

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

CHARLES RUSSELL;
CHRISTOPHER HUBBARD;
HARRY WHITE; CARL
SMELLEY; SHANE CARLINE;
and COURTNEY WHITE,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WAYNE COUNTY, MICHIGAN;
BENNY NAPOLEON, in his official
capacity as Sheriff of Oakland County;
DANIEL PFANNES, in his official
capacity as the Undersheriff for the
Wayne County Sheriff's
Office; ROBERT DUNLAP, in his
official capacity as Chief of Jails and
Court Operations; JAMES E. DAVIS,
in his official capacity as Deputy Chief
of Jail Operations,

Defendants.

Case No. 2:20-cv-11094-MAG-
EAS

**EMERGENCY MOTION FOR EXPEDITED CONSIDERATION OF
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

Due to overcrowding, mismanagement, and the onset of the COVID-19 pandemic, all three Divisions of the Wayne County Jail—two in Detroit and one in Hamtramck, Michigan—are currently facing a dire public health emergency. *See* Compl. ¶¶ 64-108. Many people in the Jail, including six named

Petitioners/Plaintiffs, are medically vulnerable and their lives are at imminent risk. Absent immediate relief, the disease will spread rapidly inside the Jail, and, as a result, more people inside *and* outside the Jail will become infected and will likely die. This Court has the power and the opportunity to order immediate relief that will save lives.

On Monday, May 4, 2020, Petitioners/Plaintiffs filed their Complaint and Emergency Motion for Temporary Restraining Order requesting immediate relief, including the implementation of basic safeguards inside the jail and the immediate release of people who are over 50 years old or otherwise medically vulnerable. Petitioners/Plaintiffs now request the Court enter their proposed temporary restraining order (TRO) immediately and without a hearing because any delay would cause severe illness or death. In the alternative, Plaintiffs request that the Court conduct a hearing no later than Wednesday, May 6, 2020, to consider and rule upon the relief requested in Petitioners'/Plaintiff's motion for TRO.

Expedited consideration would address the immediate need for relief given the imminent dangers posed by a COVID-19 outbreak in the jail. And expedited consideration would not prejudice any party. The Centers for Disease Control and Prevention (CDC) has already issued guidance regarding hygiene, social distancing, screening, and testing measures in jails and prisons.¹ Weeks ago, the Governor

¹ See Compl. Ex. 7, Interim Guidance on Management of Coronavirus Disease

issued an Executive Order setting forth risk-reduction protocols for jails and other detention facilities.² At a minimum, it should not be difficult for the parties to litigate, and for the Court to decide, on an expedited basis, that Defendants should be ordered to comply with those guidelines and orders. Indeed, this aspect of the proposed TRO does little more than request Defendants' compliance with the medical and legal standards established in the status quo. Under the circumstances, including the imminent risk of severe illness, injury, and death caused by the conditions in the Jail, expedited consideration is critical to avoid irreparable harm.

As to release of the Medically Vulnerable Subclass, every day these individuals spend behind bars literally puts their lives in jeopardy. If the Court enters the proposed TRO and orders a hearing on Wednesday, it would mean that the Court and counsel would have a list of all medically vulnerable individuals detained at the Jail for consideration of a release order at the proposed hearing. Adoption of Petitioners'/Plaintiffs' proposed expedited timeline will, quite literally, save lives.

2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control & Prevention (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidancecorrectional-detention.html>.

² *Michigan Executive Order No. 2020-29 Temporary COVID-19 protocols for entry into Michigan Department of Corrections facilities and transfers to and from Department custody; temporary recommended COVID-19 protocols and enhanced early-release authorization for county jails, local lockups, and juvenile detention centers* (Mar. 29, 2020), https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-523423--,00.html

Local Rule 7.1(a) requires Plaintiffs to ascertain whether this motion will be opposed. Because this motion is being filed contemporaneously with the complaint, there is not yet an attorney of record for Defendants in this case. Plaintiffs' counsel emailed and left a voicemail with the Wayne County Corporation Counsel's office and the Wayne County Sheriff's Office counsel to explain the nature of this motion and its legal basis. Plaintiffs' counsel was unable to reach Wayne County Corporation Counsel. David Melton, on behalf of the Wayne County Sheriff's Office, indicated that he does not concur in the motion.

