

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 20CVS500110

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, *et al.*,

Plaintiff-Petitioners,

v.

ROY COOPER, in his official capacity
as Governor of North Carolina,
et al.,

Defendant-Respondents.

**PLAINTIFFS' REPORT FOR
OCTOBER 15, 2020 STATUS REVIEW HEARING**

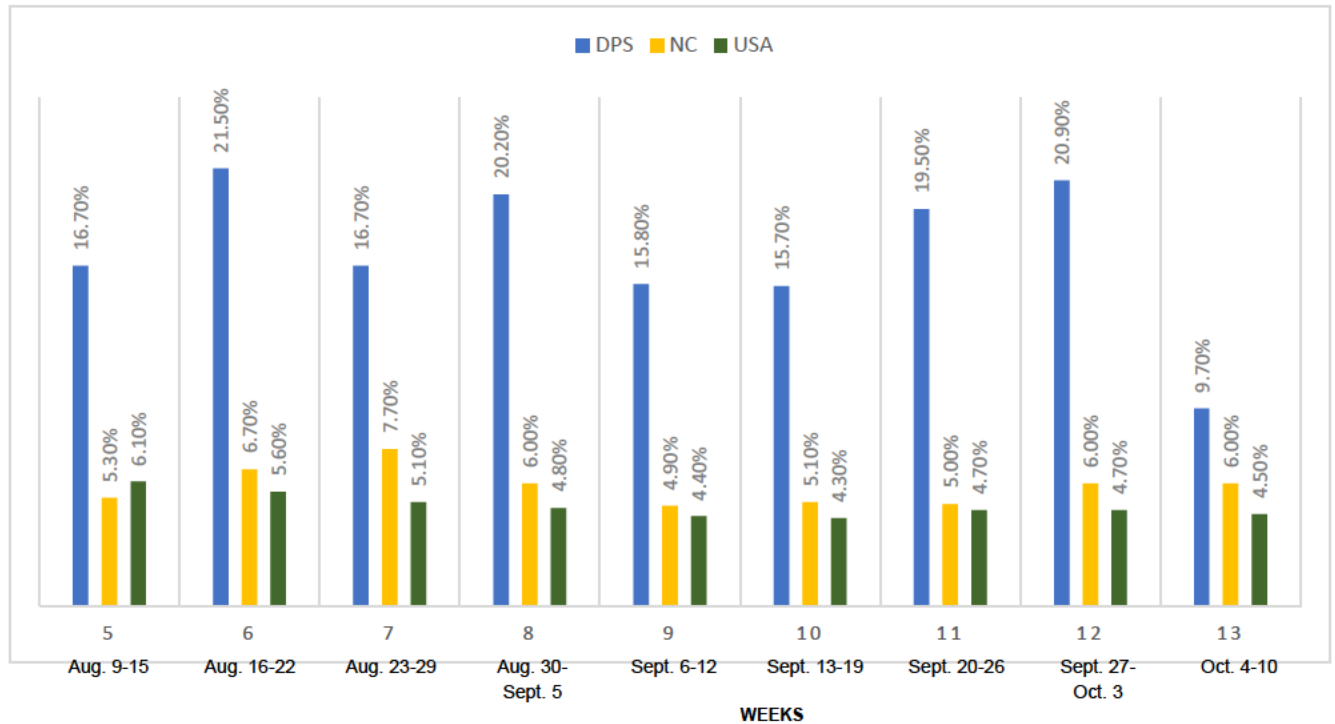
NOW COME Plaintiff-Petitioners ("Plaintiffs"), by and through counsel, and respectfully submit the following points and information for the Court's consideration at the October 15, 2020, Status Review Hearing.

1. COVID-19 infection rates in Defendants' prisons are alarmingly high.

Since the Court-ordered mass testing of Defendants' facilities concluded on August 8, 2020, until October 3, 2020, the weekly data from Defendants has shown that the COVID-19 infection rate in state prisons, in any given week, has consistently been *two to three-and-a-half times greater* than North Carolina's statewide infection rate. Defendants' most recent submission shows that for the week of October 4-10, 2020, (which, as explained in the section below, included a

broader data set from the first week of surveillance testing), the infection rate was 9.7 percent. Defs’ 29th Notice of Filing (Oct. 12, 2020) at 3-4. By comparison, the statewide infection rate in North Carolina for the same week was 6 percent.¹

Graph 1: Weekly COVID-19 Positive Rates Comparison (NC DPS v. NC v. USA)



Wollard Second Aff. at ¶9(b) & Att. (Graph 1) (attached as EXHIBIT A).

Currently, at least 17 North Carolina Department of Public Safety (“DPS”) prisons are battling a COVID-19 outbreak,² many of which are large-scale:

¹ North Carolina Dep’t Health & Human Servs. (“NC DHHS”), *NCDHHS COVID-19 Reponse, Testing: Positive Tests as a Percent of Total Tests*, <https://covid19.ncdhhs.gov/dashboard/testing> (last visited Oct. 12, 2020).

² NC DHHS defines an “outbreak” in congregate settings such as prisons as “two or more laboratory-confirmed cases within a 28-day period.” NC DHHS, *COVID-19 Clusters in Occupational, Educational, and Community Settings* (May 22, 2020), <https://epi.dph.ncdhhs.gov/cd/lhds/manuals/cd/coronavirus/COVID19%20Cluster%20Guidance%2005222020.pdf>.

