Mercer Law Review

Volume 72
Number 5 *MLR Online Companion*

Article 6

7-2021

Prisoner Exposure to a Pandemic: Measuring When Institutional Response Rises to Punishment

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Prisoner Exposure to a Pandemic: Measuring When Institutional Response Rises to Punishment*

I. INTRODUCTION

The Constitution prohibits the cruel and unusual punishment of inmates and detainees.[1] Accordingly, when prison conditions fall below a humane level due to acts or omissions by prison officials, the prison may be found in violation of the Eighth Amendment,[2] the Cruel and Unusual Punishment Clause, against an inmate or the Fourteenth Amendment,[3] the Due Process Clause, against a pre-trial detainee (hereinafter detainee).[4]

Specifically, the assertion of such claims regarding poor prison conditions raises the question of how prisons, and thus the courts, are approaching the novel health risks and administrative challenges posed by a global Coronavirus (COVID-19) pandemic in which the virus is causing contagion, sickness, and unfortunately death.

Consequently, due to the extraordinary circumstances of COVID-19, the United States Court of Appeals for the Eleventh Circuit was placed "at the crossroads of public health and public safety, science and law, and constitutional and carceral demands"[5] when presented with such an issue as described above. In *Swain v. Junior*,[6] the Eleventh Circuit determined that the Miami Metro West Detention Center's (hereinafter Metro West) response to COVID-19 likely did not violate detainee

* I would like to thank my Casenote advisor, Professor Margaret McCann for her above and beyond support and assistance throughout the writing process. From Professor McCann being my first-year professor in Legal Process to my Casenote advisor, Professor McCann has truly been an integral part of my legal writing development.

[1] U.S. CONST. amend. VIII; U.S. CONST. amend. XIV.

[2] U.S. CONST. amend. VIII.

[3] U.S. CONST. amend. XIV.

[4] *See* U.S. CONST. amend. VIII (pertaining to inmates); U.S. CONST. amend. XIV (pertaining to pre-trial detainees).

[5] Swain v. Junior, 457 F. Supp. 3d 1287, 1293 (S.D. Fla. 2020).

[6] 961 F.3d 1276 (11th Cir. 2020).

appellees' Fourteenth or Eight Amendment constitutional rights even though Metro West was unable to ensure adequate social distancing and had seen increased rate of COVID-19 infections.[7]

Further, the Eleventh Circuit held that given the CDC guidelines for correctional and detention facilities,[8] Metro West's obligation was only to respond reasonably to such guidelines.[9] In using such a standard, the court determined that Metro West should not be faulted for guidelines which were concluded to be impossible to implement or if the harm caused by the virus was ultimately not averted.[10] Thus, just because a prison's actions were ineffective at preventing the spread of COVID-19, does not mean that the prison was "deliberately indifferent" to the health and safety of its inmate/detainee population, rising to the level of a cruel and unusual punishment under the Eighth Amendment.[11]

II. FACTUAL BACKGROUND

In late March 2020, Metro West began implementing health and safety measures to protect inmates against COVID-19, including cancelling inmate visitation, screening inmates and staff, and advising staff of sanitation practices.[12] After the CDC introduced its guidelines for correctional facilities on March 23, 2020, Metro West altered its practices to reflect the guidelines by implementing, among other things, daily temperature screenings, social distancing efforts, a social hygiene campaign, and mask mandates.[13]

Plaintiffs Anthony Swain, Alen Blanco, Bayardo Cruz, Ronniel Flores, Deondre Willis, Peter Bernal and Winfred Hill were all pre-trial, medically vulnerable defendants being held at Metro West in Miami, Florida.[14] Prior to the commencing of the Plaintiffs action, no inmate had tested positive for COVID-19 at Metro West.[15]

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[7] *Junior*, 961 F.3d at 1286–87.

[8] National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral Diseases, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, *Centers for Disease Control and Prevention* (updated July 22, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

[9] *Junior*, 961 F.3d at 1286–87.

[10] *Id.*

[11] *Id.*

[12] Swain v. Junior, 958 F.3d 1081, 1085 (11th Cir. 2020).

