

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ELLIOTT ABRAMS, et al.,

Plaintiffs,

-v-

Case No. 20-cv-11053

Hon. Mark A. Goldsmith

WILLIS CHAPMAN, et al.,

Maj. Judge R. Steven Whalen

Defendants.

**REPLY
TO DEFENDANTS' RESPONSE (R 45)
TO PLAINTIFFS' EMERGENCY MOTIONS (R. 41 AND R. 42)**

Defendants have offered no realistic solution to the issue of social distancing in the prison system. The solution offered by the Defendants was attrition as to confinement of eight people in each cube in the pole barns. Defendants would obtain social distancing by not replacing a prisoner from a cube when said prisoner was moved out of that cube. One can fathom that this method would take 5 or 10 years to obtain social distancing through attrition. It seems that Defendants will not directly deal with the issues of protecting inmates from COVID-19 by eliminating social distancing, retesting, and cleansing the prison.

In their Response, Defendants are basically arguing that due to “possible costs” of bringing one or more of the cellblocks at Jackson Prison online that the

requirements of Eighth Amendment should be ignored (R. 45-1, PageID.2588-89). This is not now the law, nor has it ever been the law. *See Bounds v. Smith*, 430 U.S. 817, 825 (1977) (holding that “the cost of protecting a constitutional right cannot justify its total denial”); *Glover v. Johnson*, 478 F. Supp. 1075, 1078 n.2 (E.D. Mich. 1979) (holding, in response to female inmates' equal protection claim, that cost considerations cannot justify unwillingness to operate a prison system in a constitutional manner because the “state has constitutional obligations to its individual prisoners which override other, economic considerations”); *see also Harris v. Thigpen*, 941 F.2d 1495, 1509 (11th Cir. 1991) (stating that a lack of funds allocated to prisons by the state legislature will not excuse the failure of prison systems to maintain minimum levels of medical services); *Ramos v. Lamm*, 639 F.2d 559, 573 & n.19 (10th Cir. 1980) (stating that lack of funding is no excuse for depriving inmates of their constitutional rights); *Women Prisoners, Penological Interests, and Gender Stereotyping: An Application of Equal Protection Norms to Female Inmates*, 32 Colum. Hum. Rts. L. Rev. 251, 277 (2000) (“Because financial considerations are not *unique* to prisons, the *Turner* justification for applying a different standard of review is not present. Financial considerations are not a separate category of legitimate penological interests to be given equal weight as security, rehabilitation, and deterrence because cost alone does not justify differential treatment, and monetary constraints are not unique to prisons.”).

Defendants cast all their eggs on the Affidavit of Bush (R. 45-1). The problem with this is that it is natural for prison staff to claim that things cannot be done. However, once ordered by a court, it is done. Plaintiffs have never claimed that all of these cell blocks at Jackson were operational. They have claimed that these cell blocks were there and might be a source for additional cells. The Affidavit of Bush has not completely taken away that possibility.

As to Cell Blocks 4 and 5 (R. 45-1, PageID.2584-85), they are the newer cell blocks and all aspects functioned when first opened about 12 years ago. Why storage of papers overrides the lives and medical conditions of inmates is not explained by Bush. It is admitted by Bush that in 5 Block that “[t]he ground level rooms and offices are used by the MDOC transportation and training units for administrative purposes.” (*Id.*) It can then be assumed that 5 Block, which is connected to 4 Block, has running water, electricity and toilets. Therefore, Bush’s claim in Paragraph 12 of all the constructions and changes that would be required to bring all cell blocks at Jackson online is not factually accurate (R. 45-1, PageID.2588). The only way this Court can know which of these claims by Bush are accurate is by Plaintiffs doing an entry on land with experts.

In this affidavit, Bush mention the security of the prison as to key-operated cells. Plaintiffs will concede that it is unlikely that cell blocks 6, 7, 8, 11 and 12 have electronic system to open and close doors. However, cell blocks 4 and 5 likely do. It

is Plaintiffs understanding that MDOC is presently operating cell blocks 9 and 10, in what is known as Parnall Correctional Facility, and it is likely that these cell blocks do not have an electronic system to open and close doors. There are also cell blocks 1, 2 and 3, in what is known as Reception and Guidance Center, that has identical constructed buildings as these other cell blocks, and likely do not have electronic monitoring system for opening and closing cells.

