

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ALEXANDER GRINIS, MICHAEL
GORDON, and ANGEL SOLIZ, on behalf of
themselves and those similarly situated,

Petitioners,

v.

STEPHEN SPAULDING, Warden of Federal
Medical Center Devens, and MICHAEL
CARVAJAL, Director of the Federal Bureau
of Prisons, in their official capacities,

Respondents.

Civil Action No. 20-cv-10738-GAO

RESPONDENTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Respondents in the above-captioned action respectfully submit the following court of appeals decisions as supplemental persuasive authority for this Court's consideration of the pending motions now before this Court:

1. *Swain v. Junior*, -- F.3d --, 2020 WL 2161317 (11th Cir. May 5, 2020), attached hereto as Exhibit A.

In *Swain*, the plaintiffs sought declaratory and injunctive relief on behalf of the class claiming violations of the Eighth and Fourteenth Amendments, and seeking immediate release from custody pursuant to 28 U.S.C. § 2241. The plaintiffs challenged measures taken by the state prison to halt the spread of COVID-19. The district court granted a preliminary injunction, required defendants to take certain safety measures, and imposed reporting requirements on the prison. The defendants moved for a stay pending appeal.

The Eleventh Circuit court granted defendants' motion for a stay, finding that the district court likely committed error in granting a preliminary injunction. The court analyzed many of the

same issues now before this Court, including: likelihood of success on the merits of plaintiffs' Eighth Amendment claim, and, specifically, what constitutes "deliberate indifference;" discussed the court's assumption of administrative decisions customarily left to the discretion of prison officials; and reviewed exhaustion under the Prison Litigation Reform Act ("PLRA").

2. *Valentine v. Collier*, -- F.3d --, 2020 WL 1934431 (Apr. 22, 2020), attached hereto as Exhibit B.

Plaintiffs brought a class action alleging Eighth Amendment violations and challenging the measures the state prison system put in place to prevent the spread of COVID-19. The district court granted the plaintiffs' motion for preliminary injunction and required the defendants to take specific measures. Defendants appealed.

The Fifth Circuit entered a stay of the injunction pending appeal, found that defendants were likely to prevail on appeal, and analyzed the measures the prison took under the Eighth Amendment, and the standard for "deliberate indifference;" discussed the court's assumption of administrative decisions left to the discretion of prison officials; and reviewed the PLRA's exhaustion requirement, and the permissible scope of a remedial injunction under the PLRA.

Respectfully submitted,

ANDREW E. LELLING
United States Attorney

By: /s/ Eve A. Piemonte
Eve A. Piemonte
Assistant United States Attorney
United States Attorney's Office
John J. Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3369
Eve.Piemonte@usdoj.gov

Dated: May 7, 2020