- At Scotland Correctional Institution, there are at least 103 active cases;
- At Dan River Prison Work Farm, at least 75 active cases;
- At Pender Correctional Institution, at least 55 active cases;
- At Piedmont Correctional Institution, at least 29 active cases;
- At Green Correctional Institution, at least 30 active cases;
- At Avery-Mitchell Correctional Institution, at least 49 active cases;
- At Hyde Correctional Institution, at least 17 active cases;
- At Central Prison, at least 11 active cases; and
- At Columbus Correctional Institution, at least 9 active cases.³

To date, at least 17 incarcerated people in Defendants’ custody have died from COVID-19.⁴ Given the 3,384 positive COVID-19 tests Defendants have administered,⁵ it may be that *over 1 in 10 people* in Defendants’ custody have suffered or are suffering from a life-threatening illness that Defendants have admitted “can severely damage vital organs and can lead to death,” as well as cause

³ North Carolina Department of Public Safety (“NC DPS”), *Offender-Related COVID-19 Data – updated daily at 3 p.m.: Facility Testing Data*, <https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-info-covid-19#data> (last visited Oct. 13, 2020 2:30PM). *See also* Nate Morabito, “Get us some help.” *Hundreds infected by coronavirus in prisons*, WCNC Charlotte (Oct. 9, 2020), <https://www.wcnc.com/article/news/investigations/hundreds-coronavirus-test-positive-north-carolina-prison-inmates-guards-health/275-befa8a87-4334-4218-82fd-e17c0ff58512>; Nick Ochsner, *NC prisons still accepting inmates despite outbreak of COVID-19*, WBTW (Oct. 8, 2020), <https://www.wbtv.com/2020/10/08/nc-prison-still-accepting-new-inmates-despite-outbreak-covid-/>; Hannah Critchfield, *Just as prison family visits were to resume, COVID strikes facility again*, North Carolina Health News (Oct. 8, 2020), <https://www.northcarolinahealthnews.org/2020/10/08/just-as-prison-family-visits-were-to-resume-covid-strikes-facility-again/>.

⁴ NC DPS, *Offender-Related COVID-19 Data – updated daily at 3 p.m.: Facility Testing Data: Tests Performed/Positives/Hospitalizations/Deaths*, <https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-info-covid-19#facility-testing-data> (last visited Oct. 13, 2020 2:40 PM).

⁵ NC DPS, *Facility Testing Data*, *supra* n.3

long-term “neurological damage and permanent loss of respiratory capacity.” Defs’ Answer ¶33.

2. Defendants have failed to implement a surveillance testing plan as ordered by the Court on July 10, 2020.

On July 10, 2020, the Court directed Defendants to implement “ongoing, regular surveillance testing as described in Plaintiffs’ Objections to Defendants’ Testing Plan,” Order at 11 ¶8, which provided for “regular monthly testing for *a sampling based on population per housing unit of incarcerated people and prison staff assigned to that housing unit*” and prioritized testing medically vulnerable people, Pls’ Objections Defs’ Proposed Testing Plan (June 26, 2020) at 6¶e(iii) (emphasis added).

Over three months have passed, however, and Defendants have implemented no such plan. Instead, on August 26, 2020, two days before a scheduled hearing on Plaintiffs’ Motion to Enforce the Preliminary Injunction, Defendants submitted to the Court a document entitled “Description of Defendants’ Continued Testing Strategy and Surveillance Testing Strategy” (“Defendants’ Surveillance Testing Strategy”), in which they stated they would test for COVID-19 “when [incarcerated people] received their annual TB screening.” Defs’ 20th Notice of Filing (Aug. 26, 2020) at 2 (emphasis added). While Defendants claimed that this approach would allow “all facilities to collect random COVID samples from the population,” they did not explain how the approach would provide for a regular *monthly* sampling *per housing unit*, as the Court ordered. *Id.* at 2-3. It also appears that Defendants submitted this plan at a time when TB testing had been suspended due to COVID,

according to Defendants' counsel.⁶ The submission also made no mention of surveillance testing of prison staff. *Id.*

At Catawba, Gaston, Lincoln, Swannanoa, and Wilkes Correctional Institutions, *zero* COVID-19 tests were administered in the entire month following August 8, 2020, when the initial mass COVID-19 testing ordered by the Court was completed. Woollard Second Aff. ¶10(a) & Att. (Table 2). At ten prisons, *ten or less total* COVID-19 tests were administered in the two months that followed August 8, 2020 (Week 5 (Aug. 9-15) through Week 12 (Sept. 27-Oct.3)).⁷ *Id.* ¶10(b) & Att. (Table 2). In fact, over the total course of the last nine weeks:

- At Gaston Correctional Center, 3 tests have been administered;
- At Marion Correctional Institution, 10 tests have been administered;
- At Tyrrell Prison Work Farm, 11 tests have been administered; and
- At Wilkes Correctional Center, 3 tests have been administered.

⁶ Plaintiffs contacted Defendants on August 4, 2020, and again on September 17, 2020, after the submission of Defendants' Surveillance Testing Strategy, to discuss surveillance testing and express concerns about Defendants' plans. The parties met on this issue on September 24, 2020, and discussed Plaintiffs' concerns, including that testing in conjunction with annual TB tests would not ensure that each housing unit was sampled, and that this method would not prioritize high risk individuals as required by the Court's order. Defendants' counsel at that time indicated uncertainty about whether surveillance testing had begun, and indicated a willingness to review the issue with Defendants. Plaintiffs followed up to determine the status of Defendants' plans shortly before the Court's notice of the status hearing. On October 9, 2020, after the status hearing was set, Defendants emailed Plaintiffs to indicate that implementation of the previously submitted plan to test incarcerated people for COVID-19 during their annual TB screen was begun on October 1, 2020. Defendants' Week 13 testing report also states that they have begun testing for COVID-19 in conjunction with annual TB testing, Defs' 29th Notice of Filing at 4, but Plaintiffs are unable to determine the extent of any surveillance testing begun on October 1.

⁷ These prisons are Caswell, Davidson, Forsythe, Gaston, Lincoln, Marion, Mountain View, Rutherford, Tyrrell, and Wilkes Correctional Institutions. Woollard Second Aff. ¶10(b) & Att. (Table 2).

See Woollard Second Aff., Att. (Table 2).

As Defendants' 28th Notice of Filing reveals, "surveillance" testing only began on October 1, 2020. Therefore, tests reported at these and other facilities since the end of mass testing would presumably have been based on the existence of COVID symptoms or exposures. Beyond violating the plain language of the Court's order, this failure to test samples of each housing unit across prison is extremely dangerous because it leaves Defendants no warning of, and thus no opportunity to contain, the next outbreak. Indeed, it is likely that incarcerated people have already suffered as a result of COVID-19 transmission that might have been prevented. For example, Pender Correctional Institution is currently besieged by a COVID-19 outbreak that has infected at least 55 incarcerated people.⁸ In the six weeks leading up to this "sudden" spike, Defendants had administered *four tests or less at Pender* each week. See Woollard Aff., Att. (Table 2).

