

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 2:15-cv-00368-MHT-SRW</b>
	)	
<b>STATE OF ALABAMA AND</b>	)	
<b>ALABAMA DEPARTMENT OF</b>	)	
<b>CORRECTIONS,</b>	)	
	)	
<b>Defendants.</b>	)	

**THE PARTIES’ JOINT PROPOSED TRANSITION PLAN  
PURSUANT TO THE COURT’S OCTOBER 28, 2022 ORDER**

Plaintiff, the United States of America, and Defendants, the State of Alabama and the Alabama Department of Corrections (“ADOC” and, together with the State of Alabama, the “State”), hereby submit this joint proposed monitoring transition plan pursuant to the Court’s October 28, 2022 Order that “the parties are to file a “proposed ‘transition plan’ that addresses all the issues the court said during the conference should be in the plan.” Doc. 87. These issues include: (1) a plan for future monitoring in light of the current Monitor’s resignation; (2) the status of a number of recommendations the Monitor has previously made with respect to achieving compliance with the Consent Decree provisions remaining in partial compliance; (3) the status of certain deliverables from the State to the Monitor, and (4) a plan to hold monthly status meetings between the Parties and the Monitor.

**I. PLAN FOR FUTURE MONITORING.**

The Parties met and discussed options for monitoring the provisions of the Consent Decree. After consideration, the Parties propose a transition of the compliance evaluation function from external monitoring to a system of internal evaluation with substantial input from the United States. Given the ADOC's continued substantial compliance findings in forty-one of the forty-four sections of the decree, and the Monitor's resignation, this presents an opportunity for the State to demonstrate a capacity to self-identify and self-correct issues related to provisions that remain in partial compliance, and to monitor and sustain those provisions that are currently in substantial compliance. The Parties agree that the United States will retain all currently existing rights under the Consent Decree regarding access to the facility, documents, information, inmates, and personnel. The Parties further agree that the United States may move the Court to reinstate external monitoring for good cause.

Specifically, the Parties propose the following approach for monitoring:

- 1) The State will designate an internal monitor with sufficient expertise, time, and authority to oversee compliance with the Consent Decree (the "Compliance Director"). To assist the Compliance Director with compliance oversight, the State will assemble a team of ADOC staff with sufficient knowledge and authority to maintain and/or help achieve substantial compliance with the Consent Decree. The State will designate the Compliance Director and his or her team (collectively, the "Compliance Office") within 30 days of filing this plan.

- 2) To ensure a smooth transition, the Compliance Director will routinely communicate with the United States and the Monitor during her remaining tenure (as discussed below), respond to the United States and the Monitor's reasonable requests for documents and information that are not covered by a bona fide privilege or sealed pursuant to a court order, participate in preparing for and attending the Monitor's next site visit, and work with the State, United States and the Monitor in developing a plan to achieve and/or to maintain compliance with the Consent Decree.
- 3) Again, to assist in transition of the compliance oversight function, the Monitor and Compliance Director will work closely to develop the next Monitoring Report, provided that the Monitor will make any disputed compliance determinations. The next Monitoring Report will describe for the Court the formation and functions of the Compliance Office, and the Monitor may provide any recommendations she might have to enhance the effectiveness of the Compliance Office.
- 4) For the provisions in substantial compliance upon issuance of the next Monitoring Report, future compliance reporting and determinations will transition to the Compliance Office, and the Court's oversight authority will continue for two more consecutive monitoring periods. If at that time these provisions remain in substantial compliance, the Parties will move the Court to dismiss those provisions of the Consent Decree.
- 5) For the remaining provisions not in substantial compliance (including those that are currently in partial compliance), monitoring will transition to the Compliance Office, and the Court's oversight authority will continue until all of these remaining provisions are in substantial compliance for three consecutive monitoring periods. Notwithstanding the foregoing, the State does not waive any right to seek termination of all or any portion of the Consent Decree.
- 6) The ADOC will produce reoccurring reports, and other documents it previously provided the Monitor, to the United States, as outlined by the Consent Decree in normal course of production.
- 7) The ADOC will produce a bi-annual compliance report, in lieu of the Monitor's Report, and within the same timeframe as already established, that discusses the status of the Consent Decree provisions,

and the steps taken by the ADOC to assess and evaluate the status of each provision.

