

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES MONEY, *et al.*,

Plaintiffs,

v.

J.B. PRITZKER, *et al.*,

Defendants.

No. 20-C-2093

Honorable Steven C. Seeger

DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE

Defendants J.B. Pritzker, Governor of Illinois, and Rob Jeffreys, Acting Director of the Illinois Department of Corrections, by their attorney, Kwame Raoul, Illinois Attorney General, move to dismiss plaintiffs' complaint pursuant Fed. R. Civ. P. 12(b)(6). They seek dismissal with prejudice because plaintiffs do not state a plausible claim, and plaintiffs cannot cure the defects in their complaint by repleading. In support of this motion, defendants state as follows:

1. In the face of the COVID-19 public health emergency, plaintiffs filed this action on April 2, 2020, as part of a multi-pronged effort to compel the State to expedite the releases of thousands of Illinois prisoners through various methods provided under Illinois law.

2. Plaintiffs assert three counts: Count I, under 42 U.S.C. § 1983, alleges defendants are violating the Eighth Amendment prohibition on cruel and unusual punishment by being deliberately indifferent to the risks COVID-19 poses to Illinois prisoners. Count II, also under 42 U.S.C. § 1983, alleges defendants are depriving plaintiffs of due process by failing to provide a sufficiently efficient system-wide process to evaluate "with all deliberate speed" each individual who may be eligible for transfer to home detention. Count III alleges defendants are violating Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, by placing them at disproportionate

risk because of their existing medical conditions, and by failing to provide them with a reasonable accommodation by not allowing them to quarantine at their homes.

3. Plaintiffs sought a temporary restraining order or preliminary injunction based on Counts I and III. Dkt. 9. In denying that motion, Judge Dow ruled that plaintiffs “have no chance of success” on their Eighth Amendment deliberate indifference claim in Count I. Dkt. 38 at 38. Judge Dow similarly rejected plaintiffs’ ADA claim in Count III, concluding that “Plaintiffs do not have a reasonable likelihood of success under any of the three ways of establishing an ADA discrimination claim.” *Id.* at 41. Count II is also fatally deficient because plaintiffs do not have a liberty or property interest, as needed to sustain a due process claim.

4. Besides plaintiffs’ inability to plead a plausible claim on the merits, plaintiffs’ claims are procedurally barred because the relief they seek—a release of thousands of prisoners through furloughs, home detentions, or outright releases based on sentence credits—is not allowed under the Prison Litigation Reform Act, § 3626(a)(3)(A), and *Heck v. Humphrey*, 512 U.S. 477 (1994).

5. Plaintiffs’ requested relief is particularly inappropriate here, where the Governor and the Director have responded to the COVID-19 public health emergency by taking multiple actions to protect Illinois prisoners, including by releasing those who can safely be released consistent with Illinois law.

6. Because the defects in the complaint cannot be cured by amendment, defendants ask the Court to dismiss the complaint with prejudice.

For these reasons, and those detailed in the accompanying memorandum, defendants respectfully request that the Court grant their motion to dismiss plaintiffs’ complaint with prejudice.

Dated: April 29, 2020

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Respectfully Submitted,

/s/ R. Douglas Rees

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