

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MICHAEL BOYD,  
PAUL LEE,  
KENDRICK PEARSON, and  
J.B. WASHUP,  
*on behalf of themselves and all  
others similarly situated,*

Plaintiffs,

vs.

S.A. GODINEZ, and  
RANDY DAVIS.

Defendants.

Case No. 12-cv-0704-MJR-DGW

ORDER

REAGAN, Chief District Judge:

In 2012, a group of Illinois prisoners brought a federal suit against S.A. Godinez, the Director of the Illinois Department of Corrections, and Randy Davis, the Warden of Vienna Correctional Center. The plaintiffs, all represented seemingly on a *pro bono* basis by several Chicago attorneys, alleged that the conditions at the Vienna Correctional Center were so deplorable as to violate the Eighth Amendment of the United States Constitution, and they sought to represent a class consisting of a number of other prisoners like themselves who were housed at Vienna. Shortly after the class complaint was filed, the plaintiffs submitted a motion for class certification—the plaintiffs asked the Court to defer ruling on the motion until sufficient discovery had taken place to litigate the class point, but wanted the motion left on the docket to avoid mootness problems should the named plaintiffs be transferred or released from their prison.

Judge Gilbert, to whom the case was initially assigned, allowed the motion to remain on the docket to prevent that problem, and the parties started the discovery process.

Initial discovery didn't get far, as the parties also began settlement talks amongst themselves in earnest. Those discussions led the plaintiffs to file another motion for class certification in August 2013, this one for settlement purposes only. The motion was unopposed by the defendants on the condition that certification be for settlement purposes alone. Judge Gilbert granted that motion in late 2013 and certified the class for settlement, but he left the original motion for class certification intact and pending. From 2013 to 2016, the parties worked towards a final settlement concerning the conditions at Vienna, but those talks stalled in late 2016, and at the parties' request Judge Gilbert returned the case to the trial calendar and entered a revised scheduling order. While the parties continue to engage in settlement talks and are hopeful for a non-adversarial resolution, the case is now set for trial in March 2018.

In mid-2016, this case was reassigned to the undersigned judge, and the only question before the Court at present is whether the initial class certification motion needs to remain active on the docket to safeguard the plaintiffs from the danger of their case being rendered moot by a prison transfer or release. The initial class certification motion expressly relied on the Seventh Circuit's decision in *Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011), which held that plaintiffs in putative class cases could use early class certification motions to avoid the danger that a defendant would foist full monetary relief on the named plaintiff, thereby mooting the case before the putative class could be certified. The rub is that *Damasco* was overruled by *Chapman*

*v. First Index, Inc.*, 796 F.3d 783 (7th Cir. 2015), and the ongoing need for plaintiffs to file early class certification motions to avoid monetary-related mootness problems has been placed into considerable doubt by the Seventh Circuit in *Chapman*, by the Supreme Court in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016), and by the Ninth Circuit in *Chen v. Allstate Insurance Co.*, 819 F.3d 1136, 1145-46 (9th Cir. 2016). In light of this change in the legal landscape, the Court directed the plaintiffs to file a brief justifying the need for the initial class certification motion to stay on the docket, and invited the defendants to respond to the plaintiffs' brief if they wished.

The plaintiffs have submitted a brief as requested. They argue that a typical prisoner class action might still need a protective certification motion despite *Damasco* and the other cases mentioned above given the differences between monetary-related mootness and the mootness problems that might arise in a prisoner case, but insist that the Court needn't resolve that point given this case's posture. According to the plaintiffs, the initial certification motion here doesn't need to stay active because Judge Gilbert already implicitly ruled on it when he certified the case for settlement purposes or, failing that, that Judge Gilbert's settlement certification removes any mootness concerns, for no one has moved to decertify that class. The plaintiffs are wrong on the first point. The defendants agreed not to oppose the second motion for class certification, but only on the condition that the case be certified for settlement only. Once more, Judge Gilbert made clear in his certification order that he was only granting the second, settlement-related motion for certification, and that the case was only being certified for that purpose. And if there was any room for doubt, Judge Gilbert's 2016

scheduling order directs the plaintiffs to file a motion for class certification by March 2017, a directive that would have been pointless had he actually ruled on the initial certification motion. So the plaintiffs will still need to move to certify the case for class treatment for purposes of litigation, as the case has never been certified in that fashion.

All that said, the plaintiffs seem to be right that settlement certification, without subsequent decertification, is enough to protect them from the specter of mootness by release or mootness by transfer. Once a class has been certified, the class achieves a legal status separate from the interest asserted by the named plaintiffs, with Article III standing requirements being assessed with reference to the class as a whole. *E.g., Sosna v. Iowa*, 419 U.S. 393, 399 (1975); *Payton v. County of Kane*, 308 F.3d 673, 680 (7th Cir. 2002); *Whitlock v. Johnson*, 153 F.3d 380, 384 (7th Cir. 1998). No case that the Court can find has limited that legal status based on whether a class was certified in the settlement context or in the litigation context, and such a limitation would make little sense, as the requirements for the certification of a settlement class are nearly identical to the requirements for a litigation class. *See Martin v. Reid*, 818 F.3d 302, 308 (7th Cir. 2016). The defendants were given an opportunity to dispute this point but haven't done so, and given that failure and the logic cited above, the Court is of the view that there is no longer a need to keep a placeholder motion for certification on the docket to safeguard the plaintiffs from any mootness problem. And because there's no need to let the first motion for class certification languish on the docket, the motion (Doc. 16) is **DENIED without prejudice** on docket management grounds. This denial is with leave to resubmit in a manner consistent with the Court's 2016 scheduling order.

**IT IS SO ORDERED.**

**DATED: September 22, 2016**

**/s/ Michael J. Reagan**  
**Chief Judge Michael J. Reagan**  
**United States District Court**