- 8) The United States will participate in bi-annual onsite visits, in the normal course, and will retain the ability to speak with the ADOC leadership and facility staff, privately speak with the women housed at the facility, and request and review documents when needed to assess compliance with the Consent Decree.
- 9) As outlined in the Consent Decree, the Parties will have an opportunity to comment on each report prior to its filing. Any conflicts that arise regarding the status of compliance with a provision will be discussed during the commenting period, and if the conflict cannot be resolved, the Parties will bring the concern to the Court for discussion.
- 10) At all times, the Court retains its oversight authority over compliance with the Consent Decree. The Court may return provisions from the Consent Decree to external monitoring upon the motion of either Party, and after an evidentiary hearing where the evidence demonstrates that internal monitoring has failed to adequately fulfill the Monitor's duties under the Consent Decree, including, the inability of the Compliance Office to self-police and self-correct compliance failures under the Consent Decree.
- 11) The Parties agree that no additional PLRA (42. U.S.C. § 1997(e)) findings are necessary for the Court to order implementation of this transition plan.
- 12) The Parties agree that any chronic delinquencies in providing documents and information to the United States or the Monitor as required by the Consent Decree or an approved Transition Plan shall constitute good cause to move for reinstatement of an external monitor.
- 13) The State agrees to continue funding the external Monitor (as provided for in the Consent Decree) through issuance of the Monitor's Fifteenth Compliance Report to the Court, and as necessary to appear at the status hearing following the Report's issuance.

The Parties believe the above approach presents a pathway to substantial compliance with the Consent Decree, while acknowledging ADOC's progress with compliance with many provisions of the Consent Decree.

## **II. MONITOR'S RECOMMENDATIONS.**

As directed by the Court, the United States met with the Monitor following the prior status conference to discuss her outstanding requests. Subsequently, on November 11, 2022, the Monitor submitted her recommendations to the Parties concerning recruitment and retention ideas and operational concerns impacting staffing. The Monitor's List is attached hereto as Exhibit A. These recommendations include the following:

A. The Monitor recommends exploring the following options concerning recruitment and retention:

1. The Monitor recommends ADOC explore the possibility of working with either a local provider or a nearby academic institution to establish an on-site daycare center for Tutwiler staff.

State's Response: This recommendation concerning a daycare facility for staff members at Tutwiler falls outside the scope of the Consent Decree. The State appreciates the Monitor's recommendation but recognizes this recommendation as one containing extremely high liability concerns with minimal positive results, and requiring significant financial investment. Moreover, from

internal discussions, this recommendation of a child daycare center at a major women's correctional facility is impracticable and unlikely to substantially impact recruitment and retention of staff. The State must focus its limited resources on higher, more achievable short-term goals before addressing higher liability, long-range recommendations.

United States' Response: The United States recognizes that this recommendation is not specifically required by the Consent Decree. However, the Consent Decree requires the State to "ensure that correctional staffing and supervision is sufficient to adequately supervise inmates and staff and allow for the safe operation of Tutwiler." Doc. No. 11 at § III.C. Despite other recruitment and retention efforts the Monitor described in her most recent report, the aggregated officer staff vacancy rate has increased by almost 80% between June 30, 2021 and June 30, 2022 (21.6% to 38.8%). Doc. No. 71-1 at 29-33. Accordingly, unless and until the State implements other innovative and effective solutions to achieve adequate staffing levels at Tutwiler, the United States believes that the State should reconsider rejection of this recommendation.

2. The Monitor recommends ADOC establish a system to track individuals who attend job fairs to determine which applicants enter ADOC's workforce. Additionally, the Monitor recommends conducting follow-up interviews

with individuals who did not complete the hiring process to determine what factors deterred their eventual employment.

State's Response: ADOC will communicate this recommendation to its consultants so that ADOC and its consultants can evaluate this recommendation.

United States' Response: The United States requests that the State share the timely outcome of ADOC's evaluation of this recommendation with the Parties and the Monitor, and looks forward to reviewing it.

3. The Monitor recommends reaching out to former correctional officer candidates who either voluntarily dropped out of ADOC's Training Academy or failed out based on the original PAAT standards to inform them of the new standards applying to Academy classes after October 2022.

State's Response: ADOC engaged the services of consultants concerning recruitment and retention to develop plans and strategies for increasing recruiting of new employees and retaining existing employees. ADOC will communicate this recommendation to its consultants so that ADOC and its consultants can evaluate the Monitor's recommendation. ADOC will provide further information on the Monitor's recommendation in future reports to the Court.

United States' Response: The United States requests that the State share the timely outcome of ADOC's evaluation of this recommendation with the Parties and the Monitor, and looks forward to reviewing it.

4. The Monitor recommends reaching out to individuals who voluntarily left employment with ADOC over the past few years to inform them of ADOC's change in the shift length at Tutwiler and of the revised practice concerning forced overtime affording staff more control over schedules.