This same pattern of a large spike in positive infections discovered in one week after weeks of little-to-no testing is repeated across Defendants' prisons. For example:

- At Davidson Correctional Center, there were 15 positive cases (and a 20 percent positive rate) in one week, after 8 weeks of virtually no testing;
- At Dan River Prison Work Farm there were 21 positive cases (and a 19 percent positive rate) in one week, after 5 weeks of virtually no testing. Since then, this outbreak has ballooned to at least 75 active cases;

⁸ NC DPS, *Facility Testing Data*, *supra* n.3; see also Hannah Patrick, *Pender Co. inmate on COVID-19 outbreak, violent incident: 'They just got fed up'*, WWAY3 (Oct. 8, 2020), <https://www.wwaytv3.com/2020/10/08/pender-co-inmate-on-covid-19-outbreak-violent-incident-they-just-got-fed-up/>.

- At Eastern Correctional Institution, there were 72 positive cases (and a 31 percent positive rate) in one week after 6 weeks of little testing; and
- At Morrison Correctional Institution there were 24 positive cases (and a 34 percent positive rate) in one week after 5 weeks of little testing.

Woollard Second Aff. ¶¶13 & Att. (Table 2). Likely, the number of tests performed increased at these prisons suddenly because of an increase in symptomatic individuals after COVID-19 infections had already spread undetected in those prisons during weeks of little or no testing.

Ongoing, regular, monthly surveillance testing of a sampling of each housing unit, as the Court ordered, should have put Defendants in a position to contain and mitigate these outbreaks before they reached such a large scale. In their Surveillance Testing Strategy, Defendants represented to this Court that they are equipped to administer enough COVID-19 tests, such that each incarcerated person receives one at their annual TB screen. Defs' 20th Notice of Filing (Aug. 26, 2020) at 2. That is approximately 31,000 tests per year, or 2,583 tests per month. Plaintiffs respectfully request that the Court order Defendants to comply with its July 10, 2020 Order by ensuring that the 2,583 monthly tests are distributed and administered across each housing unit in each of Defendants' prisons, such that a sampling of incarcerated people in *each housing unit* are tested *each month*, with priority given to people who are medically vulnerable to COVID-19 because of age or underlying medical conditions.

Plaintiffs also respectfully request that the Court order Defendants to create a plan for testing a sampling of prison staff assigned to *each* housing unit, as the

Court already ordered. Just yesterday, October 12, 2020, Defendants announced to the press a “pilot project,” in which they would conduct COVID-19 testing of prison staff at Dan River Prison Work Farm, Scotland Correctional, and Greene Correctional Institutions—three prisons that are currently facing the worst outbreaks in the state prison system.⁹ This Court ordered surveillance testing of a sampling of prison staff per each housing unit in each prison *on July 10, 2020*. This announcement is troubling not only because it follows three months of inaction, but also because it still does not comply with what the Court has ordered.

3. Defendants have failed to meaningfully reduce the prison population.

On June 16, 2020, this Court ordered Defendants to address the crowded living conditions in their prisons because population reduction is “a necessary measure for population management of facilities to achieve the safety and protection of each person in custody.” Prelim. Inj. ¶3(b)(i). But Defendants’ prison population continues to hover at around 31,000¹⁰ in a prison system that has a standard operating capacity of only 32,010.¹¹

⁹ NC DPS, *Prisons Implements Staff COVID-19 Testing Pilot Project* (Oct. 12, 2020), <https://www.ncdps.gov/news/press-releases/2020/10/12/prisons-implements-staff-covid-19-testing-pilot-project>.

¹⁰ NC DPS, *Department of Public Safety Statistics*, <https://www.ncdps.gov/about-dps/department-public-safety-statistics> (last visited Oct. 12, 2020).

¹¹ N.C. Sentencing & Policy Advisory Comm’n, *Prison Projections* 2 tbl. 1, Feb. 2020, <https://www.nccourts.gov/assets/documents/publications/Projection-2020.pdf?NsN4PfbMQMs2g4fWFlua0GOJIm4kq.k5>.

Defendants have chiefly relied on their Extended Limits of Confinement (“ELC”) program for population control. But Defendants have used ELC so sparingly that only a total of 526 people have been granted ELC since September 18, 2020, and only 343 people are currently on ELC.¹² This number is virtually inconsequential in its effect on the prison population, representing, on average, about six people per facility.

The reason for these extremely low numbers is that, despite the Court’s order, the ELC program remains narrow and laden with often arbitrary disqualifying factors. Specifically, Defendants disqualify from ELC anyone who has been convicted of a “crime against a person,” a vague, broad term that, to Plaintiffs’ knowledge, they have never defined.¹³ Defendants also only consider people on work release, home leave, or with underlying conditions *if* they have a release date in 2020 or 2021.¹⁴ And, despite the fact that at least 88 percent (at least 15 of the 17) people who have so far *died* of COVID-19 in Defendants’ custody were over the age of 60,¹⁵ Defendants consider people over age 65 for ELC only where they have a

¹² NC DPS, *FAQs on Serving Sentences Outside a Prison: Offenders impacted by ELC*, <https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-info-covid-19#offenders-impacted-by-elc> (last visited Oct. 13, 2020).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See NC DPS, Press Releases, *State Prison Offender Dies after Testing Positive for COVID-19* (Oct. 7, 2020), (Oct. 2, 2020), (Sept. 26, 2020), (Sept. 25, 2020), (Sept. 6, 2020), (Aug. 7, 2020), (Aug. 5, 2020), (July 24, 2020), (July 15, 2020), (May 7, 2020), (May 6, 2020), (April 30, 2020), (April 24, 2020), (April 22, 2020), *available at* <https://www.ncdps.gov/news/press->

release dates in 2020, 2021, or 2022.¹⁶ Defendants have total authority to change these factors at will.

