CFCF and that he was given some treatment for his thumb while he was in the prison. He went to the hospital for surgery upon his release from CFCF. (Tr. 1 at 164-66 (Leventry).)

writing implements or paper are made available to inmates to enable the preparation of written complaints concerning conditions in the intake area. (Tr. 1 at 141-42 (Bucci); Tr. 2 at 34 (Kennedy); Tr. 2 at 119-20 (Pedraza); Tr. 6 at 122 (DiNubile) (inmates surrender personal property when placed in main holding cell at intake).) Moreover, when inmates held in the PPS intake areas made complaints to correctional officers concerning the conditions in the intake areas, correctional officers either ignored the inmates or told the inmates that nothing could be done to address the complaints. (Tr. 1 at 31 (Bowers) ("They don't really answer questions that the prisoners have for 'em."); Tr. 1 at 127, 133, 142 (Bucci) ("Anytime you asked the guards for anything, they would just walk right by or say no."); Tr. 2 at 119-20 (Pedraza) (inmates in intake requesting grievance forms were ignored by correctional officers); Tr. 4 at 72-73 (Scott) (denied grievance form requested in intake area).) Finally, the grievance forms in the PPS are officially available only in the housing units, law libraries, and from social services, areas that are not available to persons in intake. (Grievance Procedure, Doc. No. 74 at App. A, p. 4.)

I. City's Plans for Future of PPS

In 1978, the City created the Criminal Justice Coordinating Committee ("CJCC") to improve the local administration of criminal justice. (Tr. 7 at 68 (Diaz).) The CJCC is chaired by the City Solicitor and consists of numerous stakeholders in the criminal justice system in the City of Philadelphia. It includes the Managing Director's office, the PPS, the Police Department, the Executive Branch of the City Government, the District Attorney's office, the Defender Association of Philadelphia, the Probation office, the President Judge of the Municipal Court, the Administrative Judge of the Trial Division of the Court of Common Pleas, and the Administrative Office of the Courts. (*Id.* at 71; Tr. 6 at 98 (Johnson).) In May 2005, the CJCC

began developing a systematic approach to dealing with the problem of a rising prison population. (Tr. 7 at 69.) To that end, the CJCC employed the services of Professor John Goldkamp from Temple University to conduct a study on the demographics of the prison population, the reasons for its continued growth, and potential solutions to reduce the population of pretrial and post-trial inmates. (*Id.* at 70, 72.) Goldkamp has been a consultant to the Philadelphia courts for years and has previously issued reports as a consultant on prison population problems. (*Id.* at 111-12.) This Goldkamp study commenced in October 2005 and was due to be completed in October 2006.[22] (*Id.* at 73.)

While awaiting the Goldkamp study, the CJCC created the 24-Point Plan to begin to address population-related issues in the prison system.[23] (Hr'g Ex. D-1.) This plan includes the following proposals to help reduce the prison population:

> (1) implement out of state placements; (2) increase prison social worker and public defender staff to facilitate early releases; (3) reduce pretrial population with bail set under $10,000 or non-violent charges; (4) reduce pretrial population by implementing non-financial release mechanisms; (5) reduce pretrial population with bench warrants; (6) accelerate Court of Common Pleas dispositions; (7) reduce pretrial population by consolidating multiple open cases; (8) implement alternative sentencing options; (9) implement alternative sentencing options for backtime and probation failure cases; (10) implement alternative sentencing options for solely probation detainers; (11) implement alternative sentencing options including electronic monitoring; (12) enhance clerk of quarter sessions; (13) reduce pretrial processing delay by including reduction of continuances and increasing personnel; (14) ensure police discovery is promptly

[22] Even though several defense witnesses mentioned the Goldkamp study during the course of the testimony, either the study has not been completed or counsel did not deem the results of the study sufficiently significant to submit to this Court.

[23] It is not at all clear when the 24-Point Plan was initiated. Police Commissioner Johnson testified that it was developed after the lawsuit was filed. (Tr. 6 at 100-02 (Johnson).) Defendants claim in their Proposed Findings of Fact that it was developed in October 2005 but cite to Commissioner King's testimony, which does not support that assertion. (*See* Doc. No. 77 at 13 (citing Tr. 3 at 158 (King)).)

> provided; (15) plead more "intermediate punishment" cases in Track Program; (16) increase time in PDA to enable arrestees to make bail; (17) formalize OSA - consider increasing capacity at prisons and police; (18) aggregation of sentences for transfer to state facilities; (19) major case plea negotiation program; (20) federalize gun crimes; (21) implement alternative sentencing option for substance abuse cases; (22) expand PD indigent homicide representation; (23) hire additional probation officers; (24) revise pretrial guidelines.

(Hr'g Ex. D-1.)

Several of the proposals in the 24-Point Plan have been implemented. Judge Fitzgerald's accelerated trial disposition plan (No. 6 above) went into effect on September 11, 2006. (Tr. 7 at 80 (Diaz).) In September 2006, City officials also procured a contract with Monmouth County, New Jersey for 100 beds at the Monmouth County Prison to house PPS prisoners. There are also efforts being made, albeit unsuccessfully thus far, to find similar space in other prisons. (Tr. 3 at 157 (King).) One hundred sixty (160) additional electronic monitors have been purchased and are now in use. (*Id.* at 160 (King); Tr. 7 at 79 (Diaz).) There are efforts being made to move prisoners with aggregated state sentences into state facilities. (Tr. 6 at 141 (DiNubile).) Budget decisions with regard to the hiring of additional probation and parole staff were also made in June 2006. (Tr. 7 at 82 (Diaz).)[24]

Although the City has implemented several of these proposals, it has done nothing to increase the capacity of the prisons or to in any way significantly reduce the prison population.

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[24] The City has also begun to take some small steps to correct the sanitation and fire safety problems in the police holding cells. (*See* Doc. No. 83 at Ex. 40, Doc. No. 76 at Ex. 41.) A memorandum from October 13, 2006 demonstrates that the PAB is being scheduled for a fire drill at an unspecified time and requires all supervisors to review a copy of the emergency plan for the building. (Doc. No. 83 at Ex. 40.) A memorandum from October 19, 2006, written in response to inquiries from the City Solicitor's office, describes the custodial workers at the PAB and Police Districts and, among other things, indicates that the Police Department has requested six additional custodial workers, one of whom will be assigned to work the midnight to 8:00 a.m. shift in the PAB detention area, which was previously unassigned. (Doc. No. 76 at Ex. 41.)

The notion that there are twenty-four proposals in this plan is also misleading. A number of the proposals in the 24-Point Plan would provide reductions that overlap with other proposals on the list. (Hr'g Ex. D-1.) In addition, many of the proposals list "unknown" resources that would be required to achieve these initiatives and "unknown" population reductions that would result. (*Id.*) At least two of the proposals involve extending detention time in police custody, which is, of course, the subject of this litigation. (Hr'g Ex. D-1; *see* Nos. 16 and 17 above.) Several of the proposals involve long-term solutions that will not take effect anytime in the near future. (*Id.*) Moreover, the implementation of the proposals above-mentioned has not, thus far, reduced the prison population. Rather, the population has continued to grow. (Tr. 3 at 148 (King).)

In the face of obvious prison overcrowding, and with a prison population that has continued to grow at a rate of three to four percent every year for the last fifteen to twenty years (Tr. 3 at 95 (King)), the City failed to provide any evidence that additional space would be built or found to accommodate significant numbers of prisoners. Aside from 100 beds in Monmouth County, attempts to rent other prison space have not been successful.[25] (Tr. 4 at 47 (King); *Id.* at 24 (King).) The City has no current final plans for the construction of additional prison facilities or for the development of additional space for holding PPS inmates. All of the plans described by City officials are theoretical in nature. (Tr. 3 at 98-99 (explaining that the City has not obtained funding for a proposed new juvenile facility); Tr. 4 at 13-17, 47-51 (King); Tr. 7 at 23-29 (Ramos) (acknowledging that no additional bed space was made available from June to September 2006).)

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[25] King testified that it will cost $5,000,000 out of a budget of $200,000,000 to house one percent of the PPS population in Monmouth County. Renting prison cells from counties in other jurisdictions does not appear to be a cost-effective way to solve this problem.

Finally, the District Attorney presented evidence of proposed legislation at the state level that would facilitate the transfer of inmates from the PPS to the Pennsylvania Department of Corrections ("DOC") facilities when the inmate has a maximum sentence of twelve months or more. (Hr'g Ex. D-154, Tr. 7 at 53-55 (O'Brien).) This proposed legislation was drafted in the summer of 2006, with the assistance of counsel for the District Attorney's office, after this litigation had been filed. (Tr. 7 at 61-62 (O'Brien).) In addition, the legislation was introduced without a determination as to the positive or negative impact it would have on guilty plea negotiations, and, in turn, on the PPS inmate population. (Tr. 7 at 64-65 (O'Brien).) Moreover, this legislation would effectuate a transfer of persons from the county prisons to the State correctional institutions. There is no indication that the State Department of Corrections, the Governor, or the Legislature will support the bill.

III. LEGAL STANDARD

A. Preliminary Injunction Standard

"[A]n injunction is an extraordinary remedy, which should be granted only in limited circumstances." *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co*., 290 F.3d 578, 586 (3d Cir. 2002) (citation omitted). To obtain an injunction, the moving party must establish: "(1) that they are reasonably likely to prevail eventually in the litigation and (2) that they are likely to suffer irreparable injury without relief." *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 157 (3d Cir. 2002). If factors one and two are established, the court must then consider factors three and four: "(3) whether an injunction would harm the [defendant] more than denying relief would harm the plaintiffs and (4) whether granting relief would serve the public interest." *Id.*

B. Prison Litigation Reform Act Requirements and Restrictions

The PLRA establishes additional requirements for granting a preliminary injunction involving prison conditions. The PLRA specifies that:

> In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity . . . in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required . . . for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

18 U.S.C. § 3626(a)(2). The comity principles to which the Act refers include the following:

> The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless--
>
> (I) Federal law requires such relief to be ordered in violation of State or local law;
> (ii) the relief is necessary to correct the violation of a Federal right; and
> (iii) no other relief will correct the violation of the Federal right.

18 U.S.C. § 3626(a)(1)(B).

C. Legal Standard for Pre-trial Detainees

On a number of occasions, the Supreme Court and the circuit courts have discussed the appropriate standard when assessing civil rights actions filed by prisoners who are detained in a pretrial context. Federal courts must be particularly careful in dealing with prison conditions claims and should "be reluctant to interfere in matters relating to the internal administration of the states' correctional facilities." *Norris v. Frame*, 585 F.2d 1183, 1187 (3d Cir. 1978). Nevertheless, the Third Circuit has made it clear that "[i]f a prison practice offends a

constitutional guarantee . . . no policy of judicial restraint can justify a failure to vindicate valid constitutional claims." *Id.* Keeping in mind this prescription, courts have sought to determine whether the proper standard when dealing with prison conditions and pretrial detainees is the Eighth Amendment's ban on cruel and unusual punishment or, instead, the Fourteenth Amendment's guarantee that life, liberty, or property will not be deprived without due process of law. The Third Circuit in *Norris v. Frame* noted that while the Eighth Amendment may be a legitimate starting point, a pretrial detainee's rights may not be limited to protection from cruel and unusual punishment because that constitutional provision is not truly applicable to an individual who has not been convicted of a crime and may not be punished at all. *Id.* The court concluded:

> [A pretrial detainee] is entitled to such liberty as does not undermine the legitimate state interests related to his detention. The fourteenth amendment, therefore, must be read so as to recognize [his] distinct status . . . a citizen not yet convicted, yet at the same time not possessing the full range of freedoms of an unincarcerated citizen.

Id. The court observed that the only legitimate state interest in detaining an individual accused of a crime is the need to guarantee his presence at trial. *Id.* As a result, due process guarantees require that pretrial detainees be subjected to "restrictions and privation" only when they are inherent to the confinement itself or when they are "justified by compelling necessities of jail administration." *Id.* at 1188. The court was unequivocal in stating that "[t]his standard of compelling necessity is neither rhetoric nor dicta. . . . [D]eprivation of the rights of detainees cannot be justified by the cries of fiscal necessity, administrative convenience, or by the cold comfort that conditions in other jails are worse." *Id.* The *Norris* court concluded that

restrictions on pretrial detainees must be barred absent a showing of a "substantial relationship to a prison security interest." *Id.*

In 1979, the Supreme Court directly addressed this issue in *Bell v. Wolfish,* 441 U.S. 520 (1979), and echoed much of what the Third Circuit had stated in *Norris*. The Court indicated that Eighth Amendment scrutiny is appropriate only for individuals who have been convicted of a crime and that the Due Process Clause of the Fourteenth Amendment is the proper constitutional guarantee for a pretrial detainee. *Bell,* 441 U.S. at 537. The Court provided the following guidance in determining whether a restriction accompanying pretrial detention violates the Due Process Clause:

> A court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. . . . [I]f a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.

Id. at 538-39. In addition, the Court noted that "the effective management of [a] detention facility . . . is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment." *Id.* at 540.

The question of which standard applies to pretrial detainees is somewhat more confused in the context of medical care for prisoners. In 1993, the Third Circuit decided *Kost v. Kozakiewicz*, 1 F.3d 176 (3d Cir. 1993), in which federal pretrial detainees brought a civil rights action claiming, among other things, that they were provided inadequate medical treatment. In addressing the medical treatment claims, the Court referred to the holding in *Estelle v. Gamble,* 429 U.S. 97 (1976), in which the Supreme Court found that "'[a]cts or omissions sufficiently

harmful to evidence deliberate indifference to serious medical needs' constitute cruel and unusual punishment under the Constitution." *Kost*, 1 F.3d at 188 (quoting *Estelle*, 429 U.S. at 106). However, because the court in *Kost* was dealing with pretrial detainees, to whom Eighth Amendment protections do not apply, the court noted that Due Process rights under the Fourteenth Amendment, which are applicable to pretrial detainees, are "at least as great as the Eighth Amendment protections available to a convicted prisoner" and as a result, "the protections of the Eighth Amendment would seem to establish a floor of sorts." *Id.* at 188, 188 n.10. Having reached this conclusion, the *Kost* Court then opined that the deliberate indifference standard under the Eighth Amendment would also apply to pretrial detainees through the Due Process clause. *Id.* at 188. In order for a pretrial detainee to prove a constitutional violation in the context of medical care, he or she "must prove that prison officials acted with deliberate indifference and that he or she suffered a deprivation of the minimal civilized measure of life's necessities." *Id.* (quotations and citations omitted). Ten years later, the Third Circuit in *Natale v. Camden County Correctional Facility*, 318 F.3d 575 (3d Cir. 2003), re-affirmed this conclusion, evaluating a pretrial detainee's claim of inadequate medical care "under the standard used to evaluate similar claims brought under the Eighth Amendment" and requiring the plaintiff to show "(I) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Id.* at 582.

More recently, the Third Circuit in *Hubbard v. Taylor*, 399 F.3d 150 (3d Cir. 2005), clarified the standard for pretrial detainees' civil rights claims, addressing the confusion caused by the opinions dealing with medical treatment. In *Hubbard*, the Third Circuit noted that the district court may have been confused by the opinion in *Kost* in which the court applied the

deliberate indifference standard to pretrial detainees. *Id.* at 166-67. *Hubbard* cautioned that any consideration of pretrial detention must be viewed in the context of the *Bell v. Wolfish* standard that requires courts to consider whether conditions endured by pretrial detainees amount to punishment, whether they are reasonably related to a legitimate purpose, and whether they are excessive in relation to that purpose. *Id.* at 158. As the court in *Yelardy v. Taylor*, 2006 WL 680660 (D. Del. Mar. 14, 2006) recently summarized:

> The Third Circuit has distilled the teachings of *Bell v. Wolfish* into a two-step test: (1) whether any legitimate purposes are served by the conditions imposed; and (2) whether the conditions are rationally related to the purposes. Further, [i]n assessing whether the conditions are reasonably related to the assigned purposes, the Third Circuit inquire[s] as to whether these conditions cause [inmates] to endure [such] genuine privations and hardship over an extended period of time, that the adverse conditions become excessive in relation to the purposes assigned to them.

Id. at *7 (citing *Hubbard v. Taylor*, 399 F.3d at 159; *Union County Jail Inmates v. DiBuono*, 713 F.2d 984, 992 (3d Cir. 1983) (internal quotations omitted)). We will address Plaintiffs' claims with this inquiry in mind.[26]

IV. CONCLUSIONS OF LAW

Having determined the facts in this matter, we must now address the following questions:

(1) Were Plaintiffs' constitutional rights violated by the conditions at the PPS, at the PAB, or in the Police Districts from May through September 2006?

[26] The District Attorney suggests, and we agree, that in addition to the standard for assessing claims by pretrial detainees as delineated by this line of Third Circuit cases, courts must also consider two additional elements. The first is the requirement that to grant system-wide relief, such as that sought in this case, the court must identify widespread actual injury. *See Lewis v. Casey*, 518 U.S. 343, 349 (1996). In addition, courts must be particularly careful to permit prison officials "an opportunity to correct the errors made in the internal administration of their prisons" and in so doing to respect the limits of their roles. *Id.* at 363 n.8 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 492 (1973)).

(2) If the Plaintiffs' rights were violated, which conditions violated those rights?

(3) Are Plaintiffs entitled to declaratory or injunctive relief under the PLRA, § 1983, and the Constitution?

