

## Hadix v. Caruso

United States District Court for the Western District of Michigan, Southern Division

June 5, 2007, Decided ; June 5, 2007, Filed

Case No. 4:92-CV-110

**Reporter:** 2007 U.S. Dist. LEXIS 40727

EVERETT HADIX, et al., Plaintiffs, v. PATRICIA CARUSO, et al., Defendants.

**Subsequent History:** Motion granted by, in part, Motion denied by, in part Hadix v. Caruso, 2007 U.S. Dist. LEXIS 42216 (W.D. Mich., June 11, 2007)

**Prior History:** Hadix v. Caruso, 2007 U.S. Dist. LEXIS 33040 (W.D. Mich., May 4, 2007)

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For Barry Mintzes, Charles Anderson, William F. Grant, Dale Foltz, Daniel Trudell, Duane Sholes, John Jabe, James Pogats, Roy Rider, Charles Ustess, Don P. Leduc, Robert Brown, Jr., Graham Allen, Elton I. Scott, Pamela Withrow, Frank Elo, Marjorie Van Ochten, John Prelesnik, Patricia L. Caruso, defendants: A. Peter Govorchin, Leo H. Friedman, LEAD ATTORNEYS, MI Dept Attorney General (Corrections), Corrections Division, Lansing, MI.

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**Judges:** Richard Alan Enslin, SENIOR UNITED STATES DISTRICT JUDGE.

**Opinion by:** Richard Alan Enslin

### Opinion

This matter is before the Court to address in expedited fashion the subject of whether Defendants' heat-related injury plan should receive Court approval. The parties have provided expedited briefing on the subject. The expedition of the process has been necessary because the plan is to be implemented by July 15, 2007 and any delay

in its implementation is likely to prevent any effective remedy during the warmest of the 2007 heat alert days. While the Court would like to entertain oral argument on this matter, the Court's present scheduling and the pressing nature of the remedy do not permit such.

In order to understand the scope and nature of the remedy needed, one must revisit the Court's Findings of Fact and Conclusions of Law of April 3, 2007 (hereafter "Findings"). This Court found based on one-sided medical testimony presented during the January 2007 hearing that the present summer conditions at the *Hadix* facilities pose an unacceptable risk of heat-related injury to those *Hadix* prisoners classified at high risk for heat-related injury. [\*4] (See Findings PP 8-9, 11-12, 16, 18-20, 31, 34, 42-43.) The *Eighth Amendment to the United States Constitution* requires that prisoners be housed in humane conditions of confinement which do not expose them to life-threatening conditions. See *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976); *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994); *Helling v. McKinney*, 509 U.S. 25, 33-34, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993). While the *Eighth Amendment* only prohibits deliberate indifference to known unconstitutional conditions, once prison officials are put on notice of those conditions in the context of an ongoing litigation, their failure to correct the conditions will warrant injunctive relief to prevent further exposure to life-threatening conditions. See *Hadix v. Johnson*, 367 F.3d 513, 526 (6th Cir. 2004).

In light of such legal requirements, this Court found that a Permanent Injunction should enter requiring Defendants to house prisoners at high risk for heat-related injury within facilities with a reliable heat-index below 90. Defendants have complied with the Permanent Injunction by forwarding a plan for Court approval which provides for: (1) the use of [\*5] temporary air conditioning units (trailer-based units) for Blocks 4, 5, and 6 on heat alert days; and (2) the use of a "Cool Dome" air-conditioned facility on the grounds of the Egeler Reception and Guidance Center ("RGC") to house RGC and 7 Block at-risk prisoners during heat alert days. Defendants believe that this plan, though not without some discomfort and inconvenience for some of the affected prisoners, would

provide a sufficient remedy to comply with the Court's requirements and would prevent avoidable heat-related injury. (See Defs.' Resp. 2-5; 2nd Supplement 1-3.) Defendants also foresee that the use of the Cool Dome could serve other department needs during the non-summer seasons by providing additional space for needed storage and/or staff usage. (Defs.' Resp. at 5-7.)

