

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KARLENA DAWSON, et al.,

Plaintiff,

v.

NATHALIE ASHER, et al.,

Defendants.

CASE NO. C20-0409-JLR-MAT

DECLARATION OF
DR. SHERI MALAKHOVA, M.D.

I, Sheri Malakhova, M.D., declare as follows:

1. I am an Internal Medicine Doctor and serve as the Clinical Director for ICE Health Services Corps ("IHSC") at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. I have been employed at this facility since September 30, 2015, and my duties include providing and overseeing the medical care of detainees housed at this facility.

2. I am aware of the Court's April 1, 2020 Order to File Additional Evidence in this case and provide the following declaration in response as a supplement to Dr. Rivera's Declaration dated March 26, 2020. (Rivera Decl., Dkt. No. 65)

3. This declaration is based upon my personal and professional knowledge and information obtained from various records and systems maintained by DHS in the regular course of business. I provide this declaration based on the best of my knowledge, information, belief, and reasonable inquiry for the above captioned case.

Court's Question 1

Are detainees at NWDC currently able to maintain at least six feet of physical distance from other individuals?

1. Detainees within the medical clinic and Medical Housing Unit ("MHU") at the NWIPC are able to maintain at least 6 feet of distance apart from each other, as explained in paragraph 2.

Court's Question 2

What steps have Defendants taken to instruct and/or encourage detainees to maintain at least six feet of physical distance from other individuals, particularly in light of guidance from Department of Homeland Security ("DHS") medical subject matter experts who explain that "social distancing is essential to slow the spread of the coronavirus"?

2. IHSC has placed visible guides in the medical clinic and MHU at the NWIPC to educate and assist detainees to stay at least six feet apart everywhere within the clinic. These include posted signs as well as color footprints placed on the floor to assist detainees both sitting and standing in the clinic to stay the requisite distance apart. These preventative measures are also included at the pill line where medications are dispersed.

3. MHU rooms at the NWIPC are limited to single patient occupancy at this time to increase social distancing between detainees.

Court's Question 3

Under what circumstances, if any, are detainees unable to maintain a physical distance of six feet or more from other individuals at NWDC? If detainees are unable to maintain a distance of six feet or more from other individuals, are Defendants taking any measures to mitigate the risk entailed by these circumstances? If so, what are those measures and how will those measures mitigate the risk?

4. Detainees within the MHU and medical clinic at the NWIPC are able to maintain six feet distance from each other. However, detainees may come within six feet of IHSC staff within the medical clinic and MHU. To mitigate the risk of possible spread of COVID-19 from

1 IHSC or GEO staff within the medical unit or MHU, IHSC and GEO have implemented several
2 policies:

- 3 a. All IHSC employees are subject to temperature check screening upon entry to the
4 NWIPC in order to reduce the risk of bringing COVID-19 into the facility.
- 5 b. In addition, all IHSC employees are required to self-monitor for COVID-19
6 symptoms at the start of every shift and report any possible symptoms to an
7 immediate supervisor.
- 8 c. On April 1, 2020, IHSC instituted a universal mask policy, requiring all IHSC
9 staff in the medical care clinic and MHU to wear surgical masks at all times in
10 order to mitigate the possible spread of COVID-19 from staff to detainees.
- 11 d. GEO informed IHSC on April 1, 2020 that GEO staff within the medical clinic
12 will also be required to wear surgical masks at all times to mitigate the possible
13 spread of COVID-19 from GEO staff to detainees.
- 14 e. IHSC has stocked N95 respirator masks for use by medical staff who care for
15 COVID-19 presumptive positive and COVID-19 positive individuals.
- 16 f. IHSC has provided training to all IHSC and GEO employees on the proper fit and
17 use of N95 respirator masks.

18 5. IHSC has also cancelled all outside elective medical appointments in order to
19 reduce to an absolute minimum the amount of time that detainees spend outside the facility to
20 mitigate risk of a detainee contracting COVID-19 from outside medical staff or environment.
21

22 Court's Question 4

23 How many tests for COVID-19 have Defendants conducted on (a) all individuals present
24 at NWDC, including ICE employees, and (b) of that number, how many tests for
25 COVID-19 have Defendants conducted specifically on detainees at NWDC? Have any of
26 those tests returned positive identifications of COVID-19?
27
28

Detainees

6. ICE itself does not conduct testing for COVID-19 on any individuals present at the NWIPC except for detainees within the care of ICE's Health Services Corps ("IHSC").

7. As of April 3, 2020, three detainees at the NWIPC have been tested for COVID-19. All of those tests results were negative.

IHSC Employees

8. To date, no IHSC employees at the NWIPC have reported being tested or diagnosed with COVID-19.

Court's Question 5

How many detainees at NWDC have been placed in isolation for the "14-day observation period" or otherwise been quarantined or isolated due to screening results, symptoms, or any other COVID-19-related reason?

Isolation Due to Screening Results, Symptoms or other Specific COVID-19 Reasons

9. To date, three detainees have been placed in medical isolation in the MHU while being tested for COVID-19. *See par. 7.* A total of 70 detainees were placed in two cohorting units while waiting for the COVID-19 test results of these three detainees. All the detainees were released to general population when the test results returned as negative.

