

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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Matter of JOSEPH AGNEW, ANTHONY GANG,  
TYRONE GREENE and KAMER REID

On behalf of themselves and all others similarly situated,

Petitioners,

For a judgment under Article 78 of the Civil Practice Law  
and Rules

**NEW YORK CITY  
DEPARTMENT OF  
CORRECTION  
COMPLIANCE AFFIDAVIT**

-against-

NEW YORK CITY DEPARTMENT OF CORRECTION,

Index No.: 813431/2021E  
(Taylor, J.)

Respondent.

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STATE OF NEW YORK )

:SS:

COUNTY OF QUEENS )

**Kathleen Thomson**, being duly sworn, deposes and says as follows:

1. I am the Chief of Staff of the New York City Department of Correction (“DOC” or “the Department”). I have been employed by DOC in this position since February 14, 2022.

2. I have reviewed the prior affidavits submitted by DOC Bureau Chief of Facility Operations Ada Pressley, who previously reported to the Court and Plaintiffs as to the Department’s efforts to provide timely daily access to care and sick call to individuals in our custody. After many dedicated years of service, Chief Pressley is in the process of retiring from the Department, and I submit this affidavit in her stead.

3. I have been informed by counsel that this Court has issued an order finding the Department in civil contempt of its order, dated December 3, 2021, which directed DOC “to immediately comply with its duties to:

a. Provide Petitioners with access to sick call on weekdays, excluding holidays, and to make sick call available at each facility to all persons in DOC custody a minimum of five days per week within 24 hours of a request, or at the next regularly scheduled sick call, whichever is first; [and]

b. Safely keep in the New York City jails each person lawfully committed to his custody by providing sufficient security for the movement of incarcerated persons to and from health services, and by not prohibiting or delaying incarcerated persons’ access to care, appropriate treatment, or medical or dental services.”

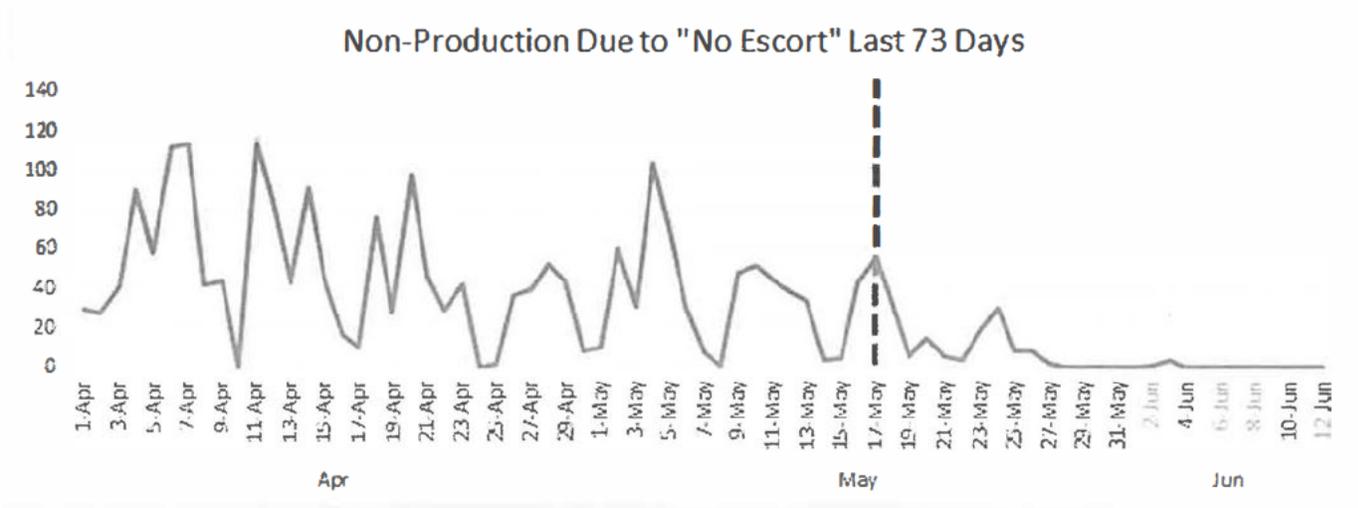
*See* NYSCEF Doc No. 126 (“Civil Contempt Order”).

4. I further understand that within 30 days of the Civil Contempt Order (*i.e.*, June 17, 2022), the Department may purge itself from this finding of contempt, by “provid[ing] proof of substantial compliance” with the Order. *See id.* at 6.