State's Response: ADOC engaged the services of consultants concerning recruitment and retention to develop plans and strategies for increasing recruiting of new employees and retaining existing employees. ADOC will communicate this recommendation to its consultants so that ADOC and its consultants can evaluate the Monitor's recommendation. ADOC will provide further information on the Monitor's recommendation in future reports to the Court.

United States' Response: The United States requests that the State share the timely outcome of ADOC's evaluation of this recommendation with the Parties and the Monitor, and looks forward to reviewing it.

5. The Monitor recommends monitoring the effectiveness of the Field Training Officer Program that provides additional support to newly hired officers for up to twelve (12) months following graduation from the Academy. The Monitor suggests this program may lead to increased retention and provides improved on-the-job training.

State's Response: ADOC will communicate this recommendation to its consultants so that ADOC and its consultants can evaluate this recommendation.

ADOC will provide further information on the Monitor's recommendation in future reports to the Court.

United States' Response: The United States requests that the State share the timely outcome of ADOC's evaluation of this recommendation with the Parties and the Monitor, and looks forward to reviewing it.

6. The Monitor recommends tracking which Correctional Officer Trainees ("COT") came from the Basic Correctional Officer ("BCO") rank to confirm if the new PAAT standards increased the ability for individuals to pass the PAAT to become COTs.

State's Response: ADOC has observed and will continue to observe the impact of the new PAAT standards on BCOs and their pursuit of a position as COT. It is, however, too early to draw any conclusions. ADOC will provide further information on the Monitor's recommendation in future reports to the Court.

United States' Response: The United States requests that the State provide this information to the Parties and the Monitor as it becomes available, in order to assess compliance with the Consent Decree provisions regarding the validation and necessity of gender-norming the PAAT standards. *See* Doc. No. 11 at § III.C.1.i.1,

7. The Monitor recommends exploring employees' hesitation to refer others to seek employment with ADOC.

State's Response: ADOC's consultants are evaluating obstacles and barriers to recruiting correctional staff, including internal issues that might impact recruitment and referrals of friends, family, or other persons for employment with ADOC.

United States' Response: The United States requests that the State share the timely outcome of ADOC's evaluation with the Parties and the Monitor, and looks forward to reviewing it.

B. The Monitor recommends exploring the following options concerning operational concerns impacting staffing:

1. The Monitor recommends reviewing ADOC's capability to acquire audio capabilities on some wall-mounted cameras, or explore the use of body cameras with audio capabilities to assist management's ability to hold staff accountable for their language when addressing female inmates.

State's Response: ADOC understands this recommendation. ADOC has explored the addition of audio to existing cameras and the use of body cameras; however, the substantial cost associated with adding audio capabilities to existing cameras, acquiring body camera, maintaining those systems, and storing the applicable data from those systems is cost prohibitive.

United States' Response: The United States believes that the State should reconsider the Monitor's recommendation in light of the potential that audio-

monitoring capabilities would have for improving the efficiency of, and reducing the investigative resources required for, investigations of inmate allegations of sexual abuse and sexual harassment at Tutwiler.

2. The Monitor encourages re-consideration of initiating a pilot body camera program for Tutwiler correctional staff.

State's Response: ADOC completed a pilot program for body cameras but not at Tutwiler. At the conclusion of the pilot program, ADOC determined that the cost of acquiring, maintaining, and storing the data associated with the body cameras to be unreasonable. Nevertheless, ADOC will continue to evaluate this technology and may decide to pursue another pilot program or use body cameras in the future when costs decrease.

United States' Response: The United States believes that the State should reconsider the Monitor's recommendation in light of the potential that a body camera program would have for improving the efficiency of, and reducing the investigative resources required for, investigations of inmate allegations of sexual abuse and sexual harassment against staff at Tutwiler. The United States requests that the State share the timely outcome of any future evaluations of body cameras or other pilot programs with the Parties and the Monitor, and looks forward to reviewing it.

3. The Monitor recommends ADOC Women's Services explore reasonable and cost-effective solutions to address unauthorized inmate activities in the bathroom areas. These solutions may include a firm schedule for inmate showers, staggered by unit, and posting an officer at the entrance to the bathrooms to inhibit some of the prohibited activities.

State's Response: ADOC understands this recommendation. ADOC reviewed the suggestions of staggered units and schedules for showers, but determined limiting access to showers would be contrary to gender responsive principles due to the fact that women require open access to showers to care for their hygiene. ADOC will continue to evaluate potential methods for addressing unauthorized activities in the shower areas.