(4) Is this Court precluded from granting relief based upon Plaintiffs' lack of standing, the mootness doctrine, the failure to exhaust administrative remedies, or restrictions placed on prisoner release orders under the PLRA?

(5) If Plaintiffs are entitled to relief, what relief is appropriate?

A. Constitutionality of Prison Intake and Police Holding Cell Conditions

The Supreme Court has repeatedly cautioned that in evaluating claims of unconstitutional prison conditions, courts must be careful not to interfere with legitimate policy choices of prison officials. *See Vazquez v. Carver*, 729 F. Supp. 1063, 1069 (E.D. Pa. 1989) (citing *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987)). As a result, our focus will not be on whether the conditions of intake and police holding cells offend the Court's personal sensibilities but rather on whether the record establishes conditions that have worked actual privations and hardships. *Id.* In assessing the constitutionality of conditions in the CFCF intake and in the various Police Department holding cells during the summer of 2006, our inquiry will not consider the conditions out of context but will instead "consider the totality of circumstances within an institution." *Hubbard*, 399 F.3d at 160. As discussed above, the standard that applies to pretrial detainees and with which we evaluate the various conditions that we have found existed in CFCF intake, the PAB, and the holding cells during the summer of 2006, is that established by *Bell v. Wolfish* and applied in numerous Third Circuit cases since then.[27] Applying this standard, we find that the following conditions are, in combination, "objectively unreasonable in light of both

[27] *See supra* pp. 38-42 for detailed discussion.

existing precedent and plain common sense." *Young v. Keohane*, 809 F. Supp. 1185, 1195 (M.D. Pa. 1992) (also noting that common sense is "sometimes a rare commodity in a prison setting where overcrowding and lack of resources raise levels of frustration for staff and inmates alike."). While we are aware that many of these conditions were caused by overcrowding, we can identify no legitimate institutional objective for these conditions and find that, at the very least, they are "quite excessive in relation to the legitimate purposes . . . that might be assigned for them." *Id.*

Plaintiffs have demonstrated, and Defendants do not meaningfully rebut, the fact that the prison was experiencing severe overcrowding in May through September 2006. Prison Commissioner King has acknowledged that he was so concerned about the increasing population and resulting overcrowded conditions at the prison that he instituted the OSA, a partial moratorium on prison admissions, to alleviate the problem. As a result, overcrowded conditions developed in the PAB and in local Police Districts where arrestees were held for up to seven days pending their admission to the prison. In CFCF intake, detainees were held in numbers that far exceeded the appropriate capacity of each cell, which created standing-room-only conditions for some, while others slept underneath benches or on top of one another on the concrete floor. Similar conditions existed at the PAB and Police Districts. The Supreme Court has noted that "confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment." *Bell*, 441 U.S. at 542. Even if one were to somehow conclude that overcrowding was not itself a constitutional violation, in this instance, the overcrowding led to a series of other

conditions including extended stays in holding cells without beds, showers, and hygiene materials along with neglect of medical issues and increasing sanitation problems. Considering the totality of circumstances created by the overcrowding, it is clear that constitutional violations occurred.

1. *Lack of Bedding*

We have concluded that detainees in the intake unit of CFCF and in police custody were not provided with beds or bedding for three to ten days.[28] As a result, detainees slept on metal benches and on concrete floors for extended periods of time. In addition, because of the overcrowding, numerous inmates were forced to sleep on the floor with their heads next to toilets.

Numerous courts have concluded that the use of floor mattresses for pretrial detainees constitutes an unconstitutional condition of confinement. *See Newkirk v. Sheers*, 834 F. Supp. 772, 782 (E.D. Pa. 1993) (forcing plaintiffs to sleep on mattresses placed on floors of cells violated their rights under Due Process Clause of the Fourteenth Amendment) (*citing Lyons v. Powell*, 838 F.2d 28 (1st Cir. 1988) (allegation that pretrial detainee was forced to sleep on floor mattress sufficient to show deprivation of due process); *Anela v. Wildwood*, 790 F.2d 1063, 1069 (3d Cir. 1986) (absence of mattresses unconstitutional in light of prior precedents that use of floor mattresses is unconstitutional for pretrial detainees); *Lareau v. Manson*, 651 F.2d 96, 105 (2d Cir. 1981) (use of floor mattresses constituted punishment "without regard to the number of

[28] *See supra* pp. 23-24 for tables showing the number of detainees held for various amounts of time and the number of combined days certain detainees were held in Police Districts and intake areas. Some detainees spent more than seven days in police custody alone before even arriving at CFCF intake and spending another several days in the intake process.

days for which a prisoner is so confined"); *Young v. Keohane*, 809 F. Supp. 1185, 1195 (M.D. Pa. 1992) (overcrowded conditions, including being forced to sleep on cots placed on floor, amounted to punishment); *Inmates of Allegheny County Jail v. Wecht*, 565 F. Supp. 1278, 1285 (W.D. Pa. 1983), *aff'd in rel. part*, 754 F.2d 120 (3d Cir. 1985) (totality of conditions at prison resulting from overcrowding, including use of floor mattresses, rose to level of constitutional violation for both pretrial detainees and inmates)). The Third Circuit in *Union County Jail Inmates v. Di Buono,* 713 F.2d 984 (3d Cir. 1983), specifically noted that placing a mattress on the floor for an inmate was an "unsanitary and humiliating practice" that was unconstitutional. *Id.* at 994, 996. In addition, in *Anela*, the Third Circuit found that the denial of beds, food, and drinking water to female inmates overnight constituted privation and punishment in violation of the Fourteenth Amendment. *Anela*, 651 F.2d at 1069.

In the instant case, the detainees were not even given mattresses. They were required to sleep on the concrete floor itself. Moreover, they were packed into cells in such numbers that they were sleeping sitting up, lying on each other, or huddled under a bench. Under the circumstances, we are compelled to conclude that the denial of beds and bedding to pretrial detainees housed in CFCF intake and in police custody for days constituted a violation of their due process rights. The failure to provide beds, while resulting from severe overcrowding was not related to any legitimate purpose and was certainly a genuine privation and hardship lasting an extended period of time.[29]

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[29] In arguing against such a conclusion, Defendants cite cases from the District of Delaware in which the court found that "providing sleeping accommodations on the floor" was not arbitrary or purposeless and hence was not a constitutional violation. *Hubbard v. Taylor*, 2006 WL 2709619, at *8 (D. Del. Sept. 20, 2006); *Brookins v. Williams*, 402 F. Supp. 2d 508, 512-13 (D. Del. 2005). The court in *Brookins* found that the failure to provide a bed was not

2. *Unsanitary/Unavailable Toilets and Lack of Personal Hygiene Materials*

We have found that in the summer of 2006, detainees were forced to use unsanitary sinks and toilets and often had to share these facilities with over thirty men. Toilets often had urine and rotten food on them, and sinks were frequently inoperable. In addition, inmates had only infrequent access to a private bathroom in which to move their bowels, and officers regularly denied inmate requests to use a private toilet. Many courts have determined that a prison's failure to provide access to an operable and sanitary toilet is a matter of grave concern from a constitutional perspective. In *Benjamin v. Sielaff*, 752 F. Supp. 140 (S.D.N.Y. 1990), the court observed that "confining detainees in receiving rooms . . . which lack operative toilets and requiring that inmates be escorted by correction officers to bathrooms violates the Fourteenth Amendment." *Id.* at 141 n.3 (citing *Flakes v. Percy*, 511 F. Supp. 1325, 1329 (W.D. Wisc. 1981) ("However primitive and ordinary, the right to defecate and to urinate without awaiting the permission of the government . . . are rights close to the core of the liberty guaranteed by the due process clause."). Courts have similarly held that failure to provide access to functioning bathroom facilities impinges on prisoners' liberty interests. *See Wolfish v. Levi*, 439 F. Supp. 114, 157 (S.D.N.Y. 1977), *aff'd in part and rev'd in part on other grounds*, 573 F.2d 118, 133 n.31 (2d Cir. 1978), *rev'd on other grounds sub nom. Bell v. Wolfish*, 441 U.S. 520 (1979) ("[I]t

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unconstitutional because it was not imposed for the purpose of punishment and because, "although it was less than comfortable, it served a legitimate governmental purpose"—the need to house inmates in an overcrowded situation. *Brookins*, 402 F. Supp. 2d at 512. We respectfully disagree. Dealing with an unacceptably overcrowded situation by forcing detainees to sleep on concrete floors, does not, in this Court's view, serve any legitimate purpose. Even if there were a legitimate purpose, being forced to sleep on a concrete floor for periods of up to ten days clearly causes detainees "to endure [such] genuine privations and hardship . . . that the adverse condition[] [is] excessive in relation to the purposes assigned to [it]." *Yelardy*, 2006 WL 680660, at *7.

falls today below an acceptable level of humaneness to confine a prisoner of any sex where he or she must solicit freedom to use a toilet."); *Young v. Keohane*, 809 F. Supp. 1185, 1195 (M.D. Pa. 1992) ("Particularly distressing is Young's unrefuted allegations that limited access to an outside toilet regularly required detainees to urinate in cups inside the fishtank."); *Vazquez*, 729 F. Supp. at 1070 (discussing problematic practice of requiring 30 inmates to share single toilet and sink and to rely on availability of prison guards for access to private bathrooms). Clearly, the failure of the prison system to provide sanitary, operable, and readily accessible toilet facilities violated Plaintiffs' due process rights under the Fourteenth Amendment.