[13] *Swain*, 958 F.3d at 1085–86.

[14] *Junior*, 457 F. Supp. 3d at 1291; *Junior*, 961 F.3d at 1280.

[15] *Junior*, 457 F. Supp. 3d at 1293.

Plaintiffs, on April 5, 2020, brought a class action lawsuit against Miami-Dade County and Daniel Junior in his official capacity as the Director of the Miami-Dade Corrections and Rehabilitation Center.[16] The complaint alleged that the Defendants had violated Plaintiffs' Eight Amendment and Fourteenth Amendment rights under 42 U.S.C. § 1983,[17] arguing that "[d]efendants [were] deliberately indifferent to the risk that [p]laintiffs [would] contract COVID-19 within the current conditions of Metro West."[18]

Then, the United States District Court for the Southern District of Florida "granted in part [p]laintiffs' emergency motion and entered a temporary restraining order (TRO) against the Defendants on April 7, 2020."[19] As part of the order, and subsequent orders, the Defendants were required to provide descriptions of the measures currently employed to protect the individuals being housed at Metro West from the risk of COVID-19.[20] Further, the order named two doctors who were to conduct an inspection of Metro West and its efforts, and present their findings back to the court.[21] After the inspections were conducted, both doctors concluded that an urgent reduction in prison population and increased COVID-19 screenings were necessary to reduce the spread of the virus within Metro West.[22] Additionally, both doctors noted the impossibility of adhering to CDC guidelines for social distancing measures, including maintaining six feet of distance between inmates, due to the dormitory-style housing units.[23]

By April 28, 2020, a total of 163 inmates at Metro West tested positive for COVID-19.[24] One day later, the district court granted plaintiffs' motion for a preliminary injunction, ordering the defendants to take a series of preventative actions to mitigate the spread of COVID-19 at Metro West.[25] In granting the preliminary injunction, the court found

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[16] *Id.* at 1291.

[17] 42 U.S.C. § 1983 (2020).

[18] *Junior*, 457 F. Supp. 3d at 1291.

[19] The court held three telephonic conferences with both parties over a two-day period following the case being filed. *Id.* at 1292.

[20] *Id.* Defendants represent that they are mandating that staff and inmates wear protective coverings at all times, encouraging social distancing by all inmates and staff, conducting daily temperature/health screening for inmates and staff, disallowing outside visitation, and providing cleaning and hygiene supplies to inmates. *Id.* at 1301.

[21] *Id.* at 1292.

[22] *Id.* at 1294.

[23] *Id.*

[24] *Id.* at 1293.

[25] The court enjoined the defendants to comply with a series of COVID-19 protective safety measuring including, in pertinent part, to (1) provide and enforce, to the maximum

that plaintiffs had shown (1) a substantial likelihood of success on the merits of their § 1983 claim; (2) that they will suffer irreparable harm absent an injunction; (3) that the threatened injury posed by the COVID-19 outbreak at Metro West outweighs any damage to the defendants resulting from an injunction; and (4) that the injunction will not be adverse to the public interest.[26]

On the first prong, the court rested its opinion on the belief that the plaintiffs satisfied both the objective and subjective components of the Eighth Amendment "deliberate indifference" analysis.[27] The court found the objective component easily satisfied as a result of a deadly virus currently spreading among inmates and staff at Metro West a portion of which have a legitimate medical need to be protected from the virus.[28] Pertaining to the subjective component, despite defendants' assurances as to the steps taken at Metro West to reduce the spread of COVID-19, the court found the record to not unequivocally demonstrate successful implementation of such policies and procedures.[29] This finding was based on evidence provided by the plaintiffs, which indicated that social distancing was not possible, social distancing was not uniformly enforced, and inmates lacked access to cleaning supplies and masks.[30] Additionally, with the significant increase in infected inmates since the start of litigation, the court could not accept the defendants' continued contentions that their efforts were sufficient to reduce the spread of the virus.[31]

After the district court granted the preliminary injunction, the defendants filed a motion for stay the preliminary injunction pending appeal.[32] The Eleventh Circuit subsequently granted defendants' motion.[33] The Eleventh Circuit, in addressing the likelihood of success on

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extent possible, adequate six feet social distancing; (2) communicate COVID-19 information to all people incarcerated at Metro West; (3) provide all inmates with face masks at medically appropriate intervals; (4) ensure that all inmates receive individual supplies of soap, disinfecting products, towels, and toilet paper; (5) provide the district court with weekly data as to the number of inmates and staff who tested positive for COVID-19 and current population numbers at Metro West; and (6) provide a proposal outlining defendants plan to ensure adequate social distancing at Metro West. *Id.* at 1317–18.

