

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

EDWARDS BRAGGS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	2:14-CV-00601-MHT-GMB
JEFFERSON DUNN, in his official capacity as Commissioner of the Alabama Department of Corrections, et al.,)	J. Thompson
)	
Defendants.)	
)	

**PLAINTIFFS’ EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER OR A PRELIMINARY INJUNCTION
REQUIRING THE IMMEDIATE CLOSURE OF
BIBB CORRECTIONAL FACILITY’S SEGREGATION UNITS**

Plaintiffs seek immediate relief closing the segregation units at Bibb Correctional Facility. Fed. R. Civ. P. 65. The circumstances surrounding these units are well known to the Court. On January 20, 2017, Plaintiffs’ expert Dr. Craig Haney recommended that the segregation units at Bibb Correctional Facility be closed immediately because of the risk of harm they pose—a recommendation he had never made in any prison. *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1239 (M.D. Ala. 2017) (Liability Opinion); Dr. Craig Haney, Jan. 20, 2018 Trial Tr., at 140:5-143:14, 165:13-21. Likewise, Plaintiffs’ expert Dr. Kathryn Burns testified that the Bibb segregation units were “very concerning” and that she had not “seen

units like that in a long time.” Dr. Kathryn Burns, Dec. 12, 2106 Trial Tr., at 214:5-215:23. As the Court noted in its liability opinion, even Defendants’ own security expert, Robert Ayers, “credibly testified to his suspicion that, because of understaffing and safety concerns, correctional officers were not walking down the hallway away from the central cube at Bibb as frequently as they claimed.” *Braggs*, 257 F. Supp. 3d at 1239.

Now, over a year later and despite the Court’s Liability Opinion, Defendants have done nothing to address the deficiencies in the segregation units at Bibb. Staffing deficiencies remain beyond critical, and information presented during this remedial trial on segregation indicated an extraordinary risk for prisoners housed in these units. There are few, if any, correctional rounds, mental health rounds, and little or no out-of-cell time. And prisoners with mental illnesses, including serious mental illnesses, remain housed in the units. Such gross violations of the State’s basic obligation to provide for the safety and health of prisoners while they are in state custody creates, and perpetuates, a substantial risk of serious harm to prisoners housed in segregation. *See Braggs*, 257 F. Supp. 3d at 1192 (articulating Eighth Amendment standard). Moreover, such conditions present an imminent risk of harm to prisoners located in the segregation units. The Court should not let this situation remain unaddressed until the conclusion of the segregation remedial phase or beyond.

For the reasons stated herein, Plaintiffs move the Court to order Defendants to (1) immediately close the segregation units at Bibb; (2) move all prisoners currently placed in the units to other correctional facilities or other housing after an expedited review of their individual situations and healthcare needs, if any; (3) report to the Court by Monday, February 12, 2018, at 5:00 p.m. regarding the status of each prisoner currently held in the Bibb segregation units; and (4) keep the segregation units closed until Defendants can appropriately renovate or replace the units to address inadequacies with the physical plant and provide appropriate staffing, monitoring, and treatment.

FACTUAL BACKGROUND

I. The Physical Layout of the Bibb Segregation Units

In its Liability Opinion, the Court found that Bibb's segregation units:

might be the most egregious in terms of visibility: each housing unit has its own segregation unit of a few cells shut off from the rest of the unit, down a long hallway and through a door, with no line of sight from the central officer station and officers entering the space to check on the prisoners only periodically.

Braggs, 257 F. Supp. 3d at 1239; *see also* Pls. Dem. Ex. 137.¹ On February 9, 2018, Associate Commissioner Grantt Culliver confirmed² that cubicle officers

¹ There are thirty-six (36) segregation cells at Bibb. Pls. Ex. 1404.

² Because Associate Commissioner Culliver's testimony referred to herein occurred today, Plaintiffs do not yet have even a rough transcript to cite. However,

cannot see into the segregation units at Bibb and that officers must physically enter the unit to observe and check on prisoners housed in segregation. Associate Commissioner Culliver further confirmed that duty post logs and correctional officer rounds logs indicate that security checks are not happening as they should in the Bibb segregation units, with prisoners going hours and even days without being seen by a correctional officer.