Plaintiffs have objected to the plan. Plaintiffs express concern that the operation of the Cool Dome would expose prisoners to undue risk of physical violence from other prisoners, would fail to provide adequate sanitation (because prisoners would have to leave the Cool Dome to use restroom facilities), would disrupt the delivery of medications and medical care to affected prisoners, would jeopardize [\*6] prisoner access to their personal property including court papers, and would provide inadequate facilities which do not accommodate the needs of handicapped prisoners. Plaintiffs also express concern that the Cool Dome remedy, as implemented, may be waived by prisoners, such that it may not be utilized by a sufficient number of them to render it effective. The Court, has reviewed these arguments with a shared concern for the plight of the affected prisoners. Plaintiffs have also filed evidence (the Affidavit of Clarence Moore) which supports the notion that prison officials may have retaliated against prisoners in Blocks 4-7 for exercising their rights under the *Eighth* and *First Amendments to the Constitution*.<sup>1</sup>

[\*7] Notwithstanding, the terms of the Prison Litigation Reform Act, 18 U.S.C. § 3626(a)(1), require that prospective relief be limited and that intrusions upon public institutions not adversely impact their operations:

Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the

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<sup>1</sup> Defendants, post-briefing, filed a "Status Report." which attempted to contradict Mr. Moore's characterization of their conduct as retaliatory. While Defendants do not deny that some regular services are being denied *Hadix* prisoners, they represent that the denials are not retaliatory in nature (*i.e.*, postal services were denied due to temporary malfunction of a postage machine and other services were temporarily suspended due to the projected closing date of prison facilities). Defendants do not dispute, however, the concept, firmly established in Sixth Circuit law, that they are not free to retaliate for the exercise of *First Amendment* rights. See *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (*en banc*). Plaintiffs have also moved to strike the Status Report since it is made without evidentiary support. While Plaintiffs' Motion to Strike will be denied given the limited authority of the Court to strike pleadings under *Rule 12(f)*, see *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distributors Ptv. Ltd.*, 207 U.S. App. D.C. 375, 647 F.2d 200, 201 (D.C. Cir. 1981), it is significant that Defendants' representations are not supported by affidavit, declaration or deposition.

Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. 18 U.S.C. § 3626(a)(1). Furthermore, the traditional stance in equity of the courts is to provide public officials with sufficient discretion in implementing effective remedies and to pay special attention to the public consequences of injunction relief. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-12, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982); [\*8] *Knop v. Johnson*, 977 F.2d 996, 1008 (6th Cir. 1992).

Given the lateness of the season and the flexibility which must be afforded to public administrators in administering constitutional remedies, the Court's only choice at this point of time is to approve Defendants' chosen heat-related remedies for this season with conditions to make the implementation of the remedy consistent with constitutional standards. To do otherwise would be to lose the 2007 summer season without an effective remedy.

As such, Defendants' remedy will be approved subject to the following conditions:

(1) Defendants shall take steps to ensure that all Cool Dome prisoners with disabilities shall be provided with accommodations for their disabilities consistent with Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* Defendants' plans to do so shall be shared with Plaintiffs and the Court on a timely basis.

(2) Defendants shall provide at no cost to the Cool Dome prisoners locks to secure property at RGC (and also Block 7, if necessary) and messengers to retrieve property when there is an urgent reason for doing so (*i.e.*, access to medication, [\*9] access to court papers in order to meet a filing date, *etc.*)

(3) Defendants shall ensure that American Public Health Association standards for sanitation (toilets and washbasins) are met as to Cool Dome prisoners, namely at least one toilet and one sink per every eight prisoners within the Cool Dome shall be provided. At least, one third of those toilet/sink combinations shall be provided inside the Cool Dome and the remainder shall be provided immediately outside the facility. These facilities shall be maintained in a sanitary condition during occupancy. <sup>2</sup> The

Monitor shall also verify the lists for those to be housed in the Cool Dome and may add additional prisoners at risk of heat-related injury to the list based upon his review of patient records and independent clinical judgment.

(4) Defendants shall plan and take active steps to ensure that Cool Dome housing does not interfere with prisoner access to medical care and prescriptions and shall share such plans on a timely basis with both Plaintiffs and this Court.

(5) Defendants shall plan and take active steps to ensure that Cool Dome housing does not pose any unnecessary security risk to prisoners and shall share such [\*10] plans on a timely basis with both Plaintiffs and this Court.

(6) Defendants shall cease and desist from punitive measures (including the non-provision of regular services afforded other inmates) which retaliate against class members for exercising their constitutional rights.

(7) Defendants shall file with the Court not later than June 15, 2007 an implementation schedule for the heat-related remedies described herein together with affidavits of responsible officials attesting to the feasibility of the implementation by July 15, 2007, the effectiveness of Defendants' plans to meet the Court's required conditions, and the steps which have been taken to eliminate any retaliation against prisoners.