[26] *Id.* at 1309–1314. (holding the four elements required for a preliminary injunction satisfied).

[27] *Id.* at 1312.

[28] *Id.* at 1311.

[29] *Id.* at 1312.

[30] *Id.* at 1299–300, 1310–11 (conflicting evidence presented by plaintiffs and defendants).

[31] *Id.* at 1312.

[32] *Swain,* 958 F.3d at 1085.

[33] *Id.*

appeal, determined that the district court committed error by "incorrectly collaps[ing] the subjective and objective components" of the deliberate indifference standard.[34] Specifically, the court reasoned that the district court misapplied the subjective component by "treat[ing] the increase in COVID-19 infections as proof that the defendants deliberately disregarded an intolerable risk."[35] Rather, the court of appeals stated that the harm, COVID-19 infections, that results does not, in and of itself, provide sufficient evidence of a culpable state of mind.[36]

The Eleventh Circuit vacated the district court's grant of the preliminary injunction.[37] The Eleventh Circuit held that the plaintiffs failed to demonstrate the likelihood of success on the merits of their deliberate indifference claim, specifically the subjective component, in violation of the Eighth and Fourteenth Amendment.[38]

III. LEGAL BACKGROUND

A. Constitutional Amendments Applicable to Prison Conditions

The Eighth Amendment provides protection from cruel and unusual punishment, while the Fourteenth Amendment prohibits "any State [from] depriv[ing] any person of life liberty, or property, without the due process of the law."[39] It has been understood that the Fourteenth Amendment Due Process Clause protects the rights of citizens, including detainees, who have not been convicted of crimes, while the Eighth Amendment's Cruel and Unusual Punishment Clause applies only to sentenced criminals.[40] However, detainees, under the Fourteenth Amendment, are entitled to "at least as great" of protection as given to inmates under the Eighth Amendment.[41]

A detainee or convicted inmate alleging a violation of their Eighth or Fourteenth Amendment rights would likely bring a claim under 42

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[34] *Id.* at 1089.

[35] *Id.*

[36] *Id.*

[37] *Junior*, 961 F.3d at 1280. A preliminary injunction is a pre-trial remedy given to a plaintiff to prevent possible harm which is almost certain to occur absent the court requiring the defendant to perform or abstain from some action**.** *Sheppard*, The Wolters Kluwer Bouvier Law Dictionary Desk Edition (2012). Due to the profound effects a preliminary injunction may have on a defendant prior to a final court ruling, it should be considered "an extraordinary remedy never awarded as a right." Winter v. NRDC, Inc., 555 U.S. 7, 24 (2008).

[38] *Junior*, 961 F.3d at 1289, 1294.

[39] U.S. CONST. amend. VIII; U.S. CONST. amend. XIV.

[40] Bailey v. Andrews, 811 F.2d 366, 373 (7th Cir. 1987).

[41] Owens v. Scott Cty. Jail, 328 F.3d 1026, 1027 (8th Cir. 2003).

U.S.C. § 1983. Section 1983 is a form of redress when persons, under the color of state authority, violate an individual's rights, privileges, or immunities secured by the constitution.[42] When an inmate, in prison-condition cases, alleges an Eighth Amendment violation, a court evaluates the claim under a deliberate indifference standard.[43] Courts apply this same standard to detainees claiming Fourteenth Amendment violations due to the notion that "[F]ourteenth [A]mendment rights of detainees can be defined by reference to the [E]ighth [A]mendment rights of convicted inmates."[44]

B. A Deliberate Indifference Claim

Under the Eighth Amendment, prison officials must provide humane conditions of confinement by "ensur[ing] that inmates receive adequate food, clothing, shelter, and medical care," and by "tak[ing] reasonable measures to guarantee the [health and] safety of inmates."[45] The Supreme Court of the United States has held that both an objective and subjective requirement must be met when determining if prison officials have violated an inmate's Eighth Amendment rights.[46]

1. Objective Requirement

In meeting the first requirement, the plaintiff must show that the deprivation alleged is objectively, "sufficiently serious."[47] Specifically, "[f]or a claim . . . based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm."[48]

Further, in determining if conditions present an objectively unreasonable risk of harm to inmates, the Supreme Court of the United States, in *Helling v. McKinney,*[49] outlined factors courts should consider.[50] Such factors include the plaintiff showing that he, himself, is currently exposed to the condition in which the cause of action is based upon; inquiry into the likelihood that such condition will actually cause such an injury to health or safety; "scientific and statistical inquiry into

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[42] 42 U.S.C. § 1983.

[43] Farmer v. Brennan, 511 U.S. 825, 834 (1994).

[44] Hamm v. DeKalb Cty., 774 F.2d 1567, 1574 (11th Cir. 1985).

[45] *Farmer*, 511 U.S. at 832.

[46] *Id.* at 834.

[47] Lane v. Philbin, 835 F.3d 1302, 1307 (11th Cir. 2016).

[48] *Farmer*, 511 U.S. at 834.

[49] 509 U.S. 25 (1993).

[50] *Id.* at 36.

the seriousness of the potential harm"; and that the "risk of which the prisoner complains is not one today's society chooses to tolerate."[51]

The Supreme Court affirmed the Court of Appeals for the Ninth Circuit's decision in *Helling* that the plaintiff had stated a valid § 1983 claim based on an alleged violation of plaintiff's Eighth Amendment right.[52] The plaintiff alleged that the defendants, prison officials, had exposed him to high levels of environmental toxic smoke, which posed "an unreasonable risk of serious damage to his future health."[53] The allegation was premised on the basis that prison officials assigned the plaintiff to a cell with another inmate who smoked five packs of cigarettes a day.[54] While still holding the plaintiff's cause of action to be valid, the Supreme Court noted the relevancy that the plaintiff had been moved out of that cell and into a different prison since the complaint was filed and the adoption of a smoking policy by Nevada State Prison's Director prior to remanding the case back to the court of appeals.[55] Thus, with respect to the objective factor, the Supreme Court demonstrated that lower courts need to account for "changed circumstances" after a lawsuit is filed when determining if a plaintiff is still personally and currently exposed to the condition.[56]

2. Subjective Requirement

In proving the defendants' deliberate indifference to a substantial risk of serious harm, the subjective component, the plaintiff needs to show that the defendant had "(1) subjective knowledge of a risk of serious harm; (2) disregard for that risk; (3) by conduct that is more than mere negligence."[57] In other words, the subjective component is likely met if a defendant has subjective awareness of an "objectively serious need" and responds in an objectively insufficient manner.[58]

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[51] *Id.*

[52] *Id.* at 35.

[53] *Id.*

[54] *Id.* at 28.

[55] *Id.* at 35–36. (inferring that plaintiff would likely not meet the objective component of the deliberate indifference standard).

[56] *See id.*

[57] *Lane*, 835 F.3d at 1308 (11th Cir. 2016) (quoting Farrow v. West, 320 F.3d 1235, 1245 (11th Cir. 2003)).

[58] Taylor v. Adams, 221 F.3d 1254, 1258 (11th Cir. 2000); Farrow v. West, 320 F.3d 1235, 1245–46 (11th Cir. 2003).

a. Subjective Knowledge of a Risk of Serious Harm

The Supreme Court, in *Farmer v. Brennan*,[59] held that for a prison official to be found liable for denying an inmate humane conditions of confinement, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."[60] However, the Court articulated the irrelevancy of merely parsing the phrase "deliberate indifference" by specifically breaking down the word "deliberate" to solely mean "knowledge of a risk."[61] As an alternate to actual knowledge, the Court emphasized that constructive knowledge of a risk by a prison official is enough to show subjective knowledge.[62] As such, the term deliberate indifference should not automatically preclude circumstances where a prison official's awareness may be presumed due to the obviousness of the risk.[63] Therefore, a prison official may be liable "if the risk was obvious and a reasonable prison official would have noticed it."[64] It is then left to the trier of fact to determine whether the risk was obvious enough that knowledge can be inferred based on circumstantial evidence.[65]

b. Disregard for That Risk by Conduct That is More Than Mere Negligence

Courts have routinely struggled to determine the level of culpability deliberate indifference entails.[66] In *Estelle v. Gamble*,[67] the Supreme Court laid the foundation by reasoning that a punishment, as to whether it violates the Eighth Amendment, should be judged based on the evolving standards of decency.[68] However, in *Whitley v. Albers*,[69] the Court determined that an act or omission by an individual may not be considered a punishment even if below the acceptable standard of decency.[70] With those rulings appearing to set forth conflicting levels of culpability requirements, the Supreme Court, in *Farmer,* held that the culpability requirement will be different depending on the underlying

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[59] 511 U.S. 825 (1994).
[60] *Farmer*, 511 U.S. at 837.
[61] *Id.* at 840.
[62] *Id.*
[63] *Id.*
[64] *Id.* at 841–42.
[65] *Id.* at 844.
[66] *Id.* at 835.
[67] 429 U.S. 97 (1976).
[68] *Estelle*, 429 U.S. at 102.
[69] 475 U.S. 312 (1986).
[70] *See id.* at 319–21.

basis of an Eighth Amendment claim.[71] The Court further elaborated on the culpability requirement set forth in *Estelle* as applied to a claim challenging the conditions of prison confinement.[72]

In *Estelle*, the Supreme Court concluded that the plaintiff's alleged insufficiency of medical treatment should not have survived the defendant's motion against the chief medical officer of the prison hospital to dismiss the claims, therefore reversing the Court of Appeals for the Fifth Circuit's decision.[73] The case involved a prisoner claiming a violation of his Eighth Amendment rights by allegedly receiving an inadequate diagnosis and medical treatment for his back.[74] However, the plaintiff had seen the prison's doctor on seventeen prior occasions and been treated with bed rest, muscle relaxants, and pain relievers.[75] The Supreme Court determined that the case represented a classic example of medical judgment in which not ordering an x-ray or other like measure did not represent cruel and unusual punishment under the Eighth Amendment.[76]

In making such a ruling, the Court affirmed that the level of culpability required would be an Eighth Amendment punishment, "which [is] incompatible with the evolving standards of decency that mark the progress of a maturing society or which involve the unnecessary and wonton infliction of pain."[77] As such, the Court noted the clear difference between a mere inadvertent failure to provide adequate medical care, and a prison official being deliberately indifferent to a serious medical need constituting unnecessary and wanton infliction of paint.[78] The former likely does not rise to the level of a punishment in violation of an inmate's or detainee's Eighth Amendment right, while the latter likely does.[79]

However, the Supreme Court appeared to heighten the culpability requirement in *Whitley*.[80] There, a riot situation was underway in which inmates had secured a prison official as a hostage.[81] As prison officials were making their way upstairs to free the hostage, the officials fired

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[71] *Farmer,* 511 U.S. at 835–36.

[72] *Id.* at 839–840.

[73] *Estelle*, 429 U.S. at 108.

[74] *Id.* at 98.

[75] *Id.* at 107.

[76] *Id.* at 107–08.

[77] *Id.* at 102.

[78] *See id.* at 104–05.

[79] *Id.* at 104–05.

[80] 475 U.S. at 320–21.

[81] *Id.* at 314–15.

warning shots. One inmate still proceeded up the stairs and was subsequently shot. That inmate alleged he was deprived of his Eighth and Fourteenth Amendment rights.[82]

The Supreme Court ruled that the inmate's Eighth Amendment rights were not violated after determining that the shooting was a good faith effort to restore prison order.[83] The Supreme Court held that in determining if the shooting of the inmate in a riot situation inflicted unnecessary and wanton pain and suffering, the question turned to "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."[84]

When an Eighth Amendment claim is not predicated on alleged physical violence or force, the Supreme Court determined that *Estelle* should be the basis of the culpability requirement.[85] In *Farmer*, the Court reviewed an Eighth Amendment claim in which the plaintiff alleged that prison officials denied her humane conditions of confinement due to the prison officials placing her in a male jail cell where she was beaten and raped.[86] In reversing summary judgment in favor of the defendants, the Supreme Court made clear that the deliberate indifference standard given in *Whitley* only applies "when officials [are] accused of using excessive physical force."[87] In all other situations, such as claims challenging conditions of confinement or medical care administered, the claims should be evaluated based on the deliberate indifference standard given in *Estelle*.[88]

In detailing the culpability standard set in *Estelle*, the Court described it as "entail[ing] something more than mere negligence, [but can be] satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result."[89] To further simplify *Estelle*'s deliberate indifference standard, the Court adopted "subjective recklessness" as a test for deliberate indifference under the Eighth Amendment.[90]

The Court, in giving additional guidance on determining subjective recklessness, made known that the core of a court's analysis should focus

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[82] *Id.* at 316–17.

[83] *Id.* at 325–26.

[84] *Id.* at 320–21.

[85] *Farmer*, 511 U.S. at 835–36.

[86] *Id.* at 829–30.

[87] *Id.* at 835.

[88] *Id.*

[89] *Id.*

[90] *Id.* at 839–40, 114 S. Ct. at 1980.

on whether an official "responded reasonably" to a known and "substantial risk to inmate health and safety"[91] rather than on whether the harm was ultimately averted or not. Specifically, in suits which seek injunctive relief to prevent a substantial risk of serious injury from ripening into actual harm, a court should judge a prison or prison official's response, in determining "reasonability" or deliberate indifference, "in light of the prison authorities' current attitudes and conduct"[92] and "their attitudes and conduct at the time suit is brought and persisting thereafter."[93]

IV. COURT'S RATIONALE

In *Junior*, the Eleventh Circuit was tasked with determining whether the district court abused its discretion by granting a preliminary injunction in favor of the plaintiffs, requiring the defendants to comply with an extensive list of COVID-19 safety measures.[94] While there are four requirements which must be established for a preliminary injunction to be granted, the Eleventh Circuit, as did the district court, focused its attention on the likelihood that the plaintiffs will succeed on the merits of their constitutional claim.[95]

The court briefly articulated that even though the plaintiffs' claim technically arose under the Fourteenth Amendment as the plaintiffs are both pre-trial detainees, the claim should be evaluated under the deliberate indifference standard as applied to an Eighth Amendment claim.[96]

After establishing that the district court properly chose to apply the deliberate indifference standard to the plaintiffs' claim, the court promptly ruled that the objective component was met.[97] This was not a disputed issue between the parties, as COVID-19, without a doubt, poses a substantial risk of serious harm towards the plaintiffs.[98]

The court was then left to determine the likelihood that plaintiffs had met the subjective component of the deliberate indifference standard. In order to establish that the defendants were deliberately indifferent to the risk of harm posed by COVID-19 towards the plaintiffs, the plaintiffs must demonstrate that the Defendants had "(1) subjective knowledge of

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[91] *Id.* at 844.

[92] *Farmer,* 511 U.S. at 845; *Helling*, 509 U.S. at 27.

[93] *Farmer, 511 U.S.* at 845.

[94] *Junior*, 961 F.3d at 1284.

[95] *Id.* at 1285.

[96] *Id.*

[97] *Id.*

[98] *Id.*

a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence."[99]

The court acknowledged, as almost obvious, that the first sub-element, the defendants' subjective knowledge of the risk associated with COVID-19 was met for purposes of granting a preliminary injunction.[100]

In evaluating the remaining sub-elements, the court applied the principles described in *Farmer*.[101] Thus, the plaintiffs must prove that the defendants disregarded the risk posed by COVID-19 through conduct that was more than mere negligence by showing that the defendants had a sufficiently culpable state of mind demonstrated by subjective recklessness.[102]

