

**Electronically Filed
Supreme Court
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SCPW-20-0000200 and SCPW-20-0000213

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SCPW-20-0000200

OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

CLARE E. CONNORS, Attorney General of the State of Hawai'i;
DONALD S. GUZMAN, Prosecuting Attorney, County of Maui;
MITCHELL D. ROTH, Prosecuting Attorney, County of Hawai'i;
JUSTIN F. KOLLAR, Prosecuting Attorney, County of Kaua'i;
DWIGHT K. NADAMOTO, Acting Prosecuting Attorney, City and County
of Honolulu, Respondents.

SCPW-20-0000213

STATE OF HAWAI'I OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA,
Director, State of Hawai'i Department of Public Safety;
EDMUND (FRED) K.B. HYUN, Chairperson, Hawai'i Paroling Authority,
Respondents.

ORIGINAL PROCEEDING

FOURTH INTERIM ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

On April 30, 2020, in response to this court's April 24, 2020 Third Interim Order, Special Master Daniel R. Foley ("Special Master") filed his Third Summary Report and Recommendations ("Third Interim Report"). The Third Interim Report provides an update on implementation of this court's orders as well as other efforts, including updated population numbers. The Third Interim Report also attaches as exhibits a progress report of the Hawai'i Paroling Authority ("HPA") (dated April 29, 2020), a letter to the Special Master from the Department of Public Safety ("DPS") in response to an April 21, 2020 letter of the Hawai'i Correctional Systems Oversight Commission ("Oversight Commission") regarding DPS's response to different levels of potential COVID-19 outbreak (dated April 28, 2020), a letter from the Oversight Commission to DPS Director Nolan Espinda requesting information concerning the COVID-19 plans for Saguaro Correctional Center ("Saguaro") (dated April 28, 2020), a letter from the Office of the Public Defender apprising the Special Master of the efforts undertaken by the parties, the amici, and the many stakeholders to reduce the inmate population of Hawai'i's correctional centers and facilities to design capacity and stating some concerns (dated April 29, 2020), and a letter from the Honolulu Department of the Prosecuting Attorney providing a status of the release of inmates and stating some concerns (dated April 29, 2020).

This court appreciates the efforts that have been undertaken by the Special Master, the parties, the amici, and the many stakeholders to work collaboratively to protect public health and public safety. This court also appreciates the efforts of the HPA to transition to audio-visual hearings using

remote technology and DPS's assistance in facilitating telephonic attorney-client contact.

Upon consideration of the Third Interim Report, including the exhibits, and the record,

IT IS HEREBY ORDERED that:

1. The Special Master shall continue to work with the parties, the amici, and the many stakeholders to expeditiously address the issues in this original proceeding in an effort to facilitate a collaborative resolution while protecting public health and public safety. Efforts shall continue to be undertaken to reduce the inmate population of correctional centers and facilities to design capacity.

2. DPS shall continue to be cooperative and responsive to the requests for information from the Oversight Commission. No later than May 13, 2020, DPS shall provide a report to the Special Master and the parties regarding the current conditions at Oahu Community Correctional Center, Saguaro, and Halawa Correctional Facility as related to COVID-19, including information on the number of COVID-19 tests administered to inmates and staff and the steps taken to prevent and mitigate the spread of COVID-19 within these facilities.

3. DPS has indicated that it is updating the individual facility Pandemic Response Plan to incorporate current guidance from the Centers for Disease Control and Prevention, and that the plans will be provided to the Oversight Commission soon. Every effort shall be taken to expeditiously update and provide the plans to the Oversight Commission.

4. The HPA shall also consider its authority under Hawai'i Administrative Rule § 23-700-51(b), to release or discharge inmates on its own accord.

5. The Special Master may file reports or recommendations for orders to this court as he deems

appropriate, but another summary report with any recommendations shall be filed on May 15, 2020. In his discretion, the Special Master may file confidential documents under seal.

6. This order does not limit the continued collaborative and ongoing efforts currently being undertaken to reduce the inmate populations and does not affect previous orders entered that, by their terms, remain in effect.

7. This court reserves its authority to order other measures based on changed circumstances.

DATED: Honolulu, Hawai'i, May 4, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