In addition, we have found that while detainees were held in police custody and in CFCF intake, they were provided with no materials for personal hygiene such as soap, warm water, toothbrushes, or toothpaste. In addition, they remained in their street clothes and had no access to showers. While the OSA was in effect, detainees were frequently held in police custody and in prison intake for days without access to these hygiene materials. In light of the length of time that detainees were held in these conditions, the overcrowded nature of the holding cells in which they were detained, and the increased risk of disease transmission and infection created by these conditions, we are compelled to conclude that this failure to provide personal hygiene materials violated Plaintiffs' due process rights under the Fourteenth Amendment. *See Ramos v. Lamm*, 639 F.2d 559, 568 (10th Cir. 1980) ("[A] state must provide . . . reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities. . . . In short, a state must provide an inmate with shelter which does not cause his degeneration or threaten his mental and physical well being." (internal citations omitted)).

3. *Medical Needs*

As discussed above, courts have concluded that the Fourteenth Amendment affords pretrial detainees protections that are "at least as great as the Eighth Amendment protections afforded to a convicted prisoner." *Natale*, 318 F.3d at 581 (quoting *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)).[30] As a result, when assessing medical claims by pretrial detainees, courts may apply the deliberate indifference standard established under the Eighth Amendment but must view the inquiry in the context of the *Bell v. Wolfish* standard, which applies Fourteenth Amendment due process principles and not the cruel and unusual punishment standard to pretrial detainees. *See Hubbard*, 399 F.3d at 165-66. The deliberate indifference standard requires a finding of: "(I) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Kost*, 318 F.3d at 582. In this case, even applying the deliberate indifference standard, there is no doubt that constitutional violations occurred.

We have found that detainees were frequently denied needed medical care while they were held in custody in the Police Districts, the PAB, and in CFCF intake. A detainee experiencing methadone withdrawal was ignored by correctional officers for two to three hours. A detainee suffering from diabetes who developed an open sore on a partially amputated toe was ignored by officers in CFCF intake despite repeated requests for a bandage to keep the area covered. An arrestee suffering from HIV and Parkinson's was taken to the hospital once in four days to receive medication despite his repeated requests and the hospital nurse's instructions that

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[30] The Third Circuit in *Natale* declined to decide "whether the Due Process Clause provides additional protections to pretrial detainees beyond those provided by the Eighth Amendment to convicted prisoners." *Natale*, 318 F.3d at 581 n.5. We need not address this question since the circumstances before us clearly evidence deliberate indifference, violating the Eighth Amendment.

he receive his medication every eight hours. In addition, detainees developed medical problems such as severe weight loss, dehydration, a blood clot, and infections as a result of the conditions to which they were subjected for several days. Plaintiffs have demonstrated serious medical needs and the failure of prison officials to respond despite sincere requests for care, clearly establishing a deliberate indifference to detainees' needs. While it is clear that this situation resulted from the overcrowded conditions and the prison and Police Department's inability to handle the number of detainees in their care, this is no justification for a violation of such essential rights.

4. *Fire Safety at the PAB and Police Districts*

Based on testimony from Plaintiffs' fire expert and a visual tour of the facilities, we have concluded that unsafe conditions existed at the PAB and in the Police Districts. PAB cells require manual unlocking of each cell, a disturbingly lengthy process to go through during a fire emergency. Combustible materials are prevalent throughout the holding cell areas. There is no evidence of fire protection systems including smoke detectors, automatic alarms and sprinklers. While there is a fire emergency plan, it requires staff to gather detainees in a garage loading area until a police wagon arrives, a situation that could cause delay and force inmates and staff to remain inside an area that is vulnerable to smoke and fire. In addition, the PAB has not performed fire drills in the last several years. The Police Districts share similar conditions and have no emergency plan at all.

Failure to provide fire protection systems, failure to maintain emergency plans, and failure to remove hazardous conditions place detainees in potentially life-threatening circumstances, a clear violation of both the Eighth and Fourteenth Amendments. *See Carty v.*

Farrelly, 957 F. Supp. 727, 737 (D.V.I. 1997) (finding conditions to be life-threatening and violation of Eighth Amendment where automated cell-locking devices, manual alarm systems, smoke dampers, and heat detectors were inoperable); *Alexander v. Boyd*, 876 F. Supp. 773, 786 (D.S.C. 1995) (finding individual padlocks on cells to unreasonably infringe on plaintiffs' safety interest); *see also Tillery v. Owens*, 907 F.2d 418, 424, 427-28 (3d Cir. 1990) (considering lack of fire safety protections—including lack of detection and fire-fighting systems, high concentration of combustible materials, and lack of master unlocking system for cells—in totality of circumstances making double-celling unconstitutional in that case). As one district court noted: "The Court does not have to wait for the Plaintiffs to be incinerated before it can order the Defendants to raise the level of fire safety at the [prison]." *Women Prisoners of D.C. Dep't of Corrs. v. District of Columbia*, 877 F. Supp. 634, 669 (D.D.C. 1994), *rev'd on other grounds*, 93 F.3d 910, 932 (D.C. Cir. 1996).

B. City Defendants' Responses to Overcrowding Crisis

As stated above, plaintiffs seeking injunctive relief must show the following: "(1) that they are reasonably likely to prevail eventually in the litigation and (2) that they are likely to suffer irreparable injury without relief." *Tenafly Eruv Ass'n*, 309 F.3d at 157. If these two showings are made, the court must then consider "whether an injunction would harm the [defendant] more than denying relief would harm the plaintiffs and whether granting relief would serve the public interest." *Id.* Having found that conditions that were in existence in CFCF intake, at the PAB, and in the Police District holding cells in the summer of 2006 violated Plaintiffs' constitutional rights, we must now consider whether Plaintiffs have shown that these conditions are likely to recur and that, as a result, Plaintiffs are likely to suffer irreparable injury.

1. *Harris and Jackson Cases*

Our consideration of the likelihood of recurrence must begin with the history of Philadelphia prison condition litigation in the federal and state courts. After concluding almost thirty years of litigation dealing with prison overcrowding and the unconstitutional conditions resulting therefrom, the courts in *Harris* and *Jackson* approved settlement agreements in 2000 and 2001 with the promise from the City that it would responsibly maintain constitutional conditions in its prisons without court supervision. The courts approved of these settlements because the City promised to limit the prison population and/or create additional housing space for an inevitably increasing population. In addition, these settlement agreements discussed specific conditions including population caps and avoidance of triple-celling. *See Jackson v. Hendrick*, No. 2437, slip op. at App. A. Between 2000, when the *Harris* case settled, and now, the prison population has increased from approximately 7,000 inmates to close to 9,000 inmates. This increase was completely predictable. Nevertheless, the City has taken no steps to substantially increase the inmate capacity of the PPS.

2. *Current Solutions and Lack of Action*

While the City has taken a few small steps in addressing the prison overcrowding problem, these steps began only in 2005, and action in earnest began after the instant lawsuit was filed. The steps taken by the City since 2005 have been catalogued above. They include: (1) use of the CJCC to bring together the various stakeholders in the City's criminal justice system to deal with the overcrowding crisis; (2) creation of the 24-Point Plan, which includes long and short-term proposals for alleviating the overcrowding problems; (3) commission of the Goldkamp Study to consider pretrial detainees, post-trial inmates, and solutions for population

related concerns; and (4) implementation of several of the 24-Point Plan proposals, many of which focus on accelerated trial dispositions. As Plaintiffs point out, many of these steps could have been suggested and implemented years ago, and many of the proposals directed at accelerating trial dispositions will not necessarily have the desired effect on the prison population.

