



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

June 3, 2020

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Mark Williams v. Craig Wilson,
No. 19A1047

Dear Mr. Harris:

Yesterday, June 2, 2020, counsel for respondents contacted the Office of the Solicitor General, questioning the accuracy of the government's statements in its stay application (1) that "absent a stay, BOP must begin to transfer inmates out of Elkton on June 5," Stay Appl. 4, and (2) that "the district court has required the removal of more than 800 inmates from Elkton to begin June 5," *id.* at 7. The application's statements are correct.

Respondents' objection appears to be merely that the district court's orders do not *expressly designate* June 5 as the fixed date when removals from Elkton must commence. That is of course true, and the government's stay application did not say otherwise. Instead, as the quotes above themselves make clear, the government's stay application simply said that the district court's orders require the removal of Elkton inmates beginning on June 5 absent a stay. Respondents do not themselves appear to disagree that this is the effect of the district court's orders.

More specifically, the district court's April 22 injunction required the government to evaluate inmates in the subclass for various forms of relief within 14 days (that is, by May 6), and then to "transfer[] to another BOP facility" members of the inmate subclass "who are ineligible for compassionate release, home release, or parole or community supervision," subject to the requirement that BOP "continue to comply with BOP policy of quarantining inmates for 14 days prior to transfer out of Elkton." Stay Appl. App. 27a-28a. Then, on May 19, the district court granted respondents' motion to enforce the injunction, stating that the court had "instructed [BOP] to move subclass members out of Elkton through furloughs or transfers," that "[t]his has not been done," and that BOP was therefore "ordered to show cause in the form of an individualized determination for why [each] inmate [who BOP had found ineligible for home confinement or compassionate release] cannot be transferred to another BOP facility * * * in compliance with the Court's preliminary injunction Order." *Id.* at 51a. Because the group quarantine of the initial set of more than 120 inmates began (in three cohorts) on May 22, their 14-day quarantine period will end on June 5.

Thus, for all of these inmates who test negative at the end of their quarantine period, it is correct that the district court's orders require BOP to begin transferring them from Elkton on June 5 absent a stay. Notably, we do not understand respondents' position to be that the government could choose *not* to transfer on June 5 those inmates who have completed their quarantine period, tested negative for the virus, and are able to be transferred out of Elkton (as is currently expected for these inmates). Accordingly, respondents' suggestion that the government's stay application was inaccurate is incorrect.

Finally, to avoid any possible further confusion, the government wishes to clarify how the quarantine and transfer process will work. As noted, BOP placed into quarantine an initial set of more than 120 inmates. BOP plans to test those inmates for COVID-19 immediately before the group's quarantine period ends, and it then plans to transfer all inmates who test negative. BOP has informed this Office that if an inmate within a cohort tests positive, it intends to delay only that inmate's transfer and place him in isolation at Elkton consistent with its quarantine policy. But, absent a stay from this Court, BOP is required to begin transferring the other inmates in the cohort who tested negative on June 5, and it will then quarantine them after their transfer.

Sincerely,

Noel J. Francisco
Solicitor General

cc: See Attached Service List

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MARK WILLIAMS, ET AL.
CRAIG WILLIAMS, ET AL.

DAVID JOSEPH CAREY
THE LEGAL AID SOCIETY OF COLUMBUS
1108 CITY PARK AVENUE
SUITE 203
COLUMBUS, OH 43206
614-586-1972
DCAREY@ACLUOHIO.ORG

FREDA LEVENSON
ACLU OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103
216-472-2220
FLEVENSON@ACLUOHIO.ORG

JOSEPH WILFRED MEAD
2121 EUCLID AVENUE
SUITE 317
CLEVELAND, OH 44115
216-307-5322
ATTYJMEAD@GMAIL.COM

DAVID ALLEN SINGLETON
OHIO JUSTICE & POLICY CENTER
215 E. NINTH STREET
SUITE 601
CINCINNATI, OH 45202
513-421-1108
DSINGLETON@OHIOJPC.ORG

MARK A. VANDER LAAN
DINSMORE
255 E. FIFTH STREET
SUITE 1900
CINCINNATI, OH 45202
513-977-8200
MARK.VANDERLAAN@DINSMORE.COM