Moreover, Defendants continue to largely ignore all the other mechanisms for population reduction at their disposal. Defendants can, at any time, effectuate the outright and immediate early release of incarcerated people (through sentence reduction credits, commutations, pardons, or parole), and prevent the unnecessary re-incarceration of people (by suspending or reducing revocations of probation, parole, and post-release supervisions). Tellingly, while Commissioner Ishee's most recent Sixth Affidavit says that DPS had "awarded discretionary time credits to 1,086 offenders," it does not state whether such time credits actually resulted in anyone's release. *Id.* ¶13. Likewise, Commissioner Ishee's assertion that over 20,000 incarcerated people have received some sort of sentence reduction credit, *id.* ¶14, is unresponsive to the Court's directive that Defendants reduce their overall prison population, unless awarding those sentence reduction credits resulted in the immediate release of significant numbers of incarcerated people.

The result of Defendants' refusal to follow the Court's directive to manage their population is that Defendants' prisons have remained dangerously packed, when the interests of public health are better served by allowing people to return home. As the previously submitted affidavits of public health experts have made

releases?field_agency_department_tid=All&field_press_release_terms_tid=2542&field_release_date_value%5Bvalue%5D%5Byear%5D=2020.

¹⁶ NC DPS, *Offenders impacted by ELC*, *supra* n.12.

clear, reducing the prison population is “crucially important to reducing the level of risk both for those within those facilities and for the community at large.” Rosen Aff. ¶68. Yet, Defendants’ prisons and their housing “cohorts” remain disconcertingly crowded. This is the case even after some of them have purportedly undergone so-called “cohort-reduction” plans.

Defendants have described “cohort-reduction” plans for only seventeen of their 50+ facilities, despite the Court’s July 10, 2020 order requiring facility-by-facility plans. But even this limited and incomplete glimpse is illuminating. The vast majority of the prisons whose “cohort-reduction” plans were included in Defendants’ filing, state that even after undergoing “cohort-reduction,” they continue to have cohorts with at least *60-70 people* in them, often sharing an open dorm with bunk beds. Defs’ 19th Notice of Filing (Aug. 25, 2020) at 3 (Alexander), 8 (Foothills), 11 (Forsyth), 14 (Lumberton), 20 (Morrison), 26 (Neuse), 31 (NCCIW), 33 (Pamlico).

At several prisons, again *after* “cohort-reduction,” there still remain cohorts consisting of *over 80 people*, *id.* at 18 (Maury), 36 (Scotland),¹⁷ or *over 100 people*, *id.* at 6 (Columbus), 22 (Mountain View), 24 (Nash), 28 (New Hanover). The reports from Defendants’ own prisons are quite frank about why these cohorts remain so dangerously large:

- “[T]he only way to reduce the cohorts any further would be to reduce the [incarcerated people] population,” *id.* at 6;

¹⁷ Scotland, which reports having *multiple cohorts of 84 people*, is currently the site of DPS’s largest COVID-19 outbreak, with 103 active cases. NC DPS, *Facility Testing Data*, *supra* n.3

- “At this time, it is impossible for Columbus CI to further reduce its cohort size unless our total regular population [is reduced],” *id.* at 7;
- Maury CI “has not increased or decreased cohort sizes because [it] does not have the physical capacity to . . . [without] creat[ing] mental health and security issues,” *id.* at 18-19;
- “It is not possible to reduce the size of our cohorts short of reducing the population,” *id.* at 24.

It *is* possible to reduce the size of these dangerously large cohorts and dangerously crowded prisons, because it is possible to reduce the prison population. Defendants have multiple methods they can use to release people from their physical custody, and they have already been directed by this Court to put those mechanisms to use.

4. Defendants’ transfer and medical isolation practices remain causes for concern.

On June 16, 2020, this Court ordered Defendants to stop all transfers unless the person transferred was first tested for COVID-19; quarantined in medical isolation after transfer; or the transfer was for “medical or health reasons or to address an immediate and serious risk to the person’s safety or another’s safety.” Prelim. Inj. ¶4(a), at 6. As public health expert Dr. Brinkley-Rubinstein testified, “[t]ransfers during this pandemic are extremely dangerous[,] and risk spreading the virus even with adequate testing,” and therefore “testing must occur directly before transfer.” Brinkley-Rubinstein Fourth Aff. ¶4.

Defendants, however, continue to transfer people between prisons based on tests that were administered 20 or more days prior to the transfer. In fact, over 90 percent of transfers (3,570 transfers) between Defendants’ prisons have occurred 20 or more days after the transferee’s most recent COVID-19 test. Woollard Second Aff.

¶16 & Att. (Table 6). These numbers are disturbing because untested transferees may infect or be infected by fellow un-tested incarcerated people or prison staff during the transfer. “Quarantining” transferees in groups in a “quarantine dorm” once they arrive at their destination prison does not solve this problem. If these transferees who have not been tested before leaving the prison they just departed are placed in a “quarantine dorms” with others, they still place those others in danger of infection or re-infection of COVID-19.

Likewise, the Court’s preliminary injunction ordered that medical isolation “must not be effectuated with actions or in a manner that would have otherwise been used for punitive or disciplinary purposes prior to the COVID-19 pandemic,” including solitary confinement. Prelim. Inj. ¶4(b). Plaintiffs have previously submitted in support of their August 17, 2020 Motion to Enforce competent evidence that raises serious concerns about Defendants’ compliance with this aspect of the Court’s order.

This the 13th day of October, 2020.

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CERTIFICATE OF SERVICE

I certify that counsel for Defendants have stipulated to service via electronic mail, and that on October 13, 2020, I served the foregoing on:

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This the 13th day of October, 2020.

/s/ Leah J. Kang

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Counsel for Plaintiffs

EXHIBIT A

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO.: 20 CVS 500110

NORTH CAROLINA STATE CONFERENCE)
OF THE NAACP, et al,)
)
Plaintiffs,)
)
v.)
)
ROY COOPER, Governor of the State of North)
Carolina, et al,)
)
)
Defendants.)

