

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ABDY NIZEYIMANA, on behalf of)	
himself and all others similarly situated,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 20-10685-ADB
)	
ANTONE MONIZ, Superintendent of the)	
Plymouth County Correctional Facility)	
)	
Respondent.)	

**RESPONDENT’S NOTICE OF SUPPLEMENTAL AUTHORITY IN FURTHER
SUPPORT OF HIS OPPOSITION TO PETITIONERS’ MOTION FOR DISCOVERY**

PLEASE TAKE NOTICE that Respondent Antone Moniz, Superintendent of the Plymouth County Correctional Facility, by and through his attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, respectfully submits a recent Supreme Court decision granting the application for stay of the district court’s order granting a preliminary injunction in *Ahlman v. Barnes*, No. 20-835, 2020 WL 2754938 (C.D. Cal. May 26, 2020). The Supreme Court’s decision is attached as Exhibit A hereto. For full context, and the Court’s convenience, Respondent also submits the motion papers filed in the Supreme Court (attached as Exhibit B hereto) as well of the district court’s preliminary injunction decision and the Ninth Circuit’s decision denying a motion to stay that injunction (attached as Exhibit C hereto).

While the Supreme Court’s decision granting the application for stay is neither substantive nor precedential, it is still important here because it undermines one of Petitioners’ key arguments in support of their request for broad-scale discovery in this habeas case. Petitioners ask this Court for unprecedented discovery—including ESI that would need to be harvested, processed,

reviewed, and ultimately produced—simply so they can confirm that Respondent is acting in compliance with public health guidelines. *See* Doc. # 177 at 7 (“it is important that Petitioners have access to the records showing when and to what extent such compliance occurred”). In earlier filings, Respondent demonstrated that Petitioners do not have good cause—the condition they must satisfy to obtain discovery in this habeas case—to claim that Respondent is not complying with public health guidelines. *See* Doc. # 193 at 6-14 (opposition to motion for discovery); Doc. # 190-3 ¶¶ 6-7 (Norat declaration); Doc. # 190-4 at 2-3 (first Wurcel declaration); Doc. # 190-7 ¶ 8 (second Baker declaration); Doc. # 203-2 ¶¶ 5-11 (second Wurcel declaration).

Even if they could claim otherwise (and they cannot), that would not provide good cause for this Court to condone the fishing expedition that Petitioners seek here. The Supreme Court has been quite clear—in this context and others—that guidance from governmental agencies does not define the contours of the Constitution. *See Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979) (holding that the guidelines from Federal Corrections Policy Task Force of the Department of Justice “simply do not establish the constitutional minima” and “are not determinative of the requirements of the Constitution”). *Cf. Davis v. Scherer*, 468 U.S. 183, 193-96 (1984) (recognizing that an official’s conduct may violate some other source of law, such as regulations, internal policies, guidelines, or manuals, or state law, and yet that does not strip the officer of qualified immunity); *Durruthy v. Pastor*, 351 F.3d 1080, 1087 (11th Cir. 2003) (“No case to which we have been cited, or that we can find, even remotely suggests that the possible violation of an internal law enforcement guideline strips an officer of qualified immunity for an arrest founded on sufficient cause.”).

Indeed, the Court’s recent decision staying the preliminary injunction in *Ahlman v. Barnes* dealt Petitioners’ argument a serious blow. *See* Ex. A. The Court’s decision strongly signals that any attempt to equate noncompliance with public health guidelines with deliberate indifference under the Constitution is doomed to fail. *See Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980)

(Brennan, J., in chambers) (recognizing that, to obtain a stay, the applicant must make a four-part showing: (1) “a ‘reasonable probability’ that four Justices will consider the issue sufficiently meritorious to grant certiorari”; (2) “*a fair prospect that a majority of the Court will conclude that the decision below was erroneous*”; (3) “a demonstration that irreparable harm is likely to result from the denial of a stay”; and (4) “in a close case it may be appropriate to ‘balance the equities’—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.”) (emphasis supplied)).

For good reason. Public health guidelines are not an appropriate yardstick to measure deliberate indifference, especially in matters of public health at idiosyncratic state jails. *See Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 38 (1905) (“The safety and the health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect.”). For example, the CDC guidelines—on which ICE’s guidelines are based—expressly disclaim an intent to establish regulatory requirements, let alone minimum constitutional standards under the Fifth Amendment. *See* CDC Website <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html> (last visited Aug. 13, 2020) (“CDC is a non-regulatory agency; therefore, the information in this document is meant to assist correctional and detention facilities in making decisions rather than establishing regulatory requirements.”). Moreover, the CDC guidelines themselves do not require compliance with their own recommendations when deemed to be infeasible, impracticable, or unacceptable in a particular facility: “Correctional and detention facilities can determine, in collaboration with state and local health officials, *whether and how* to implement” them “guided by what is feasible, practical, and acceptable” and based on “the needs of each facility.” *Id.* (emphasis supplied).

CONCLUSION

For these reasons, and those set forth in Respondent's earlier filings, Respondent respectfully requests that the Court deny Petitioners' motion for discovery.

Respectfully submitted,

ANTONE MONIZ
Superintendent of the Plymouth
County Correctional Facility

By his attorneys,

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