ADOC's own facilities assessment consultants, Goodwyn Mills, recommended in fall 2017 that ADOC create an entirely new segregation unit for Bibb because of the current lack of "visual control." Pls. Ex. 1344 at 65. Yet Defendants have done nothing to relocate or increase visibility within the Bibb segregation units, nor have they presented any plan to do so. *See* Doc. 1533 (Defs.' Segregation Remedial Plan) at 36-39. Further, Defendants have not moved any prisoners to other segregation units in other facilities even though Associate Commissioner Culliver confirmed that space was available system-side; apparently, it is just too difficult to transport them.

II. People with Mental Illness in Segregation

Bibb Correctional Facility continues to house prisoners in segregation at a disproportionate rate. As of January 10, 2018, 38% of prisoners housed in segregation at Bibb were on the mental-health caseload, compared to just 17.8% of

these representations are made based on the best recollection of all Plaintiffs' counsel who were present.

the total Bibb population on the caseload. Pls. Ex. 1404 (Jan. 10, 2018 ADOC Segregation Roster); Pls. Ex. 1376 (Jan. 2018 MHM Master Roster); Pls. Ex. 1393 at 1 (Dec. 2017 MHM Monthly Report).

Though the Court held in June 2017 that prisoners with serious mental illness should not be housed in segregation absent extenuating circumstances, as of January 10, 2018, there were five (5) prisoners with serious mental illness housed in segregation at Bibb. *Braggs*, 257 F. Supp. 3d at 1247; Pls. Dem. Ex. 166 (Prisoners Nos. 11, 44, 122, 131, 132). Two (2) of those prisoners were also listed on a segregation roster from on or around December 12, 2017, giving rise to an inference they had been housed in segregation for over thirty days. Pls. Dem. Ex. 166 (Prisoners Nos. 11 and 44).

Additionally, a total of thirteen (13) individuals at Bibb listed on the January 10, 2018 segregation roster were on the mental-health caseload. Pls. Dem. Ex. 164 (Prisoner Nos. 28, 65, 110, 111, 128, 135, 142, 280, 294, 297, 311, 313, 350). Of those individuals, seven (7) were also listed on a segregation roster from on or around December 12, 2017, giving rise to an inference they had been housed in segregation for over thirty days. Pls. Dem. Ex. 164 (Prisoner Nos. 28, 65, 110, 111, 128, 135, 142).

Furthermore, within the past year, there were ten (10) instances of individuals who were discharged from suicide watch directly to segregation at

Bibb. Pls. Ex. 1401 (Jan.-Dec. 2017 Suicide Prevention Monitoring Logs). Commissioner Naglich testified on February 7, 2018, that this practice is not appropriate and would be especially problematic for a person with a mental illness. Ruth Naglich, Feb. 7, 2018 R.D. Trial Tr., at 211:23-212:7.

Finally, as of January 2018, at Bibb, there were 100 individuals with categorical serious mental illness diagnoses who were coded as MH-1. Pls. Dem. Ex. 165. Defendants' current coding scheme requires these individuals to be coded as MH-2 or higher. Ruth Naglich, Feb. 7, 2018 R.D. Trial Tr., at 121:19-24. Because ADOC's current policy only prohibits the placement of individuals coded as MH-2 or higher from being placed in segregation, these people are at risk of being placed in segregation because they are miscoded, and therefore, they face a substantial risk of serious harm. *Braggs*, 257 F. Supp. 3d at 1247. In fact, three individuals with categorical serious mental illness who were miscoded as MH-1 were placed in segregation at Bibb during December 2017 or January 2018. Pls. Dem. Ex. 165-SEG (highlighting Prisoner Nos. 139, 337, 664).

III. Correctional Officer Rounds Are Not Occurring

Correctional officer rounds in the Bibb segregation units are not happening at the frequency ADOC's own policy requires. ADOC Administrative Regulation 434 requires security officers to observe prisoners housed in segregation every thirty minutes and to note such checks on a duty post log. Pls. Ex. 1399 (Admin.

Reg. 434) at 8. On February 9, 2018, Associate Commissioner Culliver testified that he would not be surprised to know that correctional officer rounds are not occurring as required due to understaffing. Indeed, as of October 2017, Bibb was only staffed at 23% of the authorized correctional officer positions. Pls. Ex. 1308 (June 2017 ADOC Monthly Statistical Report) at 16 (listing authorized correctional officer numbers); Pls. Ex. 1323 (Correctional Officer Staffing Numbers).³ Four months ago, Defendants received preliminary staffing recommendations for Bibb from their security consultants, Merle and Margaret Savage. The Savages recommended that ADOC station one correctional officer in each segregation unit at Bibb twenty-four (24) hours a day, seven (7) days a week. Doc. 1374-2 at 13 (Savages' Preliminary Staffing Recommendations for Bibb).