In addition to these policy solutions, the prison system has solved the immediate pretrial detainee overcrowding problem with one main solution—triple-celling in the quarantine unit of CFCF intake. Adding a third inmate to quarantine cells intended for two prisoners has allowed the prison to handle more inmates in its intake unit overall. We do not now decide whether triple-celling under the present circumstances constitutes a violation of the due process rights of pretrial detainees. However, we caution that even if triple-celling is permissible as a short-term emergency solution, it is not tenable as a permanent cure. *See Tillery*, 907 F.2d at 427-28 (affirming district court holding that under the totality of circumstances, double-celling violated the Eighth Amendment); *see also French v. Owens*, 777 F.2d 1250, 1253 (7th Cir. 1985) (finding double-celling to be unconstitutional and affirming a ban on its use) (citing *Toussaint v. Yockey,* 722 F.2d 1490, 1492 (9th Cir. 1984) (injunction upheld against double celling where it "engender[s] violence, tension and psychological problems"). The addition of a third detainee into a small holding cell intended for two detainees creates a host of troubling and hazardous conditions. The spread of disease is more likely to occur when inmates are forced to sleep in such close proximity to one another. This is of even greater concern at CFCF where inmates are triple-celled while they are in the quarantine unit, before they have been medically cleared and while they may still be carrying infectious diseases. Furthermore, detainees have not been fully

classified when they are in quarantine. As a result, detainees of different categories may be placed together in a small living space, a situation which can result in violence and injury. With two inmates on a bunk bed and the third on a blue boat on the floor, there is little space left for standing or moving around the cell. Such a situation is likely to cause tension and perhaps violence. Finally, the solution of triple-celling cannot withstand a new influx of prisoners. While it is a stop-gap for the current crisis, any new surge in the intake population will overcome this solution and force the prison back to the conditions that existed in the summers of 2005 and 2006. When that occurs—and the history of yearly summer increases demonstrates that it will occur—there is nothing in place to solve the problem.

The City's approach to addressing this problem has been to place a band-aid on a wound that requires major surgery. The City offers no evidence of new building projects that could create substantial change by significantly increasing the capacity of the prisons. Aside from hypothetical plans and a list of sites under consideration for potential future projects, neither Commissioner King nor the City Managing Director mentioned any plans for expanding existing prison space in the near future. In addition, aside from one contract with Monmouth County, New Jersey, the City has pointed to no other contracts for bed space that have been formalized or that are even under active discussion. While Commissioner King noted that the rule of corrections is if you build new space, you will fill it, a steadily increasing prison population clearly demands an increase in space. (Hr'g Tr. 3 at 158 (King) ("As we say in corrections, 'If you build them, they will come.'").) New space is filled because there is a need. The City's failure in this regard is shocking in light of the well-known fact that the prison population is constantly increasing even without the summer spikes. *See supra* n. 4 (describing PPS's

knowledge of the overcrowding problem, particularly in the summer months, and the lack of action even after summer 2005 brought a similar problem with a similar moratorium style solution).

3. *Inevitable Recurrence*

Under the circumstances, we are compelled to conclude that recurrence of the unconstitutional conditions that were in existence in the summer of 2006 is inevitable. In fact, even after the preliminary injunction hearing in October, problems in the intake unit of CFCF continued. Inmates Jerome Hands and Richard Brown were transferred from Pennsylvania Department of Corrections custody to PPS custody on October 6, 2006. They remained in CFCF intake for five days without beds. Plaintiffs allege that these inmates had no access to hygiene materials including warm water, soap, toothbrushes, or toothpaste while Defendants contend that these inmates received a daily shower, a clean jumpsuit, a towel, a blanket, and hygiene materials. Defendants do not deny that Hands and Brown spent five days in intake, far longer than the PPS policy dictates and that they had no beds during this time. Defendants' response is that these inmates are not pretrial detainees but are instead convicted prisoners who were temporarily transferred from state custody on a Writ. As such, they are not within the definition of the plaintiff class. Defendants also contend that Hands and Brown were housed in intake for five days due to an error by CFCF staff. It is, nevertheless, telling that even after the OSA was lifted on September 11, 2006, after triple-celling was instituted in the quarantine unit, and after the hearing on the Motion for Preliminary Injunction, there continued to be problems in CFCF intake such that several inmates were housed there for lengthy periods without beds. In light of

this fact and of the City's overwhelming inaction in the face of an ongoing overcrowding problem, we conclude that the unconstitutional conditions are likely to recur.

C. Preliminary Injunction Standard Met

In light of the foregoing, Plaintiffs have clearly met the four-prong standard for obtaining injunctive relief. We have determined that many of the conditions in existence in CFCF intake, the PAB, and the Police District holding cells in May through October 2006 constituted constitutional violations. Plaintiffs have therefore demonstrated substantial likelihood of success on the merits. In addition, having concluded that the history of this litigation and the City's current inaction in the face of the overcrowding problem suggest a strong likelihood that such unconstitutional conditions will recur, we conclude that Plaintiffs are likely to suffer irreparable injury without relief. Moreover, it is abundantly clear that an injunction requiring the City to meet basic constitutional standards for the detention of pretrial arrestees would not harm Defendants more than denying relief would harm Plaintiffs. The only harm to Defendants is the cost associated with providing conditions of detention that pass constitutional muster while the cost to Plaintiffs, denial of constitutional rights, is far greater. As the Third Circuit has observed, "deprivation of the rights of detainees cannot be justified by the cries of fiscal necessity . . . ." *Norris*, 585 F.2d at 1188. Finally, granting injunctive relief in this case would certainly serve the public interest. As has been noted in other prison conditions cases, "The degree of civilization in a society can be judged by entering its prisons." *Hadix v. Caruso*, No. 4:92-CV-110, 2006 WL 3275865, *25 (W.D. Mich. Nov. 13, 2006) (citing Respectfully Quoted: A Dictionary of Quotations, no. 1527 (Suzy Platt, ed., Library of Congress 1989) (attributing quote to Feodor Mikhailovich Dostoyevsky)).

D. Potential Legal Barriers to Relief

1. *Standing*

Defendants have raised the question of Plaintiffs' standing and the court's jurisdiction to hear this case in a number of pleadings over the relatively short course of this litigation. (*See* Doc. No. 25, Doc. No. 40, Doc. No. 44.) In granting Plaintiffs' Motion for Class Certification, we addressed Defendants' argument that Plaintiffs lacked a "personal stake" or individual standing, a flaw, they argued, that was fatal to jurisdiction and to the request for class certification. In rejecting that argument, we determined that this case falls into a narrow exception to the mootness doctrine that was formulated to address short-term harms that would otherwise evade judicial review. Citing *Gerstein v. Pugh*, 420 U.S. 103 (1975), and *United States Parole Commission v. Geraghty*, 445 U.S. 388 (1980), we concluded that while the named Plaintiffs are no longer pretrial detainees enduring the conditions alleged in the Complaint, the fact that their custody in intake and in Police Department holding cells does not last much more than one week made it impossible for us to rule on class certification while the named Plaintiffs were actually enduring the unconstitutional conditions. We concluded:

> Given that Plaintiffs allege severe prison overcrowding and dangerous, unhealthy, and degrading conditions and given that it is certain that other pretrial detainees are currently and will in the future be detained under the allegedly unconstitutional conditions, this case certainly belongs in the class of cases for which an exception to mootness must be made.

Bowers v. City of Phila., Civ. A. No. 06-3229, 2006 WL 2818501, at *7 (E.D. Pa. Sept. 28, 2006).

In their Proposed Findings of Fact and Conclusions of Law, Defendants have again raised this issue with a slightly different approach. Defendants now argue that Plaintiffs lack standing

and the Court lacks jurisdiction because at the time the Complaint was filed, on July 24, 2006, no named plaintiff or class representative had a live claim in that no named plaintiff was in custody in either Police Department holding cells or CFCF intake at that time. Defendants point to Plaintiff James Walker who, the Complaint indicates, was held in intake on July 24, 2006. (Doc. No. 1 ¶ 32.) Defendants argue that while the Complaint was filed at 12:39 p.m. on July 24, 2006 (Doc. No. 76 at Ex. 35 (Exhibit 35 actually shows a filing time of 12:29 p.m.), prison records show that James Walker was transferred out of CFCF intake at 8:26 a.m. on that day. (Hr'g Ex. 39 at Row 1122.)[31] Plaintiffs respond that James Walker was, in fact, held in a quarantine unit as part of intake/admissions at the time the lawsuit was filed. (Doc. No. 87 at 19.) Plaintiffs contend that quarantine units are part of intake because inmates who are in quarantine have not been medically cleared or assigned to permanent housing locations. In addition, the triple-celling discussed above was and is currently being employed in quarantine areas as a means of accommodating the large numbers of prisoners in intake. Plaintiffs contend that those held in quarantine are part of the plaintiff class, which is defined as:

> All persons who have been or will in the future be held post-preliminary arraignment in the custody of the Philadelphia Police Department, including its districts or the Police Administration Building, or anywhere in the Philadelphia Prison System, pending intake/admissions processing, at the Philadelphia Prison System, who have been or will in the future be subjected to the conditions of confinement as set forth in Plaintiffs' Complaint.

