IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN POVERTY LAW CENTER, Plaintiff, v. **U.S. DEPARTMENT OF HOMELAND SECURITY**, et al., Defendants.	No. 1:18-cv-00760-CKK-RMM

THIRD DECLARATION OF RUSSELL WASHBURN

I, Russell Washburn, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration.

2. I have personal knowledge of the facts set forth in this Declaration, and if called as a witness, could competently testify to these facts.

3. I have been employed by CoreCivic, Inc. since 1996. I have 24 years of experience as corrections professional, and for the past 12 years, I have held the position of Warden at several CoreCivic facilities.

4. I am a member of the American Correctional Association. I am also the President of the North American Association of Wardens and Superintendents ("NAAWS"). I became the NAAWS President effective August 17, 2020.

5. Effective April 1, 2020, I became Warden of the Stewart Detention Center ("SDC"), in Lumpkin, Georgia. SDC is privately owned and operated by CoreCivic, who I understand is not a party to this litigation. CoreCivic is the service provider for an

Intergovernmental Service Agreement between Stewart County, Georgia and U.S. Immigration and Customs Enforcement ("ICE").

6. It is my understanding that SDC is the largest of the four facilities at issue, with more than twice the capacity to house ICE detainees than the Irwin County Detention Center. In addition to capacity, the physical plant design of each facility presents unique operational challenges. While the facility is currently significantly below its full capacity, the policies and procedures described herein are designed to be achievable for a full facility population nearly 2,000 ICE detainees.

7. I have previously provided two Declarations in this matter, including my Second Declaration, dated June 30, 2020 in response to the Court's June 17, 2020 Order.

8. I have been provided with, and have reviewed, Plaintiff's Motion to Enforce the Court's June 17, 2020 Order, filed on August 7, 2020.

Compliance with PBNDS 5.6 Optimal Requirements

9. In accordance with the Court's June 17, 2020 Order at 3-4 [Doc. 123], I previously certified that SDC complies with Optimal Requirements of PBNDS Section 5.6 relating to Telephone Access. I stand by that certification.

10. Plaintiff and its experts appear to be asking the Court to re-write the Performance National Detention Standards ("PBNDS"). Specifically, they seek to redefine "operable telephone" to be the number of telephones in each housing unit, and to require that only telephones spaced more than six feet apart be counted. Yet, the PBNDS does not include any specification

Pod	Design Capacity	DTS Phones
3A	62	7
3B	66	7
3C	66	7
3D	62	7
3E	62	7
3F	62	7
4A	88	9
4B	80	8
4C	88	9
5A	88	9
5B	80	8
5C	88	9
6A	88	9
6B	80	8
6C	88	9
7A	38	4
7B	80	6

All general population housing pods (1A through 6C), meet or exceed the PBNDS Optimal Standards of 1 telephone for every 10 detainees. The housing pods in Unit 7 (7A and 7B) are designed as Restricted Housing Units, where in accordance with PBNDS 5.6(V)(H), access may be more limited. As previously detailed on May 15th, at full capacity, there is a 9.53 detainee to telephone ratio, which is surpasses the PBNDS 5.6 optimal standard.

16. Plaintiff and its expert also assert that SDC improperly counts toward compliance with DTS phones when detainees are not permitted to use those phones during times of count or

21. It is my understanding that the contract between ICE and Talton requires that the system permit detainees to place direct or free (or pro bono) telephone calls. Upon information and belief, the list of numbers programmed into the system to which free calls may be placed from SDC, includes but is not limited to: the Executive Officer for Immigration Review or local immigration court; the Board of Immigration Appeals; federal and state courts where the detainee is; consular officials; the Department of Homeland Secu Tw 0 -2t60 Td [y(i)-eo(i)-ey Ssice0 Td [(f)14 [f

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25. It is my understanding that the length of any call placed from the DTS may not exceed 20 minutes in duration. If additional detainees are waiting to use the phone, detainees are requested at the end of their time, to allow another detainee to use a phone. However, there is no limit on the number of DTS calls a detainee may place in a single day.

