

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)

v.)

Case No. 2:15-cv-00368-MHT-SRW

STATE OF ALABAMA AND)
 ALABAMA DEPARTMENT OF)
 CORRECTIONS,)
)
 Defendants.)

**PARTIES’ JOINT STATEMENT
PURSUANT TO THIS COURT’S JANUARY 4, 2024, 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 statement pursuant to the Court’s October 27, 2023 Order to provide a status update concerning compliance with the Consent Decree, including, “whether any of the informal benchmarks discussed in [the Parties’] previous statements remain outstanding and, if so, what progress the parties have made toward achieving them.” (Doc. 114 (the “Order”) at 1-2, Consent Decree, Doc. 11).¹ Additionally, pursuant to the Court’s October 27, 2023, Opinion and Order, the Parties provide an explanation

¹ The State filed an Unopposed Motion for Extension of Time on December 22, 2023 (Doc. 115) that this Court granted on January 4, 2024 (Doc. 116).

for why additional findings under the Prison Litigation Reform Act (18 U.S.C. § 3626, the “PLRA”) remain unnecessary for the Court to order the implementation of the Parties’ Transition Plan. (Doc. 113 at 10).

I. STATE’S COMPLIANCE WITH THE CONSENT DECREE

A. Status of Compliance with the Consent Decree.

1. On October 27, 2023, the Court ordered a transition to an internal monitoring system after former Independent Monitor Kathleen Denehy’s resignation. (Doc. 113). The State appointed an Internal Monitor, former warden of Tutwiler Prison for Women (“Tutwiler”) Deidra Wright. Pursuant to the transition process ordered by the Court, Internal Monitor Wright is responsible for assessing the State’s compliance with the Consent Decree and reporting to the Court on the State’s ongoing progress.

2. The Internal Monitor filed the Sixteenth Monitoring Report (the “Report,” Doc. 118-1) and the Compliance Report Tool (the “Chart,” Doc. 118-2) on January 26, 2024. Following the lead of the former Independent Monitor, the Internal Monitor used the Chart to measure the State’s compliance with the Consent Decree. The Chart’s 44 sections group multiple paragraphs of the Consent Decree together into separate Chart sections to measure compliance. The Parties agree that the Internal Monitor should continue to use the Chart to measure compliance with the Consent Decree.

3. The Internal Monitor reports the State remains in substantial compliance with 41 of the 44 Chart sections and in partial compliance with the remaining three (3) Chart sections. The three (3) Chart sections in partial compliance correspond to Consent Decree paragraphs III.C.1 (staff recruitment, selection, hiring, training, and retention), III.C.2 (staffing plan, staffing analysis, quarterly staffing updates, bi-annual staffing reports, hiring and retention policies), and III.F.3-4 (on-going validation of the Women's' Risk Needs Assessment [WRNA] update). (Doc. 11 at 10, 11, 18). The Parties agree with the Internal Monitor that the State is in partial compliance with these three Chart sections covering Consent Decree paragraphs III.C.1, III.C.2 and III.F.3-4.

4. The Internal Monitor reports that the State remains in substantial compliance with the remaining 41 of 44 sections set forth in the Chart, which cover the remainder of the Consent Decree's provisions. These ratings remain unchanged from the ratings made by the Independent Monitor in her last nine (9) reports. *See* Doc. Nos. 34-1, at 8; 37-2, at 6; 39-1, at 7; 43-1, at 10; 53-1, at 11; 57-1, at 11; 61-1, at 11; 78-1, at 12; 101-1, at 14. The State agrees with the Internal Monitor's determinations.

5. Unlike the State, the United States does not fully agree with the Internal Monitor's substantial compliance determinations. Rather, the United States submits that the State is only in partial compliance, not substantial

compliance, with certain parts of Consent Decree paragraph III.K. Consent Decree III.K requires “that all allegations of sexual abuse and sexual harassment are promptly, thoroughly, and objectively investigated and . . . that alleged victims are advised of the outcome of their allegations.” (Doc. 11 at 84). After an extensive review, the United States does not believe that the State’s investigations are thorough, timely, or properly noticed, as required by the Consent Decree, to justify a continued substantial compliance rating.

