

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

EDWARD BRAGGS, *et al.*,

Plaintiffs,

V.

JOHN HAMM, *et al.*,

Defendants.

Case No. 2:14-cv-00601-MHT

District Judge Myron H. Thompson

**RESPONSE TO PLAINTIFFS' REPORT
REGARDING QUARTERLY STAFFING REPORTS [REDACTED]**

Defendants John Hamm (“Commissioner Hamm”), in his official capacity as Commissioner of the Alabama Department of Corrections (“ADOC”), and Deborah Crook (“Deputy Commissioner” and, collectively with Commissioner Hamm, the “State”) in her official capacity as ADOC’s Deputy Commissioner, Office of Health Services, hereby submit this their Response to Plaintiffs’ Report Regarding Quarterly Staffing Reports (the “Report,” Doc. 3710).¹

¹ The State submits this report in response to the Phase 2A Revised Remedy Scheduling Order on the Eighth Amendment Claim. (Doc. 3667). The State expressly preserves any and all objections and all available legal and equitable arguments in response to the Court's Phase 2A Omnibus Remedial Opinion (Docs. 3461, 3462, 3463, 3465), Phase 2A Omnibus Remedial Order (Doc. 3464), any other Phase 2A remedial orders, and the Court's liability opinions and orders in this action, including without limitation, the Court's Liability Opinion and Order as to Phase 2A Eighth Amendment Claim (Doc. 1285) and Phase 2A Supplemental Liability Opinion and Order on Periodic Mental-Health Evaluations of Prisoners in Segregation (Doc. 2332). Nothing contained in this filing shall be construed as an admission by the State, a waiver of any objection to any opinion or order in this action, or a waiver of the State's pending appeal related to Phase 2A (see Doc. 3488). Nothing in this filing shall be construed as an admission of any kind by the State that ADOC's current or historical staffing or provision of mental-health care is or was unconstitutional.

I. PLAINTIFFS MISREAD THE STATE’S QUARTERLY CORRECTIONAL STAFFING REPORTS.

Plaintiffs inappropriately ignored certain correctional staff included in the State’s Quarterly Correctional Staffing Reports and confused Mandatory posts with Mandatory/Critical minimum staffing, resulting in a misreading of the State’s Reports. The State does not dispute that correctional staffing at the major male facilities decreased from March 31, 2021 to March 31, 2022. The State, however, disagrees with Plaintiffs concerning the magnitude of the decrease. Plaintiffs’ Report inappropriately equates critical minimum staffing with “Mandatory” posts. (Doc. 3710 at 12). Further, Plaintiffs refusal to count correctional cubical officers results in an apparent (but false) reduction in the State’s overall correctional staffing compliance.

The State retained Meg and Rus Savage (the “Savages”) to assist with creating a staffing analysis for ADOC’s major male facilities. The Savages reviewed ADOC’s major male facilities and submitted the “Assessment of Correctional Staff Needs and Shift Relief Requirements at Facilities within the [ADOC].” (“2018 Staffing Analysis,” Doc. 1813-1). The 2018 Staffing Analysis created post plans for ADOC’s major male facilities and identified posts within ADOC facilities as either “mandatory” or “essential” posts. (Doc. 1813-1 at 113-126). Under the 2018

or deficient in any way.

Staffing Analysis, the “[REDACTED]
[REDACTED].” (Id. at 106).

Further, the 2018 Staffing Analysis differentiated between mandatory posts and critical minimum staffing. “[REDACTED]
[REDACTED]
[REDACTED].” (Doc. 1813-1 at 22). The 2018 Staffing Analysis identified the “Mandatory posts,” not the “Mandatory minimum.” (Id.). Plaintiffs incorrectly state, “[t]he inability to staff [mandatory] posts is so crucial that the failure of a system to reach this level makes the facility so unsafe that a ‘lockdown,’ in which all but emergency procedures stop, must be instituted.” (Doc. 3710 at 12). Falling below critical minimum staffing may in certain circumstances require a facility to lock down, but that does not directly equate to “Mandatory Posts.”

Additionally, Plaintiffs simply ignore certain staff currently filling mandatory posts within each facility.² In Plaintiffs’ Report, Plaintiffs subtract cubical correctional officers (“CCO”) from consideration as correctional staff. (Doc. 3710). Plaintiffs then compound this reduction by calculating a percentage of assigned posts covered by correctional staff based upon the number of Mandatory and Essential posts identified on the Quarterly Correctional Staffing Report. (Id. at 12). Plaintiffs’

² Plaintiffs unilaterally remove CCOs from the list of correctional staff. The Court ordered the State to include CCOs in a breakdown of correctional staff; the Court did not order the State to ignore these staff members. (Doc. 2763).

artificially lowered number equates to sufficient correctional staff to cover 38.8% of ADOC's Mandatory and Essential Posts. (*Id.*)³ In simple terms, Plaintiffs artificially ***inflated*** the number of critical minimum posts by including all Mandatory and Essential posts, and artificially ***deflated*** the number of correctional staff by excluding CCOs. (*Id.*). These alterations resulted in an intentional misstatement of ADOC's staffing levels.⁴ ADOC disputes Plaintiffs' observations and conclusions concerning the March 31, 2021 to March 31, 2022 Quarterly Correctional Staffing Reports.

