

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ABDY NIZEYIMANA, on behalf of	)	
himself and all others similarly situated,	)	
	)	
Petitioners,	)	
	)	
v.	)	Civil Action No. 20-10685-ADB
	)	
ANTONE MONIZ, Superintendent of the	)	
Plymouth County Correctional Facility	)	
	)	
Respondent.	)	

**RESPONDENT’S STATUS REPORT AND RESPONSE TO  
PETITIONERS’ MOTION FOR EMERGENCY STATUS CONFERENCE**

Respondent Antone Moniz (“Respondent”), Superintendent of the Plymouth County Correctional Facility (“PCCF”), by and through his attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, respectfully submits this (1) status report to inform the Court and parties of the below developments, and (2) response to Petitioners’ motion for emergency status conference. Doc. # 286.

**General Developments**

**1. PCCF’s Testing Practice.**

On November 25, 2020, Respondent notified the Court that it was in the process of reevaluating its testing practice:

Over the last several days, PCCF personnel have been in discussions with the Massachusetts Department of Public Health (“DPH”) regarding PCCF’s testing practice. Based on those discussions, and in light of the uptick in positive employee cases reflected in Respondent’s recent status reports, PCCF has determined to reevaluate its testing practice. The details of how exactly PCCF will reevaluate its testing practice are still being worked out in consultation with DPH. At present, PCCF intends, within the next

few days, to perform asymptomatic testing for all inmates in one of PCCF's dormitory style units. Over the next few days, PCCF will continue to reevaluate its testing practice in consultation with DPH. Respondent intends to provide the Court with a further update with more details early next week.

Doc. # 284.

By way of update, over the last few days, PCCF has administered asymptomatic testing to all inmates in three units. *First*, as indicated above, on November 25, 2020, PCCF administered asymptomatic testing to all inmates (13 in total) in Unit B-S-1, which is a dormitory style unit that holds state inmates. All test results for all inmates in Unit B-S-1 were negative. *Second*, on November 27, 2020, PCCF administered asymptomatic testing to all ICE detainees in Unit C-3, which is the unit that holds the current class members in this case. All test results for all ICE detainees in Unit C-3 were negative. *Third*, on November 30, 2020, PCCF administered asymptomatic testing to all inmates (52 in total) in Unit E-1, which is a unit that holds state inmates. As of the date and time of filing, the test results for all inmates in Unit E-1 remain pending.<sup>1</sup>

While all inmates and ICE detainees in Unit B-S-1 and Unit C-3 tested negative, Respondent has determined to modify its testing practice as follows. As quickly as reasonably possible, Respondent will begin broad-based testing of all inmates and detainees and staff at PCCF. Respondent currently is in the process of retaining a vendor to assist with the implementation of broad-based testing at PCCF. Respondent will provide the Court and the parties with periodic status updates (*i.e.*, at least weekly but likely more frequently) regarding PCCF's efforts to implement a modified testing practice that includes broad-based testing.

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<sup>1</sup> PCCF tested all 52 inmates in Unit E-1 on November 30, which was one day after PCCF learned that a state inmate in that unit had tested positive on November 29. That state inmate's positive test is described in further detail below.

## 2. Quarantine Protocols for PCCF Employees.

Almost two weeks ago, on November 20, 2020, Respondent notified the Court and the parties that, based on state guidance issued in May 2020, PCCF reserved the right to reduce the quarantine period for asymptomatic medical staff who had close contact. Doc. # 280 (“Based on written guidance from DPH, however, the medical staff will quarantine only if they experience symptoms.”); *see also* Doc. # 280-1 (DPH guidance). Petitioners never responded to that information, either in a formal response to Respondent’s status report or in any of the email or telephonic communications between class counsel and the undersigned in the last 11 days.