Duty post logs from Bibb segregation units reflect that correctional officer rounds are not occurring every thirty (30) minutes and that, at times, hours and **even days pass** without correctional officer rounds happening. Pls. Ex. 1406 (Bibb Correctional Officer Rounds Logs). Indeed, the logs confirm that one prisoner, C.C., who has been diagnosed with Bipolar II disorder, went four (4) days without being checked on by a correctional officer. Pls. Ex. 1376 (Jan. 2018 MHM Master Roster) at 9; Pls. Ex. 1406 (Bibb Correctional Officer Rounds Logs)

³ On February 9, 2018, Associate Commissioner Culliver testified that Bibb was currently staffed at 28-30% of the authorized correctional officer positions. But it was unclear the basis of this conclusion and/or whether this number included supervisory officers.

at ADOC0413834, ADOC0416080-82 (showing no entries at all into the segregation unit from January 5 through January 8, 2018).

Furthermore, some correctional officer rounds logs from Bibb are signed by Correctional Cubicle Officers (CCOs), who have not received training at the Academy. *See, e.g.*, Pls. Ex. 1406 (Bibb Duty Post Logs) at ADOC0413836-37, ADOC0413857-64; *see also* Jefferson Dunn, Nov. 30, 2017 Trial Tr., at 79:1-86:9. These officers are not allowed to interact with prisoners because they have not received adequate training. Jefferson Dunn, Nov. 30, 2017 Trial Tr., at 79:1-86:9. On February 9, 2018, Associate Commissioner Culliver testified that, based on the logs, it is not possible to know whether CCOs themselves conducted the rounds or simply signed the form. If CCOs are in fact conducting segregation rounds, prisoners are placed at a further risk of irreparable harm because they are being directly supervised only by untrained officers.

IV. Mental-Health Rounds Are Not Occurring

Mental-health rounds in the Bibb segregation units are not happening at the frequency ADOC's own policy requires. ADOC's own policy requires mental-health segregation rounds four days per week. Jt. Ex. 126 (ADOC Admin. Reg. 624) at 2. While mental-health rounds logs from Bibb reflect that mental-health rounds occurred on six days during a two-week period, the duty post logs from the same period reflect zero entries by mental-health staff into the segregation units at

Bibb. *Compare* Pls. Ex. 1433 (Bibb Mental Health Rounds Logs) (documenting rounds on six days during a two-week period) *with* Pls. Ex. 1406 (Bibb Duty Post Logs) at ADOC0416080-82. The rounds logs contain almost no substantive notes regarding prisoners' mental-health status, further evidencing the cursory contact, if any, between mental-health staff and prisoners in segregation, some of whom have serious mental illnesses. *See* Pls. Ex. 1433 (Bibb Mental Health Rounds Logs).

V. Out-of-Cell Time Is Not Provided to Prisoners Housed in Segregation at Bibb

Prisoners housed in segregation at Bibb are not receiving out-of-cell time. The logs maintained for prisoner C.C., who has a Bipolar II diagnosis, reflect that he received one exercise walk between December 28, 2017, and January 26, 2018. Pls. Ex. 1406 (Bibb Segregation Logs) at ADOC0416080-82. And class member M.P., who has a serious mental illness diagnosis of Psychotic Disorder Unspecified, received no exercise walks between December 10, 2017, and January 12, 2018. *Id.* at ADOC0416111-15; Pls. Ex. 1376 (Jan. 2018 MHM Master Roster). The Court has found that out-of-cell time is critical for prisoners with serious mental illness who are housed in residential treatment units and failure to provide it results in a substantial risk of serious harm. *Braggs*, 257 F. Supp. 3d at 1213-17, 1267-68. Similarly, the failure to provide out-of-cell time to prisoners with serious mental illnesses housed in segregation only compounds the risk of harm segregation poses to this population. *See id.* at 1240 n.65 (noting that other

states operate housing units for people with mental illnesses who have committed disciplinary infractions that provide up to twenty (20) hours of out-of-cell time per week as well as therapeutic activities).

