

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

**NEXUS DERECHOS HUMANOS
ATTORNEYS, INC.**

Plaintiff,

v.

**CITY OF NORFOLK SHERIFF JOE
BARON,
CITY OF CHESAPEAKE SHERIFF
JIM O’SULLIVAN, and
CITY OF PORTSMOUTH SHERIFF
MICHAEL A. MOORE,**
in their individual capacities,

Defendants.

Case No.: 2:18cv486

COMPLAINT

Plaintiff, Nexus Derechos Humanos Attorneys, Inc., files this Complaint against City of Norfolk Sheriff Joe Baron, City of Chesapeake Sheriff Jim O’Sullivan, and City of Portsmouth Sheriff Michael A. Moore, in their individual capacities, pursuant to 42 U.S.C. § 1983 with respect to vindicating the rights guaranteed by the Eighth and Fourteenth Amendments of the U.S. Constitution.

INTRODUCTION

Despite the imminent arrival of category 4 Hurricane Florence, the Sheriffs in Norfolk, Chesapeake, and Portsmouth Virginia are consciously choosing to ignore the mandatory evacuation order from Commonwealth Governor Ralph

Northam and refusing to evacuate the nearly 2,500 inmates housed in their local jails. Prisons and jails in Texas, almost one year earlier, took the same course of action during Hurricane Harvey, which caused extensive damage to jail operations and placed inmates in both danger and unlivable conditions. (See Exhibit 1.) This conduct shocks the conscience; our country's Constitution simply cannot tolerate this type of discriminatory treatment, where all free citizens evacuate to save their life, but inmates are placed in dire straits at a local jail because they are incarcerated – noting that many inmates are pretrial detainees who have been merely accused of a crime.

JURISDICTION AND VENUE

1.

Jurisdiction is proper under 28 U.S.C. §§ 1331, 28 U.S.C. §§ 2201-02, and 1343(a)(3-4), under 42 U.S.C. § 1983. Venue is proper under 28 U.S.C. § 1391(b) and L.R. 3(B)(3) because the events and omissions giving rise to Plaintiff's claims occurred within this District and Division.

PARTIES

2.

At all times relevant to this Complaint, Nexus Derechos Humanos Attorneys, Inc. is a law firm incorporated in Virginia and based in Atlanta, Georgia. Nexus Derechos Humanos Attorneys, Inc. submits itself to the

jurisdiction of this Court and is entitled to bring this action under federal law for injunctive and declaratory relief and all general, special, compensatory, punitive, and any other permissible damages. Nexus Derechos Humanos has a demonstrable history of defending the constitutional rights of incarcerated people; in fact, NDH's Mission is to do just that. NDH's standing is based on case law. See People for the Ethical Treatment of Animals v. U.S. Dep't of Agric., 797 F.3d 1087, 1097 (D.C. Cir. 2015) (stating "In sum, precedent makes plain that, if an organization expends resources "in response to, and to counteract, the effects of the defendants' alleged [unlawful conduct] rather than in anticipation of litigation," *Equal Rights Ctr.*, 633 F.3d at 1140, it has suffered a "concrete and demonstrable injury" that suffices for purposes of standing.") NDH has expended resources in response to, and to counteract, the effects of the Defendants' conduct. Defendants' failure to evacuate in a mandatory evacuation zone, where free citizens are evacuating belies the evolved sense of human decency and respect to which this country has aspired. To suggest that inmates are on the sixth floor, so there is no need to evacuate with respect to a catastrophic Hurricane shows a blatant disregard for human life in dire times.

3.

At all times relevant to this Complaint, Defendant Sheriff Joe Baron was a United States citizen, a Virginia resident, and the Sheriff of the independent city of Norfolk. Plaintiff is using 42 U.S.C. § 1983 as the vehicle to sue Sheriff Baron in his individual capacity regarding his failure to protect inmates' constitutionally guaranteed protection from cruel and unusual punishment, which includes a guarantee of reasonable safety and security. Defendant may be served, personally, at his place of employment.

4.