II. THE STATE CONTINUES TO FIGHT TO RECRUIT AND RETAIN CORRECTIONAL STAFF.

Plaintiffs assert the State "permits" the staffing shortages at ADOC, suggesting the State failed to take any action to attempt to address the level of correctional staffing. (Doc. 3710 at 3). Plaintiffs insist that the State "must take whatever steps are necessary to attract" more staff. (*Id.* at 18). Plaintiffs, however, fail to identify any concrete steps the State should, but failed to, take. The State, on the other hand, continues to proactively address its staffing challenges through multiple concrete measures. The State lobbied the Alabama Peace Officer's

³ This number remains overly exaggerated as it fails to consider overtime worked by all correctional staff, including CCOs.

⁴ ADOC must update the 2018 Staffing Analysis by November 1, 2022. (Doc. 3667). Until completion of the updated staffing analysis, ADOC cannot accurately identify all Mandatory posts or the critical minimum staffing for each facility.

Standards and Training Commission (“APOSTC”) to modify standards to broaden the range of eligibility of new recruits. (See Letter to John Hamm, Commissioner from APOSTC re: APOSTC Physical Agility Test Protocol, June 15, 2022, attached as Exhibit A). Further, the State created new positions (CCO and basic correctional officer (“BCO”)) to attempt to provide immediate relief to staffing concerns. The State implemented pay increases for new hires, as well as current staff. ADOC retained the assistance of three (3) consulting firms to assist with identifying ways to address retention and recruitment, and bolstered its internal recruiting team to include to (3) Lieutenants and one (1) Captain. The State continues to make significant efforts to recruit and retain correctional staff.

A. ADOC SUCCESSFULLY LOBBIED APOSTC TO MODIFY PAAT STANDARDS.

ADOC recognized one obstacle to recruiting successful candidates to join ADOC concerned the Physical Agility/Ability Test (“PAAT”) required by APOSTC to become a certified correctional officer (“CO”). To address this concern, ADOC commissioned a study conducted by Troy University to validate proposed modifications to the PAAT for COs. The modifications included tests directed towards activities associated with correctional officers and an updated scoring system. ADOC presented the proposed modifications to APOSTC, and APOSTC unanimously approved the proposal. Beginning October 1, 2022, the new PAAT will go into effect for a test period. ADOC anticipates the new PAAT will broaden

the available number of individuals qualified to become COs.

B. The State Created CCOs and BCOs to Fill Certain Mandatory Posts.

The State created two (2) positions within ADOC to allow more opportunity for individuals to apply without the restrictions of the APOSTC training. The BCO and CCO positions allow ADOC more flexibility to fill more mandatory positions. The BCO position requires a 6-week training to obtain ADOC certification, while the CCO position does not require any certification and only requires on the job training. These positions increase the number of trained correctional staff available to fill Mandatory posts.

C. THE STATE INCREASED THE PAY FOR ADOC CORRECTIONAL STAFF.

The State increased the starting pay for correctional staff. Starting in 2019, the Alabama legislature authorized a two-step (5%) salary increase for a multitude of positions, such as CO and BCO. (See New Compensation Plan, July 2019, attached as Exhibit B). The pay increase provides ADOC the opportunity to compete with other employers seeking individuals interested in law enforcement opportunities.

D. ADOC INCREASED ITS RECRUITING EFFORTS.

In an effort to address recruiting, ADOC expanded its recruitment section to include three (3) Lieutenants and one (1) Captain (“Recruitment Team”). The full

time Recruitment Team hosts on site job fairs at ADOC facilities, and participates in local job fairs across the state. Additionally, the State utilized active recruiting methods to identify individuals willing to work. ADOC scheduled nineteen (19) correctional officer training (“COT”) onsite hiring events in 2022, completing eleven (11) during the first seven (7) months. ADOC will complete the remaining eight (8) hiring events before the end of 2022. Additionally, ADOC anticipates expanding the Recruitment Team, and beginning September 1, 2022, another Lieutenant will assist with the recruiting initiatives.

In addition to the onsite job fairs, the Recruitment Team also visits career centers and canvasses communities surrounding every facility in attempt to recruit individuals willing to work for ADOC. These efforts remain in conflict with the current economy. The location of ADOC’s correctional facilities currently experience low, below 5%, unemployment rates. (See Alabama Department of Labor, Nation, Alabama, Counties, Metropolitan Areas and Cities, 2022 Unemployment Data, <http://www2.labor.alabama.gov/LAUS/CurrentYTD.PDF> last accessed Aug. 11, 2022). In fact, Alabama’s Department of Labor reported Alabama’s unemployment rate of 2.9% in March 2022. (Id.). The correctional facilities with the lowest Quarterly Staffing Report findings exhibit lower unemployment rates, such as Bullock with an unemployment rating of 2.8%, Bibb with an unemployment rating of 2.3%, and Donaldson with an unemployment rating

of 2.5% in March 2022. The limited availability of eligible employees frustrates ADOC's efforts to recruit and retain correctional staff.

