

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 20-cv-977-PAB

THOMAS CARRANZA, *et al.*,

Plaintiffs, on their own and on behalf of a class of similarly situated persons,

v.

STEVEN REAMS, Sheriff of Weld County, Colorado, in his official capacity,

Defendant.

**PLAINTIFFS' MOTION FOR FORTHWITH HEARING REGARDING DEFENDANT'S
NON-COMPLIANCE WITH THE COURT'S PRELIMINARY INJUNCTION**

Plaintiffs Thomas Carranza and all other similarly situated medically vulnerable inmates housed at the Weld County Jail hereby request a forthwith hearing on Defendant's non-compliance with the Court's May 11, 2020 preliminary injunction.

Certificate of Conferral: Plaintiffs' counsel conferred with Matthew Hegarty, counsel for Defendant Reams, who opposes the relief requested herein.

Introduction

Defendant's newly enacted policies and procedures to identify and protect medically vulnerable inmates at the Weld County Jail (WCJ) do not comply with this Court's order and are insufficient to reasonably mitigate the risk of COVID-19 to medically vulnerable inmates. Indeed, as currently conceived, Defendant's plans will increase the likelihood of infection for some medically vulnerable inmates. The risk to the Plaintiff class is real and extreme. Just yesterday, Anthony Griego, a medically vulnerable inmate at WCJ, lost his battle with COVID-19 and died in his cell. Plaintiffs

ask the Court to set a forthwith hearing on whether the changes implemented by WCJ comply with this Court's May 11, 2020 preliminary injunction and are sufficient to satisfy the Court that WCJ has mitigated the risk to medically vulnerable inmates.

Procedural History

Following a full-day evidentiary hearing, the Court entered a straightforward order granting Plaintiffs' request for a preliminary injunction and requiring Defendant to institute specific policies or procedures at the Weld County Jail regarding the following:

1. A process to compile a list of all medically vulnerable inmates at the Weld County Jail;
2. A policy ensuring social distancing of medically vulnerable inmates housed at the jail to the "maximum extent possible";
3. A procedure for single-celling or, if single-celling is not possible, otherwise socially distancing medically vulnerable inmates during the intake/transition process;
4. Policies requiring enhanced sanitation procedures;
5. A plan to obtain sufficient masks for inmates; and
6. A policy providing increased monitoring of medically vulnerable inmates.

The Court's preliminary injunction remains in effect through at least August 9, 2020. (ECF No. 55 at 39.)

On May 18, 2020, Defendant filed his "Notice of Complete Compliance with This Court's Preliminary Injunction Order" explaining the new policies and procedures implemented at the Weld County Jail. (ECF No. 60.) Plaintiffs acknowledge that Defendant's policies and procedures regarding enhanced sanitation and masks for inmates comply with the standards set forth by the Court. However, Defendant's actions fall short of full compliance with other provisions of the Court's preliminary

injunction. Defendant's submission also fails to provide Plaintiffs and the Court with sufficient information to explain or justify Defendant's refusal to single-cell medically vulnerable inmates in the face of the Court's order requiring Sheriff Reams to do so if possible. Accordingly, Plaintiffs request a forthwith hearing.

Legal Standard

In granting the preliminary injunction, the Court found Plaintiffs demonstrated a substantial likelihood of success on the merits of their claim and that they had shown a significant risk of probable irreparable harm. (ECF No. 55 at 25-26.) The Court ordered Defendant to implement specific policies and procedures and now has the inherent authority to ensure its order is being followed. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) (discussing court's inherent authority to enforce duly entered injunction). Given the serious health risk faced by medically vulnerable inmates each moment that Defendant remains in non-compliance with the Court's order, Plaintiffs seek a forthwith hearing regarding non-compliance.

Analysis

Defendant's response to the Court's preliminary injunction order is deficient in at least three respects: (1) conditions for medically vulnerable inmates in the housing pods; (2) how medically vulnerable inmates are housed in the intake/transition unit; and (3) the procedures utilized to identify medically vulnerable inmates. Each of these deficiencies will be discussed in turn below.

A. Housing Conditions for the Medically Vulnerable

The Court ordered Defendant to enact a policy "ensuring that, to the maximum extent possible considering the Jail's physical layout, population level, and classification needs, medically vulnerable inmates are 'socially distanced' from other inmates housed in the Jail. If social distancing is

effectively impossible for some or all of the medically vulnerable inmates in the Jail, such policy may be supplemented by housing medically vulnerable inmates together in one or more pods.” (ECF No. 55.)