At all times relevant to this Complaint, Defendant Sheriff Jim O'Sullivan was a United States citizen, a Virginia resident, and the Sheriff of the independent city of Chesapeake. Plaintiff is using 42 U.S.C. § 1983 as the vehicle to sue Sheriff O'Sullivan in his individual capacity regarding his failure to protect inmates' constitutionally guaranteed protection from cruel and unusual punishment, which includes a guarantee of reasonable safety and security. Defendant may be served, personally, at his place of employment.

5.

At all times relevant to this Complaint, Defendant Sheriff Michael A. Moore was a United States citizen, a Virginia resident, and the Sheriff of the independent city of Portsmouth. Plaintiff is using 42 U.S.C. § 1983 as the vehicle

to sue Sheriff Moore in his individual capacity regarding his failure to protect inmates' constitutionally guaranteed protection from cruel and unusual punishment, which includes a guarantee of reasonable safety and security. Defendant may be served, personally, at his place of employment.

STATEMENT OF FACTS

6.

On Saturday, September 8, 2018, in anticipation of then-tropical storm Florence hitting the East Coast, Virginia Governor Ralph Northam declared a state of emergency for the Commonwealth of Virginia.

7.

Once Florence was upgraded to a category 4 hurricane, Governor Northam issued a mandatory evacuation order for "Zone A" flood areas on the coast of Virginia, effective beginning Tuesday, September 11, 2018.

8.

The most vulnerable parts of the coast of Virginia are divided into "flood zones," labeled A-D, based on the area's geographical factors and tendency to flood. Zone A areas are the most susceptible to flooding, while Zone D areas are the least susceptible of the areas designated. The Commonwealth uses the zone designators to indicate which areas are to be evacuated during tropical storms and hurricanes.

9.

The cities of Norfolk, Chesapeake, and Portsmouth all sit near the coast of Virginia. Based on their locations, all three cities have significant parts labeled as flood zones.

10.

The City of Norfolk Sheriff's Office, where the city jail is located, is in a Zone A flood zone, and thus subject to the Commonwealth's mandatory evacuation order.

11.

The City of Chesapeake Sheriff's Office, where the city jail is located, is in a Zone A flood zone, and thus subject to the Commonwealth's mandatory evacuation order.

12.

The City of Portsmouth Sheriff's Office, where the city jail is located, is in a Zone A flood zone, and thus subject to the Commonwealth's mandatory evacuation order.

13.

Despite the mandatory evacuation for Zone A, the City of Norfolk Sheriff's Office is not evacuating the jail, which holds approximately 1,100 inmates.

14.

Despite the mandatory evacuation for Zone A, the City of Chesapeake Sheriff's Office is not evacuating the jail, which holds approximately 1,000 inmates.

15.

Despite the mandatory evacuation for Zone A, the City of Portsmouth Sheriff's Office is not evacuating the jail, which holds approximately 240 inmates.

16.

In contrast, Indian Creek Correctional Center, a state prison also in Chesapeake, is evacuating its approximately 1,000 inmates, despite being outside the evacuation order, because the prison is in Zone D.

17.

During category 4 Hurricane Harvey, which hit Texas at the end of August in 2017, prisons and jails also refused to evacuate. Conditions in those facilities were reported as dire and included flooding, lack of running water and clean drinking water, no access to working toilets, and food shortages.

18.

By refusing to follow the evacuation order from Governor Northam, Norfolk, Chesapeake, and Portsmouth are not only placing almost 2,500 inmates in danger, but also the officers and civil servants charged to stay and guard and

tend to the jails. Each Defendants has the authority to evacuate the jail over which they command.

COUNT I

**42 U.S.C. § 1983 – VIOLATION OF FOURTH AND EIGHTH AMENDMENT
RIGHT TO FREEDOM FROM BOTH CRUEL AND UNUSUAL
PUNISHMENT AND UNREASONABLE CONDUCT
(Against all Defendants)**

19.

Plaintiff now fully incorporates the facts and assertions found in paragraphs 1–18, and any other facts this Court deems relevant, as if fully stated herein to support all allegations made in this Count.

20.