United States' Response: The United States believes that increased staffing presence inside housing units would be required to effectively implement this recommendation. However, adequate staffing levels and staffing presence inside housing units may obviate the need to implement the recommendation. In addition, audio-recording capability discussed in other recommendations (above) hold the potential to mitigate risk of harm, deter harm, and improve the efficiency of investigations for allegations that occur in the shower areas. The United States agrees that gender-responsive principles promote unimpeded access to showers for

women, but also believes that these principles must be balanced against the risk of harm that unsupervised and unrestricted shower access may present.

4. The Monitor recommends developing an expanded range of sanctions and consequences for inmates proven to knowingly make false PREA allegations. ADOC should make all inmates aware of the expanded lists of sanctions and consequences to ensure awareness by the inmates to dissuade future false reports.

State's Response: Inmates who file false PREA allegations are already subject to possible sanctions and consequences. See AR 403. There is a fine line between a “false PREA report” and an unfounded or unsubstantiated PREA report. ADOC is therefore reluctant to make its sanctions and consequences any more severe to avoid negatively affecting the willingness and ability of inmates to report sexual abuse and harassment in good faith based upon a responsible belief that the alleged conduct occurred. Instead, ADOC believes it needs to better use the existing sanctions and consequences when an inmate files a false PREA report.

United States' Response: The United States agrees with the State that inmates should have unfettered ability and multiple avenues to report allegations of sexual abuse and sexual harassment in good faith without risk or fear of retaliation. The United States also believes that PREA allegations made by inmates “in bad faith” (allegations that are knowingly false when made and intended to obtain a

secondary benefit for the reporter or are malicious in nature) are a significant concern at Tutwiler, are disruptive to facility operations, and divert important investigative resources from other allegations. As the Monitor discussed in her last report, “every single staff member and inmate interviewed privately raised” this issue as a primary concern. Doc. No. 71-1 at 64. The United States and the Monitor have created and shared a proposal with the State to mitigate and deter “bad-faith” allegations, and look forward to discussing the proposal with the State.

### **III. STATUS OF DOCUMENT PRODUCTION TO THE MONITOR.**

1. The Monitor indicates that she was not provided with the data that supports the calculation of a “relief factor” used for the staffing plan in accordance with the Consent Decree. *See* Doc. No. 11 at § III.C.2.i.2.

State’s Response: The State submitted the 2022 Staffing Plan, including the calculation of the “relief factor” to the Monitor and Plaintiff’s counsel on November 22, 2022. ADOC calculated the relief factor based on system-wide leave numbers that apply equally to all facilities based on five (5) day or seven (7) day posts and twelve (12) hour or eight (8) hours shifts.

United State’ Response: The United States received the 2022 Staffing Plan provided to the Monitor on November 22, 2022. The United States understands that the 1.70 (per 8-hour shift) relief factor is system-wide and calculated using statewide leave numbers.

2. The Monitor indicates that she has requested data collected “*from Tutwiler*” pursuant to a pilot program at ADOC facilities to track data and determine the frequency of mandatory posts going unfilled, but has not received such data.

State’s Response: The State objects to providing any documents or information from the “pilot program” as the documents were developed as part of the State’s defense of itself in the Braggs action and are protected by the attorney-client privilege and the attorney work-product doctrine. To avoid the waiver of any privilege associated with the pilot programs documents, the State is willing to provide the Monitor with a summary of the findings and conclusions from the pilot program.

United States’ Response: The Consent Decree governing the Parties in this case is clear that the Monitor is entitled to “full and complete access to Tutwiler [including] all Tutwiler documents and records...” Doc. No. 11 at § VIII.B.1. Further, that the “Monitor shall also have access to any ADOC documents or data she requests related to any facility built to supplement Tutwiler.” *Supra*. “ADOC and Tutwiler shall direct all employees to cooperate fully with the Monitor.” *Supra*.

The United States believes that data regarding Tutwiler’s frequency of mandatory posts going unfilled is central to a compliance determination regarding the adequacy of staffing at Tutwiler, the adequacy of Tutwiler’s staffing plan, and the efficacy of ADOC and Tutwiler’s recruitment and retention efforts. *See Doc.*

No. 11 at § III.C. In addition, the United States does not necessarily agree that such information about operational practices at Tutwiler is shielded from disclosure pursuant to the attorney-work product doctrine.

Nonetheless, the United States believes that the Monitor's request may be satisfied without resolving the privilege and work-product issue if the State provides the Monitor with data about the frequency of mandatory posts going unfilled at Tutwiler, to the extent known to ADOC.