[31] We note that Defendants indicate that Walker was transferred at 8:32 a.m. and cite to row 5728 in Exhibit 39. These numbers are incorrect. We also note that throughout their Proposed Findings of Fact, Defendants consistently cite to page numbers in the Hearing Transcript that do not provide support or even make mention of the topic or statement asserted in the Brief.

Bowers, 2006 WL 2818501, at *8. We agree that Walker's presence in the quarantine unit at the time the Complaint was filed supports Plaintiffs' argument that they had standing to pursue injunctive relief at the commencement of the lawsuit. Indeed, when the Court took a tour of the intake unit at CFCF, the B-Pod or quarantine unit was included in that tour. In addition, the lawsuit was commenced on July 24, 2006 as a class action. The fact that the formal Motion for Class Certification was filed on September 12, 2006 is not fatal to the court's exercise of jurisdiction.[32]

Even if we were to conclude that Walker's presence in quarantine did not give him standing to sue, there are two additional grounds upon which standing and jurisdiction properly rest in this case. Plaintiffs argue that under the circumstances, it would have been impossible to require Plaintiffs to file suit while they were held in CFCF pre-quarantine intake or police custody because they lacked access to counsel or the courts during this time. Defendants respond that the hearing testimony from Thomas Innes of the Defender Association of Philadelphia, Mr. Innes's deposition testimony,[33] Deputy Warden DiNubile's testimony, and what they refer to as "the symbiotic relationship between the Defenders Association and the Law

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[32] This conclusion regarding Walker's location and standing to sue on July 24, 2006 re-affirms our earlier finding that this case is a suitable exception to the mootness doctrine. There was a named Plaintiff with standing at the time the suit was filed, but his standing had expired by the time the court certified the class because of the inherently short duration of the alleged harm. *See Gerstein*, 420 U.S. at 111 n.11 ("At the time the complaint was filed, the named respondents were members of a class of persons detained without a judicial probable cause determination, but the record does not indicate whether any of them were still in custody awaiting trial when the District Court certified the class. Such a showing ordinarily would be required to avoid mootness under *Sosna*. But this case is a suitable exception to that requirement.").

[33] We precluded the use of the Innes deposition testimony in our Memorandum and Order of January 18, 2007. (Doc. No. 92.)

Offices of Kairys, Rudovsky, Messing, and Feinberg" together demonstrate that counsel did have access to pretrial detainees during pre-quarantine intake and while held in police department custody. We have reviewed this evidence and are compelled to agree with Plaintiffs.

Defendants cite to numerous passages of Thomas Innes's deposition testimony, which they claim demonstrate that the Defender Association had access to pretrial detainees during intake and while in police custody. While we have determined that Innes's deposition transcript must be excluded because he was present and testified at the hearing, in the interest of fully considering the jurisdictional question, we have reviewed the deposition transcript. It contains no statements that would suggest that public defenders spoke with, met, or had any meaningful access to detainees while in police custody or intake. Defendants claim that Innes testified that after the preliminary arraignment, the Defender Association "opens a file and tracks the location of their clients at all times." (Doc. No. 76 at 12.) A review of Innes's testimony reveals that he actually testified that a non-attorney representative of the Defender Association is present at preliminary arraignments and that the office then "tag[s] [their] cases, and they are then sent to [the] office on a daily basis, and files are opened up." (Hr'g Tr. 4 at 103 (Innes).) He mentioned nothing about tracking clients' locations in the prison system.[34] Defendants also argue that "in some cases, an arrestee can be interviewed by a member of the Defender's office **before** the arraignment takes place." (Doc. No. 76 at 12 (emphasis in original).) Again, this is not what Innes stated. When asked if interviews ever took place pre-arraignment, Innes actually responded: "There may be. I don't know of any." (Innes Dep. at 14.) Defendants next assert

[34] In fact, Innes testified that he had developed a list of people who his office could not interview before preliminary arraignment because "we weren't able to find them." (Hr'g Tr. 4 at 126 (Innes).) Clearly, there was no tracking of detainees' locations within the system.

that meetings between public defenders and their clients "can take place **before and after** the preliminary arraignment, anywhere their clients may be located." (Doc. No. 76 at 13 (emphasis in original).) Once again, Innes's testimony does not support this assertion. He instead stated that public defenders meet with their pretrial detainee clients "[a]s soon as possible **after** the arraignment and **after** they are admitted into the facility." (Innes Dep. at 14 (emphasis added).) At the hearing, Innes further testified that the only time he can see arrestees who are in police custody is at the preliminary arraignment when one attorney must handle thirty to forty cases. (Hr'g Tr. 4 at 105 (Innes).) He made clear that the Defender Association has no system in place to interview people who are in police custody. (*Id.*) Similarly, Innes testified that in terms of detainees held in CFCF intake, his office does not have access to them until they leave the initial intake area and go into the quarantine because the initial intake area "is not set up for any interaction between non-correction staff and the inmate. . . . There's no place to interview, it's not secure . . . for the attorneys, there's a lot of question at what point they're actually strip searched. They may be carrying . . . weapons and so on, and the chance of one of our attorneys being hurt is high. (*Id.* at 106-07.)[35]

It is clear from Innes's testimony that public defenders had no access to their clients while they were in pre-quarantine intake or in police custody. In addition, having found that detainees in these areas were held in deplorable conditions for days at a time, had no access to a

[35] Defendants also assert that Innes implied that during his tour of the CFCF intake unit, he could have spoken to the detainees if he had so requested. (Doc. No. 76 at 14.) In fact, Innes remarked only that because the walls of the cells were plexiglass he "didn't need to go in [to the cells] unless [he] expected to talk to the inmates and [he] didn't even ask for that." (Hr'g Tr. 4 at 118.) This statement in no way implies that communication between counsel and detainees was commonplace.

prison grievance process, and had their serious medical complaints and requests to use the bathroom routinely ignored, we have no difficulty concluding that these prisoners had no meaningful ability to request counsel visits or to demand the right to file a complaint in federal court. The lack of meaningful access to the courts certainly supports our prior conclusion that this Court had jurisdiction even if a named plaintiff was not in intake at the time the Complaint was filed.

In addition to the lack of access to the courts, Plaintiffs argue that this case presents a situation for which the traditional "capable of repetition, yet evading review" exception to mootness should apply. Under the Supreme Court's holding in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), this doctrine "applies only in exceptional situations, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality." *Id.* at 109 (citing *Defunis v. Odegaard*, 416 U.S. 312, 319 (1974)). The exception thus applies only when the plaintiff himself will suffer the alleged harm again in the future. While our Memorandum and Order granting class certification expressed doubt as to the applicability of this standard in this case, Plaintiffs have presented additional evidence that makes such a scenario more likely. While we are not convinced based on general recidivism rates alone that one of the named plaintiffs in this case will likely return to the PPS and be required to go through intake again, evidence of the criminal records of specific plaintiffs are convincing in this regard. Plaintiff McDowell's record details eleven prior admissions to the PPS in the last eight years. Since the hearing in this case, he has been convicted of DUI and is scheduled to stand trial on theft and related charges. (Doc. No. 87 at 22, Ex. E.) Several other plaintiffs have lengthy criminal records as well: Plaintiff Bullard has two prior incarcerations in

the PPS; Plaintiff Topping was arrested three times between November 2005 and June 2006; and Plaintiff Williams has a pending criminal case, at least three prior arrests and two prior incarcerations at CFCF. (*Id.* at Ex. D.) This evidence suggests that at least some of the plaintiffs will certainly be rearrested and reincarcerated, again enduring the intake process at CFCF. *See Demery v. Arpaio*, 378 F.3d 1020, 1027 (9th Cir. 2004) (basing finding of "capable of repetition" prong on fact that numerous named plaintiffs have been arrested and detained at subject facility in the past). Since we have already concluded that the conditions in police holding cells and at CFCF intake resulted from policies and practices of the PPS and the Police Department—namely the OSA and the lack of plans to handle known overcrowding problems—this case is also a good candidate for the traditional "likelihood of repetition, yet evading review" standard to apply. *See Md. State Conference of NAACP Branches v. Md. Dept. of State*, 72 F. Supp. 2d 560, 564-65 (D. Md. 1999) (distinguishing case from *Lyons* where pattern and practice evidence and likelihood of recurrence evidence is present); *see also DeShawn v. Safir*, 156 F.3d 340, 344-45 (2d Cir. 1998) (same); *Thomas v. County of Los Angeles*, 978 F.2d 504, 507 (9th Cir. 1992) (distinguishing case from *Lyons* and noting that the "possibility of recurring injury ceases to be speculative when actual repeated incidents are documented"). For these reasons, we conclude that Plaintiffs have standing to pursue injunctive relief and that jurisdiction in this Court is proper.

