

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARYLAND RESTORATIVE *
JUSTICE INITIATIVE, *et al.*, *
Plaintiffs, *

v. * Case No. 1:16-cv-01021-ELH

GOVERNOR LARRY HOGAN, *et al.*, *
Defendants. *
*
*

* * * * *

PLAINTIFFS’ CONSENT MOTION FOR WRIT OF HABEAS CORPUS

Plaintiffs, Maryland Restorative Justice Initiative, Calvin McNeill, Nathaniel Foster, and Kenneth Tucker, have filed suit against various state actors challenging Maryland’s parole system, as applied to individuals sentenced to life in prison for offenses of which they were convicted as juveniles. (ECF No. 1.) Plaintiffs McNeill, Foster, and Tucker currently are imprisoned at state correctional facilities.

Defendants have moved to dismiss the Complaint, or in the alternative, for summary judgment. (ECF No. 23.) Plaintiffs strongly oppose defendants’ motion, and the parties and the Court have deemed the issues therein so significant as to justify extensive briefing, and third parties filed materials as amici. (*See* ECF Nos. 34, 41, 43-45.) This Court has set a hearing on the defendants’ motion for January 4, 2017. (ECF No. 47.) Plaintiffs now seek Writs of Habeas Corpus to be directed by this Court to the U.S. Marshals Service and the wardens of the inmates’ correctional institutions so that they may be present at this important and potentially dispositive hearing. Defendants do not object to this motion.

For the reasons set forth in the accompanying Memorandum of Law, plaintiffs respectfully request that the attached Writs of Habeas Corpus be signed by this Court, allowing them to attend the January 4 hearing in their case.

Respectfully submitted,

/s/ _____

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Counsel for Plaintiffs

Dated: December 20, 2016

CERTIFICATE OF SERVICE

I certify that service of the foregoing PLAINTIFFS' MOTION FOR HABEAS CORPUS and supporting materials have been made by electronic cm/ecf, addressed to :

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Counsel for Defendants

Dated: December 20, 2016

/s/ _____

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
CONSENT MOTION FOR WRIT OF HABEAS CORPUS**

District courts are empowered with the ability to grant writs of habeas corpus when individuals are imprisoned by authority of a court in the United States. *See* 28 U.S.C. § 2241. Here, three of the plaintiffs involved this bellweather case are incarcerated by the State. Plaintiffs Calvin McNeill and Kevin Tucker are in custody at Jessup Correctional Institution. Plaintiff Nathaniel Foster is imprisoned at Eastern Correctional Institution East (ECI), in Westover.¹ (ECF No. 1.)

All three inmates were juveniles at the time they committed offenses for which they were sentenced to life imprisonment under Maryland’s mandatory sentencing guidelines. They challenge the constitutionality of the current parole scheme in Maryland and contend that their youth status at the time of their offenses was not considered appropriately during sentencing or

¹ Mr. Foster was recently transferred from Hagerstown to ECI.

subsequent parole proceedings. This is an important case both to the named plaintiffs and to many other “juvenile lifers” similarly situated to these plaintiffs.

Defendants have moved to dismiss the plaintiffs’ claims on multiple grounds. Should this Court grant defendants’ motion, plaintiffs fear they will remain in prison for the rest of their lives, on sentences that failed to adequately consider their youth and immaturity at the time of the offenses. The Supreme Court has weighed in that these factors should be considered. *See, e.g., Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718, 733-34 (2016); *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455, 2469 (2012). Plaintiffs ask that they be allowed to be present at this potentially dispositive hearing.

On December 19, 2016, Counsel for plaintiffs, Barry Fleishman, spoke with counsel for defendants, Michael Doyle, who advised that defendants do not object to this motion.

For the foregoing reasons, plaintiffs respectfully urge this Court to grant their Consent Motion for Writ of Habeas Corpus, permitting them to be present to witness the January 4, 2017 oral arguments in their case.