Based on the incorporated facts to support this Count, Defendants are unconstitutionally subjecting thousands of inmates to imminent danger caused by an impending category 4 hurricane by ignoring a mandatory evacuation order from the Governor of the Commonwealth of Virginia, issued to the exact areas where these jails are located. By ignoring Governor Northam’s order to evacuate, Defendants show deliberate indifference to the safety and security of those both housed in the jails and those charged to work in and guard the jails. There is no doubt that the facts within Defendants’ knowledge demonstrate a rationale inference that everyone located at their jail is subject to a serious risk of bodily and emotional, and that these Defendants have drawn that inference. These

Defendants also have access to evacuation plans but have chosen not to execute those plans, placing the expenditure of resources over human lives. It dumbfounding that a prison with a lower evacuation priority would evacuate but these jails, in Zone A, high priority, mandated evacuation, will not.

COUNT II

42 U.S.C. § 1983 – VIOLATION OF FOURTEENTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS (Against all Defendants)

21.

Plaintiff now fully incorporates the facts and assertions found in paragraphs 1-20, and any other facts this Court deems relevant, as if fully stated herein to support all allegations made in this Count.

22.

Based on the incorporated facts to support this Count, Defendants are unconstitutionally subjecting thousands of inmates to imminent danger caused by an impending category 4 hurricane by ignoring a mandatory evacuation order from the Governor of the Commonwealth of Virginia, issued to the exact areas where these jails are located. Defendants' conduct – ignoring the health and safety of inmates they are charged to protect – shocks the conscience in violation of substantive due process.

COUNT III

INJUNCTIVE RELIEF AND DECLARATORY RELIEF
(Against all Defendants)

23.

Plaintiff now fully incorporates the facts and assertions found in paragraphs 1-21, and any other facts this Court deems relevant, as if fully stated herein to support all allegations made in this Count.

24.

Based on the incorporated facts to support this Count, Plaintiff requests immediate injunctive relief in the form of mandating the evacuation of the jails in Norfolk, Chesapeake, and Portsmouth to comply with Governor Northam's mandatory evacuation order for areas in flood zone A to ensure the safety and security of those housed in the jails and those who work in the jails when the hurricane hits.

COUNT IV

PUNITIVE DAMAGES

25.

Based on the facts alleged in this complaint, Plaintiff is entitled to punitive damages under all applicable laws, because Defendants acted with a willful and conscience indifference to the mandatory evacuation order in effect for flood

zone A areas in the Commonwealth of Virginia, which amounts to violations of inmates' constitutional rights.

COUNT V

ATTORNEY'S FEES

26.

Based on the facts alleged in this Complaint, Plaintiff is entitled to attorney's fees under all applicable laws.

RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. That process issue and service be had on each Defendant;
2. That this Court order Defendants to immediately comply with the mandatory evacuation order in effect for flood zone A areas of the Commonwealth to ensure the safety and security of those who live and work in the jails;
3. That judgment be granted in favor of the Plaintiff against the Defendants for the injuries of Plaintiff;
4. That Plaintiff recover all costs of this litigation;
5. That a jury trial be had on all issues so triable;
6. That Plaintiff recover a judgment against Defendants for punitive damages; and,

7. That Plaintiff receives other and further relief as this Court deems just and proper.

Respectfully submitted this 12th day of September 2018,

s/ MARIO B. WILLIAMS
Mario B. Williams (VSB # 91955)

NEXUS DERECHOS HUMANOS ATTORNEYS, INC.
44 Broad St. NW, Suite 200
Atlanta, GA 30303
404-254-0554/ 703-935-2453 (fax)
mwilliams@ndhlawyers.com

s/LILLIE W. BLANTON
Lillie W. Blanton (VSB # 91733)

1875 Connecticut Ave NW. 10th Floor
Washington, DC 20009
540-478-5309
lblanton@ndhlawyers.com
Counsel for Plaintiff

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that I have reviewed the foregoing **COMPLAINT** and that the facts stated therein are true and correct to the best of my knowledge. The Undersigned called each subject jail and were told that the inmates are not being evacuated. One jail actually said, despite the mandatory evacuation notice, that evacuation was not necessary because the inmates were on the Fifth floor. On top of calling each jail, this issue has been cited by media sources.

s/MARIO WILLIAMS
Mario Williams

s/LILLIE BLANTON
Lillie Blanton