

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

JAMAAL CAMERON; RICHARD
BRIGGS; RAJ LEE; MICHAEL
CAMERON; MATTHEW
SAUNDERS, individually and on
behalf of all others similarly situated,

Case 2:20-cv-10949-LVP-MJH

Plaintiffs,

v.

MICHAEL BOUCHARD, in his
official capacity as Sheriff of Oakland
County; CURTIS D. CHILDS, in his
official capacity as Commander of
Corrective Services; OAKLAND
COUNTY, MICHIGAN,

Defendants.

DEFENDANTS' PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

NOW COME Defendants, MICHAEL BOUCHARD, CURTIS D. CHILDS and
OAKLAND COUNTY, by and through their attorneys, POTTER DeAGOSTINO
O'DEA & CLARK, and hereby file the following as their Proposed Findings of Fact
and Conclusions of Law.

The Court's TRO found, based upon Plaintiff's allegations, that OCJ had not imposed even the most basic safety measures recommended by health experts. (ECF No. 21). This factual conclusion has no basis in the record below.

1. Oakland County Jail ("OCJ") personnel first began meeting regarding COVID-19 ("C-19") at the end of February/beginning of March. (Preliminary Injunction Transcript ("PIT") Vol. 1, 111:8-12)

2. On March 11th Capt. Childs distributed a memo to the jail staff regarding cleaning to limit the spread within OCJ. (PIT Vol. 2, 190:24-25, 191:1-3, ECF 30-3)

3. On March 13th OCJ stopped all visitation. (PIT Vol. 2, 193:13-22)

4. On March 18th OCJ initiated new arrest screenings for C-19. (PIT Vol. 2, 194:23-195:5)

5. On March 19th OCJ posted a memo from Capt. Childs advising inmates of the risks associated with C-19 and precautions that should be taken. (PIT Vol. 2, 211:5-18, and ECF 30-7)

6. On March 20th OCJ initiated its first prison release program. (PIT Vol. 2, pg 195:20-25, 197:5-25, 198:1)

7. 166 inmate names were sent to **state courts** for consideration of early release, 42 of these 166 individuals were identified as medically vulnerable. Of the 166, 110 inmates were released, **all by state court judges**, 27 of whom were medically

vulnerable. (PIT Vol. 2, 198:6-27, ECF No. 30-1)

8. On March 24th OCJ started quarantining new arrests for 14 days in two-person cells. (PIT Vol. 2, 195:9-16, 15:14–16:8)

9. OCJ quarantines inmates who have symptoms of C-19 and any inmate who has had contact with a symptomatic inmate. (PIT Vol. 2, 20:12-19, 25:14-26:2)

10. Inmates who are in symptomatic quarantine are checked three times a day with a full set of vitals including a temperature check. If an inmate tests positive they are placed in the positive C-19 cells. (PIT Vol. 2, 21:4-11, 21-25, 22:1-13, Vol. 1 127:15-18)

11. Inmates in symptomatic and C-19 positive quarantine are in areas that cannot be accessed from inside the pods. (PIT Vol. 2, 24:16-25, 25:1)

12. When an inmate is quarantined his remaining cell mates and the rest of the cells in his row are quarantined. (PIT Vol. 2, 26:8-15)

13. Quarantine is for 14 days. To be removed from quarantine, an inmate must have a normal temperature for three consecutive days, have no other symptoms and test negative if previously tested positive. (PIT Vol. 2, 26:20-25, 27:1-13)

14. As of March 26, 2020, all jail staff are screened for C-19 symptoms and their temperatures are taken daily. All jail staff are trained in recognizing C-19 symptoms. (PIT, Vol 3A, 61:23-25,62:1-5, ECF No. 77, ECF No. 75)

15. On April 9th level one masks were distributed to all inmates. (PIT Vol. 2, 209:5-24)

16. On April 7th an additional order of 5,000 cloth masks was made which were distributed after they were received. (PIT Vol. 2, 210:3-13, and ECF No. 74)

17. On April 8th a second prisoner release was discussed by jail staff based upon medical vulnerability. (PIT Vol. 2, 201:12-25, and ECF No. 73)

18. CDC requirements for a correctional facility require the correctional facility to social distance to the extent practical and, when not practical, implement alternative strategies. (PIT Vol. 2, 152:7-10)

19. Prior to the lawsuit OCJ developed alternative strategies to social distancing which included canceling group activities, using prepackaged meals for food service, utilizing a UVI disinfecting machine and cleaning and sanitizing as much as possible. (PIT Vol. 2, 153:11-25, 154:1-4, Vol 3A, 71:21-72:5, ECF 30-2)

20. All inmates have access to a disinfectant called DMQ, which is effective against C-19. It is available to all inmates when requested and provided no less than three times per day during food delivery. (ECF No. 30-2, ECF No. 30-7)

21. From the end of March through the present, Capt. Childs has further attempted to create social distancing by reducing cell numbers dependent upon inmate classification. (PIT Vol. 2, 206:5-24, ECF No. 67 and 68)

22. As a result of OCJ's efforts the jail population has been reduced from 1,156 on March 20th to 664 on May 1st. (PIT Vol. 2, 208:17-25, 209:1-4, ECF 67)

23. The onsite jail clinic is staffed 24/7 by medical professionals. (PIT Vol. 2, 42:23-47:14)

24. OCJ's protocol with regard to inmates advising of any medical condition is to have jail clinic staff pass out sick call slips daily which are collected daily. Inmates can also advise a corrections officer that they need medical attention. (PIT Vol. 1, 123:9-17, Vol. 2, 110:20-23)

25. OCJ has a contract with McLaren Pontiac Hospital to receive inmates who need medical treatment. McLaren has never advised OCJ that they did not have capacity for jail inmates. (PIT Vol. 2, 35:5-16)

26. Jail clinic staff can identify any medically vulnerable inmate who needs special medical treatment which determines where they will be housed. (PIT Vol. 2, 47:17-25, 48:1-25, 49:1-11)

27. After receiving 1,000 test kits from the Oakland County Health Dept., medically vulnerable inmates were identified as a priority to be tested. (PIT Vol. 2, 78:5-11)

28. Since May 1st, the entire inmate population has been tested or refused testing. 468 inmates were tested and 186 refused. Only 3 inmates tested positive. (ECF

No. 83-1)

29. As of May 6th, the jail had ten current confirmed cases of C-19. No OCJ inmate has died from C-19 nor required hospitalization. (PIT Vol. 2, 35:17-22, 32:16-33:5, ECF No. 30-2)

Applicable Law & Proposed Conclusions of Law

1. “Federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States.” *Meachum v Fano*, 427 US 215, 229 (1976)

2. “A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it.” *Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 573 (6th Cir. 2003).

3. “It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.” *Farmer v Brennan*, 511 US 825, 836 (1994). The prison official's state of mind must evince “deliberateness tantamount to intent to punish.” *Miller v Calhoun County*, 408 F3d 803, 813 (6th Cir.2005). **The Court finds as a matter of law that Plaintiffs have not demonstrated a substantial likelihood of success on the issue of deliberate indifference and that Plaintiffs have failed to meet their burden for a preliminary injunction.**

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Dated: May 13, 2020

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all participating attorneys.

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