

IN THE
COURT OF APPEALS OF MARYLAND

THE HON. BEN C. CLYBURN, in his
official capacity as the Chief Judge for
the District Court of Maryland, et al.,

*
*

Petitioners,

*

Petition No. 622

v.

*

September Term, 2013

QUINTON RICHMOND, et al.,

*

Respondents.

*

* * * * *

ANSWER TO PETITION FOR A WRIT OF CERTIORARI

Respondents Quinton Richmond, et al. (“Plaintiffs”), by their undersigned counsel, respectfully Answer the Petition for a Writ of Certiorari (“Petition” or “Cert. Pet.”) filed by Petitioners, the Hon. Ben C. Clyburn, et al. (the “District Court Defendants” or “DCDs”).

1. Plaintiffs agree that the DCDs’ appeal should be heard by this Court and not by the Court of Special Appeals. To that limited extent, Plaintiffs do not oppose issuance of a writ of certiorari.

2. As explained in Plaintiffs’ Response to the DCDS’ motion for stay, which is incorporated by reference in its entirety (including the exhibits thereto), the Petition does not present any true substantive disputes between the parties at this juncture requiring the Court’s *appellate* power to resolve. The procedural issues are de minimis and readily curable by a proposed order. Indeed, the DCDs acknowledge that the Court is the superior forum to address the issues that they contend that the Circuit Court failed to address prior to entering its permanent injunction. See Cert. Pet. at 10-11. The substantive issues regarding the feasibility of implementing Plaintiffs’ right to counsel on an interim basis have been answered by Judge Clyburn. The only remaining issue is whether, where, and when that implementation should occur while policymakers work on

long-term solutions. This Court can resolve that question through its rulemaking power, as it had contemplated in its November 6 Rules Order. Alternatively, the Court can resolve it upon considering the Petition and the Motion for Stay in tandem. If necessary, the Court can consider further briefing on the issue. However the Court prefers to resolve this issue, it should bear in mind that the *only* bona fide issue that the Court needs to resolve is whether, where, and when interim implementation should occur. Everything else is de minimis and would become moot if the Court resolves this single issue.

3. In Plaintiffs' Response to the motion for stay, Plaintiffs set forth a compromise approach for proceeding with implementation that would allow implementation to commence first in Baltimore City. If this approach is accepted by the Court, the Court will have no need to engage in further appellate proceedings in this case. Similarly, the Court will have no need to remand the case to the Circuit Court for further proceedings on Plaintiffs' Petition for Further Relief. All issues will be resolved, and Plaintiffs' constitutional rights finally will be honored. The Court will need only to remand the case for entry of an injunction order in the form attached as Exhibit 9 to Plaintiffs' Response to the District Court Defendants' Motion for Stay.

4. If the Court decides not to adopt this approach, the Court should limit the appellate proceedings to the question of whether, where, and when interim implementation should occur while policymakers work on long-term solutions. The procedural issues raised by the DCDs are moot in light of their acknowledgement that this Court can address implementation issues based on the record, Plaintiffs' agreement that the Circuit Court's order should be revised, and this Court's prior statement that it would order its November 6 Rules Order to take effect as soon as the Court is notified that an order compelling implementation has been entered.

5. The Court should reject the DCDs' alternative request that the Circuit Court's order be summarily vacated and the case returned to the Circuit Court for further proceedings. That suggestion is the surest way for the proceedings in this case to be prolonged even further and to generate a *fifth* round of appellate proceedings. Moreover, as Plaintiffs have been granted only 2½ days to respond to the DCDs' Petition and

motion for stay, it would be unfair for the Court to decide whether the Circuit Court's order granting a permanent injunction is erroneous and should be reversed through this summary briefing process without providing reasonable notice and opportunity for Plaintiffs to substantively brief the issues raised by the DCDs.

6. This case is now in its *eighth* year of litigation. Richmond II resolved the substantive issues regarding Plaintiffs' right to counsel four months ago. Despite having had their right to counsel at initial bail hearings affirmed by this Court twice, Plaintiffs *still* are not being afforded their constitutional rights. They are continuing to be incarcerated unnecessarily as a result, causing "devastating effects," as this Court has previously ruled in Richmond II. As discussed in the Response to the Motion for Stay, Plaintiffs urge the Court to act now to set appropriate deadlines and require the parties to act and move forward. Plaintiffs should not continue to be thwarted indefinitely in receiving their constitutional right to counsel, and thereby securing their liberty where appropriate, while the long-term remedies continue to be debated by the policy-makers. If the Court accepts certiorari, it should do so for the sole purpose of deciding how Plaintiffs' constitutional rights can be honored as soon as possible.

WHEREFORE, Plaintiffs respectfully request that the Petition for a Writ of Certiorari be granted for the limited purpose of entering the relief requested in Plaintiffs' Response to the motion for stay pending appeal, or alternatively, for deciding whether, where, and when interim implementation of Richmond II should proceed.

Respectfully submitted,

Mitchell Mirviss

Michael Schatzow

mschatzow@venable.com

Mitchell Y. Mirviss

mymirviss@venable.com

Venable LLP

750 East Pratt Street, Suite 900

Baltimore, Maryland 21201

(410) 244-7400

(410) 244-7742 (fax)

Attorneys for Quinton Richmond, et al.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 17th day of January 2014, a copy of the foregoing Answer to Petition for a Writ of Certiorari was served by electronic mail and by first class mail, postage prepaid, on the following counsel for the District Court Defendants and for the Public Defender, respectively:

William F. Brockman, Esquire
Deputy Solicitor General
Julia Doyle Bernhardt, Esquire
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Attorneys for the District Court Defendants

Brian Boynton, Esquire
Ashley E. Bashur, Esquire
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

A. Stephen Hut, Jr., Esquire
Office of the Public Defender
Six St. Paul Street, 1400
Baltimore, Maryland 21202

Attorneys for the Public Defender



Mitchell Y. Mirviss