LEGAL STANDARD

To obtain a temporary restraining order or preliminary injunction, the moving party must show: (1) a substantial likelihood of success on the merits; (2) that it will suffer irreparable injury unless the injunction is issued; (3) that the threatened injury outweighs possible harm that the injunction may cause the opposing party; and (4) that the injunction would not disserve the public interest. *GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Engineers*, 788 F.3d 1318, 1322 (11th Cir. 2015). If a temporary restraining order is sought, the moving party must also show that immediate and irreparable injury will result before the adverse party can be heard in opposition. *See* Fed. R. Civ. P. 65(b)(1)(A).⁴

ARGUMENT

⁴ Pursuant to Fed. R. Civ. P. 65(b)(1)(B), the attorney for the movant seeking a temporary restraining order must “certif[y] in writing any efforts made to give notice and the reasons why it should not be required.” Today, counsel for the parties conferred briefly. No agreement on segregation at Bibb has been reached, but Plaintiffs have expressed their willingness to continue to discuss the issue should Defendants find evidence that the conditions in segregation are less dire than the duty post logs and other ADOC records show. However, given the extraordinary nature of the evidence of risk of harm in segregation at Bibb, Plaintiffs do not believe they should postpone bringing this motion.

I. Defendants Continue to Be Deliberately Indifferent to Substantial Risks of Serious Harm to Prisoners Housed in the Segregation Units at Bibb.

The Eighth Amendment requires that prison officials adequately meet the serious mental health needs of prisoners. *See Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986). It also requires that officials “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotations omitted). Prison officials violate the Eighth Amendment when they are deliberately indifferent to a substantial risk to prisoner safety. *Farmer*, 511 U.S. at 834. Deliberate indifference “entails something more than mere negligence,” but “the cases are also clear that it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” *Id.* at 835. Where officials have actual knowledge that prisoners are at substantial risk of serious harm, but “disregard[] that known risk by failing to respond to it in an (objectively) reasonable manner,” they violate the Eighth Amendment. *Rodriguez v. Sec’y for Dep’t of Corr.*, 508 F.3d 611, 617 (11th Cir. 2007); *see also Farmer*, 511 U.S. at 836 (“It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.”)

The Court has already found Defendants deliberately indifferent with respect to segregation conditions system-wide and noted its particular concern with the

situation at Bibb. Nevertheless, Defendants have not taken any actions to correct the deficiencies at this specific facility. As deeply disturbing as the facts are here, the response of ADOC officials is even more so. While acknowledging that the situation in the segregation units at Bibb “concerned” him, Associate Commissioner Culliver questioned the veracity of ADOC’S own documents and advocated for keeping the units open despite the severe risks to prisoners, merely because it would be too difficult to transport them to another facility. Moreover, as of February 9, 2018, his stated plan of action was not to review immediately each prisoners’ situation and house them elsewhere where possible, but to gather the various logs together and to discuss the situation with the Bibb warden. Furthermore, there is no plan to address the lack of visibility into the segregation cells caused by the way the units were constructed. This *de facto* lack of response merely demonstrates the continued deliberate indifference of Defendants to the substantial risk of serious harm faced by seriously mentally ill prisoners in the segregation units at Bibb.

II. Defendants’ Failure to Adequately Supervise, Monitor, and Treat Prisoners in the Segregation Units at Bibb Creates a Substantial Threat of Irreparable Injury.

The injuries at issue in this Motion—suicide, serious self-injury, or decompensation—are patently imminent and irreparable. There is no question that the vast majority of suicides and suicide attempts in the ADOC system have

occurred while the prisoner was housed in segregation. Pls. Ex. 1267; *see also Braggs*, 237 F. Supp. 3d at 1236 (citing Dr. Craig Haney regarding the “characteristically high numbers of suicide deaths and incidents of self-harm and self-mutilation” that occur in segregation). Further, the Court has already noted that “[t]he serious psychological harm stemming from segregation is **even more** devastating for those with mental illness.” *Braggs*, 257 F. Supp. at 1237 (emphasis added).

As stated above, as recently as January 20, 2018, there were five (5) prisoners with serious mental illness currently housed in segregation at Bibb, and two (2) of them may have been in segregation more than 30 days. Similarly, there were thirteen (13) individuals on the mental-health caseload in segregation, and seven (7) may have been housed in segregation for over thirty days. The risks to these individuals is even more acute considering the lack of any monitoring by health or security staff, virtually no out-of-cell time, and the dearth of mental health treatment. *See Braggs*, 257 F. Supp. 3d at 1245. **There are literally days in which not one official has entered the segregation units at Bibb.** This cannot be allowed to continue—particularly when Defendants have empty segregation cells in other facilities. Defendants’ promises of more staffing, monitoring, and treatment, or their references to the purportedly limiting effect of the application of “extenuating circumstances” on the placement of seriously mentally ill prisoners in

segregation, rings hollow against the overwhelming weight of the evidence. And in any event, none of these measures alter the physical deficiencies in how the units were constructed in the first place. The Court “need not await a tragic event” before it may act. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”).