3. The Monitor indicates that she has not received ADOC's updated 2022 policy related to correctional staffing analyses.

State's Response: The State submitted the Administrative Regulation concerning ADOC's creation of and maintenance of a staffing analysis to the Monitor and Plaintiff's counsel on November 22, 2022.

United States' Response: The United States has received Administrative Regulation 238 regarding the Resource Planning Unit (dated October 21, 2022) and the "Tutwiler Prison for Women Posts" attached to the 2022 Staffing Plan provided to the Monitor on November 22, 2022. To the extent that there is any other "policy" or "Facility Staffing SOP" (required by the Administrative Regulation) that the State has not previously provided to the Monitor, the United States requests that the State provide it. In addition, pursuant to the Consent Decree, the United States requests that the United States and the Monitor be provided with

an opportunity to provide comments on Administrative Regulation 238 and that the State make any revisions as appropriate. *See* Doc 11 § III.A. 6.

4. The Monitor indicates that she has not been provided with information collected *from Tutwiler* for updating the initial staffing analysis.

State's Response: The State provided the Monitor all the data collected to complete the 2022 Staffing Analysis, including the duty post rosters collected for the months of April 2022 through September 2022.

United States' Response: The United States received the 2022 Staffing Analysis and duty post roster for the months of May 2022 through September 2022. To the extent that there is other data collected from Tutwiler (not discussed under other Monitor requests) that the Monitor requires, the United States will work with the Monitor to request it.

5. The Monitor indicates that she has not been provided with information about whether any Tutwiler staff participated in, or is participating in, the National Institute of Corrections program on correctional staffing analyses that began on November 1, 2022.

State's Response: The State informed the Monitor that ADOC selected the members of the Resource Planning Unit to attend the NIC training, including Ms. Tina Tyler who also serves as the Inmate Grievance Officer and the ADA Coordinator for Tutwiler.

United States' Response: The United States has confirmed with NIC that the ADOC participants began attending the training (which started on November 1, 2022 and ends on January 24, 2023).

6. The Monitor indicates that she has not been provided with documentation about whether the State and its agents have visited Tutwiler to gather information for updating the initial staffing analysis.

State's Response: The State provided the Monitor reports filed in Braggs v. Hamm indicating documentation gathered from Tutwiler and site visits completed for purposes of completing the 2022 Staffing Analysis.

United States' Response: The State indicated that the “[Resource Planning] Unit completed site visits at Tutwiler on June 28, 2022.” *See* Doc. No. 85, at 4. The United States believes that this request has been fulfilled, but will work with the Monitor to request any additional documentation she requires.

7. The Monitor indicates that she was not provided a “report” on the status of the State’s benchmark activities as regarding revisions to Tutwiler’s staffing analysis, which was due on June 30, 2022. *See* Doc. No. 85, at 4.

State's Response: The Parties filed a joint report to the Court on June 29, 2022 (doc. 71), informing the Court of the status of the Consent Decree. The State provided this report to the Monitor on November 23, 2022.

United States' Response: The State indicated that it “facilitated an interview by the Monitor with the Unit’s Coordinator, Cheryl Price, on July 11, 2022.” *See* Doc. No. 85, at 4. In addition, the State indicates that it provided the Monitor with the Parties’ joint report to the Monitor which included the State’s view of its compliance with each benchmark as of October 17, 2022. The United States believes that this information, together with the provision of the 2022 Staffing Plan and other information discussed herein, has satisfied this request. The Monitor has requested additional clarifications from the State on the Staffing Plan, and the United States will work with the Monitor and the State to facilitate her request.

8. The Monitor indicates that she was not provided with the updated staffing analysis, insofar as it applies to Tutwiler, that was filed under seal in the *Braggs* litigation on November 1, 2022. *See* generally, Doc. No. 85, at 5.

State’s Response: The State provided the Monitor and Plaintiff’s counsel a redacted copy of the 2022 Staffing Analysis, providing all information related to Tutwiler. The State prepared the 2022 Staffing Analysis as ordered by the Court in the Braggs litigation. Plaintiffs in the Braggs litigation continue to review the 2022 Staffing Analysis, including Tutwiler. The State will provide the Monitor and the United States the filed response regarding staffing at Tutwiler.

United States' Response: The Monitor requests additional information and clarifications from the State on the Staffing Plan, and the United States will work with the Monitor and the State to facilitate her request.

**IV. PLAN TO HOLD MONTHLY MEETINGS BETWEEN PARTIES AND MONITOR.**

The Parties plan to conduct monthly status meetings between both Parties, the Monitor, and the Compliance Director to discuss the status of efforts to achieve and maintain substantial compliance with the Consent Decree provisions, any outstanding recommendations of the Monitor, and any deliverable the Monitor indicates remains outstanding. These monthly status meetings shall occur on or near the first of every month.

