

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

BRANDON LIVAS, <i>ET AL.</i>)	CIVIL ACTION NO. 20-cv-00422
)	
VERSUS)	JUDGE DOUGHTY
)	
RODNEY MYERS, <i>ET AL.</i>)	MAGISTRATE JUDGE KAY
<hr/>)	

**RESPONDENTS' MOTION TO STAY CONSIDERATION OF
CLASS CERTIFICATION PENDING ADJUDICATION
OF RESPONDENTS' MOTION TO DISMISS
PETITIONERS' PETITION AND EMERGENCY MOTION**

Respondents Rodney Myers, Warden of Oakdale Federal Correctional Institutions and Michael Carvajal, Federal Bureau of Prisons Director, in their official capacities (collectively "Respondents"), by and through David C. Joseph, United States Attorney for the Western District of Louisiana, and Karen J. King, Assistant United States Attorney, respectfully move to stay consideration of Petitioners Brandon Livas, Richard Buswell, Dewayne Corbett, Johnny Smith, Carlos Lorenzo Martin, and Gaines Andrews (collectively "Petitioners") request for class certification (Docs. 1, 9) pending the adjudication of Respondents' Motion to Dismiss. Doc. 12. The grounds for this motion are more particularly set forth in the accompanying memorandum of law.

Counsel for Respondents, AUSA Karen J. King, sought consent from Counsel for Petitioners, Bruce Hamilton and Somil Trivedi, on April 16, 2020, via e-mail to seek such stay. On the same date, Mr. Hamilton responded that Petitioners oppose

Respondents' request.

Dated: April 17, 2020.

Respectfully Submitted,

DAVID C. JOSEPH
UNITED STATES ATTORNEY

BY: *s/ Karen J. King*
KAREN J. KING (#23508)
KATHERINE W. VINCENT (#18717)
Assistant United States Attorneys
800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501
Telephone: (337) 262-6618
Facsimile: (337) 262-6693
Email: karen.king@usdoj.gov

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**RESPONDENTS' MEMORANDUM IN SUPPORT OF
MOTION TO STAY CONSIDERATION OF CLASS CERTIFICATION
PENDING ADJUDICATION OF RESPONDENTS' MOTION TO DISMISS
PETITIONERS' PETITION AND EMERGENCY MOTION**

Respondents, Rodney Myers, Warden of Oakdale Federal Correctional Institutions and Michael Carvajal, Federal Bureau of Prisons Director, in their official capacities, respectfully move the Court to stay consideration of Petitioners' request for class certification (Docs. 1, 9) pending the adjudication of Respondents' Motion to Dismiss Petitioners' *Petition for Writ of Habeas Corpus, Injunctive, and Declaratory Relief* and *Emergency Motion for Release of Vulnerable and Low-Risk Prisoners from Oakdale*. Doc. 12.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioners filed a *Petition for Writ of Habeas Corpus, Injunctive, and Declaratory Relief* on April 6, 2020. Doc. 1. Additionally, Petitioners seek class certification. *Id.* On April 13, 2020, Petitioners filed an *Emergency Motion for Release of Vulnerable and Low-Risk Prisoners from Oakdale* seeking a temporary restraining order and/or a preliminary injunction. Doc. 9. Petitioners' Motion for a TRO was denied as moot. Doc. 10. However, the Court granted Petitioners' request

for expedited consideration of their request for preliminary injunction. Federal Respondents were ordered to respond to the motion for preliminary injunction by April 15, 2020. *Id.* Respondents filed a Motion to Dismiss Petitioners' *Petition for Writ of Habeas Corpus, Injunctive, and Declaratory Relief and Emergency Motion for Release of Vulnerable and Low-Risk Prisoners from Oakdale*. Doc. 12.

Respondents also filed an opposition to Petitioners' Emergency Motion. Doc. 13.

Following a status conference with the Court, Petitioners' have been ordered to respond to the jurisdictional issues in Respondents' motion to dismiss by April 20, with Respondents' reply to any such response due April 21. Pending the Court's determination of jurisdiction, a hearing on Petitioners' motion for preliminary injunction has been set for April 23 and the Court has reserved its ruling on Respondents' motion to dismiss for failure to state a claim under Rule 12(b)(6), FED.R.CIV.P. Doc. 15.

ARGUMENT

Respondents ask the Court to stay consideration of Petitioners' request for class certification (Docs. 1, 9), and any hearing related thereto, until after the Court adjudicates Respondents' Motion to dismiss, Doc. 12. Respondents seek such a stay not for purposes of delay, but rather to preserve resources and advance the interest of judicial economy.

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants . . . [this] calls for the exercise of

judgment, which must weigh competing interests and maintain an even balance.”

Landis v. N. Am. Co., 299 U.S. 248, 254-55 (1936). The class action is a procedural device that serves two primary purposes. First, class actions increase judicial economy by avoiding multiple suits. *See Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 349 (1983); *American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 553 (1974).