26. Further, detainees who do not wish to use the DTS telephones to make legal calls may avail themselves to other opportunities at SDC, including facilitated legal calls. However, the DTS phones are an efficient tool for detainees to quickly contact and leave messages for their legal representatives to request or schedule a facilitated legal call or VTC session, if additional privacy is desired.

Telecommunications Quality Assurance and Reporting

27. I previously certified that that SDC complies with the standards set forth in PBNDS Sections 5.6(V)(A)(3)-(4) with respect to the DTS, and I stand by that certification.

28. SDC personnel inspect DTS telephones daily, and promptly reports out-of-order telephones to the designated Talton contact, so that any required repairs may be completed quickly.

29. DTS phone service is monitored by ensuring that each phone has a dial tone when the receiver is lifted. Officers also dial a special number in the free call platform to ensure that the

32. Additionally, SDC detainees are instructed to report any phone issues directly to Talton Customer Service, by entering their Personal Identification Number ("PIN") and dialing 211#. Instructions for this are contained in the SDC Detainee Handbook Supplement at pages 20-21. Attachment 6 is a true and correct copy of the SDC Detainee Handbook Supplement, which is issued to all ICE detainees at intake. A Spanish language version is provided to detainees as necessary.

33. It appears that Plaintiff's sole complaint is that SDC has not identified by name a single individual who should be contacted for any technical issues.

34. While I understand Dr. Schriro's theoretical organization concern relating to accountability, due to staff screenings and quarantine protocol, it is highly possible, if not likely, that any single named individual may not be present in the facility for an extended period of time to address issues. As a result, the designated contacts at SDC are identified by positions and titles to ensure coverage during any scheduled or unexpected staff absence. Identifying and designating a certain point of contact by an individual's name would serve only to create a failure point when such person is not available. At SDC the point of contact for all technical issues relating to voice and VTC calls is the Chief of Unit Management. If the Chief of Unit Management is not available due to an absence, inquiries should be directed to the employee designated as the acting Chief of Unit Management.

35. The designated ICE/ERO free legal services providers have also been notified to contact the main facility phone number ((229) 838-5000) to report any problems with calls placed to them through the Video Teleconferencing systems ("VTC"). Likewise, if there are issues with the quality of a call placed from the DTS, the same number should be called. The facility operator can then direct the call to the Chief of Unit Management, or employee acting in that capacity, during the Chief's absence.

36. VTC systems at SDC are also monitored daily to ensure adequate hardware and software functionality. Attorney complaints regarding functioning may also be reported via e-mail to the address used to schedule attorney/client VTC visits.

37. Because the VTC systems rely upon an internet connection, I understand that issues of "lag" in audio or video during VTC sessions may be more likely to occur in periods of high demand for internet bandwidth, as well as competing demands for bandwidth at the legal representative location, where multiple devices may be connected to the same network or router, particularly home networks. SDC lacks the ability to control internet connectivity issues arising outside of the facility.

38. Detainees are escorted out of their housing pod and visually supervised by staff in locations where facilitated legal calls (rather than calls placed through the DTS) and VTC legal appointments occur. If a detainee has an immediate concern regarding a technical issue during any such communication, they should alert the staff member who is visually observing them from out of earshot. Concerns which do not require immediate resolution may be brought to the attention of the Chief of Unit Management, through any member of the detainee's Unit Management Team.

39. Plaintiff neither asserts nor identifies any specific technical issue with the inability to engage in a legal communication with any detainee at SDC for any particular telephone call or VTC appointment since June 30, 2020.

40. I am also not aware of any instances where there have been any reported issues regarding the functioning of DTS phones, staff telephones, or VTC systems.

Confidentiality of Attorney-Client Communication

41. I previously certified that SDC complies with the standards set forth in PBNDS Sections 5.6(V)(F)(2) relating to the confidentiality and privacy of detainee-attorney communications placed using the DTS. I stand by that certification.

42. With respect to SDC, Plaintiff complains that facilitated legal calls which take place in staff offices are not confidential, because staff maintain *visual* supervision of the inmate. Such complaint either misinterprets or demonstrates a fundamental misunderstanding

43. I understand the Court's June 17, 2020 order to direct SDC to certify compliance with PBNDS 5.6(V)(F)(2). SDC does so by (1) having sufficiently sized privacy panels on DTS telephones in detainee housing areas; (2) locating DTS telephones away from where staff may overhear them; and (3) permitting and facilitating calls from staff office telephones.

44. Specifically, I previously attested, and reaffirm here that the Talton DTS has the ability to restrict the monitoring and recording of calls placed by detainees to their attorneys. Detainees or attorneys can request that their numbers be placed on the do not monitor/do not record list.

45. Attorneys who wish to be placed on this list should provide the facility with a req2 (l0.138 Tw3 (ovi)-2 (de)4 (t)-2 (he)4 (f)3I 0.14-0.0)6 ( )]TJ -0.002 T4 (h)-1214-0.eho w-1 (t1 (i)-2 (i)-2
m 2 le(y)(l)-453
424

number is an attorney number. Talton will validate that the number is an attorney number and can confirm that it will not be recorded or monitored.

48. I reaffirm that detainees wishing to ensure that their calls using the DTS are not monitored or recorded, need to provide a request through their Unit Management Team to the Telephone Information Officer[1] listing their attorney's name and phone number. Once the information is verified by the facility inv

Poverty Law Center. Attachment 12 is a true and correct copy of the SDC log documenting those scheduled calls.

69.

73. Attorneys seeking to schedule VTC visits with detainees at SDC, do so by emailing a request to a designated e-mail address used to maintain the schedule of those appointments. Attachment 15

meeting with his legal representative, he should notify the representative, and ask the representative to submit a request at least 24-hours in advance to schedule the VTC meeting.

76. Attorney VTC meetings are scheduled on a first-come, first-served basis, in 60-minute blocks. In late March 2020, the available hours were expanded and visits may now be scheduled between 8:00 AM and 6:00 PM, Eastern Time, Monday through Friday. This schedule permits up to 100 VTC legal visits to be conducted at Stewart each week.

77. Attorneys are not limited on the number of VTC appointments they can request, but no attorney is permitted more than one 60-minute appointment with any one detainee on any single calendar day. The 60-minute per appointment slot is to ensure that attorneys and detainees with later appointments the same day, are permitted to begin on schedule, and will not have to be cancelled or rescheduled because another attorney or detainee ran over time. Attorneys who anticipate a need for longer consultation, are permitted to schedule multiple visits with a single detainee on consecutive days.

78. Available time slots for VTC attorney visits are seldom completely filled on any given day. When that occurs, the requesting attorney is free to request the next available slot.

79. Because SDC recognizes that attorneys tend to face multiple time constraints, SDC will generally not suggest alternative VTC visit times, but expects the attorney to request other

Hall meetings on proper procedures to clean and disinfect hard contract surfaces, including the DTS phones.

87. SDC has also posted additional reminders for detainees to sanitize the DTS phones before and after their individual use. Attachment 18E accurately depicts the placement of notices near all DTS phones in the SDC housing pods.

88. Further, the updated CDC guidelines continue to contemplate that detainees, rather than facility staff, will be responsible for cleaning common areas. *See* Attachment 17 at 10. ("Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of those areas throughout the day.")

89. I previously certified that, before and after each use, SDC personnel are cleaning and disinfecting staff telephones used for facilitated legal calls as well as VTC equipment, even though such equipment is not a detainee contact point. I stand by those certifications.

90. With respect to equipment used for facilitated legal telephone calls and video visits, detainees are not permitted to handle or touch such equipment at SDC, due to legitimate and compelling safety and security reasons. Many of the detainees at SDC are currently detained by ICE following completion of a felony sentence, which involved not only significant prison time, but also due to the seriousness of the felonies of which they were convicted, renders them removable. As a result, the DTS contains an announcement that the call is being placed from a Detention Center, identifies the detainee placing the call, and must be affirmatively accepted before the detainee is permitted to speak. This prevents detainees from calling or threatening victims, prosecutors, and members of the Court, because those members can choose to reject a call. When calls are placed from staff offices, the staff member enters the long distance or

Dr. Owen Murray's independent findings and conclusions that "SDC [has] overwhelmingly implemented the CDC Interim Guidance" and also exceeds the CDC guidelines in certain respects (Attachment 23 at 4 and 7).

