

STATE OF MICHIGAN
In the 29th Circuit Court for the County of Gratiot

RAND W. GOULD

Plaintiff,

Cir. Ct. No. _____

Hon. _____

V

GOV. GRETCHEN WHITMER, ET AL
Defendants. _____

RAND W. GOULD, C-187131
Plaintiff in Pro Per
Central Michigan C.F.
320 N. Hubbard St.
St Louis, MI 48880-1926

DANA NESSEL
Attorney for Defendants
Michigan Attorney General
P.O. Box 30212
Lansing, MI 48909

PETITION FOR WRIT OF MANDAMUS

NOW COMES PLAINTIFF, Rand W. Gould in propria persona, who petitions this Honorable Court, pursuant to MCR 3.305, to issue a Writ of Mandamus against the defendants, Michigan Governor Gretchen Whitmer (Gov. Whitmer), Michigan Department of Corrections (MDOC) Director Heidi Washington (Dir. Washington), MDOC Chief Medical Officer (CMO) Carmen McIntyre, M.D. (CMO McIntyre), and MDOC Central Michigan Correctional Facility (Central Mich. C.F.) Warden John Christiansen (Warden Christiansen) to compel them to perform their public duty in accordance with their oath of office and the public duty doctrine, MCL 750. 478, and order their immediate compliance with current Centers for Disease Control (CDC) guidelines for managing the coronavirus, SARV-CoV-2, in MDOC correctional facilities, as required by PD 03.04.110(c), Control of Communicable Diseases, and DOM 2020-30R4, or its successor DOM, accord MCL 333.5101 et seq., especially in concern of their willful neglect of

their specific public duty to ensure “social distancing recommendations shall be followed at all times” as stated at page 2, DOM 2020-30R4, for the facts, reasons, and law set forth below.

Plaintiff is a state prisoner currently in the custody of the MDOC at Central Mich. C.F. in the County of Gratiot, Michigan, who has given defendants ample notice of said policy and law violations, including filing a detailed Request for Declaratory Rulings, pursuant to MCL 24.263, accord Admin. R. 791.1115, mailed to Dir. Washington, Gov. Whitmer, and Michigan Attorney General Dana Nessel (A.G. Nessel), which remains unresponded to as of this date. See Request for Declaratory Rulings to Dir. Washington, 26 October 2020, marked Exhibit A, attached hereto and incorporated herein by reference.

Defendants have housed plaintiff in said facility, i.e. prison, in a cubicle with seven (7) other men, E-Unit, Bunk-87, that was designed to house only four (4) men, with each man sleeping with his head no farther than three (3) feet from the nearest man’s head, and with approximately eight (8) sq. ft. of unencumbered floor space per man. See Improved Standards for Laboratory Animals Act of 1985 (requiring a minimum of 25 sq. ft. for great apes weighing over 55 lbs.).

In common parlance, plaintiff has been “double-bunked by defendants, as has every prisoner at Central Mich. Cf., where eight (8) polebarns designed to house 160 men each, four (4) of which were built as “temporary” housing back in 1990 as St. Louis Temporary Facility, currently house approximately 320 men each for a total of nearly 2,560 men. That is, at twice, or 200% of, its designed capacity, thereby rendering social distancing impossible and creating a massive viral incubator in the center of the community of St. Louis. Compare with the 130% limit set by the Federal Bureau of Prisons, and the 137% limit set for California’s prisons in *Plata v Brown*, 536 US 493, 539 (2010).

Any claims to the contrary, or pretensions to ignorance of said facts, by defendants would be flagrant lies, as prisoners at Central Mich. C.F. sleep, eat, and use the bathroom within one (1)

to three (3) feet of other every day in a virtual viral petri dish, with defendants possessing full knowledge of this situation for decades. As early as September 9, 2009, plaintiff filed Grievance Id. SPR-09-098-527-122 in concern of then Pine River C.F. (now Central Mich. C.F.) administration's failure to follow required quarantine protocols for whooping cough (pertussis) and MRSA epidemics raging through this very prison. See Letter to Dr. George Pramstaller, MDOC Chief Medical Officer, 11 June 2010, marked Exhibit B, attached hereto and incorporated herein by reference; also Exhibit A, paragraphs 5-7, supra.

