

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 LANIER, 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 ATIF RAFAY

22 I, Atif Rafay, declare under penalty of perjury under the laws of the State of Washington
23 that the following statements are true and correct to my best knowledge and belief:

- 24 1. I am 45 years old.
- 25 2. My birthday is February 15, 1976.
- 26 3. I am over the age of 18 and am competent to testify as to the contents of this

27 declaration.

28 DECLARATION OF
29 ATIF RAFAY - 1

Columbia Legal Services
101 Yesler Way, Suite 300
Seattle, WA 98104
(206) 464-5911

1 **Background**

2 4. I am currently in detention at the Monroe Correctional Complex-Washington
3 State Reformatory (WSR) in Monroe, Washington.

4 5. My DOC number is 876362.

5 6. I have been at this facility for 15 years.

6 **General Conditions**

7 7. From the very beginning of the Pandemic, there was widespread resistance from
8 staff on following social distancing and masking protocols. Even after mask wearing became the
9 settled course of action to combat the coronavirus, staff here were intermittently wearing masks,
10 some not at all, and at least one staff member said they had been told not to. This facility did not
11 implement any policies until I submitted multiple grievances in April to implement the CDC
12 masking guidance. On April 10th, DOC made face coverings mandatory and on April 17th, the
13 facility finally distributed a cloth mask kit.

14 8. However, despite DOC policies stating masks were to be worn indoors, there are
15 many instances where staff are not, or are unable to, enforce them. For example, people are not
16 wearing their masks while talking on the phones and essentially just breathing right on them. To
17 make matters worse, the phones are right by the vents, potentially spreading the germs even
18 further. And, although this facility has numerous cameras everywhere, they are not used to
19 enforce the safety guidelines. Additionally, the official policy says that the phones are to be
20 cleaned after each use, but there is nothing available for people to clean the phones with.
21 Monitoring for every single instance where a mask is not worn or the policy is not correctly
22 followed is not practical in this environment.

1 9. Another point of concern is that there are no N-95 masks available here. N-95
2 masks are understood to be the most effective barrier against COVID-19 in a contaminated
3 environment, but we are not allowed to have those. Some people were able to get a hold of a few,
4 but when COs saw them with their masks, they were threatened with an infraction and told they
5 could not have them. I think the Ombuds' office tried to advocate for DOC to provide us with N-
6 95 masks but was unsuccessful. The story that was put out to family members was that there was
7 no funding to provide N-95 masks to everyone in DOC, but that doesn't explain why they were
8 not made available for sale. I hear rumors that the N-95 masks provide some protection against
9 the guards OC spray, or pepper spray, so that is supposedly the real reason for confiscating those
10 masks. I think it is worth pointing out that OC spray is almost never used in the living units, its
11 been many years since I have last seen it used, so that does not seem like a good reason to keep
12 people from having the N-95 masks.

13 10. In January of 2021, the infection started spreading throughout MCC. Keep in
14 mind that we have open bar cells, so air travels easily. I had been asking staff for solid plexiglass
15 to install between the bars, but that never happened. At one point DOC promised plastic curtains,
16 but that never happened either. People resorted to using cardboard boxes, cereal boxes, or just
17 jackets/blankets against the cell bars to slow the spread of the virus. Unfortunately, people were
18 forced to take most of it down, taking away the little protection people were able to find.

19 11. I believe the outbreak started in C and D units at the end of December in 2020.
20 Inside of the A/B units, we had been hearing about the outbreak going on in C/D and we were
21 placed on quarantine on January 15, 2021. During the first day of quarantine, DOC limited the
22 number of people outside of their cells according to a cohort schedule. Staff would let small
23 groups of people out at a time, but they were not able to get to everyone, which caused distress

1 and led to an incident in A unit that first night. Everyone ended up on total locked down for a
2 few days. That weekend, January 17th, we received our first round of COVID testing; with a
3 second test on January 19th.

4 12. It is worth noting that I filed a grievance on January 15th, outlining the facilities'
5 deliberate indifference to COVID-19. My grievance detailed how there was no surveillance
6 testing, no cleaning supplies near the phones, no enforcement of DOC policies on mask wearing,
7 no provision of plastic curtains or shield to cover the open bars, and no N-95 masks available for
8 purchase. The C and D outbreaks had demonstrated to me that DOC practices were not stopping
9 the virus and I wanted to alert them that they needed to start implementing other measures. I
10 would get a response almost a month later from DOC asking me to rewrite my grievance. Even
11 after I submitted a rewrite, they rejected it because DOC falsely claimed it was not submitted on
12 time.