On November 25, 2020, Respondent notified the Court that, based on recent state guidance issued on November 20, 2020, PCCF reserved the right to reduce the quarantine period for asymptomatic security staff (*e.g.*, correction officers) who had close contact:

In a recent status report, Respondent provided the Court with a copy of guidance, dated May 7, 2020, from the “Massachusetts COVID-19 Command Center” describing quarantine protocols for healthcare personnel and others. Doc. # 282-2. In that status report, Respondent explained that, based on that written guidance, PCCF’s medical staff identified as close contacts “will quarantine only if they experience symptoms.” Doc. # 282 at 2. Recently, on November 20, 2020, the Massachusetts Executive Office of Health and Human Services (“HHS”), which oversees DPH, and the Massachusetts Executive Office of Public Safety and Security (“EOPSS”) issued a letter “to confirm that, consistent with Massachusetts COVID-19 Command Center guidance, EMS providers and first responders are not required to quarantine following an exposure to COVID-19, provided the EMS provider or first responder is not experiencing any COVID-19 symptoms and continues to self-monitor for symptoms.” Nov. 20, 2020 Letter, attached as Exhibit A hereto. In other words, both HHS and EOPSS have confirmed that the earlier guidance applies not only to healthcare personnel, but also to “first responders.” Under Massachusetts law, “first responders” are individuals “trained to administer first aid under M.G.L. c. 111, § 201 and are not certified and working as EMS first responders.” 105 CMR 171.040. PCCF security staff, including correction officers and others, satisfy that definition of first responders. Accordingly, PCCF security staff—

just like PCCF medical staff—“are not required to quarantine following an exposure to COVID-19,” provided they are “not experiencing any COVID-19 symptoms and continues to self-monitor for symptoms.” Ex. A.

Doc. # 284.

Yesterday, November 30, 2020, in response to the above status report, Petitioners filed a motion that sought an “emergency” status conference to address what they characterize as a “dangerous practice” that is “totally unsupported.” Doc. # 286. For the reasons that follow, those characterizations are inaccurate.

A reduction of the quarantine period for asymptomatic correction officers who had close contact is based on three sources of authority. *First*, this practice is supported by the operative version of ICE’s “COVID-10 Pandemic Response Requirements” (“PRR”), which Respondent provided to the Court and the parties as an attachment to its November 20 status report. Doc. # 280-1. The relevant portion of the PRR provides as follows:

Management should consider requiring asymptomatic staff who have been identified as close contacts of a confirmed COVID-19 case to home quarantine to the maximum extent possible, while understanding the need to maintain adequate staffing levels of critical workers. *Workers in critical infrastructure sectors (including correctional and detention facilities) may be permitted to work if they remain asymptomatic after a potential exposure to SARS-CoV-2, provided that worker infection prevention recommendations and controls are implemented, including requiring the staff member to wear a face mask (unless contraindicated) at all times while in the workplace for 14 days after the last exposure (if not already wearing one due to universal use of face masks). If the exposed staff members test positive, they should follow local health department and health care provider instructions regarding home isolation.*

Doc. # 280-1 at 20 (emphasis supplied).

*Second*, this practice is supported by the operative guidance from the CDC applicable to correctional and detention facilities. *See* CDC Website, <https://www.cdc.gov/coronavirus/2019->

ncov/community/correction-detention/guidance-correctional-detention.html (last visited Dec. 1, 2020).<sup>2</sup> The relevant portion of the CDC guidance provides as follows:

Staff identified as close contacts of someone with COVID-19 should self-quarantine at home for 14 days, *unless a shortage of critical staff precludes quarantine.*

- Staff identified as close contacts should self-monitor for symptoms and seek testing.
- Refer to CDC guidelines for further recommendations regarding home quarantine.
- *To ensure continuity of operations, critical infrastructure workers (including corrections officers, law enforcement officers, and healthcare staff) may be permitted to continue work following potential exposure to SARS-CoV-2, provided that they remain asymptomatic and additional precautions are implemented to protect them and others.*
  - Screening: The facility should ensure that temperature and symptom screening takes place daily before the staff member enters the facility.
  - Regular Monitoring: The staff member should self-monitor under the supervision of their employer's occupational health program. If symptoms develop, they should follow CDC guidance on isolation with COVID-19 symptoms.
  - Wear a Mask: The staff member should wear a mask (unless contraindicated) at all times while in the workplace for 14 days after the last exposure (if not already wearing one due to universal use of masks).
  - Social Distance: The staff member should maintain 6 feet between themselves and others and practice social distancing as work duties permit.
  - Disinfect and Clean Workspaces: The facility should continue enhanced cleaning and disinfecting practices in all areas including offices, bathrooms, common areas, and shared equipment.

*Id.* (emphasis supplied).

