

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.2:15-cv-00368-MHT-SRW
)	
STATE OF ALABAMA and)	
ALABAMA DEPARTMENT OF)	
CORRECTIONS,)	
)	
Defendants.)	

PARTIES' JOINT STATEMENT
PURSUANT TO THIS COURT'S SEPTEMBER 4, 2020 ORDER

Come now the Plaintiff, the United States of America, and Defendants, the State of Alabama and the Alabama Department of Corrections, and provide this statement pursuant to the Court's Order of September 4, 2020. Doc. No. 44. The Court requested that the Parties file a statement explaining their understanding of the issues of staff recruitment, management, and retention; and when the litigation is likely to end. *Id.*

The Parties submit that Defendants have made, and continue to make, progress in recruiting and retaining staff. Nevertheless, Defendants have not yet achieved substantial compliance with the provisions of the Consent Decree relating to staff recruitment and retention. It is Defendants' aim to reach substantial compliance with these provisions in the near future; at section X.B., the Decree defines substantial compliance as a finding of substantial compliance reflected in 3 consecutive monitoring reports, which means this would be attainable by the end of 2022 at the earliest. *See* Doc. No. 11. Once Defendants reach that point, there will be only one remaining area out of substantial compliance, which concerns the validation study of Defendants' new gender-responsive classification and risk/needs assessment system. Validation is a lengthy process, because it involves many steps, including, among other things, a pilot period during which

the system is administered to the current population in order to make classification determinations and housing, work, and program decisions; the formation of a validation committee; a request for proposal and awarding of the contract; an assessment of inter-rater reliability; and data collection and coding. Defendants are currently in the data collection phase, but validity must be established for intake, reclassification, and prelease assessments, which takes time. *See* Doc. No. 43 at 22-25 (10th Monitor's Report).

Pursuant to the Consent Decree in this matter, Defendants must “ensure that correctional staffing and supervision is sufficient to adequately supervise inmates and staff and allow for the safe operation of Tutwiler.” *See* Doc. No. 11 at III.C. Through enhanced recruitment and retention efforts, and the creation of the new position of basic correctional officer, Defendants have steadily increased the percentage of filled staff positions at Tutwiler since the filing of this litigation five years ago, so that, according to the latest Monitor's report, as of June 30, 2020, “the combined vacancy rate for correctional officer and basic correctional officer positions . . . was thirty-six percent.” *See* Doc. No. 43-1 at 17 (10th Compliance Report). This level of staffing, while vastly improved from where it was previously, nonetheless remains insufficient, causing the Monitor to “remain[] concerned.” *Id.* As the Monitor has noted, Defendants have covered posts with this level of staffing through efforts such as a reliance on overtime; using retired staff part-time; having supervisors staff posts; and doubling up housing posts (so that one officer is responsible for two units). *Id.* at 18-19. According to the Monitor, “[w]hile these efforts may be workable in the short term, they do not, in the monitor's strongly held opinion, present a long-term solution to the chronic staffing shortage.” *Id.*

Through Defendants' continued recruitment and retention initiatives, Defendants expect that staffing numbers at Tutwiler will continue to rise, and the staff vacancy rate will

correspondingly continue to fall, to the point that the Monitor will find Defendants in substantial compliance with the staffing requirements of the Consent Decree. While neither Party can say with certainty when that point will occur, Defendants intend to continue expending considerable resources to ensure that it occurs sooner rather than later.

Once Defendants reach the point of attaining substantial compliance with the staffing provisions of the Consent Decree, and assuming Defendants remain in substantial compliance with all other provisions, the only remaining Consent Decree requirement will be the validation of Defendants' gender-responsive classification and risk/needs assessment system. As the Monitor explained in her most recent report, the validation study began in November 2019, and the "entire validation process is expected to take three years and six months to complete." *Id.* at 24. As such, the validation will not be completed before approximately May 2023.

In conclusion, the Parties are committed to working together to ensure that Defendants continue progressing towards substantial compliance with the staffing provisions and a timely termination of the Consent Decree pursuant to its terms.

In compliance with CM/ECF Civil Administrative Procedure II.C.3., the parties hereby certify that they have agreed to have their names electronically signed to this Joint Statement.

Respectfully submitted this 24th day of September, 2020.

/s/ Samantha R. Miller

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all participants.

/s/ Samantha R. Miller
Assistant United States Attorney