

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JEROME DUVALL, *et al.*,

*

Plaintiffs,

*

v.

* Civil Action No. ELH-94-2541

LAWRENCE HOGAN, *et al.*,

*

Defendants.

*

PLAINTIFFS’ NOTICE OF ADDITIONAL AUTHORITY

Plaintiffs respectfully submit this Notice of Additional Authority pertinent to Plaintiffs’ pending Emergency Motion For Relief From Risk of Injury and Death From COVID-19 (Doc. 645).

Cameron v. Bouchard, ___ F.Supp.3d ___, No. CV 20-10949, 2020 WL 2569868 (E.D. Mich. May 21, 2020) (opinion attached hereto as Exhibit A, order as Exhibit B), is a lawsuit brought by detainees at Michigan’s Oakland County Jail, alleging that they are subject to an unconstitutional risk of injury and death from COVID-19. Although the Jail had taken a number of remedial measures, including extensive testing, substantial population reduction, and the release of some medically vulnerable detainees, the Court concluded that plaintiffs had shown a likelihood of success on their Constitutional claim:

[I]n the midst of a pandemic for which there is no vaccine, limited effective treatment, no contact tracing, and rapid spread via asymptomatic individuals, to place especially susceptible individuals into a highly confined communal space—with limited access to clean facilities, limited ability to socially distance from others, and increased exposure via potentially infected Jail staff and inmates cycling in and out of the Jail—and then, to ask them to tolerate the risk of whatever catastrophic result that may befall them, is to demean “the essence of human dignity inherent in all persons.” *Brown [v. Plata]*, 563 U.S. [493,] 510-11 [(2011)]. Such a suggestion “has no place in civilized society.” *Id.*

Considering the weight of the public health evidence demonstrating the medically-vulnerable population's unique, specific, and life-threatening susceptibility to COVID-19—paired with the communal nature of jail facilities, the Court finds that home confinement or early release is the only reasonable response to this unprecedented and deadly pandemic.

Exh. A at 57-58 (footnotes omitted).

The Court ordered extensive relief, including the following:

Defendants shall ... Within three (3) business days, provide the Court and Plaintiffs' counsel with a list of the members of the Medically-Vulnerable Subclass, which includes inmate identification numbers, ages, any health vulnerabilities, as well as records detailing the instant charges or convictions and any criminal history of the Subclass member. The purpose of this order is to enable the Court to implement a system for considering the release on bond or other alternatives to detention in the Jail for each subclass member. After reviewing the list, the Court will issue a schedule for Defendants to submit the following additional information for each Subclass member: (i) their position on whether the individual should be released on bond; (ii) the reasons why they maintain the individual should not be released; and (iii) what conditions should be put into place if bond is granted.

Exh. B at 6-7. The Court further held that the "prisoner release order" requirements of the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(3), "do not apply to an order releasing medically-vulnerable inmates in this case." Exh. A at 67.

Respectfully submitted this 26th day of May 2020.

/s/David C. Fathi
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