10. Four detainees at the NWIPC have been placed in medical isolation upon admission to the NWIPC for observation for COVID-19 due to recent travel to or from various countries (China, Korea, Japan and Iran). All four detainees have since completed 14 days of monitoring with no COVID-19 symptoms and been released to general population.

14-Day Observation Monitoring

11. Since March 20, 2020, all incoming detainees to the NWIPC who do not meet the current IHSC protocol requirements for isolation monitoring due to possible COVID-19

1 symptoms, exposure or testing, are placed in separate housing units for 14 days of monitoring for
2 signs or symptoms of COVID 19.

3 12. IHSC has established a remote medical unit to monitor the detainees in these 14-
4 day observation units.
5

6 13. IHSC has limited staff rotation from the remote medical post, i.e. the same IHSC
7 staff remain assigned to the remote unit, in order to reduce the possibility that IHSC staff will
8 spread COVID-19 into the general population.
9

10 14. To date, none of the detainees undergoing 14-day observation have shown
11 symptoms of COVID-19 and none have required testing. Detainees will not be cleared for
12 release until 14-days have passed without signs or symptoms of COVID-19.

13 Court's Question 7
14

15 In addition to isolating any individual who shows symptoms or tests positive for COVID-
16 19, what are Defendants' current plans, if any, in the event of a COVID-19 outbreak at
17 NWDC—especially if it becomes widespread—to (a) provide medical care for detainees
18 who contract COVID-19, particularly detainees who are elderly and/or have serious
19 medical conditions and (b) manage the COVID-19 outbreak to minimize the possibility
20 of spread to other individuals within NWDC and to the public at large?

21 15. Detailed descriptions of IHSC's COVID-19 screening and prevention protocols,
22 including isolation and testing of detainees for COVID-19 and cohorting of asymptomatic
23 detainees who were previously housed with a detainee undergoing testing to minimize spread of
24 the virus are provided in the March 18, 2020 and March 26, 2020 declarations of IHSC Deputy
25 Assistant Director for Clinical Services Dr. Ada Rivera.

26 16. Detainees who are COVID-19 positive or presumptive positive will be housed
27 individually first in the NWIPC MHU. The MHU at the NWIPC contains eight rooms, including
28 four negative pressure rooms (airborne infection isolation rooms).

1 17. Two additional housing units at the NWIPC have been designated as medical
2 overflow units to house additional COVID-19 positive and presumptive positive detainees
3 should space become unavailable in the MHU. These housing units contain individual cells so
4 that detainees can be housed separately or COVID-19 positive detainees can be housed together.
5

6 18. IHSC has set up a remote medical units to treat detainees in these medical
7 overflow units. These remote medical units will be staffed by nurses.
8

9 19. In the event that a detainee at the NWIPC is diagnosed with COVID-19, IHSC
10 will perform a medical assessment to determine the detainee's degree of illness. IHSC will
11 provide medical care to detainees who are diagnosed with COVID-19 to the point that it
12 determines a detainee requires hospital care. If IHSC determines that a detainee should be
13 transported to the hospital, the detainee will be transported to a local hospital. The NWIPC is
14 located within minutes of both Tacoma General Hospital and St. Joseph Medical Center in
15 Tacoma.
16

17 20. Because all types of contact visitation are currently limited at the NWIPC,
18 detainees are not exposed to the public at large unless they are taken to the hospital. Once at the
19 hospital, medical decisions for each detainee are made by hospital medical staff. All outside
20 medical providers are required to communicate with IHSC, including providing medical records
21 and lab reports so that IHSC is aware of each detainee's ongoing physical condition and
22 treatment.
23

24 21. IHSC has provided ICE Enforcement and Removal Operations ("ERO") with a
25 list of NWIPC detainees whose medical records indicate are at higher risk of COVID-19 under
26 CDC guidelines. It is IHSC's understanding that ERO is currently conducting an ongoing
27 review of those cases to determine which, if any, may be suitable for release.
28

22. In the event that identified detainees are not released from custody and test positive for COVID-19, IHSC intends to prioritize these detainees for placement within the MHU where medical providers will be available.

Court's Question 9

Do Defendants currently possess the resources and ability to fully execute the plans referenced above, including necessary medical personnel, facilities, and equipment, including personal protective equipment?

23. It is my professional medical opinion that IHSC has the necessary resources and ability to execute the COVID-19 response plans outlined above.

24. The nature of COVID-19 is such that the majority of positive cases involve either no symptoms or minor symptoms. In addition, the nature of an outbreak is such that some patients will be recovering or have recovered at the time that others fall ill.

25. The NWIPC is currently operating at a very low detainee occupancy rate, which significantly increases staff to detainee ratios and the availability of resources to medically house and treat detainees.

26. IHSC has a full inventory of personal protective equipment ("PPE"), including N95 respirator masks for use with suspected positive and positive COVID-19 detainees.

27. The medical clinic at the NWIPC is currently staffed with more than 50 employees, including physicians (internal medicine specialists), nurses, radiology technicians, record technicians, pharmacists and pharmacy technicians, psychiatrists and behavioral health specialists, dentists and dental technicians. The medical clinic contains its own x-ray and a full-time x-ray technician. Therefore, IHSC is capable of conducting its own x-ray examinations for COVID-19-related pneumonia. The medical clinic also has its own pharmacy, two pharmacists as well as pharmacy technicians and is therefore capable of dispensing needed medications.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Sheri w malakharu ms

Sheri W. Malakhova, M.D.
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