Bush mentions the plumbing in blocks 4-8 as being intact but has a concern that since water has not flowed for 10 years through those water pipes there might be plumbing issues (R. 45-1, PageID.2586). The problem with that statement is Bush also claimed that Block 5 is used for administrative offices, so it is hard to believe that water does not flow there each day. At Jackson Prison, deep wells provide water where needed and these well were located on the South side of the prison. This would mean that for water to get to 4 and 5 blocks, it likely had to flow through pipes that Bush is claiming has not saw water for 10 years or more.

Bush also mentions “Functionality” issues if these blocks are opened (*Id.*, PageID.2587). One issue mentioned is medical. The state-wide hospital is on the backside of Jackson Prison. Second issue mentioned is mental health services, but the hospital is right around the corner. Third issue mentioned is food service. Plaintiffs agree that it might be difficult to provide meals but not impossible. There are four prisons within a quarter mile, if not closer, of these cellblocks at Jackson.

This was not mentioned by Bush. Further, he never explained why each of these prisons could not prepare “x” amount of extra food to be provided if any of the cell blocks are opened. Bush does mention that “because elevators are non-operational, food service employees would need to carry the trays up various flights of stairs to deliver meals, three times a day, to inmates.” (R.45-1, PageID.2587, para. c). The inmates confined in the operational cell blocks at Jackson prison are not fed in their cells. They come down to base and many go to the chow hall to eat. We know that in regular housing units with 2 inmates to a cell, these inmates go to base and get their food and then return to their cell to eat the food. Bush never explained why that could not be done.

Bush only mention of Blocks 11 and 12 was that they have been vacant since 2002. It is Plaintiffs’ understanding that these two blocks had a significant amount of upgrading done around 1995 and they should still be in decent shape but without an inspection that cannot be determined.

Block 7 has been operated as a museum for a number of years. It is hard to believe that this block did not have electricity and running water. This Court may not be aware that 7-block is connected to 6-block at one end and the other end is connected to 8-block. It seems that the water to get to 7-block had to flow through the pipes leading up to 8-block. The same could be said as to water flowing to 5-

block had to either go through or by 8, 7 and 6 blocks. None of this is explained by Bush.

It seems that the purpose of Bush's affidavit was to put before this Court as many obstacles the he could create. However, based on the above, he might not have read closely what he was signing on to. By now, MDOC should know that making conclusory statements will not be sufficient to allow it not to comply with what the constitution mandates.

It seems there are numerous discovery requests that Defendants will agree to but based on Bush's affidavit they don't want a close review of these cell blocks. If during the tours, it is demonstrated that certain cell blocks cannot be opened, Plaintiff would concede that to this Court. Plaintiffs has already done that when Defendants pointed to the issues of reopening the Riverside Correctional Facility. Defendant never addressed Stanish Prison or others mentioned by Plaintiffs.

Due to the affidavit of Bush, Plaintiffs now has to expand their request for entry on land to include the cell blocks in the Reception Center and the cell blocks at Parnall Prison based on the above issues raised by Plaintiffs. Plaintiffs would request that staff be made available so that the experts, and counsel for Plaintiffs, can understand the issues raised by Bush's affidavits and it can be demonstrated why each of the different cell blocks cannot be opened. Further, Plaintiffs would request to take the deposition of Bush.

Plaintiffs are aware that they have no duty or obligation to present to this Court the means for Defendants to meet their constitutional obligations in the seeking of an injunction. Case law requires Defendants to comply with a court's order. However, to prevent significant medical issues, and even some deaths of Plaintiffs, Plaintiffs are willing to work with the Defendants to meet their constitutional obligations.

WHEREFORE, for the reasons stated above and in the emergency motions, this Court should allow the limited discovery as requested by Plaintiffs. This Court should further allow Plaintiffs to enter on the land of the Reception center to enter into Cellblocks 1-3 and on the land of Parnall Prison to enter into Cellblocks 9, 10 and 16, and the taking of the deposition of prison staff Bush.

Respectfully submitted,

/s/ Daniel E. Manville
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Certificate of Service

I, Daniel E. Manville, states under the penalty of perjury that on June 3, 2020, the above document was served on Defendants' counsel by the ECF system.

s/ Daniel E. Manville