2. *Mootness and Voluntary Cessation*

Throughout the preliminary injunction hearing, Defendants consistently pointed to the fact that the conditions in existence in the summer of 2006 are no longer present at the police holding cells or in CFCF intake. The implication is that this case is moot because the conditions have been remedied. We do not agree. As the Court in *Friends of the Earth, Inc. v. Laidlaw Envtl. Svcs.*, 528 U.S. 167 (2000) stated: "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. If it did, the courts would be compelled to leave the defendant free to return to his old ways." *Id.* at 189 (internal quotations and citations omitted). The Court therefore announced the following stringent standard: "'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Id.* (citing *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968); *see also United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953); *United States v. Gov't of the Virgin Islands*, 363 F.3d 276, 285 (3d Cir. 2004). Furthermore, the "heavy burden" of convincing the court that the alleged conduct will not begin again lies with the party asserting mootness. *Friends of the Earth, Inc.*, 528 U.S. at 189.

In this case, the City has not met this burden. The timing of the City's termination of the OSA—one week prior to the hearing on the Motion for Preliminary Injunction and on the same day that it sought a continuance of the 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.[36] *See W.T. Grant Co.*, 345 U.S. at 632 n.5 ("It is the duty of

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[36] The connection between the instant litigation and the termination of the OSA was made even clearer by Commissioner King's admission that nothing had changed in terms of the conditions at CFCF intake to make termination of the OSA possible. Instead, the Managing

the courts to beware of efforts to defeat injunctive relief by protestations of repentance and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption." (quoting *United States v. Or. State Med. Soc'y*, 343 U.S. 326, 333 (1952))); *Gov't of the Virgin Islands*, 363 F.3d at 285 ("The timing of the contract termination—just five days after the United States moved to invalidate it, and just two days before the District Court's hearing on the motion—strongly suggests that the impending litigation was the cause of the termination."). In addition, the City's continued defense of the conditions as a legitimate response to its overcrowding problems[37] does not engender confidence that the PPS will not revert to these conditions again when faced with the inevitable growth of the prison population in the future. *See Gov't of the Virgin Islands*, 363 F.3d at 285-86 ("[T]he GVI's continued defense of the validity and soundness of the contract prevents the mootness argument from carrying much weight."). Furthermore, the City's history of constitutional violations in the area

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Director terminated the OSA when overcrowding in the Police Department became a matter of concern. Commissioner King implemented triple-celling in the quarantine unit in order to handle the influx of prisoners in intake, a step he considered taking prior to instituting the OSA but chose not to take because of correctional concerns. (Hr'g Tr. 3 at 178-79, 182-83.)

In addition, the efforts of the CJCC were clearly related to the instant litigation. Several elements of the 24-Point Plan were implemented in the weeks before the hearing. In addition, the proposed state legislation that was presented as evidence of potential solutions to the overcrowding crisis was itself drafted only weeks before the hearing and with the assistance of the District Attorney's representative. These factors only serve to bolster the notion that the City's efforts to put an end to the unconstitutional conditions and to deal with the underlying overcrowding problem were undertaken in direct response to this litigation.

[37] *See* Doc. No. 76 at 32-33 ("While the conditions at the Police Department's CCTV locations and the PDU were not ideal during the summer months of 2006, the conditions were not designed to punish the arrestees. . . . The implementation of the OSA served a legitimate government purpose—to provide conditions of confinement at CFCF that met the constitutional standards set forth in *Bell v. Wolfish*."). We have found the conditions in the summer of 2006 to be at best unconstitutional and at worst inhumane; their characterization as "not ideal" is drastically insufficient. The OSA in no way provided constitutional conditions of confinement.

of prison overcrowding and its failure to make any substantial progress since the termination of the previous litigations suggest that the present voluntary cessation cannot be relied upon in the future. This is particularly true given that the intake unit has, in the past, become the site of severe and unconstitutional conditions when the prison facilities reach their absolute maximum capacity. *See Gray v. Sanders*, 372 U.S. 368, 376 (1963) ("[T]he voluntary abandonment of a practice does not relieve a court of adjudicating its legality, particularly where the practice is deeply rooted and long standing."). Finally, the fact that the prison population continues to increase, with consistent yearly increases of three to four percent coupled with the lack of any formal plans for construction of additional housing space in the near future means that the conditions that caused the overcrowding crisis and concomitant unconstitutional conditions in the summer of 2006 are likely to recur. The City's present cessation is no guarantee that it will not re-institute similar policies again. *See W. T. Grant Co.*, 345 U.S. at 632 n.5 ("When defendants are shown to have settled into a continuing practice . . . courts will not assume that it has been abandoned without clear proof."). For the foregoing reasons, we are compelled to conclude that the City's voluntary cessation of the challenged conduct does not deprive the Court of jurisdiction over this case.[38]

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[38] The District Attorney argues that the PLRA's requirements for preliminary injunctive relief coupled with the City's voluntary cessation of the challenged conduct prevent the court from providing injunctive relief in this case. As noted above, the PLRA provides that a court may enter preliminary injunctive relief only when it is "narrowly drawn, extend[s] no further than necessary to correct the harm the court finds requires preliminary relief, and [is] the least intrusive means necessary to correct that harm. 18 U.S.C. § 3626(a)(2). We do not agree that the present termination of the OSA and the unconstitutional conditions which followed from it has created a situation in which there is no harm left to correct. As previously noted, recurrence of the conditions in existence in the summer of 2006 is virtually inevitable as is irreparable injury. While we intend the relief we order to be narrowly drawn in keeping with PLRA, we have no doubt that such relief is necessary to correct the harm.

3. *Exhaustion of Administrative Remedies*

Defendants have argued directly, in their Motion to Dismiss (Doc. No. 44) and by implication in their questioning of various Plaintiffs who testified at the hearing, that this case should be dismissed based on Plaintiffs' failure to file grievances and exhaust their administrative remedies as is required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e *et seq.* (*See* Doc. No. 44 at 15.) The PLRA provides: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e. Under the PLRA, "Prisoners must now exhaust all available remedies, not just those that meet federal standards." *Woodford v. Ngo*, 126 S. Ct. 2378, 2382 -83 (2006) (internal quotations omitted); *see also Booth v. Churner*, 532 U.S. 731, 736 (2001). Defendants argue that since none of the incarcerated Plaintiffs filed grievances challenging the conditions of their confinement in the intake unit or police holding cells, they have failed to exhaust their administrative remedies and the case must be dismissed. (Doc. No. 44 at 16.) We disagree.

First, several plaintiffs were not incarcerated at the time the Complaint was filed and, as such, are not bound by the exhaustion requirements of the PLRA. *See* 42 U.S.C. § 1997e(a). In addition, we have concluded that throughout their time in police custody and in the intake unit of CFCF, detainees had no meaningful access to a grievance procedure through which they could have objected to the conditions of their detention. *See supra* pp. 29-30. When detainees are admitted to the PPS, they must surrender all personal property including writing implements and paper. These items are not provided to detainees while they are in the intake process. Moreover,

when detainees attempted to verbally complain to correctional staff about the conditions in intake, they were consistently ignored or told that nothing could be done to address their complaints. Finally, the PPS Policies themselves indicate that grievance forms are not available in intake areas. Therefore, we are compelled to conclude that there was no grievance procedure available to detainees held in intake. As a result, the failure of plaintiffs who were prisoners to file grievances regarding their conditions in intake and police custody cannot act as a bar to this court's adjudication of the matter under the PLRA.[39]

4. *PLRA Restrictions*

The PLRA provides that courts may not enter a "prisoner release order" unless (1) the court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the federal right and (2) the defendant has had a reasonable amount of time to comply with the previous court orders. 18 U.S.C. § 3626(a)(3)(A). The PLRA defines a prisoner release order as "any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison." 18 U.S.C. § 3626(g)(4). Plaintiffs have acknowledged that they cannot and do not seek a prisoner release order at this stage of the litigation. However, the District Attorney argues that several provisions in Plaintiffs' proposed preliminary injunction order would constitute prisoner release orders under the Act. (Doc. No. 85 at 2.) Specifically, the District Attorney contends that any order that limits the length of time detainees may be held in police custody and/or that limits the number of

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[39] Because Defendants' Motion to Dismiss (Doc. No. 44) was premised on two arguments—standing and exhaustion of administrative remedies—which we have rejected, we will deny the Motion to Dismiss.

people who can be detained in a particular cell would have the effect of limiting the population of prison facilities and thus would constitute a prisoner release order. (Doc. No. 85 at 2-3.)

