

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

NICHOLAS FRAZIER, ALVIN HAMPTON, MAVIN KENT, MICHAEL KOURI, JONATHAN NEELEY, ALFRED NICKSON, HAROLD (“SCOTT”) OTWELL, TRINIDAD SERRATO, ROBERT STIGGERS, VICTOR WILLIAMS, JOHN DOE, individually and on behalf of all others similarly situated,

Plaintiffs/Petitioners,

v.

WENDY KELLEY, Secretary of Arkansas Department of Corrections; DEXTER PAYNE, Division of Correction Director, Arkansas Department of Corrections; JERRY BRADSHAW, Division of Community Correction Director, Arkansas Department of Corrections; NATHANIEL SMITH, Secretary of Arkansas Department of Health; ASA HUTCHINSON, Governor of Arkansas; BENNY MAGNESS, Chairman of Arkansas Board of Corrections; BOBBY GLOVER, Vice Chairman of Arkansas Board of Corrections; BUDDY CHADICK, Secretary of Arkansas Board of Corrections; TYRONNE BROOMFIELD, Member of Arkansas Board of Corrections; JOHN FELTS, Member of Arkansas Board of Corrections; WILLIAM (“DUBS”) BYERS, Member of Arkansas Board of Corrections; WHITNEY GASS, Member of Arkansas Board of Corrections; all in their official capacities,

Defendants/Respondents.

Case No. 4:20-cv-434-KGB

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiffs Nicholas Frazier, Alvin Hampton, Mavin Kent, Michael Kouri, Jonathan Neeley, Alfred Nickson, Harold (“Scott”) Otwell, Trinidad Serrato, Robert Stiggers, Victor Williams, and John Doe file this memorandum in support of their emergency motion for a temporary restraining order and a preliminary injunction to seek immediate relief against the substantial risk of COVID-

19 infection, illness, and death while incarcerated in Arkansas Department of Correction (“ADC”) facilities.

Plaintiffs are entitled to a temporary restraining order and a preliminary injunction because they are substantially likely to succeed on the merits of their claim that the Defendants’ failure to take steps to address the imminent risk caused by COVID-19 constitutes deliberate indifference in violation of Plaintiffs’ Eighth Amendment rights. Further, Defendants have violated, and will continue to violate, the Americans with Disabilities Act (ADA) by failing to provide Plaintiffs with disabilities with reasonable accommodations that would allow them to have safe housing while serving their prison sentence that does not place them at substantial risk of COVID-19 infection, illness, or death by virtue of their disability.

The United States is in the throes of an unprecedented crisis. Plaintiffs are requesting that the Court grant emergency relief today to protect Plaintiffs from the imminent risk of severe illness or death from exposure to COVID-19. Defendants are aware of the substantial risk posed by the virus and the recommended CDC steps to prevent its spread; nevertheless, they have failed to take steps to protect Plaintiffs. Plaintiffs and putative class members are also entitled to relief because they will suffer irreparable harm absent relief, and traditional legal remedies will not adequately protect their rights. Further, the harm to Plaintiffs and Arkansans outweighs any putative harm to Defendants, and the relief Plaintiffs seek is in the public interest.

On Tuesday, April 21, Plaintiffs provided Defendants notice of the Plaintiffs’ claims and the imminent risks caused by their failure to take appropriate steps in light of COVID-19. Defendants have acknowledged receipt of the Complaint via email. However, they have not communicated to Plaintiffs their position on the federal violations alleged and whether they intend to remedy said violations. Plaintiffs now seek an immediate temporary restraining order to prevent

immediate and irreparable injuries to Plaintiffs caused by COVID-19 pending determination of their motion for preliminary injunction.

Plaintiffs respectfully request that this Court grant a Temporary Restraining Order and a Preliminary Injunction as requested in Plaintiffs' Prayer for Relief in their complaint filed contemporaneously with this motion. Compl. pp. 45-48. Plaintiffs further request that Defendants refrain from destroying any information related to Plaintiffs' claims to preserve relevant discovery in this lawsuit including, but not limited to, video footage within its facilities, medical records, grievances and other complaints from prisoners, ADC responses to grievances and complaints, disciplinary records, and ADC policies and procedures related to COVID-19.

Dated this 21st day of April, 2020.

Respectfully submitted,

By: /s/ Omavi Shukur

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**Pro hac vice* motions forthcoming

Attorneys for Plaintiffs and the Putative Classes

CERTIFICATE OF SERVICE

I certify that on April 21, 2020, I filed the foregoing Plaintiffs' Emergency Motion for a Temporary Restraining Order and Preliminary Injunction electronically via the Court's CM/ECF system, which will send a copy to all counsel of record.

/s/ Omavi Shukur

Omavi Shukur

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