UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 20-21553-CIV-COOKE/GOODMAN

PATRICK GAYLE, et al.,

Plaintiffs,

v.

MICHAEL W. MEADE, et al.,

Defendants.
_____/

RESPONDENTS' OBJECTIONS TO THE AMENDED REPORT AND RECOMMENDATIONS ON CLASS CERTIFICATION

Defendants, by and through their undersigned counsel, file their Objections to the Amended Report and Recommendations on Class Certification ("R&R") DE:123 and state:

I. STANDARD OF REVIEW

Upon objection by any party to a report and recommendation of a magistrate judge, the district judge must conduct a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also United States v. Raddatz*, 447 U.S. 667, 681-82 (1980) ("Congress has provided that the magistrate's proposed findings and recommendations shall be subjected to a *de novo* determination by the judge who . . . then exercises the ultimate authority to issue an appropriate order." (internal quotation marks omitted)). The district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); *see also Matthews v. Weber*, 423 U.S. 261, 275 (1976) (a district court's reference to a magistrate judge "will result in a recommendation that carries only such weight as its merit commands and the sound discretion of the judge warrants").

II. ARGUMENT

On May 29, 2020, the Honorable Jonathan Goodman, United States Magistrate Judge, issued his Amended Report and Recommendations on Class Certification Motion (R&R). D.E. 123. In the Report, the Magistrate Judge recommended the class action certification as to habeas corpus demand for release be denied. D.E. 123 at 4. The Magistrate Judge recommended the class action certification be granted as to claims relating to injunctive and declaratory relief for all current detainees at Krome Service Processing Center, Glades County Detention Center, and Broward Transitional Center. Id. at 4, 5.

Defendants respectfully object to Magistrate Judge Goodman's recommendation that class action certification be granted as to the claims relating to declaratory and injunctive relief. As to the commonality element, the R&R found that "a class action seeking a declaration that the conditions at the three South Florida immigration detention centers constitute cruel and unusual punishment or an injunction requiring that cleaning and hygiene products be provided on a regular basis and that beds be reconfigured to promote social distancing meets the commonality requirement." Id. at 40. Moreover, R&R states commonality is met because Plaintiffs allege that all three facilities are subject to the same common conditions, policies, and practices. D.E. 123 at 38.

The "commonality" requirement mandates that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). More specifically, the putative class' "claims must depend upon a common contention" and "[t]hat common contention . . . must be of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349 (2011).

To determine whether a violation occurred under United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 266, 268 (1954), there must be analysis determining whether the measures undertaken by each facility is sufficient under the CDC's Interim Guidance on Management of Coronavirus Disease 2019 in Correctional and Detention Facilities (CDC Guidelines). An individualized analysis of each facility is required because each facility has different employees, which is crucial when determining if specific employees allegedly refused to properly supply disinfecting agents and masks, and different configurations, which is crucial when determining whether the social distancing procedures are adequate.[1] For example, Plaintiffs filed declarations on June 1, 2020, in anticipation of the preliminary injunction hearing. D.E. 130. Danny Ruiz Garcia states that, "at BTC we get masks every three days, but virtually no one wears them." D.E. 130 at 5, ¶ 5. Maikel Carrasco Polo states, "[n]ew masks are handed out every three days, but only to those who have their old masks at the time the new masks are available." D.E. 130 at 13, ¶ 5. Thus, Plaintiffs' declarations fairly establish that masks are being distributed every three days at BTC.

Even assuming the allegation that one facility violated Accardi by not implementing proper social distancing measures is accurate, it has no bearing on the other facilities' alleged failure to comply with the CDC Guidelines because they are different facilities. This conclusion leads to the determination that the truth or falsity of an issue in one facility will not drive the classwide resolution in "one stroke," as required by Dukes.

Likewise, a finding of cruel and unusual punishment under the Fifth Amendment, as in the Eighth Amendment, requires an individualized analysis preventing classwide resolution in one

[1] Even within a detention facility, there are variations in the amount of living space available. At the Krome Detention Center, detainees can be housed in six different PODS, as well as Buildings 11, 14, a medical unit, and a Behavioral Health Unit. D.E. 33-1 at 7-8.

stroke. As explained in Swain v. Junior, Case No. 20-11622,*10 (11th Cir. 2020)(citing Farmer v. Brennan, 511 U.S. 825, 846, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994), a challenge to the conditions of confinement has two components: objective and subjective.

To satisfy the objective component, the plaintiff must show that the challenged conditions were extreme and presented an unreasonable risk of serious damage to his or her future health or safety. Id. To satisfy the subjective component, the plaintiff must show that the official acted with deliberate indifference by disregarding an excessive risk to detainee health or safety. Id. at *10-*11. This standard requires the official to have a subjective state of mind closer to criminal recklessness." Id. at 11.

Both the objective component and subjective component require a fact specific inquiry. The objective component inquiry requires an individualized assessment of the conditions at each facility and relevant incidents because, as explained above, the facilities have different configurations, different employees, and different Assistant Field Office Directors. Importantly, satisfaction of the subjective component requires an even more individualized analysis because it requires a finding that the official(s) in the facility at issue were subjectively aware of the excessive risk to detainee health or safety. Farmer v. Brennan, 511 U.S. 825, 829, 114 S. Ct. 1970, 1974 (1994)(emphasis added). Thus, it is not sufficient to solely identify the agency, in general, as the culprit, as described in the R&R,[2] because an agency does not have a subjective state of mind, only individual officers do. D.E.:123 at 44. As such, the commonality element is not met because the truth or falsity of the alleged cruel conditions in one facility and the subjective awareness of specific officer(s) will not drive the classwide resolution in "one stroke," as required by Dukes.

[2] "Here, the proposed class members have suffered the same injury…caused by the same purported deliberate indifference by the same entity (i.e., ICE)." D.E:123 at 44.

As to the adequacy and typicality elements, the R&R disagreed with Defendants' arguments that those elements were not met because the named Plaintiffs' claims varied depending on each detention facility. D.E. 123 at 44, 45. The R&R states "the proposed class members have suffered the same injury because they are subject to the same confinement under the same allegedly unconstitutional conditions caused by the same purported deliberate indifference by the same entity (i.e., ICE) which is exposing them to the same risk of developing COVID-19." Id. at 44. However, Plaintiffs are not under the same conditions of confinement as every other putative class member because they are detained in different detention centers. A named plaintiff detained at one facility, such as Krome, cannot adequately represent a class which includes detainees at the other detention facilities, such as BTC or Glades, because that named plaintiff has no standing to contest the conditions of confinement at detention centers where he/she is not detained.[3] Further, the allegations are all fact specific to each detention center, and even room or building specific, although similar in nature. As an example, an allegation of insufficient social distancing at one facility due to the facility's configuration of beds is not typical of all three facilities when the facilities have different sleeping arrangements; consequently, an independent assessment of each area is required. See D.E. 131-1 at 3-5, 131-2 at 2.

For all these reasons, Defendants respectfully request that the Court reject the Report and Recommendation's conclusion that class certification be granted for the injunctive and declaratory relief claims.

[3] Standing requires, among other things, that an injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992)).

DATED: June 3, 2020

Respectfully submitted,

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