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 28<sup>th</sup> day of November, 2022.

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## Monitor's Outstanding Information Requests and Recommendations

### *Recommendations made by the Monitor Related to Recruitment and Retention*

- Explore the possibility of working with either a local provider or a nearby academic institution to establish an on-site daycare center for Tutwiler staff. Potential partners could include local, licensed private providers; and local universities offering elementary educational programs. Students could earn practicum credits under the supervision of faculty.
- Establish a system to track those who attend job fairs to determine which applicants do enter the ADOC workforce. Conduct voluntary follow-up interviews to determine why some applicants may not follow through to hiring (p.35, Monitor's 14th Report). If they had sufficient interest to attend a job fair, what factors deterred their eventual employment?
- Conduct outreach to former correctional officer candidates who either voluntarily dropped out of the Academy or failed the Academy simply because they could not meet the original PAAT standards. These candidates may be interested in trying to meet the revised PAAT standards which apply to Academy classes effective October 2022.
- Given the change in shift length and revisions to the forced overtime practice to afford staff more control over schedules, another potential target group for recruitment includes staff who resigned from Tutwiler in the last few years, as a result of the amount and unpredictability of forced overtime hours. These individuals have already attended the training academy and would require very little training before being placed back on a roster. Retirees also represent a potential source of re-hires, as they are allowed to work part-time hours post-retirement. (p.85, Monitor's 14th Report).
- The Field Training Officer Program has been under development and holds potential to improve the on-the-job training of newly hired officers and impact long term retention of these officers by providing the additional support they require for up to 12 months as they graduate from the Academy and join Tutwiler's roster. The impact of this program needs to be monitored (p.34, Monitor's 14th Report).
- Track which Correctional Officer Trainees came from the rank of BCO. That was a hope. Is it being realized?
- Based upon staff survey data, some employees indicated they would not refer others for employment. It would be useful to explore employees' hesitation to make job referrals (p.43, Monitor's 14th Report).

### *Recommendations made by the Monitor Related to Operational Concerns*

#### *Impacting Staffing*

- Should funding become available, additional capabilities of the video surveillance system could be activated (p.20, Monitor's 14th Report). Acquiring audio capability on either

some cameras mounted on the walls, or the use of body cameras with audio capabilities would greatly assist management's ability to hold staff accountable for their language when addressing the women (p.61, Monitor's 14th Report).

- The Monitor encourages re-consideration of initiating a pilot body camera program for Tutwiler security staff (p.21, Monitor's 14th Report).
- The Monitor has suggested that ADOC Women's Services explore reasonable and cost-effective solutions to address unauthorized inmate activities in the bathrooms. Establishing a firm schedule for inmate showers, staggered by unit, and ensuring an officer roving between units for shower coverage is posted at the entrance to the bathrooms would serve to inhibit some of the prohibited activities. (p.56, Monitor's 14th Report).
- The Monitor recommends that leadership develop an expanded range of sanctions and consequences for inmates when it is proven they knowingly made false PREA allegations. Inmates should be made aware of an expanded list of sanctions, so they clearly know what the consequences of their actions will be.

#### *Outstanding Information Requests made by the Monitor*

- The monitor is supposed to be provided with the data that supports the calculation of a "relief factor" used for the staffing plan. To date, this settlement requirement has not been met. (See section II.AA. and section IIIC2(2), Consent Decree (Doc 11)).
- In March 2022, the Monitor learned a pilot program was conducted in three ADOC facilities to track data to determine the frequency of mandatory posts going unfilled. The Monitor has repeatedly requested the data collected at Tutwiler be shared with her. This request is still pending. ADOC advised that they had to check to make sure this information is not under court seal (p.24, Monitor's 14th Report).

#### *Outstanding Updates on the Benchmarks submitted to the Court (Document 62, filed March 21, 2022)*

- March 28, 2022: **Benchmark:** Develop ADOC's policy related to correctional staffing analyses.
  - As of November 4, 2022, the Monitor has not received this policy.
- April 1, 2022: **Benchmark:** Begin the collection of information from ADOC's major facilities (including Tutwiler) for updating the existing staffing analyses.
  - As of November 4, 2022, the information referenced in this benchmark has not been documented to the Monitor.
- May 16, 2022 to July 15, 2022: **Benchmark:** The Resource Planning Unit will participate in the training program on correctional staffing analysis taught by the

National Institute of Corrections (“NIC”). NIC could not accommodate ADOC’s request to attend the May 16, 2022 to July 15, 2022 training program. NIC notified ADOC in September 2022 that the Resource Planning Unit could attend training beginning on November 1, 2022.

