

In the Supreme Court of the United States

LADDY CURTIS VALENTINE AND RICHARD ELVIN KING,
INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED,
Applicants,

v.

BRYAN COLLIER, IN HIS OFFICIAL CAPACITY, ROBERT HERRERA, IN HIS OFFICIAL
CAPACITY, AND THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
Respondents.

**SUPPLEMENTAL BRIEF REGARDING EMERGENCY APPLICATION TO
JUSTICE ALITO TO VACATE STAY PENDING APPEAL OF
PRELIMINARY INJUNCTION ENTERED BY THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

JEFF EDWARDS
SCOTT MEDLOCK
MICHAEL SINGLEY
DAVID JAMES
The Edwards Law Firm
The Haehnel Building
1101 East 11th Street
Austin, Texas 78702
(512) 623-7727

JOHN R. KEVILLE
DENISE U. SCOFIELD
MICHAEL T. MURPHY
BRANDON W. DUKE
Counsel of Record
BENJAMIN D. WILLIAMS
ROBERT L. GREEN
CORINNE STONE HOCKMAN
Winston & Strawn LLP
800 Capitol Street, Suite 2400
Houston, Texas 77002
(713) 651-2600
bduke@winston.com

Counsel for Applicants

Plaintiffs-Applicants write to direct the Court to important supplemental information that Defendants-Respondents submitted to the Court of Appeals for the Fifth Circuit last night. *See* Defendants' Response to Court Directive filed in the Fifth Circuit, dated May 11, 2020 (filed under seal with the Fifth Circuit).

Defendants' submission contains critical facts not previously disclosed regarding the Wallace Pack Unit. On April 17, 2020, when moving to stay the preliminary injunction, Defendants primarily argued that the inmates had failed to exhaust their administrative remedies (a two-plus month long grievance process) and stated that "Plaintiffs have alleged only a speculative threat of harm from the absence of a preliminary injunction." Defendants' Motion for Stay Pending Appeal filed in the Fifth Circuit, dated April 17, 2020. On May 5, 2020, Defendants informed the district court judge they "did not know" how many inmates had tested positive. But yesterday, May 11, 2020, in response to an Order requiring disclosure, Defendants revealed that numerous inmates and staff members at the Wallace Pack Unit are now COVID-19 positive and the vast majority of those tested positive within the past two weeks. *See* Defendant's Response to Court Directive filed in the Fifth Circuit, dated May 11, 2020 (filed under seal with the Fifth Circuit). Included in this are inmates who died as a result of the virus. There are over a thousand inmates and hundreds of staff members who live and work at the Pack Unit; only a fraction have been tested to date. Many have likely been in contact with those that were infected and it appears that no contact tracing has been conducted related to any confirmed cases amongst staff and inmates.

The newly-disclosed information is pertinent to this Court's review of Applicants' Motion to Vacate. Defendants' refusal to put in place the preliminary injunction's easily implemented and common sense protections reveals a continuing and deliberate indifference to the health of the inmates, the staff, and the community. And the late-revealed information provides compelling evidence that in the time since the Fifth Circuit imposed a stay of that Order, the conditions at the Pack Unit with respect to COVID-19 have worsened significantly, causing irreparable harm to the inmates that will continue unless the injunction is reinstated.

Respectfully submitted,

s/ Brandon W. Duke

JOHN R. KEVILLE

DENISE U. SCOFIELD

MICHAEL T. MURPHY

BRANDON W. DUKE

Counsel of Record

BENJAMIN D. WILLIAMS

ROBERT L. GREEN

CORINNE STONE HOCKMAN

Winston & Strawn LLP

800 Capitol Street, Suite 2400

Houston, Texas 77002

(713) 651-2600

JEFF EDWARDS

SCOTT MEDLOCK

MICHAEL SINGLEY

DAVID JAMES

The Edwards Law Firm

The Haehnel Building

1101 East 11th Street

Austin, Texas 78702

(512) 623-7727

CERTIFICATE OF SERVICE

I, Brandon W. Duke, a member of the bar of this Court, certify that on May 12, 2020, a copy of the foregoing was served on all parties by email and first class mail to the individuals listed below:

KYLE D. HAWKINS, SOLICITOR GENERAL
MATTHEW HAMILTON FREDERICK
JASON R. LAFOND
CHRISTIN COBE VASQUEZ
Office of the Attorney General for the State of Texas
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697
kyle.hawkins@oag.texas.gov
matthew.frederick@oag.texas.gov
jason.lafond@oag.texas.gov
christin.vasquez@oag.texas.gov

s/ Brandon W. Duke
BRANDON W. DUKE
Counsel of Record