In fact, the defendants have a long, sordid history of failure and/or refusal to practice required quarantine protocols, throughout the MDOC's prisons, for influenza (flu), norovirus, MRSA, and, now, coronavirus/COVID-19. See Rand W. Gould, "MDOC Runs Death Camps: COVID-19 Pandemic in Michigan's Overcrowded, Understaffed, and Deteriorating Prisons," 21 May 2020; also, "Fake Flu Quarantine Equals Real Lockdown in Michigan Prisons", 7 February 2018; "Inside Michigan Prisons: Overview and Analysis of Structure and Conditions," speech over phone, Lansing, MI, 7 July 2018, reprinted in *San Francisco Bay View*, December 2018, 15 & 17,; "Back Through the Looking Glass: The Death of Brian Rodriguez and the Fake 'Flu Quarantine' at Gus Harrison Correctional Facility", 25 March 2019; with Kenneth Smith, "Letter to Gov. Gretchen Whitmer," 29 April 2020, reprinted as "Lack of Social Distancing Causes COVID-19 Explosion in Michigan's Aging and Overcrowded Prisons," *San Francisco Bay View*, August 2020, 15; and "Gov. Whitmer Hosts COVID-19 Super-Spreader Events in Michigan Prisons," 16 November 2020, reprinted in *San Francisco Bay View*, January 2021, 3 & 16; all available at www.freerandgould.com.

Gov. Whitmer, as chief executive, has authority and control over appointed and/or contracted state officials, including Dir. Washington, Warden Christiansen, and CMO McIntyre. Thus, it is her public duty, as well as theirs, to ensure the MDOC's written rules, policies, and procedures are followed in order to achieve its stated goal "*to provide the greatest amount of public protection* in a cost-efficient manner that is consistent with proven methods" (emphasis supplied) and fulfill its mission of "KEEPING MICHIGAN'S CITIZENS AND OUR STAFF SAFE BY

PROVIDING EFFECTIVE OFFENDER SUPERVISIOSN IN OUR PRISON FACILITIES AND COMMUNITIES.” (sic). “Vision and Mission,” *MDOC Employee Handbook*, pp. vi-vii; also PD 02.03.100. See Exhibit A, paragraphs 1-4, supra.

Said goal and mission is to be achieved by following policy and PD 03.04.110(c) states: “*The Chief Medical Officer, BHCS [MDOC’s Bureau of Health Care Ser vices], shall ensure that the control and treatment of communicable diseases is in accordance with the most recent guidelines of the Centers for Disease Control (CDC),*” (emphasis supplied), and COVID-19 is a “communicable disease[s]” for which “recent guidelines” have been issued by the CDC, including six (6) feet of social distancing. See “Interim Guidance and Management of Coronavirus Disease 2019 (COVID-19), in Correction and Detention Facilities,” CDC, March 23, 2020, <http://www.cdc.gov/coronavirus/2019-ncov/community/correctiondetention.html>. (n.b., updated and expanded over the past year.)

Gov. Whitmer, if not the others, was required to “take an oath,” upon assumption of offices to perform her public duty and uphold the constitutions, both state and federal. 4 USC §101. “It is presumed that a public officer will do, whenever called to, what the law requires of him,” or her. *Hoff v Jasper*, 110 U.S. 53 (1884). Gov. Whitmer,, and her co-defendants, have been “called on” to do “what the law requires of” them and have failed and/or refused to do so in violation of the public duty doctrine codified as MCL 750.478, which provides for imprisonment for not more than one year or a fine of not more than \$1,000.00 for “every willful neglect to perform such duty,” and is applicable to state officials, including “prison officials.” *Smith v. Kowalski*, 223 Mich. App. 610, 613 (1997). See Exhibit A, I & II, para. 25, and Summary, supra.

Moreover, defendants have a clear public, and legal, duty to ensure that they and their staff, as state employees, are familiar with and follow MDOC rules, policies, and procedures, as written and promulgated, in accordance with the law. *DeBeaussaert v Shelby Twp.*, 122 Mich App 128,130 (1982); *Semaan v LCC*, 425 Mich 28, 37, (1986); see also, MCL 19.142(1)(g); PD

01.04.110(A); PD 02.03.100, Work R. #13, *MDOC Employee Handbook*, p. 20, and PD 02.03.107(B). See Exhibit A, *ibid*.

Consequently, the elements required for the issuance of a writ of mandamus have been established, as follows: “(1) the Party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgement, and (4) no other remedy exists, legal or equitable, that may achieve the same result.” *Morales v Michigan Parole Bd.*, 260 Mich 29, 41 (2003).

