

1 EXPEDITE
2 Hearing set for:
3 Date: Friday, April 23, 2021
4 Time: 9:00 a.m.
5 Judge/Calendar: Judge James Dixon

6 **SUPERIOR COURT OF WASHINGTON**
7 **FOR THURSTON COUNTY**

8 CANDIS RUSH, JUSTIN AUTREY,
9 GREGORY STEEN, THEODORE RHONE, and
10 MICHAEL LINEAR, on behalf of themselves
11 and all others similarly situated,

12 Plaintiffs/Petitioners,

13 vs.

14 WASHINGTON STATE DEPARTMENT OF
15 CORRECTIONS, a state agency; STEPHEN
16 SINCLAIR, Secretary of the Washington State
17 Department of Corrections; WASHINGTON
18 STATE DEPARTMENT OF HEALTH, a state
19 agency; and DR. UMAIR SHAH, Secretary for
20 the Washington State Department of Health;

21 Defendants/Respondents.

CLASS ACTION

No. 21-2-00491-34

DECLARATION OF WENDELL M.
CLARK

22 I, Wendell M. Clark, declare the following:

- 23
1. I am 51 years old.
 2. My birthday is 7/31/1969.
 3. I am over the age of 18 and am competent to testify as to the contents of this

declaration.

1 **Background**

2 4. I am currently in detention at the Stafford Creek Correction Center (SCCC) in
3 Aberdeen, Washington.

4 5. My DOC number is 416403.

5 6. I have been at this facility since August 2019.

6 7. My early release date of November 2027 and my expected release date is
7 November of 2028.

8 8. I currently find myself in unit H-2.

9 9. I suffer from sleep apnea and a deviated septum, which are respiratory issues that
10 make me worried about catching COVID.

11 **General Conditions**

12 10. My time at SCCC since the start of the pandemic has been full of worry and
13 neglect from DOC staff.

14 11. Throughout this whole pandemic, DOC has had plenty of warning from the
15 community at large and the scientific community on what to do to combat the spread of this
16 disease. For some reason, DOC and its staff have continued to ignore those warnings.

17 12. Simple things like proper masks, Lysol, bleach, or other disinfectant would have
18 helped greatly. Even making it available for purchase would have been a good option. Instead,
19 they give us a very diluted solution called hepistat. I don't know how effective that is, but whatever
20 effectiveness it has is certainly less by the time we have it available with all the extra water it
21 has. They also told us they wouldn't give us alcohol-based sanitizer solution, or aerosol sprays,
22 because it was a danger and security threat. I could maybe live with that if DOC at least tried to
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1 give us Lysol/Clorox wipes, stuff that has a known effectiveness against COVID and isn't
2 diluted to being simple water.

3 13. I remember back in March or April of 2020, DOC started to require everyone to
4 wear surgical masks. Then in May or June of 2020, they made us all turn in our masks for what
5 was basically cloth napkins or bandannas with coffee filters inside of them, made by correctional
6 industries. The reason we were told was because, again, the effective masks had some sort of
7 security issue. I felt safer with the surgical masks because those could clamp down around your
8 nose and provide actual verifiable safety. The cloth masks we were forced to wear didn't have
9 any safety features and I was told by DOC staff that the surgical masks were being reserved for
10 staff.

11 14. The big outbreak we had at Stafford Creek started back in November of 2020
12 when the CUS for H-1 unit was hospitalized with the coronavirus and a massive infection rate
13 followed. I heard around four residents ended up dying, but I don't think all the information has
14 come out yet, there could be more from this outbreak.

15 15. But even after the outbreak started, for weeks, we continued about our normal
16 routines of mainline and chow hall, thus spreading the virus even further. Around December was
17 when SCCC staff started providing us with the surgical masks again. Even then, we were not
18 well informed of the situation. It was not until residents started demanding that DOC begin
19 testing everyone that we were all made aware of how serious the situation was.

20 16. On December 16, 2020, I was informed by DOC staff that I had tested positive for
21 the coronavirus. My life has been hell ever since.

22 17. I asked staff about the probabilities that I had received a false positive, but no one
23 was willing, or able, to tell me anything. I even asked for a second test to confirm that I had not

1 received a false positive, but I was told by staff that a second test was not an option. This turned
2 out to be false because I ended up getting 6 tests total.

3 18. I was informed to pack all my belongings because I was going to be relocated to
4 another part of the facility where other people had also tested positive. I was going to be placed
5 into a housing unit called H-1, which is where the outbreak at SCCC first started and where some
6 of people who tested positive were being placed. Other places were the gym, the visiting room,
7 and there were even cots in the kitchen because the outbreak was so massive.

8 19. However, I was concerned about my health and the potential false positive and
9 did not believe being placed in H-1 would be safe for me. I asked staff to place me in IMU,
10 disciplinary housing, because this was the only place in the entire facility that has single man
11 cells and it would be the safest. Staff ultimately agreed after I kept asking them multiple times
12 for a second test or for placement in IMU. I spent the next 15 days in “medical isolation,” which
13 was from December 16th-31st.