At the time the preliminary injunction was entered, the Court lacked the data necessary to determine to what degree medically vulnerable inmates could be single-celled or otherwise socially distanced. That is, because Defendant had not identified how many medically vulnerable inmates were at the WCJ, it was impossible to ascertain whether medically vulnerable inmates could be housed in single cells. Even without this data, the Court noted the Jail was “well below half of its maximum capacity, indicating that there is space within the Jail to increase the amount of physical distancing for at least some inmates.” (ECF No. 55 at 31.)

Per Defendant’s Notice, WCJ’s screening process identified 89 inmates (less than 20% of the WCJ population) who qualify as medically vulnerable. (ECF No. 60 at 3.) Despite the limited number of medically vulnerable inmates, Defendant found it “very difficult” to create a policy that would satisfy the Court’s preliminary injunction. (ECF No. 60-8 ¶ 16(g).) Defendant chose to ignore the Court’s structure and instead prioritized what he apparently regarded as a need to reduce inmate movement and realignment, and to avoid inconvenience to the WCJ staff. (*Id.* ¶ 16.)

The Court entered a very specific order. Defendant was to adopt a policy that either: (1) allowed all medically vulnerable inmates the opportunity to socially distance from others; or (2) if social distancing from others was “effectively impossible,” Defendant was to adopt a policy that housed medically vulnerable inmates in a pod with only other medically vulnerable inmates. (ECF No. 55.) Defendant admits his chosen policy falls short of complying with this order. A forthwith hearing is necessary for Plaintiffs to challenge Sheriff Reams’s conclusion that his adopted policy

was the “*only* option,” and that complying with the Court’s order would have been impossible. (ECF No. 60-8 ¶ 16(i) (emphasis in original).)

One point worth noting: Throughout these proceedings, Defendant has acknowledged the availability of unused cells at WCJ. Plaintiffs’ counsel and their expert observed multiple empty cells in each unit during their inspections of the facility and noted that medically vulnerable inmates were housed with several cellmates in those same pods that had empty cells. Defendant claims it is “impossible” to fill all of the cells on the one hand, while on the other hand claims he would need 8-12 additional housing units and 48-72 additional deputies to house medically vulnerable inmates separately from other inmates. (ECF No. 60-8 ¶ 16.) Interestingly, during recent conferral conversations, Defendant refused to provide Plaintiffs’ counsel with specific data regarding the number of unused cells and the units in which those empty cells are located. The Court should require Defendant to provide this information and explain why there are empty cells at WCJ while medically vulnerable inmates are housed in units with non-vulnerable inmates and not given adequate space to socially distance from others. A forthwith hearing allows Plaintiffs to test Defendant’s conclusory assertions of impossibility.

Should Sheriff Reams convince the Court that it is “effectively impossible” to comply with the Court’s order regarding social distancing, and that the jail may continue housing medically vulnerable people in the same cells together inside a pod with other non-medically vulnerable people, Plaintiffs expert will testify that – especially without testing medically vulnerable inmates – this plan is likely to *increase* the danger of infection for some medically vulnerable inmates. As Dr. Franco-Paredes explained in his declaration and during testimony, a large number of people infected with COVID-19 are asymptomatic. Without testing medically vulnerable people before moving them into

a cell with other medically vulnerable people, Weld County Jail predictably risks spreading the virus between medically vulnerable people who face a substantial risk of serious illness or death by the virus.

Given changes that Dr. Franco-Peredes can testify to regarding test availability—a subject that has also received widespread media attention this week—there is no longer any excuse for failure to test. While there may have been some doubt as to the availability of testing at the time of the preliminary injunction hearing, recent developments have made clear that testing is now widely available. Whereas, at the time of the hearing, tests were in short supply and competition for tests was fierce, Colorado now has the supplies and capacity to test everyone who needs to get tested, and free testing is currently available to all essential workers and any symptomatic Coloradans.¹ Dr. Franco-Peredes has confirmed and, if the Court should grant a hearing, would be available to testify, that WCJ could promptly obtain the supplies to test all inmates in the Jail if it desired. Yet, Defendant has only performed 26 COVID-19 tests to date² and does not assert any intention to test medically vulnerable inmates before moving them into cells with other medically vulnerable inmates. Failure to take this minimal protective action, particularly in light of Defendant’s failure to follow the Court’s

¹ See, e.g., FORT COLLINS COLORADOAN, “All symptomatic Coloradans, essential workers can get coronavirus test as capacity ramps up,” May 18, 2020, *available at* <https://www.coloradoan.com/story/news/2020/05/18/coronavirus-colorado-state-covid-19-testing-capacity-ramps-up-where-tested/5213901002/>; COLORADO PUBLIC RADIO, “Polis: Any Coloradan with Coronavirus Symptoms Should Get Tested,” May 18, 2020, *available at* <https://www.cpr.org/2020/05/18/anyone-with-covid-19-symptoms-should-get-tested-polis-announces/>.

² As of the April 30, 2020 hearing, WCJ had tested 22 inmates for COVID-19. Pl.’s Ex. 8. Since then, despite a sea change in the availability of tests, WCJ has conducted only 4 COVID-19 tests on inmates. The lack of testing calls into question the veracity of Defendant’s assertion that the COVID-19 outbreak inside WCJ has stabilized.

directive on social distancing, poses a foreseeable and unreasonable risk of harm to medically vulnerable inmates.

B. Vulnerable Inmates in the Intake/Transition Unit

The Court's preliminary injunction ordered Defendant to enact a procedure for medically vulnerable inmates to be "single-celled or otherwise socially distanced, to the maximum extent possible considering the Jail's physical layout and classification needs, while housed in the transition unit." (ECF No. 55 at 38.) The Court found this relief was necessary because "the Jail places more than one inmate in a cell in the transition unit, and there is no evidence that new inmates are given a COVID-19 test." (*Id.* at 34.)

Defendant's adopted policy specifically allows more than one medically vulnerable inmate to be housed together in the intake unit, while still not requiring either of the inmates be tested for COVID-19. (ECF No. 60 at 8.) This policy defies the letter and the spirit of the Court's order. As noted above, many individuals are asymptomatic for COVID-19; thus Defendant's plan places medically vulnerable inmates at grave risk of harm. Particularly given that infection Dr. Franco-Paredes will testify that only single-celling medically vulnerable inmates through intake and then ensuring the inmate and any potential cellmates have twice tested negative for COVID-19, can reasonably mitigate the risk of infection to medically vulnerable inmates. Based on information from Weld County, it appears that, on an average day, they see 10-20 bookings in to the jail and only about 20% of those individuals – or 2 to 4 people – will qualify as medically vulnerable and require single-celling for at least 14 days. Defendant's submission to the Court does not explain why, given its current jail capacity, single celling of these few inmates is not possible. Further, to the extent this Court concludes that WCJ may house medically vulnerable inmates with others during

intake/transition, WCJ should be required to implement a policy that requires testing of medically vulnerable inmates before they are housed together in a cell during the intake/transition process. As discussed above, Dr. Franco-Paredes would testify to the availability of adequate testing supplies.

Despite adopting a policy that falls short of the Court's order, Defendant again claims his adopted policy was the "*only* option." (ECF No. 60-8 ¶ 21 (emphasis in original).) Plaintiffs should be afforded the opportunity to test this assertion at a compliance hearing.

C. Deficiencies in Defendant's Screening Protocol

Plaintiffs and their counsel are concerned that Defendant's adopted screening protocol is not properly identifying all medically vulnerable inmates. As one example, Plaintiffs' counsel has been in contact with an inmate who suffers from asthma and is dependent on an inhaler. Yet, he was not identified as medically vulnerable based on Defendant's screening criteria.

As Dr. Franco-Paredes will testify, the screening questions are inadequate to reasonably ensure that the screener will uncover whether the inmate is medically vulnerable. For instance, inmates are asked whether they are "immunocompromised" or have a "chronic lung disease" in the absence of additional information explaining to them what types of diagnoses and medical conditions fall within these categories. Inmates have varying education levels and life experiences, and may not have responded accurately to the questioning. Offering a non-exhaustive list of common conditions that fall within chronic lung disease or serious heart conditions and questioning inmates about current medications and recent hospitalizations would allow WCJ to identify and protect all inmates who are medically vulnerable.

As such, Plaintiffs ask the Court to hold a hearing during which they can explore whether Defendant's screening tool adequately identifies all medically vulnerable inmates, or whether

different language should be utilized during the screening process to ensure all inmate who are medically vulnerable are identified as such.

Conclusion

Plaintiffs and members of the Plaintiff class remain at risk of imminent harm in the WCJ. Medically vulnerable inmates continue to be held in conditions that do not allow for social distancing and in units with non-medically vulnerable inmates. Despite widespread availability of COVID-19 tests, WCJ is not testing medically vulnerable inmates before housing them in a cell with another person (who also has not been tested).

For the reasons set forth above, Plaintiffs request a forthwith hearing on Defendant's compliance with the Court's preliminary injunction order, with Defendant required to provide detailed information on the availability of empty cells in each unit housing medically vulnerable individuals.

Dated: May 21, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2020, a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR FORTHWITH HEARING REGARDING DEFENDANT'S NON-COMPLIANCE WITH THE COURT'S PRELIMINARY INJUNCTION** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification to the following counsel.

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