- It is unclear if anyone from Tutwiler will be in attendance at that training. Attendance will need to be documented for the Monitor.
- May 23, 2022: **Benchmark:** Begin visiting ADOC’s major facilities (including Tutwiler) to gather information for updating the existing staffing analyses.
  - Compliance with this benchmark has not been documented to the Monitor.
- June 30, 2022: **Benchmark:** Provide the *Tutwiler* Monitor with the status of these activities insofar as they relate to Tutwiler.
  - No report was provided to the Monitor.
- November 1, 2022: Complete the update of the existing staffing analysis.
  - The Monitor has not received an updated staffing analysis, despite understanding that it was filed in the *Braggs* litigation.

The following **Benchmarks** remain on the State’s timetable for completion:

- December 31, 2022: Develop internal and informal benchmarks (e.g., numbers, percentages, or rates such as fill/vacancy rate) for correctional staffing at Tutwiler.
- January 21, 2023: Provide the *Tutwiler* Monitor with the status of any internal and informal benchmarks established for Tutwiler.

## **Transition Considerations**

### *Appointment of Monitor*

*The following is a summary of the steps that were taken when I was appointed by the court in August 2016. If a decision is made to follow the same process, this summary might be helpful in terms of the parties estimating some of the benchmarks that may need to be met during a transition.*

- DOJ first provided me with a copy of the Consent Decree for my review.
- Each party identified three potential candidates.
- ADOC Commissioner Dunn was attending an ACA conference in Boston and he conducted a face-to-face interview with me.
- As the jointly recommended candidate, my CV was submitted for the court's consideration. I received confirmation of my appointment by the Court.

- Alabama then required me to register as a vendor. This is an on-line process, but it involved completing an application so that a state-wide vendor id number could be issued.
- The next step was the drafting of the Monitor's contract. This is a pretty much a boiler-plate document, but it did involve some information gathering and paperwork having to be notarized.
- As part of the contract, I was then required to submit a budget to ADOC. This is an annual requirement. The contract did include "caps" on some items e.g. total travel costs, line item to contract with "outside experts", etc.

### *First On-site Visit*

- ADOC, DOJ, and the transitioning Monitors identified dates for an on-site visit. The purpose of the transition visit was to bring me up to speed on outstanding issues; the court report format; make introductions to identify staff with key responsibilities, and to tour the facility.
- Prior to the visit, the outgoing Monitor and I connected on the phone to discuss some logistical considerations (travel recommendations, best hotels for government rates, etc.).
- The out-going Monitor shared some files with me, including previously filed Monitor Reports and ADOC's confidential self-assessment compliance reports (Section VI.A. of the Settlement Agreement Self Assessments) which are required prior to an on-site monitoring visit. I was also introduced to the use of the Monitoring Tool format. The Tool is both cumbersome and lengthy to read.
- As a practical matter, there was a period of a month or so of budget overlap between the incoming and outgoing Monitor. As the incoming Monitor, this overlap ensured that my travel and lodging expenses would be covered.
- A notice is to be posted to inmates and staff advising of an upcoming monitoring visit.
- We conducted a transition visit in September 2016, one month after my appointment. I then took over the monitoring responsibility. It was a great deal to absorb at once.
- I returned for an on-site visit with DOJ in December and then drafted my first compliance report. We did receive a 30 day extension to file the February 2017 report due to my need to focus on both my parents being placed in hospice with both their deaths occurring in the first week of April.
- As I said in my letter of resignation, I am able and willing to work with a new Monitor and to draft the next report due February 28, 2023.
- The ADOC's confidential self-assessment compliance report should be available to the Monitor and DOJ 30 days prior to a monitoring compliance visit. Dr. Mautz is aware of this requirement.

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>Case No. 2:15-cv-00368-MHT-SRW</b>
	)	
<b>STATE OF ALABAMA AND</b>	)	
<b>ALABAMA DEPARTMENT OF</b>	)	
<b>CORRECTIONS,</b>	)	
	)	
<b>Defendants.</b>	)	

**STIPULATED ORDER APPROVING  
THE PARTIES’ JOINT TRANSITION PLAN**

Having reviewed the Parties’ Joint Proposed Transition Plan filed on November 28, 2022, and good cause appearing,

IT IS HEREBY ORDERED the Parties’ Proposed Transition Plan is granted.

