

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 20CVS500110

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, *et al.*,

Plaintiff-Petitioners,

v.

ROY COOPER, in his official capacity
as Governor of North Carolina,
et al.,

Defendant-Respondents.

**PLAINTIFFS' SUPPLEMENTAL FILING REGARDING THE COURT'S
OCTOBER 27 & 29, 2020 ORDERS FOR ADDITIONAL INFORMATION**

NOW COME Plaintiff-Petitioners ("Plaintiffs"), by and through counsel, and respectfully submit for the Court's consideration the following supplemental information responsive to the Court's October 27 and 29, 2020 Orders for Additional Information.

1. On October 27, 2020, and October 29, 2020, the Court issued Orders directing Defendants to respond and provide additional information on the effect of the COVID-19 pandemic on North Carolina's incarcerated population, including details about COVID-19 testing and quarantine practices related to inter-prison transfers.

2. On November 6, 2020, Defendants filed their Response to the Orders, which made no mention of pending prison closures.

3. On November 13, 2020, Plaintiffs filed a Reply to Defendants' Response.

4. On November 25, 2020, after a media outlet published an article reporting on significant prison closures, mass inter-prison transfers of incarcerated people, prison staffing shifts, and over-capacity prison medical facilities,¹ North Carolina Department of Public Safety ("NCDPS") issued a press release publicly acknowledging that the "surge of COVID-19" had prompted them to make significant changes to prison operations, including closing Randolph Correctional Center, Southern Correctional Institution minimum custody unit, and Piedmont Correctional Institution minimum custody unit, and reassigning large numbers of staff and incarcerated people.²

5. The transfers of hundreds of individuals *en masse* raise significant concerns of further COVID-19 transmission within the prison population, as large numbers of individuals incarcerated at facilities with high positive rates were moved to other facilities at one time.

¹ Nick Ochsner, NC Closes Prisons, Moves Inmates, as COVID cases spike, (Nov. 25, 2020), available at <https://www.wbtv.com/2020/11/25/nc-closes-prisons-moves-inmates-covid-cases-spike/>

² Press Release, North Carolina Department of Public Safety ("NCDPS"), *Prisons Temporarily Suspends and Consolidates Some Facility Operations Due to COVID-19 Issues*, (Nov. 25, 2020), available at <https://www.ncdps.gov/news/press-releases/2020/11/25/prisons-temporarily-suspends-and-consolidates-some-facility>

6. In the past four weeks, infection rates in Defendants' prisons have ranged between 16.6 and 19.2 percent. *See* Defs' 32nd-35th Notices of Filing. Since mass testing was completed on August 8, 2020, NCDPS's overall, average positive rate is 17.4 percent (3,702 positives out of 21,248 tests). *See* Defs' 17th-35th Notices of Filing.

7. In their most recent filing for Week 19 (Nov. 14-21, 2020), NCDPS reported a positive rate of 18.8 percent. *See* Defs' 35th Notice of Filing. The statewide positive rate in North Carolina is 8.6 percent.³

8. As Plaintiffs have presented to this Court in their previous filings, Defendants' weekly reports in recent weeks were already documenting high numbers of transfers that appear to exceed the prisons' quarantine capacity. *See* Pls' Report for Oct. 15, 2020 Status Review Hearing (Oct. 15, 2020) at 12-13; Pls' Supp. Submission Following Oct. 14, 2020 Status Review Hearing (Oct. 21, 2020) at 1-8.

9. Even before these most recent closures were announced, in Weeks 18 and 19 (Nov. 8 to Nov. 21, 2020), 165 people were moved out of Randolph Correctional Center, *see* Defs' 34th & 35th Notices of Filing, presumably to make Randolph CC ready for the closure NCDPS revealed in its November 25, 2020, statement.

³ North Carolina Department of Health & Human Services, *COVID-19 Response: Testing*, available at <https://covid19.ncdhhs.gov/dashboard/testing>.

10. In Weeks 1 to 17 (June 22 to Nov. 7, 2020), NCDPS averaged 404 transfers per week. By comparison, in Weeks 18 and 19 (Nov. 8 to Nov. 21, 2020), NCDPS completed 1,176 and 1,227 prison transfers, respectively. *See* Defs’ 34th Notice of Filing. In Week 18, 703 people were transferred out of Neuse Correctional Institution to several different facilities on November 13, 2020, because of a natural disaster. *Id.* The next week, 630 people were transferred back to Neuse CI over the course of four days (Nov. 17 to 20, 2020). *Id.* While all of the November 13, 2020, transfers are marked as having undergone quarantine, it is clear these people were returned back to Neuse CI before they completed the 14-day quarantine process.

11. Crowding at the receiving facilities for these transfers will necessarily be increased, further decreasing the possibility of social distancing, and effective medical isolation, “cohorting,” and quarantining.

12. It is particularly alarming that Defendants have engaged in sudden, mass transfers, even as their transfer practices have been called into question and remain under examination by this Court. *See* Order for Add’l Info. (Oct. 28, 2020).

13. Defendants’ November 25, 2020, press statement states that the prison closures are necessary, and that future closures may be necessary, to “reduce the stress on hospitals treating non-offender COVID-19 cases in their communities.”⁴ This statement indicates that prison consolidation is necessary to preserve community hospital beds for people outside the prison population. This acknowledgement is striking in its implication that those who are incarcerated, who

⁴ NCDPS, Press Release (Nov. 25, 2020), *supra* n.2.

are now in more crowded conditions and cannot engage in adequate preventative measures, are also being intentionally disadvantaged with regard to access to necessary medical treatment.

14. Defendants' statement also indicates that providing healthcare for the incarcerated population will require additional movement and that more prison transfers are forthcoming.