*Third*, this practice is consistent with—if it is not technically supported by—the letter referenced in Respondent's November 25 status report. Doc. # 284-1. Respondent's position, based on its expertise in corrections and knowledge of its employees' training and responsibilities, is that correction officers qualify as first responders. Not only have correction officers at PCCF

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<sup>2</sup> See also <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-infrastructure-sectors.html> (last visited Dec. 1, 2020) (similar).

received the training that the Commonwealth requires of first responders, but correction officers are first responders in a literal sense. Indeed, at PCCF, correction officers are often the first to respond to emergencies involving inmates and detainees, including emergencies involving health and safety. If Petitioners take issue with how a state prison interprets guidance from a state agency, they can seek relief in state court or file a complaint under § 1983. Resolution of this issue is not appropriate for a habeas proceeding in which Petitioners seek a declaration about the constitutionality of the detention of ICE detainees. *See* Doc. # 119 at pg. 19 (“Declare that the petitioners and class members are entitled to release, with appropriate conditions and precautionary public health measures.”).

In all events, reducing the quarantine period for asymptomatic correction officers who had close contact is a last resort that PCCF has seldom been required to utilize in the last several months (and only recently). PCCF’s baseline practice is to quarantine all close contacts of positive cases. Recently, PCCF briefly permitted some employees to return to work during quarantine when it faced a critical staffing shortage that endangered its ability to maintain the safety and security of inmates and detainees (Respondent reported those instances on November 20 and November 25). But PCCF has since resumed quarantining all close contacts and will only reduce the quarantine period in the future as required to maintain the safety and security of inmates and detainees.

#### **New Positive Test Results**

As mentioned above (*see supra* note 1), on November 29, 2020, a sentenced inmate tested positive for COVID after he reported symptoms. Through its contact tracing efforts, PCCF identified close contact with 10 other inmates in the same unit (Unit E-1). As reported above, on November 30, 2020, PCCF tested all inmates in that unit and results are currently pending.

Separately, the following employees have testified positive:

- On November 25, 2020, a correction officer tested positive for COVID. PCCF had identified the officer as an out-of-work contact with a correction officer identified in the November 20 status report (Doc. # 282). The officer has been quarantined since the trace.
- On November 25, 2020, two correction officers and two lieutenants tested positive for COVID. The Department had identified all four employees as close contacts of a lieutenant identified in the November 25 status report (Doc. # 284). One lieutenant initially quarantined, then returned to duty under the new guidance from EOPSS and HHS. A trace identified no close contacts with staff or inmates. One correction officer has quarantined since November 18. The second correction officer has quarantined since November 19. The second lieutenant has quarantined since November 21.
- On November 28, 2020, a captain tested positive for COVID. Through its contact tracing efforts, PCCF identified one sergeant as a close contact (and no inmates or detainees). The sergeant will quarantine and test.
- On November 29, 2020, a clerk assigned to booking tested positive for COVID. The clerk had not been to PCCF since November 20. Through its contact tracing efforts, PCCF identified contact with one transportation officer and two clerks assigned to booking. All will quarantine and test.
- On November 29, 2020, a correction officer tested positive for COVID. The officer has been out of PCCF since November 24.

- On November 29, 2020, a correction officer tested positive for COVID. Through its contact tracing efforts, PCCF identified close contact with one medical officer (and no inmates or detainees). The medical officer will quarantine and test.
- On November 29, 2020, a correction officer tested positive for COVID. Through its contact tracing efforts, PCCF identified close contact with one officer (and no inmates or detainees). The officer will quarantine and test.
- On November 30, 2020, a correction officer assigned to medical tested positive for COVID. PCCF had identified the officer as a close contact of a lieutenant, a medical officer, and a sergeant assigned to medical, identified in the November 25 status report (Doc. # 284). The officer has remained out on quarantine.

Respectfully submitted,

ANTONE MONIZ  
Superintendent of the Plymouth  
County Correctional Facility

By his attorneys,

ANDREW E. LELLING,  
United States Attorney

By: /s/ Jason C. Weida  
Jason C. Weida  
Assistant U.S. Attorney  
United States Attorney's Office  
1 Courthouse Way, Suite 9200  
Boston, Massachusetts 02210  
(617) 748-3180  
Jason.Weida@usdoj.gov

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