SECOND AFFIDAVIT OF LUKE WOOLLARD

- 1) My name is Luke Foster Woollard. I am over 18 years of age and an attorney in good standing with the North Carolina State Bar.
- 2) I am currently employed as a staff attorney by Disability Rights North Carolina, a plaintiff in this case. I am one of the attorneys currently representing plaintiffs in this litigation.
- 3) I have reviewed the Defendant's weekly court-ordered filings regarding transfers and testing of incarcerated persons conducted by the North Carolina Department of Public Safety (NCDPS).
- 4) As of the date of this affidavit, NCDPS has filed reports for each of twelve weeks, beginning on July 12, 2020 and continuing through October 10, 2020.
- 5) These filings include the following information regarding each transfer:
 - a) The name of the origin facility;
 - b) The name of the destination facility;
 - c) The date of transfer;
 - d) The test date;
 - e) The test result;
 - f) Whether or not the transferee was quarantined or isolated.
- 6) I received each of these reports as PDF attachments to emails from opposing counsel. I downloaded them in PDF format and transferred them into Excel format for easier analysis.

- 7) In addition to the information below, further analysis of Weeks 1-4 (July 12 - Aug. 8, 2020) can be found in my previously filed affidavit.

DPS Testing and Positive Test Rates

- 8) Documents filed by DPS indicate that mass testing was completed at the end of Week 4 (Aug. 2-8, 2020).
- 9) Since the completion of mass testing, between Week 5 (Aug. 9-15) until the end of Week 13 (Oct. 4-10), DPS's weekly COVID-19 testing shows:
- a) DPS has averaged a 17.4 percent positive rate, with positive rates above 20 percent on Weeks 6 (Aug. 16-22), Week 8 (Aug. 30-Sept. 5) and Week 12 (Sept. 27 - Oct. 3). This is illustrated in the attached *Table 1: NC DPS Weekly COVID-19 Positive Rates*.
 - b) Each week during this time span, with the exception of Week 13 (Oct. 4-10), DPS's positive rates have been two to three-and-a-half times that of the North Carolina statewide positive rates,¹ which is typically higher than the nationwide positive rate.² This is illustrated in the attached *Graph 1: Weekly COVID-19 Positive Rates (NC DPS v. NC v. USA)*.
- 10) Since the completion of mass testing, between Week 5 (Aug. 9 - 15) until the end of Week 13 (Oct. 4-10), DPS filings show, as illustrated in the attached *Table 2: Number of COVID-19 Tests per Prison per Week*, the following:
- a) In the four weeks following August 9, 2020, when initial mass testing ordered by the Court was completed, zero COVID-19 tests were administered at Catawba, Gaston, Lincoln, Swannanoa, and Wilkes Correctional Institutions. During that same time frame, 13 other DPS facilities administered fewer than five tests each.
 - b) In the eight weeks following August 9, 2020, ten or fewer COVID-19 tests were administered at Caswell, Davidson, Forsyth, Gaston, Lincoln, Marion, Mountain View, Rutherford, Tyrrell, and Wilkes Correctional Institutions.

¹ Weekly North Carolina statewide COVID-19 positive rates are available at <https://covid19.ncdhhs.gov/dashboard/testing> and <https://covidusa.net/?state=North+Carolina>

²Hasell, J., Mathieu, E., Beltekian, D. et al. A cross-country database of COVID-19 testing. *Sci Data* 7, 345 (2020). Available at <https://ourworldindata.org/coronavirus-testing>.

- c) As of the end of Week 13 (Oct. 4-10), Gaston and Wilkes Correctional Institutions have performed five or fewer total tests; and
 - d) As of the end of Week 13, nine DPS facilities have performed 20 or fewer tests. Those prisons are Franklin, Gaston, Lincoln, Marion, Mountain View, Swannoa, Tabor, Tyrell, and Wilkes.
- 11) Several facilities have experienced sustained outbreaks, by which I mean there have been multiple new COVID-19 cases at that prison over several consecutive weeks.³ These prisons include: Craven CI, Scotland CI, Albemarle CI, Avery-Mitchell CI, and Dan River CI. This is illustrated in the attached *Table 3: Number of COVID-19 Cases per Week in DPS Prisons with Sustained Outbreaks*.
- 12) Since mass testing was completed, an average of 12 facilities per week have experienced active outbreaks. Weekly data on active outbreaks is illustrated in *Table 4: Number of NC DPS Prisons with COVID-19 Outbreaks*.
- 13) At the following prisons, a large spike in positive infections was discovered in one week, after several weeks of very little testing. For example:
- a) At Davidson Correctional Institution, according to Defendants' 29th Notice of Filing, there were 15 positive cases out of 73 administered in Week 13 (Oct. 4-10). In the previous eight weeks, DPS had administered 0-1 test at Davidson each week. *See Table 2: Number of COVID-19 Tests per Prison per Week*.
 - b) At Mountain View Correctional Institution, according to Defendants' 29th Notice of Filing, there were 9 positive cases out of 9 tests administered in Week 13. In the previous eight weeks, DPS had administered 0-2 tests at Mountain View each week, with the exception of Week 2, when they administered four tests. *See Table 2*.
 - c) At New Hanover Correctional Institution, according to Defendants' 29th Notice of Filing, there were 15 positive cases out of 52 tests administered in Week 13. In the previous eight weeks, DPS had administered between zero and seven tests each week. *See Table 2*.
 - d) At Greene Correctional Institution, according to Defendants' 27th and 28th Notices of Filing, there were 62 positive cases out of 124 tests administered, during Weeks 11 and

³ NC DHHS defines an active outbreak as any facility where there are two or more confirmed cases. <https://files.nc.gov/ncdhhs/documents/files/covid-19/Weekly-COVID19-Ongoing-Outbreaks.pdf>