In March 2020, two MDOC prisons were ranked as the 8th and 11th COVID-19 hot-spots in the country. See Ted Rod Roelofs, “Coronavirus Cases Surge in Michigan’s Crowded Prisons,” *Bridge*, March 27, 2020, <https://www.bridgemi.com/michigan-government/coronavirus-cases-surge-michigans-crowded-prisons>. Yet, defendants continued to refuse to put in place a medically valid quarantine, as they have done for decades, in a shockingly willful neglect to perform their public, and legal, duty, resulting in 22,629 Michigan prisons, out of approximately 34,000 total, infected with COVID-19 as of January 5, 2021. The Marshall Project, <https://www.themarshallproject.org>. Defendants even went so far as to remove the unit blowers last summer at Central Mich. C.F. that were used to circulate fresh air, when public spaces—schools, museums, hospitals, etc.—were installing same to increase the circulation of fresh air and dilute potential concentrations of the coronavirus. See Exhibit A, para. 8. “In Michigan, mass incarceration has led to an additional 4,787 COVID cases (or 48 per 100,000 residents) throughout the state.” Victoria Law, “states say they’re decarcerating, yet 1 in 5 prisoners has had COVID.” Truthout.org, reprinted in *San Francisco Bay View*, January 2021, 19. Defendants’ willful neglect to perform their public, and legal, duty is also the reason why, as of December 12, 2020, Michigan prisons have reported 115 confirmed COVID-19 reinfections, according to the *Detroit Free Press*, and almost all prisoners at Central Mich. C.F. will tell you that they have had COVID-19 twice, once in February and March 2020, when little or no testing was done, and then again in November and December 2020.

As of December 6, 2020, Central Mich. C.F. had 2,016 out of approximately 2,500 prisoners test positive for COVID-19 and eventually nearly every prisoner there tested positive, resulting in several unnecessary deaths and increased infection in the community, in the largest COVID-19 outbreak in a prison in the country! A travesty likely precipitated on October 15, 2020 when approximately 160 previously infected prisoners were transferred in from the COVID-19-hotspot of Newberry C.F. and housed in D-Unit, allowing them to immediately intermingle with the general prisoner population without testing or a quarantine period. Unsurprisingly, once the incubation period for the coronavirus transpired, on November 5, 2020, over 200 prisoners were reported to have tested positive for COVID-19, and Warden Christiansen instituted a “quarantine”, locking down prisoners in their units where no fresh air was circulating. On the following day, November 6, 2020, Warden Christiansen, even more bizarrely, began moving approximately 600 prisoners from their assigned bunks and units all around the prison, intentionally and effectively spreading coronavirus to nearly every prisoner in what can only be viewed as some sort of ill-considered attempt to achieve “herd-immunity”. See Rand W. Gould, “Gov. Whitmer Hosts COVID-19 Super-Spreader Events in Michigan Prisons,” *ibid*.

Warden Christiansen claimed this veritable antithesis of a quarantine was instituted “by Lansing”, i.e., Dir. Washington and CMO McIntyre, and “there was nothing [he] could do.” When plaintiff, and his cubemates, objected to potentially infected prisoners being moved into our unit and our cubicle, we were awakened at 5:45 a.m., the following morning of November 7, 2020, by 3rd shift commander Lt. Grady, who told us “You’re all going to get it anyway,” meaning COVID-19, and confirming our eventual infection was intentional. Especially, in light of us being locked down in our units with the blowers removed and no fresh air.

Although the temporal proximity of the Newberry C.F. prisoner transfer was the most likely cause of the mass outbreak of COVID-19 at Central Mich. C.F. in November 2020, the majority of staff’s refusal to be tested, and only submitting to temperature checks, with highly inaccurate digital thermometers, upon entering the prison, may well have contributed to the

outbreak. Particularly, considering their reluctance to wear their masks properly, if at all, when interacting with prisoners, including conducting shakedowns, which can easily be confirmed as true by reviewing camera footage taken within the prison. See Exhibit A, paras, 9-16.

Based on defendants' past record, especially Dir. Washington's, as detailed in "MDOC Runs Death Camps", *ibid*, and Exhibit B, they are likely to lie and cover-up as much of their part in this rapidly and exponentially expanding COVID-19 disaster as they can. This was proven true in May 2020, when defendants and/or their representatives had the audacity to lie to U.S. District Court Judge Paul L. Maloney, stating that at Central Mich. C.F.: 1) the weight-pit and gym were closed, when they remained open; 2) team sports were not being played, when they were; and 3) new prisoners were not being transferred in, when they were on a regular basis to replace those being paroled out. E.g., on June 16, 2020, the prison Count Sheet reflected a total population of 2,417 and on June 17, 2020 it reflected a population of 2,446, indicating 29 prisoners transferred in that day. See *Hill v. Whitmer*, 2020 US Dist LEXIS 89418 (5/21/2020); c.f. Central Mich. C.F. Count Sheets, May and June 2020, and camera footage (Exhibit A, para. 9).