14 20. I was horribly mistreated while I was at IMU. For example, I was not allowed to
15 contact my family to tell them how I was doing or just to reassure them that I was still here. Nor
16 was I allowed to bring in my own personal hygiene items like deodorant, lotion, or soap. I asked
17 staff multiple times for a simple phone call and my requests were ignored up until about the 13th
18 day of medical isolation. Staff brought me a cordless phone to be able to call my family, but I
19 wasn’t able to connect with them. There was no other way to contact my family since there is a
20 general policy that does not allow people in medical isolation to send out mail. Additionally, I
21 did not have access to a T.V., radio, or my JPAY player.

22 21. Even worse, I was only able to have one change of outer clothes during this entire
23 time in medical isolation (pants, sweater, etc). I spent 15 days in basically the same clothes.

1 22. The lack of clean clothing was made a little better by being able to shower but not
2 by much. In the entire time I was there, I was only able to shower three times. The first time was
3 after spending seven days in medical isolation. As for my undergarments, that means I only had
4 three pairs of clean underwear and clean undershirts.

5 23. My time in medical isolation resembled more of a punishment for potentially
6 catching COVID, not medical attention. I was completely cut off from my family and stewing in
7 my own mustiness and body odor.

8 24. After I was released from medical isolation, I was placed in H-2, which was full
9 of people who were in post-quarantine. I discovered my daughter had been trying to reach me to
10 check in on me and see that I was doing ok. The general situation in DOC is no secret and I was
11 sick to hear that my own daughter could not get in touch with me in any way. My daughter tells
12 me that it was like my accounts were shut down, she says she couldn't send me anything.

13 25. Also, when I arrived in H-2, staff brought my personal belongings to my new
14 housing. I had all kinds of items missing, I got my tv back damaged and it won't even stand on
15 its own anymore. It feels like DOC just took our stuff and threw it around. I understand things
16 happen, but in the middle of the pandemic, to be moved around, and to lose the only things we
17 help to keep our minds off what is going on is very unfair.

18 26. During this whole ordeal, I ended up being tested by DOC 6 times. All of my tests
19 ended up being negative, except for the first test and the sixth test, which was inconclusive. I
20 strongly believe that my first test was a false positive, especially now seeing all my subsequent
21 tests were negative or inconclusive. This confirms my initial fear that DOC was going to place
22 me in a situation that was detrimental to my health for no reason. In other words, DOC was
23 going to make me contract COVID-19. I understand that DOC policy is to not retest people who

1 are initially positive because they are likely to test positive again, but this policy is flawed and
2 doesn't make sense in prison. The chance of a mistake and its consequence are too great in this
3 congregate environment. I believe being suspicious of my results and DOC's handling of the
4 pandemic preserved my health in this instance. I felt like staff were rushing to get over this and
5 to just get everyone into a sort of herd immunity situation.

6 27. Currently, we are on a cohort schedule. Meaning only a certain number of us are
7 allowed out at a time. The chow hall is still closed to keep people from sitting and eating
8 together. This would make sense if it wasn't for the fact that all this falls apart the second they
9 bring us all out. Just on our way to get our food, we are all walking together in a crowd. The
10 policies sound nice and protective, but the way we are made to follow them defeats the whole
11 purpose. Once we are in the kitchen, we are lined up right next to each other. And this is just one
12 example.

13 **DOC Vaccine Efforts**

14 28. DOC recently sent a message about the vaccines through the kiosks. This
15 provided us with the effectiveness of the vaccine and it looks like DOC will be making the
16 Moderna and Johnson & Johnson vaccines available to us. The Moderna vaccine is 94%
17 effective, but its a two-shot deal, and the second shot gives the most side effects. On the other
18 hand, the Johnson & Johnson vaccine is only 67% effective, but its only one shot. The kiosk
19 message said we would have the choice between the two, except that some locations will only
20 have one option.

21 29. I would prefer to have the most effective vaccine, even if it means having two
22 shots; but I'll take the Johnson & Johnson vaccine if I have no choice. There are already rumors
23 going around that this kiosk message was meant to prepare us to only have one vaccine available

1 or the black population will only have the least effective vaccine available to them. I think this is
2 an obvious sign on the distrust between the people living here and DOC's administration of the
3 vaccine. Like there is no way we are going to have a real choice, or DOC is going to find some
4 way to punish us over this.

5 30. I've been able to hear a lot of opinions on the vaccine. It seems like most people
6 my age, or older, are leaning towards taking the vaccine once it is made available to us. It is
7 really the younger population in here that does not want to take it. I try to share some of the
8 sources of information that I have come across, like really good news sites so people can get
9 more information than what we have been getting from DOC. If I had to break it down even
10 further, I'd say the Caucasian people are most likely to take it, but the younger Latinos, Native
11 Americans, and African Americans are showing the most resistance.