12 (Sept. 20 - Oct. 3). In the previous six weeks, DPS had administered 4 or less tests each week, with the exception of Week 10 (Sept. 13-19), when they administered 13. *See Table 2.*

e) At Dan River Prison Work Farm, according to Defendants' 26th Notice of Filing, there were 21 positive cases out of 110 tests administered during Week 10 (Sept.13-19). In the previous five weeks, DPS had administered 0-1 test at Dan River each week. *See Table 2*

f) At Eastern Correctional Institution, according to Defendants' 27th Notice of Filing, there were 72 positive cases out of 230 tests administered during Week 11 (Sept.20-16). In the previous six weeks, DPS had administered 0-18 tests at Eastern each week. *See Table 2*

g) At Morrison Correctional Institution, according to Defendants' 26th Notice of Filing, there were 24 positive cases out of 95 tests administered during Week 10. In the previous five weeks, DPS had administered 1-4 tests at Morrison each week. *See Table 2.*

14) During some weeks, DPS performed very few tests in facilities experiencing large, active outbreaks. For example:

a) Per Defendants 25th, 26th, 27th, and 28th Notice of Filing, Dan River Prison Work Farm has reported increasing positive COVID-19 cases since Week 9 (Sept. 6-12), and 72 new cases in Week 12 (Sept. 27-Oct. 3). Despite this, during Week 13 (Oct. 4-10), DPS performed seven tests at Dan River Work Farm (five of which were positive). *See Table 2.*

b) Per Defendant's 23rd through 28th Notice of Filing, Avery-Mitchell CI has reported a sustained outbreak since Week 7 (Aug. 23-29), and 54 new cases in Week 12 (Sept.27-Oct.3). Despite this, during Week 13 (Oct. 4-10), DPS performed just 1 test, which returned a positive COVID-19 result. *See Table 2.*

c) At Eastern Correctional Institution, increased testing in Week 11 (Sept. 20-26) (see 13(f) above) showed an outbreak of 72 cases. In the next week (Sept. 27 - Oct. 3), DPS performed only 6 tests, with one positive result. The week after that (Week 13, Oct. 4-10) DPS performed 12 tests with two positive results.

d) Defendant's 28th and 29th Notice of Filing shows that at Pender CI 99 tests were administered during Week 12 (Sept. 27 - Oct. 3), resulting in 58 positive results. However, during the next week (Week 13, Oct. 4-10) DPS administered only 7 tests, 5 of which were positive.

e) This pattern occurred twice at Albemarle CI, a facility that has been experiencing a sustained outbreak since DPS began reporting testing results. Per Defendant's 25th and 26th Notice of Filing, in Week 9 (Sept. 6-12), DPS administered 167 tests with 50 positive results. However, the next week (Week 10, Sept. 13-19), DPS administered only 5 tests at Albemarle CI, 3 of which were positive. *See Table 2.* Per Defendant's 27th Notice of Filing, in Week 11 (Sept. 20-26), DPS again expanded testing at Albemarle, administering 111 tests with 30 positive results. Despite consistently positive rates, DPS administered only 7 tests in Week 12 (Sept. 27 - Oct. 3), with two positive results per Defendant's 28th Notice of Filing.

DPS Transfers

15) From July 12th to present, Defendants' filings show that DPS has averaged hundreds of transfers per week, with an average of 413 transfers per week. This is illustrated in the attached Table 5: *NC DPS Transfers by Week by "Type"*

a) The majority of these transfers are "administrative" transfers, with 60.8 percent of transfers described as administrative.

b) A small handful of total weekly transfers were for medical or treatment reasons, about 3.9 percent of all transfers.

16) From Week 5 (Aug. 9-15) to present, DPS has made over 3500 transfers that were based on an old testing date, meaning the person received their last test 20 or more days before their transfer. As illustrated in *Table 6: NC DPS Transfers Based on COVID-19 Tests that are 20+ Days Old*, 90.6% of transfers from Week 5 to the present have been based on tests performed 20 or more days before the date of transfer.