It is further ORDERED that, in granting the Parties’ Proposed Transition Plan, the Court finds that:

1. The State remains in substantial compliance with forty-one (41) of forty-four (44) compliance measures and in partial compliance with three (3) provisions of the Parties’ Settlement Agreement, Doc. 2-1, which was entered as an order of this Court on June 18, 2015, Doc. 11 (“Consent Decree”).

2. As a result, continued monitoring of compliance with the Consent Decree is required following the resignation of the sitting Court appointed Monitor.

3. The Consent Decree remains in effect. This Order does not waive any Consent Decree requirements.

4. The compliance evaluation function shall transition from external

monitoring to a system of internal evaluation with substantial input from the United States.

5. The United States shall retain all currently existing rights under the Consent Decree regarding access to the facility, documents, information, inmates, and personnel. Further, the United States may move the Court to reinstate external monitoring for good cause.

6. The State retains its right to move to terminate the Consent Decree.

7. The State shall designate an internal monitor with sufficient expertise, time, and authority to oversee compliance with the Consent Decree (the “Compliance Director”). To assist the Compliance Director with compliance oversight, the State shall assemble a team of ADOC staff with sufficient knowledge and authority to maintain and/or help achieve substantial compliance with the Consent Decree. The State shall designate the Compliance Director and his or her team (collectively, the “Compliance Office”) within 30 days of this Stipulated Order.

8. The Compliance Director shall routinely communicate with the United States and the Monitor during her remaining tenure, respond to the United States and the Monitor’s reasonable requests for documents and information that are not covered by a bona fide privilege or sealed pursuant to a court order, participate in preparing for and attending the Monitor’s next site visit, and work with the State, United States and the Monitor in developing a plan to achieve and/or to maintain compliance with the Consent Decree.

9. The Monitor and Compliance Director shall work closely to develop the next Monitoring Report, provided that the Monitor shall make any disputed compliance determinations. The next Monitoring Report shall describe for the Court the formation and functions of the Compliance Office, and the Monitor may provide any recommendations she might have to enhance the effectiveness of the Compliance Office.

10. For the provisions in substantial compliance upon issuance of the next Monitoring Report, future compliance reporting and determinations shall transition to the Compliance Office, and the Court's oversight authority shall continue for two more consecutive monitoring periods. If at that time these provisions remain in substantial compliance, the Parties may move the Court to dismiss those provisions of the Agreement.

11. For the remaining provisions (including those that are currently in partial compliance), monitoring shall transition to the Compliance Office, and the Court's oversight authority shall continue until all of the provisions are in substantial compliance for three consecutive monitoring periods.

12. The State shall produce reoccurring reports, and other documents it previously provided the Monitor, to the United States, as outlined by the Consent Decree in normal course.

13. The State shall produce a bi-annual compliance report, in lieu of the Monitor's Report, and within the same timeframe as already established, that discusses the status of the Consent Decree provisions, and the steps taken by the ADOC to assess and evaluate the status of each provision.

14. The United States may participate in bi-annual onsite visits, in the normal course, and shall retain the ability to speak with the ADOC leadership and facility staff, privately speak with the women housed at the facility, and request and review documents when needed to assess compliance with the Consent Decree.

15. As outlined in the Consent Decree, the Parties shall have an opportunity to comment on each report prior to its filing. Any conflicts that arise regarding the status of compliance with a provision shall be discussed during the commenting period, and if the conflict cannot be resolved, the Parties may bring the concern to the Court for discussion.

16. At all times, the Court retains its oversight authority over compliance

with the Consent Decree. The Court may return provisions from the Consent Decree to external monitoring upon the motion of either Party, and after an evidentiary hearing where the evidence demonstrates that internal monitoring has failed to adequately fulfill the Monitor's duties under the Consent Decree, including, the inability of the Compliance Office to self-police and self-correct compliance failures under the Consent Decree.

17. Any chronic delinquencies in providing documents and information to the United States or the Monitor as required by the Consent Decree or an approved Transition Plan shall constitute good cause to move for reinstatement of an external monitor.

18. The State shall continue funding the external Monitor (as provided for in the Consent Decree) through issuance of the Monitor's Fifteenth Compliance Report to the Court, and as necessary to appear at the status hearing following the Report's issuance.

19. No additional PLRA (42. U.S.C. § 1997(e)) findings are necessary for the Court to order implementation of this transition plan.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Myron H. Thompson  
United States District Judge

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all attorneys of record in this matter by the Court's CM/ECF system, which will send notification of such filing to all counsel of record on this 28th day of November, 2022.

/s/Joshua C. Delaney

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