Second, class actions provide a method of protecting the rights of those who would not otherwise bring individual claims for practical reasons such as cost or

ignorance. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). While

these primary goals require the district court to decide the issue of class

certification “as soon as practicable,” Fed. R. Civ. P. 23(c)(1), the Fifth Circuit, as

well as a majority of other circuits, have held that dispositive motions may be

considered prior to ruling on a motion for class certification. *See, e.g. Floyd v.*

Bowen, 833 F.2d 529, 534–35 (5th Cir.1987) (noting that the rule in several circuits

is that class action litigation may be halted by a Rule 12 motion to dismiss or a Rule

56 motion for summary judgment); *see also, Pharo v. Smith*, 621 F.2d 656, 663–64

(5th Cir.), *on rehearing aff'd in part, remanded in part on other grounds*, 625 F.2d

1226 (1980) (affirming summary judgment for a defendant where no ruling has

been made as to the class). “Ruling on a dispositive motion prior to addressing class

certification issues may be appropriate where there is sufficient doubt regarding the

likelihood of success on the merits of a plaintiff’s claims, where inefficiency would

result, or where neither plaintiffs nor members of the putative class would be

prejudiced.” *Thornton v. Mercantile Stores Co., Inc.*, 13 F.Supp.2d 1282, 1289 (M.D.

Ala. 1998).

In this case, Respondents' Motion to Dismiss is dispositive of all Petitioners' claims. As such, named Petitioners Brandon Livas, Richard Buswell, Dewayne Corbett, Johnny Smith, Carlos Lorenzo Martin, and Gaines Andrews cannot represent the proposed class because they do not bring any claims over which this Court has jurisdiction or for which relief can be granted. *See* Resps'. Mot. to Dism., Doc. 12. For the same reasons, Petitioners cannot establish a likelihood of success on the merits, *see generally*, Resps'. Opp. to Mot. for Prelim. Inj., Doc. 13 and Resps'. Mot. to Dism., Doc. 12. Thus, were the Court to adjudicate the class certification motion in favor of Plaintiff and then make a favorable ruling on Respondents' Motion to Dismiss, the result would be one where there is no named Petitioner to represent a certified class. This would result in further motions practice from the parties related to the class certification issue—perhaps even an interlocutory appeal—during which the Court may also have to stay all further proceedings. Accordingly, “inefficiency would result” and should be avoided “where neither plaintiffs nor members of the putative class would be prejudiced.” *Thornton v. Mercantile Stores Co., Inc.*, 13 F.Supp.2d at 1289; *see* Fed. R. Civ. P. 1 *et seq.* (establishing that the purpose of the Federal Rules is “to secure the just, speedy, and inexpensive determination of every action and proceeding”); *see also* Chief Justice John Roberts, 2016 Year–End Report on the Federal Judiciary at 6, Supreme Court of the United States, available at <http://www.supremecourt.gov/publicinfo/year-end/year-endreports.aspx> (“2016

Year-End Report”) (noting “Litigation is costly, and everyone benefits if disputes can be resolved efficiently with minimal expense and delay.”). Where, as here, the controlling issues are purely questions of law that can be resolved via dispositive motion, “[i]n those situations, the district judge has the responsibility—always in the first instance, and frequently in the last—‘to say what the law is,’” thereby resolving the dispute as early as possible. *Id.* at 7.

A stay would not prejudice Petitioners. Staying certification of a class while the Court considers Respondents’ Motion to Dismiss, which may dispose of the entire case, will not cause any discernable prejudice to the six named Petitioners. With respect to any proposed class members who are confined at FCC Oakdale or who may someday be so confined, Respondents submit they are receiving adequate review through: (1) seeking compassionate release from their sentencing courts, (2) seeking habeas relief via *Zadvydas*, or (3) the BOP’s home confinement or non-transfer furlough process. *See generally* Resps’. Second Update on Inmate Review, Doc. 14.

Accordingly, Respondents respectfully request the Court grant their motion to stay consideration of class certification pending adjudication of their Motion to Dismiss.

Dated: April 17, 2020.

Respectfully Submitted,

DAVID C. JOSEPH
UNITED STATES ATTORNEY

BY: s/ Karen J. King
KAREN J. KING (#23508)
KATHERINE W. VINCENT (#18717)
Assistant United States Attorneys

800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501
Telephone: (337) 262-6618
Facsimile: (337) 262-6693
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[PROPOSED] ORDER

Considering Respondents’ Motion to Stay Consideration of Class Certification Pending Adjudication of Respondents’ Motion to Dismiss Petitioners’ Petition for Writ of Habeas Corpus, Injunctive, and Declaratory Relief and Emergency Motion for Release of Vulnerable and Low-Risk Prisoners from Oakdale, and good cause having been shown,

IT IS ORDERED that the motion is GRANTED.

Monroe, Louisiana, this ____ day of April, 2020.

**HONORABLE TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE**