Nos. 20-3447/3547

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CRAIG WILSON, on behalf of themselves and all others similarly situated, et al.,

Petitioners-Appellees,

v.

MARK WILLIAMS, in his official capacity as Warden of Elkton Federal Correctional Institution, et al.,

Respondents-Appellants.

O R D E R

Before: COLE, Chief Judge; GIBBONS and COOK, Circuit Judges.

Petitioners, on behalf of themselves and other inmates housed or to be housed at the Elkton Federal Correctional Institution and its low-security satellite prison FSL Elkton, filed a petition under 28 U.S.C. § 2241 to obtain enlargement of their custody to limit their exposure to the COVID-19 virus. Following a hearing, the district court entered a preliminary injunction directing Respondents to take certain steps for a medically-vulnerable subclass. Respondents appealed, No. 20-3447, and moved to stay the injunction pending resolution of their appeal. We denied a stay. Since then, the district court granted Petitioners' motion for enforcement of the injunction and imposed further standards for compliance. Respondents appealed, No. 20-3547. Respondents now renew their motion to stay the preliminary injunction in No. 20-3447 and

move to stay the district court's order enforcing the injunction in No. 20-3547. Petitioners oppose a stay, and Respondents reply.

We balance four factors to determine whether, in our discretion, a stay is appropriate: (1) whether the movant "has made a strong showing that he is likely to succeed on the merits"; (2) whether the movant "will be irreparably injured absent a stay"; (3) whether issuance of a stay will "substantially injure" other interested parties; and (4) "where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). Respondents reiterate their prior arguments in renewing their motion to stay the preliminary injunction and moving to stay the enforcement order, with citations to recently issued decisions from other circuits in similar cases. Having considered these additional authorities, we conclude the respondents have not met the criteria for a stay, given the deference owed to the district court. Whatever the merits of that argument, we decline to review Respondents' brief assertion that transfer to home confinement is an improper remedy for any alleged Eighth Amendment violation because we will not generally consider "[i]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation." *United States v. Sandridge*, 385 F.3d 1032, 1035 (6th Cir. 2004) (citation omitted).)

Irreparable harm requires more than "some possibility of irreparable injury." *Id.* The district court's injunction, broad in scope, requires Respondents to fast-track review of more than 800 Elkton inmates for enlargement. "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991) (citation omitted). We recognize that when state "officials undertake[] to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad." *S. Bay United*

Pentecostal Church v. Newsom, No. 19A1044, at *2 (U.S. May 29, 2020) (Roberts, C.J., concurring) (internal citation and quotation marks omitted). The inmates quarantined in preparation for transfer will remain so for several more days. At this point, a decision on the merits will benefit all parties. We have expedited No. 20-3447 for briefing and submission, on the schedule suggested by the parties. The parties have already filed their principal briefs, and Respondents' reply brief is due on Monday, June 1, 2020. We will conduct a Video Argument on Friday, June 5, 2020, at 2:30 p.m. (ET), and we anticipate a decision will soon follow.

The motion to stay is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk