

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY MAYS, <i>et al.</i> ,)	Case No. 1:20-cv-2134
)	
Plaintiffs-Petitioners,)	The Hon. Matthew F. Kennelly
)	Emergency Judge
v.)	
)	The Hon. Robert Gettleman
THOMAS J. DART, Sheriff of Cook)	Presiding Judge
County,)	
)	The Hon. David Weisman
Defendant-Respondent.)	Magistrate Judge

PLAINTIFFS’ REPLY TO DEFENDANT’S MAY 11, 2020 RESPONSE

The Sheriff’s recent response regarding his compliance with the court’s April 27 preliminary injunction order (Doc. No. 87-1) contains a fundamental, pervasive flaw: the Sheriff apparently believes that no one—not Plaintiffs and not the court—has standing to question his bald assertion that he has “demonstrated full compliance with the order.” Response at 20. Plaintiffs’ response (Doc. No. 85) showed in detail, to the contrary, that there is every reason to question the extent of the Sheriff’s compliance, and, in certain respects (*e.g.*, the requirement for COVID-19 testing for asymptomatic detainees), whether the Sheriff has complied at all. The Sheriff does not engage with the details of Plaintiffs’ argument in his response.

Plaintiff’s response included a request for targeted discovery relating to compliance with the specific terms of the preliminary injunction. But the Sheriff claims that Plaintiffs are guilty of a “misconception” insofar as they assert a right to monitor his compliance. Response at 20. From this, the Sheriff concludes (without any support) that Plaintiffs’ requested discovery is “burdensome” and “irrelevant.” *Id.* at 25. The Sheriff is mistaken. Under well-established law, Plaintiffs’ right to discovery in these circumstances is clear. *See Perfecseal, Inc. v. Heezen*, No. 01 C 9249, 2002 WL 27663, at *1 (N.D. Ill. Jan. 9, 2002) (parties were permitted to

pursue discovery in accordance with the Federal Rules of Civil Procedure, including discovery concerning defendant's compliance with the preliminary injunction order); *United States v. Chappelle*, No. 118CV00943RLYTAB, 2019 WL 549379, at *5 (S.D. Ind. Jan. 4, 2019) (authorizing United States to engage in post-judgment discovery to monitor Defendants' compliance with the terms of this injunction); *United States v. Jackson*, No. 1:18-CV-2000, 2018 WL 2731224, at *2 (N.D. Ill. May 17, 2018) (maintaining jurisdiction of case so as to oversee post-judgment discovery related to compliance with injunction); *United States v. U.S. Contracting, LLC*, No. 1:15-CV-01536-WCG, 2016 WL 6995368, at *3 (E.D. Wis. Aug. 4, 2016) (United States permitted to issue discovery requests during the term of the injunction to assure Defendants' compliance with the injunction); *see also EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir.2012) (As a general matter, "broad post-judgment discovery in aid of execution is the norm in federal and New York state courts."). The Sheriff's citation to *Maynard v. Nygren*, 332 F.3d 462 (7th Cir. 2003), which addressed the standard of proof for dismissal as a sanction for a discovery violation (and which was subsequently reversed, *see Ramirez v. T&H Lemont Incorp.*, 845 F.3d 772 (7th Cir. 2016)), is irrelevant to whether Plaintiffs can seek evidence on behalf of a conditionally-certified class, who are entitled to monitor a preliminary injunction order.

The Sheriff's lengthy arguments to the contrary notwithstanding, the court entered the preliminary injunction because it found that the order was necessary and appropriate—in order, among other things, to prevent irreparable harm to the class of persons being detained at the Jail in the midst of the COVID pandemic. *See, e.g.*, 4/27/20 Preliminary Injunction Mem. Op and Order (Dkt. No. at 73) at 81 (finding that "without additional measures to expand and enforce social distancing and the continuation of measures aimed at enhancing sanitation of surfaces within

the Jail and otherwise curbing the spread of coronavirus among detained persons, some of the class members will contract the virus”).

There is also an ongoing, troubling disconnect between the Sheriff’s portrayal of a fully compliant Jail and the information provided by detainees since before the inception of this case and postdating the Sheriff’s supposed compliance with the order. Plaintiffs have repeatedly placed the detainees’ counter-narratives before the court. *See* Dkt. Nos. 1-4 through 1-22, 36-2, 55-5, 64-5, 85-4. Declarations submitted on behalf of detainees living in all divisions in the Jail attest to the severe risk each person in that facility continues to face. The risk is manifestly worst for those with heightened susceptibility to COVID-19, including those in packed conditions in the RTU and Cermak. The detainee complaints and concerns about social distancing, testing and sanitation have not abated, despite the Sheriff’s most recent assurances. Additional declarations taken since Plaintiffs filed their request for discovery underscore the ongoing lack of protections for detainees from the transmission of COVID-19 in the Jail. *See* Group Ex. A (Detainee declarations).

Given all this, Plaintiffs and the court are certainly are not required to take on faith the Sheriff’s avowal that he has “demonstrated full compliance with the order[.]” Report at 20. As Plaintiffs showed in their response, there is “good cause” for the very limited discovery requests that Plaintiffs described and attached to that pleading. *See* Doc. No. 85 at 12-13; Doc. No. 85-1. The Sheriff has cited no authority to refute this demonstration (he fails even to mention the good cause standard in his response). Plaintiffs’ proposed discovery is not only reasonable but essential to ensure the health and safety of the provisionally certified class of detainees in the Jail.

WHEREFORE, for the reasons stated here and in their Response to the Sheriff’s Compliance Report, Dkt. No. 85, Plaintiffs request expedited discovery to monitor the Sheriff’s compliance with the Court’s Preliminary Injunction Order.

Respectfully submitted,

/s/ Alexa Van Brunt

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CERTIFICATE OF SERVICE

I, Alexa Van Brunt, an attorney, hereby certify that on May 12, 2020, I caused a copy of the foregoing to be filed using the Court's CM/ECF system and served upon all counsel who have filed appearances in the above-captioned matter.

/s/ Alexa A. Van Brunt
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