5. As discussed below, the Department has made substantial strides and is pleased to report to the Court and Plaintiffs that it is in substantial compliance with its obligation to timely provide access to care. In the period lasting from May 17, 2022 to June 12, 2022, 42,177 clinic appointments were scheduled. Of that number, the Department failed to produce 186 inmates due to lack of escort availability. This represents approximately 0.4% of the total scheduled appointments during this time period. Moreover, as discussed in Chief Pressley’s January 26, 2022 affidavit, Department’s Health Affairs Division tracks certain statistical information concerning the provision of medical services, such as the Correctional Health Services (“CHS”) Sick Call spreadsheet. These spreadsheets indicate that on average from February 2022- April 2022, 91% of persons in custody were produced for sick call.

6. The below chart, Figure 1, represents the numbers of incarcerated individuals that were not produced to their clinic appointments from April 1, 2022 to June 12, 2022 due to lack of escort availability:

Figure 1



7. The above “No-Escort” designations in the pertinent time period were limited to three facilities, listed in Table 1 as follows:

Table 1

Facility	Scheduled Appointments Between May 17, 2022 and June 12, 2022	No Escort	% of total appointments
OBCC	1,826	174	9.5%
RMSC	3,778	9	0.2%
RNDC	6,049	3	0.05%

8. Table 1 demonstrates that the bulk of the No-Escorts since the Court issued the Civil Contempt Order occurred at the Otis Bantum Correctional Center

(“OBCC”). The high number of No-Escorts at OBCC can be attributed to the significant amount of OBCC staff out sick and on leave from February 2022 - May 2022. Although there were 713 members of service assigned to OBCC in February 2022, the total average members of service available for inmate contact posts, which would include escort to the clinics, was only 470 (66%). However, the number of staff available for inmate contact at OBCC began to consecutively increase from month to month through June 2022. As of the beginning of June 2022, 692 members of service were assigned to OBCC, 512 (74%) and were available for inmate contact assignment. Please see Table 2 below, documenting OBCC’s: average monthly uniformed staff totals, average monthly sick rate, Medically Monitored Restriction Status (“MMR 3”)<sup>1</sup>, and staff on leave from February 2022 the beginning of June 2022.

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<sup>1</sup> Staff identified as Medically Monitored Restriction 3 are generally unable to be assigned to inmate-facing posts.

Table 2

MONTH	OBCC Total Uniformed MOS	OBCC Avg. MOS Sick	OBCC Avg. MOS MMR 3	OBCC Total MOS on Leaves	OBCC Total MOS on LWOP (Due to Mandate 2021 Present)	OBCC Total MOS Dec. thru	OBCC Total Avg MOS available for inmate contact
Feb-22	713	160	57	24	2		470=66%
Mar-22	710	158	46	20	2		484=68%
Apr-22	698	146	40	19	2		491=70%
May-22	692	120	44	21	2		505=73%
Jun-22 (Week 1)	692	108	49	21	2		512=74%

9. Additionally, OBCC was initially supposed to close on November 1, 2020, but was kept open because of the pandemic. However, many of OBCC's staff were reassigned to the Eric M. Taylor Center ("EMTC") when it re-opened as a new admissions facility, given that OBCC was previously the new admission facility. EMTC closed on May 17, 2021, but was re-opened as a new admission facility on September 20, 2021. Once OBCC's staffing needs became apparent to the Department, on April 21, 2022, the Department ceased admitting incarcerated individuals to OBCC, and began consolidating housing areas by transferring incarcerated individuals to other facilities. As a result, the current inmate population at OBCC is approximately 40 as of June 16, 2022 (from more than 900 in September 2021). The Department also reassigned non-inmate-facing staff posts as escorts within OBCC, and also assigned additional staff from the Department's Emergency Command Center, Health Affairs Division, the Bureau Chief of Operations Office, and Chief of Department's Office, to OBCC to assist with clinic production.

10. As mentioned in Chief Pressley's February 11, 2022 affidavit, on February 14, 2022, the Department rolled-out the "no escort" pass pilot at the Rose M. Singer Center ("RMSC") to improve medical production to the clinic. This pass system identified low classification

incarcerated individuals, who given their classification, would not require an escort to the clinic. Upon request to go to the clinic, these individuals are issued a physical pass to enter the clinic without an escort. This pilot was expanded to the Anna M. Kross Center (“AMKC”) on March 23, 2022 and thereafter to OBCC on May 9, 2022.

11. To increase clinic production at all facilities including OBCC, the Health Affairs Division facilitated daily calls with the necessary wardens and deputy wardens and the Department’s Legal Division, to discuss the prior day’s clinic production and address clinic production issues when they arise. The Health Affairs Division also provided in-person trainings, handouts and resources, and consulted with Department staff to address accurate coding of appointment outcomes. Additionally, throughout the course of this litigation, the Health Affairs Division has met bi-weekly with Department and CHS staff at the four facilities that have faced the greatest challenges with clinic production in order to troubleshoot key reasons for non-production and facilitate interagency cooperation.