As set forth above, Defendants’ conduct and knowing failure to act constitutes an ongoing violation of their constitutional duty to adequately protect the safety of prisoners located in the segregation units at Bibb. An ongoing constitutional violation also constitutes irreparable harm in and of itself. *See Laube v. Haley*, 234 F. Supp. 2d 1227, 1251 (M.D. Ala. 2002) (“The existence of a continuing constitutional violation constitutes proof of an irreparable harm...”)

(quoting *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir.1978)).

III. The Threatened Injury to Seriously Mentally Ill Prisoners at Risk of Serious Injury or Death Significantly Outweighs the Harm of Issuing an Injunction Against Defendants.

In light of the previous findings of the Court in the Liability Opinion, the testimony of Associate Commissioner Culliver that virtually no action is being taken to address the particular and singular issues with respect to the segregation units at Bibb, and the incontrovertible proof that seriously mentally ill prisoners continue to be placed in the units, there is no legitimate question that the threatened

injury to prisoners significantly outweighs any purported harm to Defendants. *See Laube*, 234 F. Supp. at 1252 (finding that the defendants would “suffer no harm from providing sufficient staff and adequate facilities to reduce the risk of assault and harm to women prisoners”); *see also Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 705 (11th Cir. 1985) (“Lack of funds for facilities cannot justify an unconstitutional lack of competent medical care and treatment for inmates.”). Defendants have failed their constitutional duty to adequately monitor and treat prisoners located in segregation generally, but particularly at Bibb. And their intransigence continues unabated. In these circumstances, Plaintiffs respectfully submit, the Court must act.

IV. A Restraining Order or Preliminary Injunction Would Be in the Public Interest.

The public has a substantial interest in not only safeguarding the rights afforded under the Constitution generally, but also specifically in protecting prisoners in the segregation units at Bibb from preventable death, self-harm, or decompensation. *See Laube*, 234 F. Supp. at 1252 (“[T]here is a strong public interest in requiring that plaintiffs’ constitutional rights no longer be violated, as well as in prevention of the foreseeable violence that will occur if present conditions persist.”). Defendants have disregarded their constitutional obligation to adequately monitor and treat prisoners housed in the segregation units at Bibb, and the public would be served by an injunction requiring them to adhere to their

constitutional duty by not just monitoring and treating prisoners in segregation but by closing the Bibb segregation units altogether.

V. Plaintiffs Should Not Be Required to Post Bond Under Fed. R. Civ. P. 65(c).

The Court should require no security or nominal security under Fed. R. Civ. P. 65(c), as Plaintiffs and class members are prisoners seeking compliance with their basic civil rights and injunctive relief to prevent further death and serious injury. *See BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005) (“[I]t is well-established that the amount of security required by the rule is a matter within the discretion of the trial court, and the court may elect to require no security at all.”) (quotations and ellipses omitted); *Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009) (“Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.”); *see also All States Humane Game Fowl Org., Inc. v. City of Jacksonville, Fla.*, No. 308-CV-312-J-33MCR, 2008 WL 2949442, at *13 (M.D. Fla. July 29, 2008) (“Plaintiffs bring a constitutional law complaint and allege infringement of fundamental rights. The action that they fear, permanent destruction of their roosters, is a considerable loss to face. The Court finds it appropriate to waive the bond requirement in this case.”).

RELIEF REQUESTED

Plaintiffs seek an order requiring Defendants to (1) immediately close the segregation units at Bibb; (2) move all prisoners currently placed in the units to other correctional facilities or other housing after an expedited review of their individual situations and healthcare needs, if any; (3) report to the Court by Monday, February 12, 2018, at 5:00 p.m. regarding the status of each prisoner currently held in the Bibb segregation units; and (4) keep the segregation units closed until Defendants can appropriately renovate or replace the units to address inadequacies with the physical plant.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter a temporary restraining order or preliminary injunction as set forth in this Motion.

Dated: Feb. 9, 2018

Respectfully Submitted,

/s/ Maria V. Morris

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CERTIFICATE OF SERVICE

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