Next, the court reiterated the basis for which the district court made its determination: "(1) the increase in the rate of infections at Metro West and (2) the lack—and seeming impossibility—of meaningful social distancing at the facility."[103] The court first concluded that the district court erred in relying on the increased infection rates because, as established in *Farmer*, the court should focus on the reasonableness of the response rather than whether the harm was averted.[104] Therefore, if the defendants supply evidence tending to show officials acted reasonably to thwart the risk, the defendants should not be held automatically liable solely because COVID-19 continued to spread at Metro West.[105]

Second, the court ruled that the district court erred "in concluding that the defendants' inability to ensure adequate social distancing constituted deliberate indifference."[106] The court based its ruling on the district court stating repeatedly that social distancing was impossible at Metro West, the inmates' own declarations supporting the notion that social distancing was impossible, and the finding made in the court-commissioned expert report that it was impossible to follow the CDC social distancing guidelines at Metro West.[107] Taking such evidence into consideration, the court determined that the defendants "failing to do the 'impossible' doesn't evince indifference, let alone deliberate indifference."[108]

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[99] *Id.* at 1285 (quoting *Lane*, 835 F.3d at 1308) (quotation omitted).

[100] *Id.*

[101] *Id.* at 1285–86.

[102] *Id.*

[103] *Id.* at 1287.

[104] *Id.*

[105] *See id.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

In conducting its own analysis, the Eleventh Circuit focused on the defendants' entire course of conduct, taking into account all of defendants' evidence, discounting factual disputes regarding the implementation of defendants' policies and procedures, and setting aside factual disputes regarding the different measures that the defendants allege to have adopted.[109] The court took into consideration the court-commissioned expert report which concluded that defendants did their best to defendants encourage social distancing by putting tape on the floor, staggering prison bunks in head to toe configurations, and staggering and distancing patient inmates when going to receive medical treatment and testing.[110] The court also clarified that the CDC guidelines for correctional facilities do not require social distancing of six feet between inmates. Rather, the social distancing provision recommends maintaining six feet of distance as the "ideal" practice.[111] When ideal social distancing cannot be practiced as recommended, the guidelines indicate a need for tailoring the correctional facility's strategies to individual spaces in a facility, like arranging bunks so individuals sleep head to toe, and that certain strategies may not be feasible in certain facilities.[112] Moreover, the court reviewed the defendants' evidence of the measures taken by the prison to mitigate the spread of COVID-19, such as requiring face masks be worn by inmates and staff at all times, giving inmates disinfecting and hygiene supplies, prohibiting outside visitation, checking inmates temperatures daily, and requiring staff to undergo screening prior to entering the facility.[113]

After weighing the experts' opinions, the interpretation of the CDC guidelines for correctional facilities, and the defendants' evidence, the court determined the defendants should not have their actions be considered unreasonable or subjectively reckless when the evidence demonstrates that the prison officials did their best.[114] The defendants' should not have their mitigation efforts discounted merely because the prison encountered the "perfect storm of a contagious virus and the space constraints inherent in a correctional facility."[115] With defendants' mitigation activities considered reasonable, the plaintiffs failed to meet the subjective component of the deliberate indifference standard.[116]

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[109] *Id.* at 1287–88.

[110] *Id.* at 1288.

[111] *Id.*

[112] *Id.* at 1288–89.

[113] *Id.* at 1289.

[114] *Junior*, 961 F.3d at 1289; *see Farmer,* 511 U.S. at 839–40.

[115] *Junior*, 961 F.3d at 1289; *see Farmer*, 511 U.S. at 839–40.

[116] *Junior*, 961 F.3d at 1289.

Accordingly, the court held that the plaintiffs were not likely to succeed on the merits of their Eighth and Fourteenth Amendment constitutional claim and vacated the district court's grant of plaintiffs' preliminary injunction, concluding that the district court abused its discretion in doing so.[117]

V. IMPLICATIONS

The United States Court of Appeals for the Eleventh Circuit's decision in *Junior* sets forth clear precedent for lower courts to follow when dealing with an emergency situation where an inmate or detainee claims a violation of their Eighth or Fourteenth Amendment rights.[118] The new precedent applies the deliberate indifference subjective component established in *Farmer* and relates those principles to an emergency situation in which the harm is imminent and steps taken to eliminate the harm, no matter the degree, will not eliminate such harm.[119]