12. While the above initiatives improved in-house clinic production at OBCC and other facilities, the Department then also realized it had difficulties providing transportation services for individuals with appointments at other clinics on Rikers Island and off-island clinics. The Department then secured additional transportation vans for OBCC, as well as two other facilities with similar issues, the George R. Vierno Center (“GRVC”) and EMTC.

13. The Department has also worked closely with its healthcare partner, CHS, to improve documentation and reconciliation of the reasons for delays in producing persons in custody for clinic visits and outcomes. Using a secure email server known as Kiteworks, CHS will provide its call-down lists in electronic form with a drop-down menu to enable the Department to more clearly, accurately, and efficiently track production.

14. In order to assist the Department in bringing individuals to the clinic in a timely manner, but also in a steady stream of manageable numbers, CHS will develop a revised approach to scheduling groups of patients by service and blocks of time within a tour. The agencies expect this to spread production of incarcerated individuals over the course of a tour, and permit the Department to focus its production efforts on specific services at specific times. This restructured scheduling will be piloted at AMKC and is expected to begin in the coming weeks.

15. Similarly, CHS has proposed that it can expand its use of its therapeutic housing protocols to group patients with certain medical conditions, to make production of these patients more efficient. The Department is examining the feasibility of this proposal.

16. With this affidavit, I also wish to provide updated information to the Court and Petitioners of the Department's efforts to come into compliance with the Civil Contempt Order. In Chief Pressley's prior affidavits (and testimony at the hearing), she discussed the effects of absentee staff hampering the Department's ability to provide mandated services to the individuals in custody; since then, the Department has continued to make progress in that regard.

17. Specifically, the Department's efforts to reduce staff absenteeism continues to pay dividends. For example, when the staffing crisis began (roughly in August of 2021), 1,530 members were out sick, and the number jumped to 2,300 staff members by the end of last year. The numbers quickly dropped back down to about 1,500 staff members in January 2022. Since then, the sick leave totals have continued to drop, and now approximately 970 staff members are out sick on average for the month of June thus far.

18. While we acknowledge this number is still far too high, the Department is encouraged that the number of staff out sick has been reduced since the crisis began last summer.

19. This reduction in staff absenteeism is the result of the following remedial measures taken by the Department:

- 147 staff members have been suspended this year for sick leave abuse.
- 499 Medical incompetence cases are currently pending with the Department's Trials & Litigation Division. Of the 499, 302 were opened by the Trials & Litigation Division in 2022. Processing of the more egregious cases has been expedited.
- Staff members have been referred to the Department of Investigation for potential abuse of sick leave.
- The Department revamped the Health Management Division ("HMD"). The Commissioner removed the Warden and replaced HMD senior staff with new leadership. Further, a full assessment of HMD is ongoing, with plans to hire additional doctors to conduct medical appointments, and to hire civilians to manage the unit to ensure neutral and independent assessments of staff out on leave, and provide necessary support to those staff that need it. HMD has held 2,385 appointments with staff in May alone. Moreover, from June 1, 2022- June 15, 2022, HMD conducted 1,281 appointments.
- Policy revisions to critical leave policies are underway. Notably, the policy on home confinement visits has been revised to eliminate the burdensome processes on confirmation of whether someone is home while on leave.
- The Commissioner is developing a plan to reduce the number of staff on medically monitored duty, and to more efficiently deploy those staff that are legitimately on a restricted duty status.
- The Department is evaluating all staff out on sick leave and restricted status to determine whether they can return to work, if discipline should be imposed for any abuse of leave, and/or whether the individual should be separated from the Department.

20. As discussed above, daily calls are held discussing challenges and successes with clinic production. We also continue to have weekly meetings with the First Deputy Commissioner,

the Deputy General Counsel and other Legal Staff, Facility Leadership, and Health Affairs Division Leadership to discuss issues identified and progress made as a result of the daily calls for the week.

21. As the Court and Plaintiffs can see, the Department has made considerable progress in coming into compliance with the Civil Contempt Order. We believe the Department is now in compliance with the Court's order, and respectfully request that the Civil Contempt Order be purged.

  
Kathleen Thomson

Sworn to before me  
this 16<sup>th</sup> day of June, 2022

  
NOTARY PUBLIC

**DIANE RAPISARDA**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02RA6310995  
Qualified in New York County  
Commission Expires September 8, 2022