Given the urgent nature of the issues raised in Petitioners'/Plaintiffs' motion and the imminent risk of severe harm, it is Petitioners'/Plaintiffs' position that the Court should decide the motion and enter a TRO immediately, even if a full merits determination has to be made at a later date.

Lessons can be learned from the staggering speed at which the virus has spread inside other carceral environments. Rikers, which has been described at a "public health disaster," now has a rate of infection that is nearly five times higher than New York City, over 30 times higher than the rest of America, and far higher than the infection rates of the most infected regions of the world.³ Similarly, the

³ The Legal Aid Society, *COVID-19 Infection Tracking in NYC Jails* (updated May 1, 2020), <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last visited May 3, 2020).

Cook County Jail went from two confirmed COVID-19 cases on March 23 to more than 350 confirmed cases (238 detainees and 115 staff members) two weeks later;⁴ one month later, the confirmed cases have more than doubled, resulting in the deaths of six detainees.⁵

The Wayne County Jail has 29 confirmed positive cases amongst detainees and almost 200 amongst staff as of April 30, 2020.⁶ Based on the comparators from other major jail systems, this number has likely already multiplied exponentially. *See, e.g.*, Compl. Ex. 1, Declaration of Dr. Adam Luring ¶¶ 10-11. Dr. Luring has detailed why the conditions in the Wayne County Jail and the Jail's deficient response to this pandemic are likely to lead to tragic outcomes if left to fester for any period of time. *See id.* ¶¶ 28-43, 45-46 (explaining how the specific conditions described by detainees at the jail present an immediate danger to their health and the public at large). Based on his professional medical opinion about the disease and

⁴ Timothy Williams & Danielle Ivory, *Chicago's Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars*, N.Y. Times (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

⁵ Andy Grimm, *Cook County Jail director defends handling of COVID-19 outbreak*, Chi. Sun Times (Apr. 23, 2020), <https://chicago.suntimes.com/coronavirus/2020/4/23/21233570/cook-county-jail-covid-19-outbreak-tom-dart>.

⁶ Ross Jones, *Huge disparity among local jails testing for COVID-19*, Channel 7 Detroit WXYZ (April 30, 2020), <https://www.wxyz.com/news/local-news/investigations/huge-disparity-among-local-jails-testing-for-covid-19>.

the Jail's conditions, Dr. Lauring recommends the "urgent" release of medically vulnerable individuals and sufficient individuals to reduce the population size to permit effective social distancing practices, noting that "[t]he horizon of risk for COVID-19 in this facility is a matter of days, not weeks." *See id.* ¶¶ 42-45. There cannot be any more urgent situation in which Petitioners'/Plaintiffs' request for expedited consideration could be made.

Notably, in an analogous case seeking the same relief against the Oakland County Jail—where detainees are held in similarly problematic conditions as the Petitioners/Plaintiffs here—this court issued a temporary restraining order on the same day the case was filed.⁷ There is no reason that the same relief should not issue in Wayne County.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above and in their Complaint and Emergency Motion for Temporary Restraining Order, Petitioners/Plaintiffs request that this Honorable Court grant the request for expedited consideration and enter Petitioners'/Plaintiffs' proposed Temporary Restraining Order immediately and without a hearing. In the alternative, Petitioners/Plaintiffs request that the Court conduct a hearing no later than Wednesday, May 6, 2020, to consider and rule upon the relief requested in

⁷ *See Cameron v. Bouchard*, No. 20-cv-10949, 2020 WL 1929876, at *2-3 (E.D. Mich. Apr. 17, 2020) (Parker, J.).

Petitioners'/Plaintiffs' Emergency Motion for Temporary Restraining Order.

Respectfully submitted,

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*Applications for admission forthcoming

DATED: May 4, 2020

CERTIFICATE OF SERVICE

I affirm that this Emergency Motion for Expedited Consideration and will be served concurrently with, and in all the same manners as, the service of the Summons and Complaint, the Emergency Motion for Temporary Restraining Order and Preliminary Injunction, and the Motion for Class Certification in this matter.

/s/Allison L. Kriger

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