Dated: December 20, 2016

Respectfully Submitted,

/s/ _____

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Counsel for Plaintiffs

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ORDER ON PLAINTIFFS’ CONSENT MOTION FOR WRITS OF HABEAS CORPUS

Upon consideration of Plaintiffs’ Consent Motion for Writ of Habeas Corpus, it is ORDERED:

1. Plaintiffs’ motion is GRANTED; and
2. The attached Writs of Habeas Corpus are signed, and plaintiffs are directed to forward said Writs to the United States Marshal’s Service and the wardens at Jessup Correctional Institution and Eastern Correctional Institution East in Westover.

Date

Ellen L. Hollander
United States District Judge

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v.

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WRIT OF HABEAS CORPUS

TO: United States Marshal, District of Maryland, and

(Check all that apply. Note: if prisoner is in the custody of the Maryland Division of Correction, box for Transportation Unit MUST be checked.)

Warden
Eastern Correctional Institution East
30420 Revells Neck Rd.
Westover, MD 21890

Transportation Unit
MRDCC
550 East Madison Street
Baltimore, Maryland 21202

Greetings:

YOU ARE HEREBY COMMANDED to produce the body of Nathaniel Foster, I.D. No. # 174-966, D.O.B. 12/19/1965, who is presently in your care, custody and control, for official proceedings, at the United States Courthouse for the District of Maryland, 101 West Lombard Street, Baltimore, Maryland, 21201 at 10:00 a.m., on January 4, 2017. **YOU ARE FURTHER COMMANDED** to return the prisoner back to his original place of incarceration at the conclusion of the proceedings.

Let this writ be issued as prayed this ____ day of _____, 20__.

Ellen L. Hollander
United States District Judge

Felicia C. Cannon, Clerk

By:

Deputy Clerk Name., Deputy Clerk

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WRIT OF HABEAS CORPUS

TO: United States Marshal, District of Maryland, and

(Check all that apply. Note: if prisoner is in the custody of the Maryland Division of Correction, box for Transportation Unit MUST be checked.)

Warden

Jessup Correctional Institution
7800 House of Correction Road
Jessup, MD 20794

Transportation Unit

MRDCC
550 East Madison Street
Baltimore, Maryland 21202

Greetings:

YOU ARE HEREBY COMMANDED to produce the body of Calvin McNeill, I.D. No. 163182, D.O.B. 7/16/64, who is presently in your care, custody and control, for official proceedings, at the United States Courthouse for the District of Maryland, 101 West Lombard Street, Baltimore, Maryland, 21201 at 10:00 a.m., on January 4, 2017. **YOU ARE FURTHER COMMANDED** to return the prisoner back to his original place of incarceration at the conclusion of the proceedings.

Let this writ be issued as prayed this ____ day of _____, 20____.

Ellen L. Hollander
United States District Judge

Felicia C. Cannon, Clerk

By:

Deputy Clerk Name., Deputy Clerk

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WRIT OF HABEAS CORPUS

TO: United States Marshal, District of Maryland, and

(Check all that apply. Note: if prisoner is in the custody of the Maryland Division of Correction, box for Transportation Unit MUST be checked.)

Warden

Jessup Correctional Institution
7800 House of Correction Road
Jessup, MD 20794

Transportation Unit

MRDCC
550 East Madison Street
Baltimore, Maryland 21202

Greetings:

YOU ARE HEREBY COMMANDED to produce the body of Kenneth Tucker, I.D. No. 130850, D.O.B. 6/28/56, who is presently in your care, custody and control, for official proceedings, at the United States Courthouse for the District of Maryland, 101 West Lombard Street, Baltimore, Maryland, 21201 at 10:00 a.m., on January 4, 2017. **YOU ARE FURTHER COMMANDED** to return the prisoner back to his original place of incarceration at the conclusion of the proceedings.

Let this writ be issued as prayed this ____ day of _____, 20____.

Ellen L. Hollander
United States District Judge

Felicia C. Cannon, Clerk

By:

Deputy Clerk Name., Deputy Clerk