While the antithesis of a quarantine instituted at Central Mich. C.F. was very effective at spreading COVID-19 throughout the prison, it was also effective at denying prisoners access to the law library and the courts, as well as general library, programming, and fresh air. None of which has been restored as of this date, except limited access to the yard. Yet prisoners come into contact with each other while moving all over this prison for over the past month, going to health-care callouts, med-lines, picking up legal mail, and going to the dining hall to eat, as well as being moved from unit to unit and new prisoners transferring in. A rational person would think opening the yards so prisoners can get fresh air and practice a modicum of social distancing would be the first priority. However, defendants do not seem to think rationally, and, certainly, have not acted rationally for a long time, if ever, as everything inside the MDOC's prisons is run ass-backwards, which, ultimately, is a big problem, and all-the-bigger when magnified by operating them at twice their designed capacity—a \$2 billion-per-year problem.

Obviously, plaintiff cannot speak to the health of every prisoner in the MDOC or at Central Mich. C.F. he can, however, speak in general and, specifically, to his own health. By February 2020, prisoners at Central Mich. C.F. were contracting COVID-19, which the administration, including Warden Christiansen, kept insisting was influenza and passed Tama-Flu boxes out to everyone. Apparently, this cover-up occurred state-wide in the MDOC. Most prisoners eventually realized they had COVID-19, although not tested, which was confirmed by comparing the symptoms then with those in November and December 2020, when they tested positive. Currently, having suffered through COVID-19 twice, many prisoners are now suffering from “long-haul” COVID-19, as is plaintiff.

Initially, in March 2002, plaintiff experienced numbness in his left-hand, which over the summer spread to his right-hand. After contracting COVID-19 again in November 2020, the numbness got worse and spread to his feet, as well as his left leg from the knee down. This was accompanied by severe muscle cramps, i.e., charley horses, in both legs, waking him up at night, and a near-permanent one in his upper left leg and buttock, which develops when he walks for more than a few steps to the point it is all he can do to walk to the dining hall, when he used to walk 5 to 10 miles daily. He remains lethargic, suffers headaches, and has trouble concentrating. Worse, he’s not the only one suffering through these problems and can only wonder what’s next as multiple prisoners tested positive for COVID-19 here last week in the third wave of COVID-19.

Summary and Relief

In pursuing this writ, plaintiff is not seeking personal relief in the form of damages or release from prison. He is simply requesting this Honorable Court to order defendants to perform their public, and legal, duty, in compliance with MCL 750.478, which, so far, they have willfully neglected to perform by, inter alia, refusing to institute and comply with CDC guidelines for the management of COVID-19 in prisons and, instead, continuing to operate MDOC prisons at 200%

of their designed capacity, thereby rendering social distancing impossible. It shocks the conscience that defendants have gotten away this for over a year in the midst of the COVID-19 pandemic, and are still getting away with it, as prisoners at Central Mich. C.F. face a third wave of COVID-19 with multiple prisoners testing positive again last week, as defendants remain deliberately indifferent to the health and well-being of prisoners, in violation of the 8th Amendment to the U.S. Constitution, as well as staff and the surrounding community. *Estelle v. Gamble*, 429 US 97, 103-104, (1976); and *Hutto v Finney*, 437 US 678, 682 (1978). Defendants' de facto rejection of the conclusions and recommendations of scientist and health experts, including the CDC, for managing COVID-19 in prisons must be deemed reckless, if not murderous, as no Michigan prisoners have been sentenced to death, under the analysis in *Farmer v Brennan*, 511 US 825 (1994). E.g. *Helling v McKinney*, 509 US 25, 34-36 (1993).

WHEREFORE, plaintiff respectfully requests this Honorable Court to issue the writ of mandamus, pursuant to MCR 3.305, as people's lives are at stake in prisons and their surrounding communities, and/or issue an order to show cause as necessity for immediate action has been shown.

Respectfully submitted,

Rand W. Gould

Dated: 15 February 2021

VERIFICATION

Pursuant to 28 USC § 1746, I verify under penalty of perjury the foregoing is true and correct.
Executed on: 15 February 2021

Signed,

Rand W. Gould