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

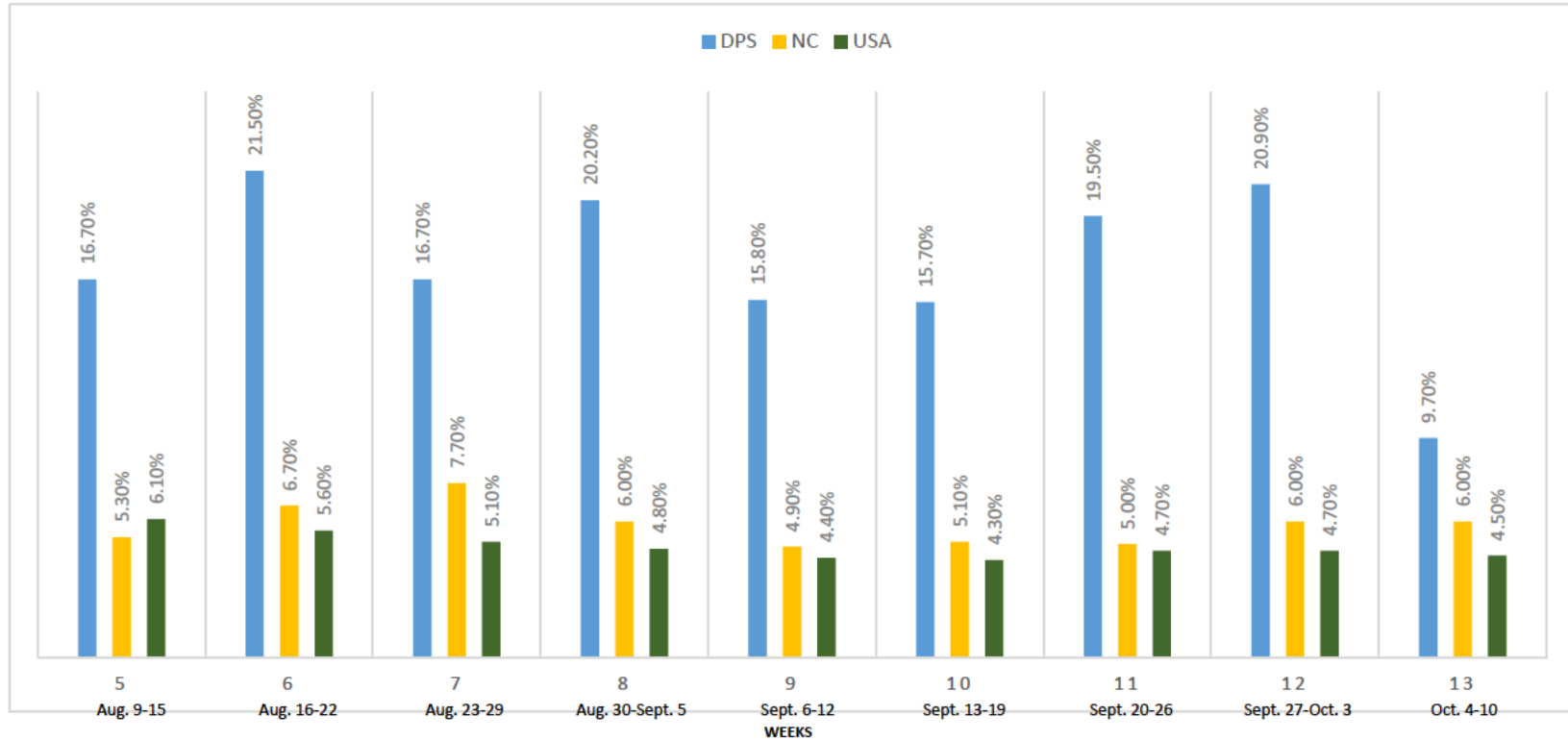
Luke Foster Woollard

Luke Foster Woollard
October 13, 2020

Table 1: NC DPS Weekly COVID-19 Positive Rates

Week	Dates	Number of Tests	Number of Positive Tests	Positive Rate
5	Aug 9-15	772	129	16.7%
6	Aug. 16-22	1015	218	21.5%
7	Aug. 23-29	954	159	16.7%
8	Aug. 30 - Sept. 5	1130	228	20.2%
9	Sept. 6-12	989	156	15.8%
10	Sept. 13-19	1150	181	15.7%
11	Sept. 20-26	1553	303	19.5%
12	Sept. 27 - Oct. 3	1768	369	20.9%
13	Oct. 4-10	1507	146	9.7%
	Totals	10838	1889	AVG: 17.4%

Graph 1: Weekly COVID-19 Positive Rates Comparison (NC DPS v. NC¹ v. USA²)



¹ Data from North Carolina Dep’t Health & Human Servs., *COVID-19 Dashboard*, <https://covid19.ncdhhs.gov/dashboard> (last visited Oct. 12, 2020); COVIDUSA, *North Carolina COVID-19 Statistics* (Updated Oct. 13, 2020), <https://covidusa.net/?state=North+Carolina>.

² Hasell, J., Mathieu, E., Beltekian, D. et al., *A cross-country database of COVID-19 testing*, *Sci Data* 7, 345 (2020), available at <https://ourworldindata.org/coronavirus-testing>

Table 2: Number of COVID-19 Tests per Prison per Week

WEEK	5	6	7	8	TOTAL TESTS WEEKS 5-8	9	10	11	12	TOTAL TESTS WEEKS 9-12	13	TOTAL TESTS ALL WEEKS
	Aug. 9-15	Aug. 16-22	Aug. 23-29	Aug. 30 - Sept. 5		Sept. 6-12	Sept. 13-19	Sept. 20-26	Sept. 27-Oct.3		Oct. 4-10	
1 Albemarle CI	220	185	150	226	781	167	5	111	7	290	43	1114
2 Alexander CI	6	8	0	10	24	7	4	6	5	22	22	68
3 Anson CI	0	0	0	129	129	11	7	6	20	44	56	229
4 Avery/Mitchell CI	0	0	10	268	278	390	275	7	335	1007	1	1286
5 Bertie CI	4	1	45	3	53	120	7	2	4	133	3	189
6 Black Mountain	0	0	0		0					0		0
7 Burke CRV 0	0	0	0		0					0		0
8 Caldwell CC	52	0	1	2	55	0	3	3	2	8	5	68
9 Caledonia CI	0	3	0	1	4	1	0	0	17	18	40	62
10 Carteret CC	0	80	1	0	81	0	1	1	0	2	0	83
11 Caswell CC	0	1	1	0	2	0	2	0	1	3	40	45
12 Catawba CC	0	0	0	0	0	0	2	36	0	38	1	39
13 Central Prison	32	44	97	46	219	36	96	56	56	244	48	511
14 Columbus CI	1	0	5	1	7	1	0	1	11	13	9	29
15 Craggy CC	0	3	1	3	7	4	3	4	6	17	30	54
16 Craven CI	229	214	140	215	798	78	65	13	71	227	160	1185
17 Dan River PWF	1	0	0	1	2	1	110	54	301	466	7	475
18 Dart Cherry	0	13	16		29					0	28	57
19 Davidson CC	1	1	0	0	2	0	1	0	0	1	73	76
20 Eastern CI	0	3	13	7	23	11	18	230	6	265	12	300
21 Foothills CI	44	45	40	0	129	2	1	1	21	25	64	218
22 Forsyth CC	2	0	0	1	3	1	2	0	2	5	13	21
23 Franklin CC	0	1	1	2	4	0	1	5	2	8	6	18
24 Gaston CC	0	0	0	0	0	2	0	0	0	2	1	3
25 Greene CI	2	4	4	2	12	4	13	63	61	141	23	176
26 Harnett CI	8	7	4	8	27	9	3	23	1	36	0	63
27 Hyde CI	0	0	0	1	1	0	0	1	68	69	16	86
28 Johnston CI	1	0	0	1	2	0	32	2	3	37	9	48
29 Lincoln CC	0	0	0	0	0	1	1	0	1	3	12	15