13 13. Once we were no longer on total lock down, DOC continued with a cohort
14 schedule and let people out for 50 minutes at a time. I think DOC tried for about a day to bring
15 everyone's food on a cart to distribute, but that didn't last long. Instead, DOC opted to just place
16 a small table at the bottom tier with trays of food and let people out in groups at a time to get
17 their food. As people were let out, they were forced to walk next to each other, no social
18 distancing, and passing by everyone else left in their cell. This violated all of DOC's own
19 policies and forced people to breathe in contaminated air.

20 14. Testing continued for a third round on February 2nd. After every test, people who
21 tested positive would be taken out of their cell and moved to the IMU or the gym. At first it was
22 about 10 people who left the unit, then 20, and finally in February about 70 people were taken
23 from the unit. It was alarming to see that many people taken out, but it also wasn't a surprise to

1 see how rapidly the rate of infection had increased. I remember at night, I could hear the
2 symphony of coughing go on throughout the unit.

3 15. For the rest of us who had continued to test negative, and remained in the unit, it
4 was clear that we were likely infected. DOC moved us to the IMU around February 5th. I
5 remember carrying my box of clothes and because I only weigh about 125 lbs, I was breathing
6 hard. It also didn't help that DOC moved us in a group. I was surrounded by about 8 or 9 other
7 people. Although I was wearing three masks, I was probably getting other people sick. That very
8 night I developed symptoms and based on what I know about COVID, I was probably at my
9 most infectious as I was walking to IMU. I do believe moving to IMU was a good idea overall.
10 There were solid doors, walls, medical mattresses, and a non-shared sink/toilet that provided
11 protection against the virus.

12 16. I reported my symptoms that very night that I arrived at IMU because I had
13 pneumonia in 2019, so I was worried about catching that again. The next morning, I was
14 showering when staff came over to get me swabbed, and I ended up being moved to another cell,
15 and then moved again to another cell within IMU. I have no idea if these cells were cleaned after
16 each time I was moved. I had what I guess is usual for COVID: headache, cough, sneezing, chest
17 congestion, fever, high blood pressure, heart racing, and I lost my sense of smell. Bizarrely on
18 my fifth day at IMU, as I was recuperating and had access to medical attention, correctional staff
19 told me I was leaving. I had no idea why DOC was deciding to move me again as I was
20 recuperating from the virus, but I packed up my stuff and got into a truck with four other people.

21 17. It was around February 11th that I was sent off to a sort of MASH style tent city.
22 These tents were erected over a wooden frame with relatively sophisticated amenities. Vinyl
23 showers, sinks, toilets, a hot water system, and living space. Even though the tents looked

1 adequate, the environment wasn't. In contrast to IMU, DOC staff gave us a blanket that looked
2 like it was made of gauze, and we were going to be sleeping on cots with no mattresses. We
3 made such a fuss that staff brought more gauze. But there was no mattress, phone, or real
4 blankets, and to use the bathroom you had to walk 40-50 feet, through two sets of doors, while
5 sick with COVID. Making the whole situation worse, there were insects coming in through the
6 gaps between the vinyl and wooden frame.

7 18. This tent city was officially called the Rapid Deployment Care Facility (RDCF),
8 but it was colloquially known as the "Really Don't Care Facility." The operating procedures
9 seemed to have been designed without consideration for the well-being of the patients it was
10 supposed to care for. Patients in the tent city were not allowed to open the door to the tent,
11 couldn't go outside, use a chair, have a mattress, use the phone, and there was no actual outdoor
12 lighting, it was just dusty and dirty. So, you had a bunch of sick people, wrapped in gauze, being
13 forced to clean the tent regularly. We were using paper towels and spray bottles of cleaner to
14 scrub the vinyl tent. It was up to us to make that place work. We cleaned, scrubbed, and
15 vacuumed in order to maintain a certain amount of cleanliness. Staff also left us a baby monitor
16 to use if anyone needed anything. When we used it to make requests, they were rarely if ever
17 successful. We ended up waiting until staff would come around to check on us to make any
18 requests. This was not an environment for anyone suffering symptoms because there wasn't a
19 real opportunity for rest or recuperation.

20 19. An additional concern with the administration of the tent city was the supplies
21 available for purchase. We were able to buy sausages, chips, and candy for example, but any
22 item of medical/nutritional value was removed from the list available for purchase. We couldn't
23 buy cough drops, tea, vapor rub, milk, NSAIDs (non-steroid anti-inflammatories a.k.a aspirin) or

1 whole grain cereal. I submitted a medical kite to point out these issues and the response I
2 received simply said “noted.”

3 20. I was at the tent city for about five days and from there, I was taken to the gym on
4 February 16th. There was about 30-40 people in the gym by the time I got there. I hear there had
5 been about 100 people from the horrid stories I’ve been told. Of course, no one was wearing
6 masks at the gym, but it was a remarkable relief from the tent city because I had phone, wifi, and
7 jpay access. They also had set up portable showers, bathrooms, and there was room to walk
8 around. I was at the gym for another 5 days. For some reason, DOC couldn’t provide us with N-
9 95 masks before the outbreaks started, but they could install massive subwoofers in the
10 gymnasium, which were used by the people staying in the gym to blast movies loudly throughout
11 the day and into the night. I can only image what it was like when 100 people were there with all
12 the noise and bodies inside the gym. For my time there, I would describe the entire situation as
13 tolerably insane.

