

**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 supplemental persuasive authority for this Court's consideration of the pending motions now before this Court:

1. *Wilson v. Williams*, No. 20-3447 (6th Cir. June 9, 2020), Order, ECF No. 54-1, attached hereto.

Petitioners filed a petition pursuant to 28 U.S.C. § 2241 to obtain release from custody to limit their exposure to COVID-19. *Wilson*, ECF No. 54-1, at 2¹. The appeals court held that jurisdiction to consider petitioners' claims under § 2241 was proper, although the statute precluded some of the relief petitioners sought. *Id.* The court found that the district court erred in concluding that petitioners showed a likelihood of success on the merits of their Eighth Amendment claim, and found that the court abused its discretion in granting a preliminary injunction. *Id.*, at 2-3.

¹ Page numbers are to the court's decision, rather than the ECF filing.

In a case where 59 inmates and 46 staff members tested positive for COVID-19, and there were six inmate deaths, the appeals court found that the Bureau of Prisons took preventative measures to reduce the risk of COVID-19 spread at the institution (FCI Elkton), including efforts to expand testing, which the court found “demonstrate[d] the opposition of a disregard of a serious health risk.” *Id.*, at 16-17. Analyzing cases in the Sixth, Eleventh, and Fifth Circuits, the court concluded that the actions taken by prison officials in responding to the pandemic demonstrated a “reasonable response.” *Id.*, at 18-19. Indeed, as the court acknowledged, in finding no likelihood of success on petitioners’ Eighth Amendment claim “our precedents do not require that prison officials take every possible step to address a serious risk of harm.” *Id.*, at 21 (case citations omitted).

2. *Chunn v. Edge*, No. 20-cv-01590-RPK-RLM, Memorandum and Order, (E.D.N.Y. June 9, 2020), ECF No. 112, attached hereto.

In *Chunn*, the petitioners challenged the conditions at Metropolitan Detention Center (“MDC”) Brooklyn’s response to the COVID-19 pandemic, claiming violation of the Eighth Amendment. Petitioners sought a preliminary injunction that would release all MDC inmates whose age or medical condition placed them at heightened risk from the virus. *Chunn*, ECF No. 112, at 1.

In denying petitioners’ request for injunctive relief, the court concluded that petitioners failed to show “a clear likelihood that MDC officials have acted with deliberate indifference to substantial risks in responding to COVID-19. Rather than being indifferent to the virus, MDC officials have recognized COVID-19 as a serious threat and responded aggressively.” *Id.*, at 2. These measures included “massively restricting movement within the facility, enhancing sanitation protocols, and creating quarantine and isolation units.” *Id.*, at 53; 56 (citing “dozens of measures” imposed by MDC). Noting some deficiencies in MDC’s implementation of CDC

guidelines, the court found “the facility’s aggressive response to a public health emergency with no preexisting playbook belies the suggestion that these apparent deficiencies are the product of deliberate indifference on the part of prison officials.” *Id.*, at 2, 59 (“Shortfalls in the immediate implementation of guidelines this complex and resource-intensive do not suggest knowing disregard of a substantial risk of harm, rather than negligent error.”).

Accordingly, Respondents respectfully request that the Court consider this supplemental authority and deny Petitioners’ motion for reconsideration for the reasons set forth, *supra*, and as set forth in Respondents’ opposition to the motion.

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: June 10, 2020