15. Since Defendants' last filing, at least 3 more people have died of COVID-19 in their custody, including a 49-year-old woman serving time for a nonviolent property crime at Anson Correctional Institution.⁵

16. This woman was apparently so ill that she required hospitalization before she was ever tested for COVID-19, per the NCDPS statement regarding her death.⁶

17. As with all of the prior COVID-19 related deaths reported by Defendants, each individual who died was known to have a health condition that placed them at increased risk from COVID-19.

18. Furthermore, Defendants have produced in discovery materials revealing that in July 2020, the North Carolina Department of Health and Human

⁵ See NCDPS Offender Public Information, Profile of Dianna M. Cross, (showing date of death November 18, 2020), available at <https://webapps.doc.state.nc.us/opi/viewoffender.do?method=view&offenderID=0093709&searchLastName=cross&searchFirstName=dianna&searchDOBRRange=0&listurl=pagelistoffendersearchresults&listpage=1>.

⁶ Press Release, NCDPS, *State Prison Offender Dies After Testing Positive for COVID-19*, (Nov. 19, 2020) available at <https://www.ncdps.gov/news/press-releases/2020/11/19/state-prison-offender-dies-after-testing-positive-covid-19>.

Services (“NCDHHS”) advised NCDPS to test prison staff regularly, and no less than every two weeks, because “the main way COVID can be introduced to a facility is through staff.” Exhibit 1.

19. On July 10, 2020, this Court also ordered Defendants to implement surveillance testing, which included regular monthly testing of prison staff assigned to each housing unit. Order (July 10, 2020) at 11 ¶ 8; Pls’ Objections D efs’ Proposed Testing Plan (June 26, 2020) at 6 ¶ e (iii).

20. As discussed at the October 15, 2020, Status Review Hearing and in filings related to that hearing, Defendants have not carried out this clear public health guidance from NCDHHS or the Court’s Order. *See* Pls’ Report for Oct. 15 Status Review Hearing (Oct. 15, 2020) at 4-8.

21. Last week’s developments, which will result in additional crowding at those prisons to which people from closed prisons are transferred, puts in stark relief how little Defendants have done to manage their prison population since the Court’s preliminary injunction. Currently, a mere 357 people are serving their sentences on home or community confinement through the Extended Limits of Confinement (“ELC”) program.⁷ Meanwhile, Defendants have engaged in multiple prison closures and are squeezing the remaining over 30,000 incarcerated people into even less space than was previously available. This does not come close to

⁷ NCDPS, FAQs on Serving Sentences Outside a Prison: Offenders impacted by ELC, <https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-info-covid-19#offenders-impacted-by-etc> (last visited Nov. 11, 2020).

resembling a population management plan that is responsive to the emergency circumstances posed by this global pandemic.

Plaintiffs respectfully ask that the Court direct Defendants to provide the Court with an explanation of how these prison closures and consolidations will ensure adequate COVID-19 and non-COVID-19-related medical care for incarcerated people, whether Defendants intend to implement (albeit belatedly) NCDHHS' guidance on regularly testing staff, and the number of additional incarcerated people who have been placed on ELC, if any, to accommodate the increased crowding resulting from the recent prison closures.

This the 30th day of November, 2020.

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CERTIFICATE OF SERVICE

I certify that counsel for Defendants have stipulated to service via electronic mail, and that on November 30, 2020, I served the foregoing on:

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This the 30th day of November, 2020.

/s/ Leah J. Kang _____

Leah J. Kang

Counsel for Plaintiffs

EXHIBIT 1

From: Sredl, Megan K

Sent: Friday, July 31, 2020 7:54 AM

To: Junker, Gary <gary.junker@ncdps.gov>; Stewart, Wayne <Wayne.Stewart@ncdps.gov>; Langley, Valerie <Valerie.Langley@ncdps.gov>

Cc: Foust, Evelyn <evelyn.foust@dhhs.nc.gov>; Money, Ben <Ben.Money@dhhs.nc.gov>; Gaetz, Kim A <kim.gaetz@dhhs.nc.gov>; Allen, Myra G <myra.g.allen@dhhs.nc.gov>

Subject: Summary of surveillance testing call

Hi DPS team,

Here is a brief summary of our thoughts from the call yesterday as requested. We will continue to think about this question and are happy to work with you to develop a more specific plan moving forward. I know there are others from DPS that were on the call who I've forgotten to include, so please share with them as well.

- If a facility has someone who is symptomatic, they should be tested for COVID-19. In response to a lab-confirmed COVID-19 case, the case's housing cohort (including inmates and staff) would be tested for COVID-19. If this testing identifies additional cases, broader testing should be conducted (could be facility-wide or just certain areas of the facility, depending on layout and how effectively the housing units are cohorted).
- To identify new COVID-19 cases, we suggest testing all incoming inmates on arrival and routine testing of staff (at least once every two weeks). Given that inmates are tested on arrival and generally spend at least 14 days in a processing center, the main way COVID-19 can be introduced into a facility is through staff. It will be faster and more effective to regularly test all staff to see if they have introduced the virus, rather than identifying the virus in a sample of inmates after it has already been circulating in the facility.
- To encourage prison staff to get tested, they may consider offering onsite testing at each facility and making sure that the warden at each prison is on board with leave policies that will support staff who test positive.
- We may need to rethink additional testing of the inmate population once visitation and educational programming and volunteers start back, since there will be more possible points of entry for the virus, recognizing the importance of these programs for the mental health of inmates.
- At this time, we are not aware of any recommendations to conduct sampling-based surveillance testing as described in the court order.

Thanks,

Meg Sredl, MPH

HAI Epidemiologist, SHARPPS Program

North Carolina Department of Health and Human Services

Division of Public Health – Communicable Disease Branch

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