14 21. From this whole experience, I learned that part of what was controlling this larger
15 landscape of COVID, I think, is the underreported cases. People underreport their symptoms
16 because of what they are subjected to if they test positive. People caught on pretty quickly that if
17 you report symptoms, you’ll get kicked out to the tents. We had all learned this would happen
18 from the first people who tested positive in our units. They came back and told us how DOC was
19 managing the situation.

20 22. I have had covid, I know how easily you can get it in here. Even when you are
21 taking every single possible precaution, prison is not designed to prevent or guard against viruses
22 like COVID and, unfortunately, COs are going to bring in a variant that is going to do more
23 damage. The nature of prison almost guarantees it. Because of DOCs policies, COs are required

1 to eat on the job as they are working, so they often are not able to wear their masks, and their job
2 requires them to interact with all of us all the time. When people in here aren't following
3 guidelines, because of staffing size and population size, it is impossible for COs to enforce the
4 masking and social distancing rules to keep the virus from spreading.

5 23. Finally, the masks that we have are designed to protect others from us. However,
6 they are not designed, and cannot protect the wearer from viruses in the environment. So we
7 don't have any way of protecting ourselves against any new wave of infection. We need access
8 to N-95 masks to protect us against the virus, and its variants, the COs will inevitably bring in.
9 Even if everyone in prison were vaccinated, there are variants reducing the effectiveness of the
10 vaccines, making the N-95 masks vital.

11 **Medical History**

12 24. I have latent tuberculosis and I caught a bacterial pneumonia back in 2019. These
13 two conditions made me fearful of catching covid.

14 25. My recent experience with DOC medical in 2019, because of my bacterial
15 pneumonia, made me especially fearful of the COVID response. I had been coughing extensively
16 for about 5 days and ended up coughing up blood. I declared a medical emergency at two in the
17 morning on a Monday. A CO came by and called a nurse, who I explained everything to. I felt
18 like I was drowning, I was constantly coughing, had an itch in my upper chest, and the coughs
19 felt deep like something was tearing, and I told the nurse that I never felt this way my entire life.
20 The nurse didn't seem care and told me to go to sick call in the morning. I went to sick call at
21 seven am. The nurse there only ordered me a cough suppressant and sent me back to my cell. My
22 condition continued to get worse for about four days, until on Friday, I finally decided to try
23 once more to get medical help and went back to the health care office. The nurse there was

1 alarmed to see my blood oxygen levels and immediately diagnosed me with severe pneumonia
2 and gave me Azithromycin (Z-pak). With these antibiotics, I finally started feeling better, but it
3 wasn't until my condition had reached a severe level of urgency and left me with permanent lung
4 damage.

5 26. Since the COVID outbreak here and since I was infected, I have continued to
6 experience a variety of strange symptoms even though I am considered recovered.

7 27. I continue to experience dizziness, brain fog, vertigo, and I can't smell anything. I
8 also have a weird numbness in my hand.

9 28. Just walking out to the phone, I feel like I am on a small, moored boat that rocks a
10 lot.

11 29. I sent in a medical kite and was later seen by a nurse practitioner. This nurse told
12 me that I would be getting a blood analysis, urine analysis, and an EKG. Two weeks passed and
13 nothing happened. I submitted another kite to follow up, and I was told the order was not
14 processed. Then within a week, I was called to provide samples of blood, urine, and had an EKG
15 done. I am currently waiting for x-rays.

16 30. I am worried that I will not have the medical exams needed to be able to track
17 what is going on with me. I have been able to read a few articles about long covid and many of
18 the typical tests that DOC could do will probably not be able to reveal anything. I'd need to go to
19 a hospital to get more advanced testing done. For example, I recently heard that more than half
20 of people suffering from long COVID are suffering from heart damage, but that will only show
21 up on an MRI, requiring a trip to the hospital. But with DOC medical, I need to work through the
22 administrative process and hope they will consider it medically necessary.

1 31. DOC's indifference to COVID led to this large outbreak and there is a chance that
2 thousands of people are, or will be, experiencing symptoms like mine. I don't see how DOC is
3 going to address the many long COVID symptoms that are the result of the outbreaks.

4 32. These symptoms are concerning for my health. If I were to get sick again, I
5 wonder what would happen or if my current condition would further deteriorate. I don't know if
6 this is now some sort of neurological damage I have sustained because of these longer-term
7 symptoms or what other consequences there may be. I lost my sense of balance, I am chronically
8 fatigued, and I continue to experience brain fog. I wonder what the standard of care will be for
9 people in prison who are now suffering from long-covid.