30 Lumberton CI	3	2	3	0	8	50	15	3	3	71	2	81
31 Marion	0	1	0	0	1	0	0	1	0	1	8	10
32 Maury	4	5	2	1	12	4	1	2	0	7	110	129
33 Morrison	2	4	1	2	9	3	95	10	14	122	6	137
34 Mountain View	0	4	1	1	6	1	1	0	2	4	9	19
35 Nash	1	1	2	12	16	2	7	11	2	22	7	45
36 NCCIW	81	191	60	46	378	48	59	40	65	212	40	630
37 Neuse	0	0	0	1	1	2	2	0	11	15	7	23
38 New Hanover	5	1	5	5	16	2	7	0	0	9	52	77
39 North Piedmont	0	14	0	17	31	1	21	0	17	39	1	71
40 Orange	0	0	32	4	36	26	1	9	2	38	4	78
41 Pamlico	0	4	103	60	167	4	19	3	8	34	51	252
42 Pasquotank	5	36	19	31	91	1	0	0	1	2	23	116
43 Pender	4	2	4	1	11	1	1	84	99	185	7	203
44 Piedmont	148	122	167	126	563	92	95	182	102	471	76	1110
45 Polk	31	34	32	29	126	32	5	28	37	102	43	271
46 Randolph	4	5	1	0	10	0	1	0	9	10	11	31
47 Rutherford	0	0	1	0	1	0	0	3	0	3	20	24
48 Sampson	0	11	2	0	13	1	2	5	32	40	24	77
49 Sanford	0	2	5	0	7	0	6	0	10	16	0	23
50 Scotland	96	144	101	83	424	35	153	541	285	1014	252	1690
51 Southern	0	0	6	5	11	0	0	0	6	6	9	26
52 Swannanoa	0	0	0	0	0	0	1	0	19	20	0	20
53 Tabor	2	0	2	0	4	2	4	1	2	9	3	16
54 Tyrrell	1	0	0	0	1	0	0	0	3	3	7	11
55 Wake	0	2	23	2	27	0	0	0	35	35	12	74
56 Warren	2	2	3	3	10	3	2	2	3	10	1	21
57 Wilkes	0	0	0	0	0	0	0	3	0	3	0	3

**Table 3: Number of COVID-19 Cases per Week
in DPS Prisons with Sustained Outbreaks**

FACILITY	Mass	WEEK 5	WEEK 6	WEEK 7	WEEK 8	WEEK 9	WEEK 10	WEEK 11	WEEK 12	WEEK 13
	Test									
	*Ended Aug. 8	<i>Aug. 9-15</i>	<i>Aug. 16-22</i>	<i>Aug. 23-29</i>	<i>Aug. 30- Sept. 5</i>	<i>Sept. 6-12</i>	<i>Sept. 13-19</i>	<i>Sept. 20-26</i>	<i>Sept. 27- Oct.3.</i>	<i>Oct. 4-10</i>
Craven	2	56	93	2	14	9	17	2	0	0
Scotland	3	4	46	23	23	12	61	119	50	47
Albemarle	71	38	35	27	54	50	3	30	2	8
Avery- Mitchell	6	0	0	4	72	58	13	3	54	1
Dan River	0	0	0	0	0	1	21	13	72	5

Table 4: Number of NC DPS Prisons with Active COVID-19 Outbreaks³ by Week

Week	Dates	Number of NC DPS Prisons with COVID-19 Outbreaks	Number of NC DPS Prisons with New Outbreaks⁴
<i>Mass Test</i>	<i>Ended Aug. 8.</i>	18	
5	Aug 9-15	8	4
6	Aug. 16-22	10	3
7	Aug. 23-29	12	7
8	Aug. 30 - Sept. 5	10	2
9	Sept. 6-12	9	1
10	Sept. 13-19	13	7
11	Sept. 20-26	12	3
12	Sept. 27 - Oct. 3	13	5
13	Oct. 4-10	15	7

³ NC DHHS defines an “outbreak” in congregate settings such as prisons as “two or more laboratory-confirmed cases within a 28-day period.” NC DHHS, *COVID-19 Clusters in Occupational, Educational, and Community Settings* (May 22, 2020), <https://epi.dph.ncdhhs.gov/cd/lhds/manuals/cd/coronavirus/COVID19%20Cluster%20Guidance%2005222020.pdf>.

⁴ “New outbreak” is a facility with 2 or more new cases that had 1 or fewer cases in the previous week.

Table 5: NC DPS Transfers by Week by "Type"

Week	Dates	Total	Admin	Treatment	Security	% Admin	% Treatment	% Security
1	July 12-18	342	0	10	332	0.0%	2.9%	97.1%
2	July 19-25	376	313	25	38	83.2%	6.6%	10.1%
3	July 26 - Aug.1	283	177	18	88	62.5%	6.4%	31.1%
4	Aug. 2-8	301	204	13	84	67.8%	4.3%	27.9%
5	Aug. 9-15	678	420	10	248	61.9%	1.5%	36.6%
6	Aug. 16-22	326	184	22	120	56.4%	6.7%	36.8%
7	Aug. 23-29	678	456	11	211	67.3%	1.6%	31.1%
8	Aug. 30 - Sept. 5	507	270	16	211	53.3%	3.2%	41.6%
9	Sept. 6-12	353	216	14	123	61.2%	4.0%	34.8%
10	Sept. 13-19	322	199	9	144	61.8%	2.8%	44.7%
11	Sept. 20-26	403	308	22	73	76.4%	5.5%	18.1%
12	Sept. 27 - Oct. 3	384	274	15	95	71.4%	3.9%	24.7%
13	Oct. 4-10	289	166	17	106	57.4%	5.9%	36.7%
Totals		5242	3187	202	1873	60.8%	3.9%	35.7%

Table 6: NC DPS Transfers Based on COVID-19 Tests that are 20+ Days Old

Week	Dates	Total Transfers	Number of Transfers Based on Tests Administered 20+ days in the Past ("Old Tests")	Percentage of Weekly Transfers Based on Old Tests
5	Aug. 9-15	678	583	86.0%
6	Aug. 16-22	326	295	90.5%
7	Aug. 23-29	678	612	90.3%
8	Aug. 30 - Sept. 5	507	493	97.2%
9	Sept. 6-12	353	334	94.6%
10	Sept. 13-19	322	303	94.1%
11	Sept. 20-26	403	359	89.1%
12	Sept. 27 - Oct. 3	384	345	89.8%
13	Oct. 4-10	289	246	85.1%
	Total	3940	3570	90.6%