(8) Defendants shall survey the percentage of prisoners who do not utilize the Cool Dome remedy and shall report to the Court by September 30, 2007 both the percentage of prisoners not utilizing the remedy and the reasons given for not utilizing the remedy by the prisoners who waive it. Prior to accepting a waiver, Defendants shall provide the prospective Cool Dome prisoner with a copy of this Opinion and the Order implementing it, and shall advise each prisoner that the Court has ordered [\*11] the remedy to be implemented consistent with constitutional standards. Plaintiffs may, but are not required to, file a motion not later than October 15, 2007 seeking a different remedy for the 2008 summer season.

Accordingly, an Order shall enter approving Defendants' heat-related injury plan subject to the conditions set forth herein.

DATED in Kalamazoo, MI:

June 5, 2007

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<sup>2</sup> See American Public Health Association Task Force on Correctional Health. *Standards for Health Services in Correctional Institutions* 151-52 (3d Ed. 2003) (setting forth the one to eight ratio as the proper standard for sinks/toilets in a dormitory setting). The above health standards reflect a recognition of the need for basic sanitation within living quarters. This is also very necessary for the *Hadix* population given that many of the inmates have health conditions which contribute to frequent urination (enlarged prostate, diabetes, *etc.*).

/s/ Richard Alan Enslin

SENIOR UNITED STATES DISTRICT JUDGE

**ORDER**

[\*12] This matter is before the Court to consider the approval of Defendants' dialysis transfer plan, as supplemented. The request for approval is now made with the consent of all parties, though Plaintiffs and the Office of the Independent Medical Monitor have requested that transfer approval be premised upon some conditions of which Defendants disapprove. The Court has also received prisoner correspondence requesting that the dialysis transfer plan be approved. Oral argument or other hearing is unnecessary in light of the basic agreement as to the transfer.

Upon review of these matters, including the prisoner correspondence, the Court will approve the transfer of the dialysis unit and dialysis unit patients, even though the approval of an overall transfer plan regarding prisoners at the Southern Michigan Correctional Facility (also known as the Josephine McCallum Facility or "JMF") is still pending. The Court finds that the purposes of the Preliminary Injunction and equity jurisdiction, which prevented transfer without Court approval, in this case warrant approval of the transfer because the transfer is not likely to endanger prisoners beyond the very significant dangers and failures [\*13] of care present at the *Hadix* facilities. In saying so, the Court is not endorsing either the level of care at the *Hadix* facilities or the expected level of care at the Ryan Correctional Facility. The record specifies rather clearly that there are serious deprivations of medical care affecting dialysis patients, including, but not limited to, a failure by Defendants to provide timely chronic care, a failure to provide timely medication renewal of chronic medications, and a failure by Defendants to provide timely access to specialty care, among other problems. These problems, as recognized by the parties, are likely to continue upon transfer. Notwithstanding, the logic of equity currently favors such transfer because Defendants themselves have begun to focus their efforts at dialysis care at the Ryan facility such that retaining the prisoners at

the *Hadix* facilities will predictably result in more deprivations of care than would occur at the Ryan facility (given Defendants' channeling of resources to the Ryan facility).

In making this approval, the Court does so subject to the endorsement of the transfer conditions deemed necessary in the Report of the Office of the Independent [\*14] Medical Monitor and by Plaintiffs, including, but not limited to, the compliance by Defendants with the remedial framework established in the *Hadix* suit, the limitations on the use of physical restraints, and the continued use of monthly meetings to address deprivations in care. The exercise of jurisdiction over the Ryan facility and medical monitoring shall be limited to the care and treatment of patients of the dialysis unit and shall cease as soon as compliance with *Eighth Amendment* standards is demonstrated by Defendants. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 55-58, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991) (describing inherent authority of federal courts to ensure that decrees are not frustrated); see also *Hadix v. Johnson*, 367 F.3d 513, 518 n.7 (6th Cir. 2004) (stating that judicial efficiency requires continuance of jurisdiction notwithstanding transfers).

**THEREFORE, IT IS HEREBY ORDERED** that Defendants' dialysis transfer plan, as supplemented, is **APPROVED** subject to Defendants' compliance with the conditions of transfer sought by the Office of the Independent Medical Monitor and by Plaintiffs.

**IT IS FURTHER ORDERED** that the exercise of jurisdiction [\*15] over the Ryan Correctional Facility and the medical monitoring of the same shall be limited to the care and treatment of patients of the dialysis unit and shall cease as soon as compliance with *Eighth Amendment* standards is demonstrated by Defendants.

DATED in Kalamazoo, MI:

June 5, 2007

/s/ Richard Alan Enslin

SENIOR UNITED STATES DISTRICT JUDGE