10 **DOC Vaccine Efforts**

11 33. Lack of information has been a systemic continuous problem with DOC. I was
12 trying to have friends send me information from the CDC website and other reliable sources, but
13 DOC staff would actually block them because they would label it as third-party correspondence.

14 34. This issue was a month's long battle between staff and residents trying to get
15 access to CDC and other reliable materials, but there are still officers in the mailroom committed
16 to the view that people should not be able to see anything off of websites. These individual
17 decisions by DOC staff to block information from websites as third-party correspondence makes
18 no sense and is contrary to existing DOC policy that allows prisoners to receive public domain
19 content including from websites. DOC should actively be helping people access this information
20 and addressing these individual COs who are improperly applying DOC policy. For example, we
21 should have access to CDC information, Lancet Journal articles, or the best compendia of
22 information available on the coronavirus and the vaccine going forward.

1 35. On the kiosks, DOC provided one study. More like a summary of one study about
2 the trials of the Moderna and Johnson and Johnson vaccines. This sounds great, but in reality, it
3 was really difficult to make sense of the information provided. It's a very brief summary of one
4 study and the data is presented in columns, but the columns are broken because of the screen,
5 and the information is insufficient for anyone to make sense of the numbers/data provided. DOC
6 is expecting us to figure out the differences between vaccines' efficacy based on data that isn't
7 even displayed correctly. This wouldn't be expected from the general public outside of prison.

8 36. I have heard about one staff member who was shamed for getting their first shot
9 of the vaccine. DOC's official documents encourage people to take the vaccine and to social
10 distance and mask. But there is a fundamental disconnect from policy and practice when their
11 own staff are shaming each other for taking the vaccine.

12 37. In my opinion, there isn't enough reliable information inside of DOC. For
13 example, people can spread their personal beliefs and biases about the vaccine. People in prison
14 already believe DOC was trying to deliberately spread COVID in its facilities to achieve herd
15 immunity, among other conspiracies. The lack of information here contributes to vaccine
16 hesitancy and mistrust.

17 38. Although there are staff from a variety of backgrounds at DOC, I have had
18 conversations with some staff that think requiring vaccines for staff would be something done in
19 communist China. Based on my conversations with staff over the 15 years I have been inside of
20 DOC, I believe most staff are from a demographic that would be the most resistant to taking the
21 vaccine.

22 39. From what I know, the DOC has a don't ask don't tell policy on whether its staff
23 has received the vaccine from sources outside of their employment.

1 40. I have signed up to be vaccinated but I have no idea when that will happen. We
2 have now been eligible for the vaccine for four days and I have not been scheduled for a
3 vaccination or provided any other follow up information. As far as I know, no one else has
4 received any additional information.

5 41. I continued to suffer pretty extreme long covid symptoms, so I am keenly
6 interested in learning more about the vaccine. Some questions I have are: as a COVID recovered
7 patient, which vaccine should I take and how long should I wait to take it? What impacts will the
8 vaccine have on my existing long COVID symptoms? Am I at greater risk for complications by
9 taking the vaccine? How many doses of the Moderna should I take? DOC has left no avenue to
10 obtain any of this information. My requests to the medical practitioners to get more information
11 on Post-Acute Coronavirus Sequelae (PACS) have been ignored. There have been no efforts by
12 DOC to provide any of this information.

13 **Who I Am**

14 42. I obsessively tried to follow every recommendation to the maximum degree. I was
15 never within 6 feet of anyone during the quarantine period, I wore three masks, I would wait
16 until the end of meal service to avoid getting close to anyone, I would bring my own cleaning
17 supplies to wipe the phone before using it, but despite using every available means, I still could
18 not avoid contracting the coronavirus because the DOC policies make it impossible for people to
19 protect themselves in here. We remain as vulnerable to a new variant as we were to the initial
20 coronavirus. If there is another outbreak, we can expect 80-90% of the population of the unit I
21 am in to get infected again.

22 43. I don't think there is any subpopulation in the last six months in Washington state
23 that has faced the rate of infection that prisoners have. It is unconscionable to continue to keep us

1 as a low priority not only with respect to the vaccine but also with respect to personal protective
2 equipment.

3 44. Columbia Legal Services has permission to use my declaration in a lawsuit
4 against DOC to try and help the situation here given this dangerous public health crisis.

5 Dated this 4th day of April 2021 in Monroe, Washington.

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

8 
9 _____
Atif Rafay, 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 Atif Rafay over the telephone on April 4, 2021. I drafted Mr. Rafay's declaration while on the telephone with him. At the conclusion of the call, I read Mr. Rafay's declaration to him, and Mr. Rafay 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 4th day of April, 2021 at Wenatchee, Washington.



Tony Gonzalez, WSBA #47771