

Winston Wins COVID-19 Testing & Increased Safety Measures for Geriatric Prisoners

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A team led by Winston & Strawn Houston Partner Michael Murphy, joined by the Austin-based Edwards Law Firm, secured a preliminary injunction that requires a geriatric prison in Texas to test all inmates for COVID-19. While the injunction is currently stayed pending appeal the team has sought to Vacate the Stay, which is currently pending before the U.S. Supreme Court.

If the injunction is implemented, these more vulnerable, older, and disabled prisoners will be granted “unrestricted access” to hand sanitizer, hand soap, and masks. The order, issued by U.S. District Judge Keith Ellison of Houston, further mandates that the prison’s shared surfaces—including housing areas, the dining hall, and bathrooms—are sanitized every 30 minutes. The Court found that the prison had shown a conscious disregard of the risks to the inmates and the prison staff.

Increasing Awareness

New educational and operational practices will also be enforced. In accordance with the order, those held in the geriatric prison, the Wallace Pack Unit, must be informed about the effects of COVID-19. To prevent new cases, the prison must also temporarily stop transfers to the Pack Unit as well as test new prisoners or quarantine them for up to 14 days.

This is the first time a court has ruled in favor of mandatory COVID-19 testing and increased sanitary measures for prisoners. The order was perhaps spurred on by the COVID-related death of Pack Unit inmate Leonard Clerkly that occurred several days before the ruling, and weeks after the lawsuit was filed. No contact tracing was done by the prison prior to the order.

Community Safety

Houston-based infectious disease specialist Dr. Joseph C. Gathe testified to the necessity of mandatory testing now that one inmate has died of COVID-19 and another tested positive. “One, you need to know who is positive so you can make sure those people are isolated away from those people that are negative,” he asserted. “Two, that those

people can be offered medical care. Whether they need treatment or not depends on where they are with the process. And, three, very importantly, those that work in the prison are themselves at risk,” he continued. “[W]e need to know, therefore, whether or not the people that are working there in all capacities...already have it.”

The Texas Department of Criminal Justice appealed to the Fifth Circuit, which stayed the injunction pending the appeal. The Fifth Circuit set an expedited schedule and oral argument is set for June 4. Winston and the Edwards team has filed an Application to Vacate the Stay before the U.S. Supreme Court, which is expected to rule within the next few days.

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