6. The United States notified the State that it disagreed with a substantial compliance rating for parts of Consent Decree concerning paragraph III.K on December 19, 2023. The Parties, including the Internal Monitor, discussed the United States’ concern on January 11, 2024. The Parties were not able to resolve the dispute.

7. The Internal Monitor agreed with the State, and the Sixteenth Monitoring Report consequently states that the State remains in substantial compliance with the 41 of the 44 sections of the Consent Decree requirements, including paragraph III.K and its sub-parts, previously found in substantial compliance by the former Independent Monitor.

8. The United States submits that the State’s compliance rating should be lowered to partial compliance for the following parts of Consent Decree paragraph III.K.: III.K.2, III.K.5-9, III.K.12, and III.K.14-16. These paragraphs implicate

four sections of the Chart. Chart at 166 (covering Consent Decree paragraphs III.K.1, .2), 174 (III.K.3, .5, .7, .8, .9), 182 (III.K.11-15), 187 (III.K.16-17). These paragraphs concern requirements related to investigator training, the investigative process, and review by upper-level management. In support, the United States will submit a separate Notice of its Objections to the Sixteenth Monitoring Report and can proffer additional details at the next status conference.

State's Response: The State agrees with the Internal Monitor's determination that the State remains in compliance with 41 of the 44 Chart sections, including those responding to Consent Decree paragraph III.K relating to PREA investigations. In the Parties' discussions with the Internal Monitor, the United States' experts' concerns related to PREA investigations. The United States' experts reported on perceived issues regarding the thoroughness, timeliness, and notice requirements of the Consent Decree. In the Fall of 2022, the State reorganized the PREA investigative process and relocated PREA investigation under the Office of the Inspector General. The Internal Monitor and the Plaintiff raised concerns regarding this reorganization in the Fifteenth Monitor's Report. (Doc. 101-1). Based on these concerns, the State reverted the investigation process back to Law Enforcement Services Division ("LESD"). This transition occurred during the reporting period for the Report, January 1 through June 30, 2023.

By ADOC identifying challenges with PREA investigations under the OIG and swiftly reverting back to LESD, the State took corrective action to resolve the perceived concerns. “Substantial compliance” does not require perfection. Rather, the State interprets “substantial compliance” in context with the lower designation of “partial compliance.” The Consent Decree states that a finding of partial compliance “indicates that ADOC and Tutwiler have achieved material compliance on some components of the relevant provision of the Agreement, but significant work remains.” The State agrees with the Internal Monitor’s finding of substantial compliance, as no significant work remains. ADOC took corrective action and remedied any deficiencies in the investigatory process resulting from ADOC’s transitioning PREA investigations away from LESD. Based upon these actions, it cannot be fairly said that significant work remains. As such, the State agrees with the Internal Monitor that Sections III.K.1, .2 (Doc. 118-2 at 166); III.K.3, .5, .7, .8, .9 (Id. at 174); III.K.11-15 (Id. at 182); and III.K.16-17 (Id. at 187) remain in substantial compliance.²

9. Consequently, unlike the Internal Monitor and the State, the United States submits that the State is in substantial compliance with 37 of 44 Chart

² The State reserves the right to supplement this response based upon any subsequent filing by the Plaintiff concerning alleged deficiencies with the State’s compliance with the Consent Decree.

sections (instead of 41 of 44) and is in partial compliance with 7 of 44 Chart sections (instead of 3 of 44).

10. Regarding the three (3) Chart sections that the Parties agree remain in partial compliance, the Parties report the following update for all three areas:

- a. Paragraphs III.C.1, III.C.2 – staffing vacancy rates remain concerning, and it is unclear whether initiatives to improve hiring and retention will succeed. As of the sixteenth compliance monitoring period, vacancy rates for security staff are at 56%. (Doc. 118-1 at 13). The State notes that the vacancy rate does not include utilization of overtime during the reporting period. Further, the State reports that the State implemented historic pay increases for correctional officers, including across-the-board pay increases for almost every officer in March 2023. The starting pay for a correctional officer trainee rose from \$33,381 to \$55,855. The United States reports that further progress and determining appropriate next steps will be difficult for the State because it remains unclear whether the most recent staffing analysis completed by the State in March 2023 accurately reflects and accounts for Tutwiler’s specific needs and circumstances. Since female

incarcerated persons sometimes have special needs that may not align with male incarcerated persons, the United States, as did the former Independent Monitor, believes it is essential that Tutwiler's staffing analysis be updated based on Tutwiler-specific data and special considerations. The State provided Plaintiff the updated Staffing Analysis completed in February 2023. This updated analysis included information concerning the methods deployed to develop the staffing analysis for Tutwiler, including identifying gender responsive staffing requirements for Tutwiler staff. Plaintiff and the State disagree as to whether the updated staffing analysis confirms the State's staffing calculations and resolves concerns raised by the former Independent Monitor as to those calculations and Tutwiler's specific needs. In February 2023, the State, at the request of the former Independent Monitor, recalculated the relief factor utilizing Tutwiler-specific data, and found the difference between the systemwide relief factor utilized in the updated Staffing Analysis de minimis.

- b. Paragraphs III.F.3-4 – The WRNA remains a work in progress. The University of Alabama continues to study the validity of

the WRNA risk assessment instrument and should be issuing a report during the January 1 through June 30, 2024, reporting period. Once the report arrives, the Parties will be able to determine whether this provision can be upgraded to substantial compliance. The United States notes that these WRNA provisions primarily address the risk assessment process and not whether staffing and supervision is adequate to implement the classification scheme. The parties agree, however, that the state made progress implementing these Consent Decree requirements during the last compliance period.

B. Informal Benchmark Deadlines and Timetable.

In the Parties' October 17, 2022, Joint Statement, pursuant to this Court's March 29, 2022, Order (Doc. 62), the State provided its most recent update on its progress with the internal and informal benchmarks it developed to address the ongoing correctional staffing concerns. (Doc. 85). The State reiterates the "internal and informal benchmarks" represent targets for the State regarding the correctional staffing analysis, and do not represent mandatory deadlines. Further, the informal benchmarks do not control the State's ability to reach partial or substantial compliance or otherwise to obtain a modification or termination of the Consent Decree.

The State asserts that it completed most of its benchmarks in a timely manner, including the development of a staffing analysis. For the informal benchmarks remaining outstanding, the State reports the following since its last October 17, 2022 update:

1. By November 1, 2022, the State must complete the update of the existing staffing analyses.

a. The State completed the staffing analysis for all major correctional facilities, including Tutwiler, on November 1, 2022 and provided a copy to the former monitor and Plaintiff on November 22, 2022. The staffing analysis incorporated an individual analysis of the staff required to operate Tutwiler, including the relief factor. The State provided an updated staffing analysis and a calculation of the Tutwiler-specific relief factor to the former monitor and Plaintiff on March 6, 2023.

2. By December 31, 2022, the Agreement directed the State to develop internal and informal benchmarks (e.g., numbers, percentages, or rates such as fill/vacancy rate) for correctional staffing at Tutwiler.

a. The State developed informal benchmarks concerning achieving identified staffing levels by July 2025. These benchmarks included Tutwiler.

3. By January 21, 2023, the Agreement required the State to provide the Tutwiler Monitor with the status of any internal and informal benchmarks established for Tutwiler.

- a. The State provided the systemwide staffing benchmarks to the former Internal Monitor and Plaintiff on January 24, 2023. The document consisted of the State's systemwide staffing benchmarks filed in the Braggs case. See Doc. 3901 in Braggs v. Hamm, Case No. 2:14-cv-00601-MHT (M.D. Ala.).

C. No Additional Findings Are Needed Under the PLRA.

The Court's October 27 Opinion and Order requests that the Parties explain why they believe the October 27 Order does not require additional findings under the PLRA. (Doc. 113 at 10). The Court's October 27 Order terminated and narrowed existing relief, which the Parties previously stipulated to be narrow, necessary, and least intrusive under the PLRA. (See Consent Decree Order (Doc. 11 at 126)). Because the October 27 Order narrowed and terminated existing relief that included stipulated PLRA findings, and did not expand existing relief or order new relief, A, no additional PLRA findings are needed.

WHEREFORE, the Parties now jointly submit this update for the Court's consideration.

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 8th day of February 2024,

/s/ Christopher N. Cheng
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