12 31. Some of the reasons I am hearing are lack of trust with DOC, suspicions about the
13 vaccinations, history of medicine being used to experiment on people of color, and general
14 history of racism inside of DOC. There is also an expectation that DOC is just going to use the
15 vaccine as another way to punish people or retaliate against them.

16 32. I've also been hearing from some of the correctional officers about the vaccine.
17 Some correctional officers are saying they got it, but it seems like most of them are saying they
18 don't want to take the vaccine. I hear them talk about it like a badge of honor for not taking the
19 vaccine. Its like a 2/3's of correctional officers that talk that way.

20 33. Hearing this from correctional officers is terrible. Maybe the people in
21 administration are taking the vaccine, but correctional officers are the ones we have to interact
22 with everyday and they are the most concerning. The fact that an outbreak can restart in here at
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1 any time, plus there is talk about new variants, its problematic to hear the officers are not taking
2 this COVID disease seriously. We're just setting ourselves up for another outbreak.

3 34. Staff are the ones coming in and out, they're the ones interacting with us, and they
4 are the ones bringing in this disease. The worst part is, we don't have any control over this. If I
5 need a new mask, I have to go and as a correctional officer. And I have to stand there and watch
6 them hand me my mask with ungloved hands. And this is after hearing them not taking this
7 seriously, seeing them talking together unmasked, and seeing them standing close together. No
8 matter what I do, I have to interact with the officers and they are basically defeating any
9 precautions I take to prevent myself from getting COVID. Overall, I'd describe the correctional
10 officers' behavior as being anti-science.

11 35. The vaccine should have been available to us a long time ago. We are in some of
12 the most dangerous conditions for spreading the disease and that was before learning that staff
13 basically don't care. Instead, DOC has given the vaccine to staff, correctional officers think it's
14 an honor to stand against the vaccine, and DOC has given it to people who work in correctional
15 industries to make sure DOC's money keeps coming in. I see DOC rushing to reopen things in
16 here, but that doesn't make any sense because the entire population hasn't been vaccinated yet.

17 36. About two weeks ago now, a staff member working in the kitchen tested positive
18 in the kitchen. After that, I heard someone in H-2, B, was sick and throwing up so it seems like
19 this person may have been working in the kitchen along with the staff member who tested
20 positive. Either way, we continued our normal routines. The food was different for about 3-4
21 days, but nothing else really changed. I think we're just waiting for another outbreak to happen
22 from instances like these.

1 **Who I Am**

2 37. I was sentenced to 9 and a half years; I wasn't sentenced to a death. I feel like my
3 health has been compromised because DOC has not decided to follow very basic and common-
4 sense things. Not giving us effective masks, cleaning supplies, continuing with a business-as-
5 usual attitude, and even staff encouraging us to take off our masks during transportation trips.

6 38. I feel like people have a right to say whether they want to take the vaccine, but as
7 far as staff coming in and out, DOC as the employer should also be looking to protect the people
8 in its care. DOC should be doing something to address the fact that there are large numbers of
9 staff not taking the vaccine. The staff's personal actions are putting the rest of us at risk, when
10 we don't have a choice in the matter and we don't even have access to the vaccine. I can respect
11 people's individual choice in this, but DOC is an employer that has a responsibility to take care
12 of us who are required to live inside of these prison facilities.

13 39. By the grace of god, I have not been infected. I continue to believe the initial
14 covid test I got was a false positive and DOC's actions after that have shown me that I was right.
15 DOC was going to get me infected and get me to spread it.

16 40. Columbia Legal Services has permission to use my declaration in their litigation
17 against DOC to try and help the situation here given this dangerous public health crisis.

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 following statements are true and correct to my best knowledge and belief:

3 *I am unable to sign this document as it was prepared in Wenatchee, Washington, but I*
4 *have had it read to me over the telephone and authorize Tony Gonzalez to sign it on my behalf.*

5 Dated this 28th day of March 2021 in Aberdeen, Washington.

6 

7

Wendell Clark, by Tony Gonzalez, WSBA #47771

CERTIFICATION RE AUTHORIZATION TO SIGN
ON BEHALF OF DECLARANT

I, Tony Gonzalez, declare under penalty of perjury under the laws of the State of Washington:

1. I am counsel for the petitioners in this action.
2. Due to urgency and limitations on access to the declarants due to the current public health crises, distance, shortened time, and prison procedures, I was unable to obtain physical signatures from the declarants.
3. I personally spoke with Wendell Clark over the telephone on March 28, 2021. I drafted Mr. Clark's declaration while on the telephone with him. At the conclusion of the call, I read Mr. Clark's declaration to him, and Mr. Clark stated to me that he believed the contents of this attached declaration to be true and correct, and authorized me to sign the declaration on his behalf.

DATED this 28th day of March, 2021 at Wenatchee, Washington.



Tony Gonzalez, WSBA #47771