In our Memorandum and Order of September 8, 2006, granting the District Attorney the right to intervene in this case, we considered the meaning of the term "prisoner release order" under the PLRA. After discussing several Fifth Circuit cases, we stated: "[I]t is clear that were this Court to engage in any action that either set population caps, ordered a reduction in population at particular prison facilities, or limited the admission of inmates to prisons, we would be engaging in a 'prisoner release order' as that term is defined by the statute." *Bowers v. City of Phila.*, Civ. A. No. 06-3229, 2006 WL 2601604, at *4 (E.D. Pa. Sept. 8, 2006) (citing *Ruiz v. Estelle*, 161 F.3d 814 (5th Cir. 1998); *Castillo v. Cameron County*, 238 F.3d 339 (5th Cir. 2001)). We do not believe, nor does the District Attorney offer any case law in support of, the notion that an order placing a limit on the number of prisoners that may be held in an individual cell or that limits the amount of time that prisoners may be held in police custody constitutes a prisoner release order under the Act. Were we to limit the amount of time that an arrestee may be held in police custody—a limit that would be based on the Police Commissioner's own testimony about the Police Department's holding cells and their intended use—such an order would actually have the effect of *increasing* the prison population because it would require the prison to immediately admit those individuals who had been held in police custody for the maximum amount of time.[40] In addition, were we to limit the number of detainees that may be

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[40] The District Attorney seems to also imply that in limiting the amount of time that a detainee may be held in a police facility, we would be issuing a prisoner release order because we would be limiting the population of that facility. However, police holding cells are not prisons. The District Attorney has offered no authority, and we are aware of none, that suggests that police department holding cells are covered in the prisoner release order definition of the

held in an individual cell, such an order would limit only the population of that cell and not of the facility overall. As has clearly been the practice of the PPS in the past, prisons can always move prisoners to other cells or other areas so that any such order would not necessarily reduce the population of a given prison.

For these reasons, we conclude that the issues raised by Defendants and the District Attorney with regard to standing, mootness, exhaustion of administrative remedies, and the PLRA do not prevent this Court from providing relief in this case. We have found constitutional violations in the form of conditions that clearly deprive detainees of their due process rights. We will provide relief that is narrowly drawn, that extends no further than necessary to correct the harm, and that is the least intrusive means necessary to correct that harm.

E. Appropriate Relief

The conditions in existence in the summer of 2006 in the intake unit of the PPS, the PAB detention unit, and the Police District holding cells violated the Fourteenth Amendment. The conditions include unsanitary and unavailable toilet facilities, the lack of soap, warm water, and personal hygiene materials, the lack of beds and bedding, deliberate indifference to the medical needs of detainees, the lack of fire safety protection for detainees at the PAB and Police Districts, and the placing of class members in holding cells at the PAB, in the Police Districts, and at the intake unit at CFCF in numbers far exceeding the capacity of the cells. Accordingly, we will issue a declaratory judgment regarding these conditions.

PLRA.

In addition, Plaintiffs are entitled to preliminary injunctive relief. We will order such relief to correct the constitutional violations.[41] In particular, we will order the City to submit plans approved by the City's Fire Marshall for fire protection at the PAB detention unit and the Police Districts to Plaintiffs and to the Court. The plans shall be subject to Court approval and shall include a schedule for implementation on penalty of contempt. In addition, we will enjoin the City from permitting the existence of the following unconstitutional conditions: (1) the using of the PAB, Police District holding cells, and the CJC for holding class members post-preliminary arraignment for more than ten (10) hours without court permission; (2) the placing of class members in holding cells at the PAB, the Police Districts, CFCF intake or other PPS intake units in numbers that exceed the reasonable capacity of the cell;[42] (3) the failing to provide detainees with warm water, soap, and personal hygiene materials in the CFCF intake unit, the PAB, and the Police District holding cells; (4) the failing to provide detainees with sanitary sinks and toilets; (5) the failing to provide detainees with a blanket, mattress, and bed for sleeping within twenty-four (24) hours of entry into the CFCF intake area; (6) the failing to provide reasonably prompt medical attention for detainees suffering from emergent medical problems;

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[41] In ordering injunctive relief, we are mindful of the Supreme Court's words of caution in *Lewis v. Casey*: "[T]he strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own errors . . . also require giving the States the first opportunity to correct the errors made in the internal administration of their prisons." *Lewis,* 518 U.S. at 362 (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 492 (1973)). We will permit the City to formulate plans to correct the unconstitutional conditions.

[42] We note that during the tour of the CFCF intake unit, it was apparent that the prison had placed signs above each of the holding cells that indicate the "legal capacity" of the cell.

and (7) the failing to classify pretrial detainees prior to their placement in the medical quarantine units.

F. The Future of this Litigation

Where this case goes from here is entirely up to the City. The City has been aware of the prison overcrowding problem for years and has failed to take the steps needed to provide for an ever-increasing prison population. The City is also aware that the prison population typically spikes during the summer months. (Hr'g Ex. P-5.) That circumstance will undoubtedly occur in May or June of this year. Considering the fact that the PPS is already at or near capacity, when the spike occurs, or perhaps even before, the options will be limited.[43] As discussed above, the PLRA defines the term "prisoner release order" as "any order . . . that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison." 18 U.S.C. § 3626. The PLRA provides that such an order may only be entered by a three-judge court and only if that court finds by clear and convincing evidence that "(I) crowding is the primary cause of the violation of a Federal right; and (ii) no other relief will remedy the violation of the Federal right." *Id.* at § 3626(a)(3)(E). It is clear that overcrowding is at the root of the unsafe, unsanitary, and unconstitutional conditions that we have discussed. This problem can be remedied either by Defendants or by a prisoner release order from a three-judge court. Obviously, the most desirable course is for the City to responsibly address the problem and comply with the relief that we now order.

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[43] The total capacity of the PPS is 8,948. (Hr'g Ex. P-13.) Commissioner King, in his Memorandum dated June 28, 2006, indicated that the population had reached 8,877 and that the prisons were full. (Hr'g Ex. P-1.) A three percent increase—which is the expected minimum yearly increase in the prison population—would put the prison population at 9,143 inmates by June 2007, significantly above the 8,948 inmate capacity.

An appropriate Order follows.

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

LEE BOWERS, et al.	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 06-CV-3229
	:	
CITY OF PHILADELPHIA, et al.	:	

ORDER

______AND NOW, this _25th_ day of January, 2007, upon consideration of Plaintiffs' Motion For Preliminary Injunction (Doc. No. 2), City Defendants And District Attorney's Joint Motion To Dismiss Under Rule 12(b)(1) And Rule 12(b)(6) Or For Summary Judgment (Doc. No. 44), and all papers submitted in support thereof and in opposition thereto, and after hearing, it is ORDERED as follows:

1. City Defendants and District Attorney's Joint Motion to Dismiss Under Rule 12(b)(1) and Rule 12(b)(6) or for Summary Judgment (Doc. No. 44) is DENIED.

2. Plaintiffs' Motion for Preliminary Injunction (Doc. No. 2) is GRANTED.

3. It is DECLARED that the conditions that existed in the intake unit at CFCF, in the detention unit of the PAB, and in the holding cells in the Philadelphia Police Districts during the summer of 2006, violated the constitutional rights of the Plaintiffs and members of the Plaintiff class as provided under the Fourteenth Amendment of the United States Constitution. The unconstitutional conditions included the holding of post-arraignment detainees for days in holding cells at the intake unit of CFCF, in the detention unit of the PAB, and in the holding cells in the Police Districts in numbers that far exceeded the capacity of the cells, and

which required detainees to sit and sleep on concrete floors and on top of each other. The conditions also included the failure to provide beds and bedding, the failure to provide materials for personal hygiene including soap, warm water, toothpaste, toothbrushes, and shower facilities, unsanitary and unavailable toilet facilities, the failure to provide for the medical needs of detainees, the failure to timely classify detainees in the intake unit at CFCF, and the lack of fire safety protection at the PAB and in the Police Districts.

4. The City is ORDERED to immediately take affirmative steps to redress the unconstitutional conditions by ensuring that detainees are held in the detention unit of the PAB, and in the Police District holding cells for no more than six (6) hours post-arraignment; by ensuring that post-arraignment detainees are placed in holding cells in the PAB, the Police Districts, and the CFCF intake unit in numbers that do not exceed the capacity of the cells; by providing post-arraignment detainees at the CFCF intake unit, the PAB detention unit, and the Police District holding cells with materials for personal hygiene; by making sanitary toilets and sinks available to detainees; by providing detainees with beds and bedding within twenty-four (24) hours of entry into the CFCF intake area; by providing prompt medical attention for detainees suffering from emergent medical problems; and by classifying pretrial detainees before their placement into the medical quarantine unit.

5. The City is further directed to submit plans approved by the City's Fire Marshal for fire protection at the PAB detention unit and the Police Districts to Plaintiffs

and to the Court within thirty (30) days of the date of this Order. The plans shall be subject to Court approval and shall include a schedule for implementation.

6. The parties shall meet and agree on terms and conditions for the monitoring of the provisions of this Order and shall inform the Court of such terms and conditions within fifteen (15) days of the date of this Order.

IT IS SO ORDERED.

BY THE COURT:

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R. Barclay Surrick, Judge