98. I further attest that SDC complies with the updated July 14, 2020 CDC Interim Guidance, including the routine testing of close contacts of detainees with COVID-19 infection, which is a very recent and significant change from prior guidance to only test symptomatic detainees.

99. Further, while Ms. Rivera details unspecified reports from her clients that La Salle is not providing cleaning and sanitation supplies, she does not relate or detail any such claims relating to SDC.

100. While SDC provides cleaning and sanitation supplies to the general detainee population, due to legitimate and compelling safety and security reasons, latex or nitrile gloves are not issued to the detainee population, except for voluntary work program participants while engaged in their assignments. For example, detainees have been known to use such gloves to cover and conceal contraband, including but not limited to narcotics, either by swallowing it or concealing it in a body cavity to hide it from facility staff. Not only does the contraband itself in the facility pose a risk to the health and safety of the detainees and staff, but when concealed in the body, such items can rupture, become stuck, or otherwise pose a significant medical risk to the detainee who is concealing it.

Remote Exchange of Legal Documents

101. In accordance with the plan detailed in my Second Declaration, SDC has completed installation of fax machines for detainees to exchange confidential documents with their counsel. Attachment 24 accurately depicts those machines.

102. Further, a notice detailing the procedure has been posted in all detainee housing units on or about July 23, 2020. Attachment 25 is a true and correct copy of that notice. Attachment 26 is a photograph accurately depicting the posting of that notice in each detainee housing pod at SDC.

103. To ensure confidentiality, detainees are to submit a detainee request to the Law Librarian indicating that they wish to send a legal fax. Additional procedures for submission by detainees in Restricted Housing, Medical Isolation or cohort/quarantine status are provided since they cannot submit their request in the box outside the chow hall. Detainees are then called to the law library and will carry their own documents, which will be inspected, but not read, to ensure that they are legal documents, rather than personal correspondence.

104. As of August 17, 2020, there have been 2 legal faxes sent, and 0 received by SDC and

110. In accordance with the Court's June 17, 2020 Order, SDC conducted refresher staff training for SDC staff regarding procedures for scheduling facilitated legal calls; scheduling VTC appointments; respecting attorney-client confidentiality during those calls, as well as for potential calls placed using the DTS phones in the housing pods; ensuring the functioning of the equipment; and information of points of contact for reported outages or technical difficulties. Attachment 30 is a true and correct copy of the staff Training/Activity Attendance Roster for those training sessions.

111. Additionally, SDC conducted Town Hall meetings with the detainee population to reinforce the detainee education relating to use of the DTS phones for unmonitored legal calls, practices to sanitize the DTS phones before and after individual use, process for obtaining facilitated confidential legal calls, and availability of the VTC appointment system to their attorneys. Attachment 31 is a true and correct copy of the minutes of those Town Hall meetings.

112. Further the detailed procedures set forth in Attachments 7, 11, 15, 24, and 29 have been disseminated to facility staff for review.

113. Since the training was completed, I am unaware of any detainee or staff report that personnel could not facilitate detainee requests for legal calls, redial a facilitated legal call, or that there was any issue with VTC calls.

114. Due to revisions as the legal fax procedure was initially rolled out, broad staff training on these procedures has not yet occurred. In addition, SDC is currently installing and issuing tablets for use by the detainee population, which also requires additional staff training. I expect that by September 30, 2020 additional training will have been provided to all relevant staff which includes reiterating procedures for scheduling facilitated legal calls and VTC sessions; ensuring attorney-client confidentiality during calls and meetings; who to contact with technical difficulties; the legal facsimile procedures; and the use, maintenance, and troubleshooting of the tablet devices.

I declare under the penalty of perjury that the foregoing

Executed this 2nd day of August 2020 in Lumpkin County, Georgia.

Russell Wasnoski

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