E. THE STATE ALSO SOUGHT THE ASSISTANCE OF EXPERTS IN MARKETING, RETENTION AND RECRUITMENT.

To attempt to overcome the challenges with recruiting and retaining correctional staff, the State retained three (3) recruiting and retention consulting firms to assist the State with developing strategies for finding and keeping qualified correctional staff. The recruitment and retention companies will assist ADOC in strategizing ways to retain and recruit employees. Additionally, the companies will assist ADOC to facilitate a strong social media presence and create policies to increase retention amongst ADOC employees. ADOC's advertising leadership conducts weekly meeting with the Commissioner to further allow for quicker decision making with the assistance of the newly retained companies. As such, the State continues to make good faith efforts to fill mandatory and essential posts within ADOC.

Dated: August 12, 2022.

/s/ Kenneth S. Steely

Attorney for the State

William R. Lunsford
Matthew B. Reeves
Kenneth S. Steely
La Keisha W. Butler
MAYNARD, COOPER & GALE, PC

655 Gallatin Street
Huntsville, AL 35801
Telephone: (256) 512-5710
Facsimile: (256) 512-0119
blunsford@maynardcooper.com
mreeves@maynardcooper.com
ksteely@maynardcooper.com
lbutler@maynardcooper.com

Luther M. Dorr, Jr.
MAYNARD, COOPER & GALE, PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203
Telephone: (205) 254-1178
Facsimile: (205) 714-6438
rdorr@maynardcooper.com

Stephanie L. Smithee
ALABAMA DEPARTMENT OF CORRECTIONS
Legal Division
301 South Ripley Street
Montgomery, Alabama 36130
Telephone (334) 353-3884
Facsimile (334) 353-3891
stephanie.smithee@doc.alabama.gov

Anne A. Hill
Deputy Attorney General
STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36104
Telephone: (334) 242-7491
Facsimile: (334) 353-8400
Anne.Hill@AlabamaAG.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all attorneys of record in this matter, including without limitation the following, on this 12th day of August, 2022:

Ashley N. Light
Lisa W. Borden
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, Alabama 36104
Telephone: (334) 956-8200
Facsimile: (334) 956-8481
ashley.light@splcenter.org
lisawborden@gmail.com

Leslie F. Jones
SOUTHERN POVERTY LAW CENTER
111 East Capitol Street
Suite 280
Jackson, MS 39201
Telephone: (601) 948-8882
Facsimile: (334) 956-8281

Bruce Hamilton
SOUTHERN POVERTY LAW CENTER
201 St. Charles Avenue
Suite 2000
New Orleans, LA 70170
Telephone: (504) 352-4398
Facsimile: (504) 486-8947

Anil A. Mujumdar
DAGNEY JOHNSON LAW GROUP
2170 Highland Avenue, Suite 250
Birmingham, Alabama 35213
Telephone: (205) 729-8445
Facsimile: (205) 809-7899
anil@dagneylaw.com

William Van Der Pol, Jr.
Lonnie Williams
Barbara A. Lawrence
Andrea J. Mixson
ALABAMA DISABILITIES ADVOCACY PROGRAM
University of Alabama
500 Martha Parham West
Box 870395
Tuscaloosa, Alabama 35487-0395
Telephone: (205) 348-6894
Facsimile: (205) 348-3909
wvanderpoljr@adap.ua.edu
blawrence@adap.ua.edu
lwilliams@adap.ua.edu
amixson@adap.ua.edu

William G. Somerville III
Patricia Clotfelter
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, PC
420 20th Street North
Suite 1400
Birmingham, Alabama 35203
Telephone: (205) 244-3863
Facsimile: (205) 488-3863
wsomerville@bakerdonelson.com
pclotfelter@bakerdonelson.com

Deana Johnson
Brett T. Lane
MHM SERVICES, INC.
1447 Peachtree Street NE
Suite 500

Neal K. Katyal
Catherine E. Stetson
Jo-Ann Tamila Sagar
HOGAN LOVELLS US LLP
555 13th Street NW
Washington, DC 20004
Telephone: (202) 637-5528
Facsimile: (202) 637-5910

Edward A. Bedard
KING & SPALDING, LLP
1180 Peachtree Street NE
Suite 1600
Atlanta, GA 30309
Telephone: (404) 572-3127

Atlanta, GA 30309
Telephone: (404) 347-4134
Facsimile: (404) 347-4138
djohnson@mhm-services.com
btlane@mhm-services.com

Joshua C. Toll
KING & SPALDING, LLP
1700 Pennsylvania Avenue NW
2nd Floor
Washington, DC 20006
Telephone: (202) 227-6138

Evan Diamond
KING & SPALDING, LLP
1185 Avenue of Americas
34th Floor
New York, NY 10036
Telephone: (212) 556-2297

Rachel Rubens
KING & SPALDING, LLP
50 California Street
Suite 3300
San Francisco, CA 94111
Telephone: (415) 318-1210

/s/ Kenneth S. Steely

Of Counsel