The Eleventh Circuit's decision in *Junior* highlighted the importance and scope of the subjective component in a deliberate indifference analysis as applied to an Eighth or Fourteenth Amendment claim alleged by an inmate or detainee.[120] More specifically, the court implicitly applied the principle described in *Farmer*, where the Supreme Court held that the actions' "reasonability" or deliberate indifference should be judged "in light of the prison authorities' current attitudes and conduct"[121] and "their attitudes and conduct at the time suit is brought and persisting thereafter."[122] The Eleventh Circuit simplified that notion by asserting that the focus, in determining whether a defendant exhibited subjective recklessness, should be on the entirety of the defendant's conduct and not on isolated failures or impossibilities.[123]

Evidence of Metro West prison officials' isolated failures to prevent COVID-19 spread and to strictly and uniformly enforce six-foot social distancing, in plain terms, "bogged" down the district court and hampered its analysis. However, the Eleventh Circuit was able to separate "the resultant harm" from the "actions taken by the defendants."[124] This adjustment, especially when the risks being presented by the plaintiffs are potentially life threatening, involve a

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[117] *Id.* at 1294.

[118] *See id.* at 1287.

[119] *See id.* at 1287.

[120] *See id.* at 1285–88.

[121] *Farmer*, 511 U.S. at 845; *see Helling*, 509 U.S. 25; *see Junior*, 961 F.3d at 1287–89.

[122] *Farmer*, 511 U.S. at 845; *see Junior*, 961 F.3d at 1287–89.

[123] *Junior*, 961 F.3d at 1287–88.

[124] *See id.*

worldwide pandemic, and the risk is considered the largest public health emergency ever, is crucial in determining whether the defendants' actions were reasonable or reckless.[125] Thus, the resultant harm imposed upon an inmate or detainee, with no consideration of the actions or omissions taken by prison officials, cannot constitute an infliction of a cruel and unusual punishment in violation of the Eighth Amendment.[126] Therefore, even when presented with an emergency situation such as a deadly virus spreading and infecting inmates, the Eleventh Circuit clarified that the lower courts in the Eleventh Circuit are not to stray away from the principles listed in *Farmer*.[127]

As the pandemic continues, the Eleventh Circuit's ruling in *Junior* has already been applied in other COVID-19 related Eighth and Fourteenth Amendment claim cases and cases involving petition under 28 U.S.C. § 2241 for writ of habeas corpus.[128] For example, in *Dixon v. Ivey*,[129] the plaintiff challenged the constitutionality of conditions at Red Eagle Honor Farm (Red Eagle), a correctional facility.[130] In denying the plaintiff a preliminary injunction, based on evidence of the extensive safety measures taken by Red Eagle, the court held that "it is improper for a court to equate an increased rate of infection with deliberate indifference."[131]

Ultimately, the Eleventh Circuit's opinion in *Swain v. Junior* will live on to shed light on the true job of courts, which is to decide a claim on the merits and not based on a panicked state caused by an emergency, whether it be COVID-19, a traumatic event, or the next global problem.

Josh Slovin

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[125] *See id.*

[126] *Farmer*, 511 U.S. 825.

[127] *Junior*, 961 F.3d at 1287–88.

[128] *See* Dixon v. Ivey, No. 2:20-CV-248-WHA, 2020 U.S. Dist. LEXIS 113122 (M.D. Ala. June 26, 2020); *see* Bolze v. Warden, No. 5:20-cv-261-Oc-39PRL, 2020 U.S. Dist. LEXIS 116503 M.D. Fla. July 2, 2020); *see* Heraud St. Louis v. Martin, No. 2:20-cv-349-FtM-60NPM, 2020 U.S. Dist. LEXIS 112986 (M.D. Fla. June 26, 2020).

[129] *Dixon*, No. 2:20-CV-248-WHA, 2020 U.S. Dist. LEXIS 113122 (M.D. Ala. June 26, 2020).

[130] *Id.* at *1–2.

[131] *Id.* at *30–31 (citing *Junior*, 961 F.3d at 1289).