

**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-CWB
	)	
STATE OF ALABAMA AND	)	
ALABAMA DEPARTMENT OF	)	
CORRECTIONS,	)	
	)	
Defendants.	)	

**UNITED STATES’ NOTICE OF OBJECTIONS TO SIXTEENTH MONITOR’S  
REPORT**

1. The Internal Monitor has reported that Defendants remain in substantial compliance with Consent Decree Paragraph III.K, Referrals and Investigations. Consent Decree, Doc. 11 at 84 (June 8, 2015); Sixteenth Monitor’s Report, Doc. 118 (Jan. 26, 2024). The United States disagrees with the Internal Monitor’s assessment and submits that the Defendants are only in partial compliance with certain sub-provisions of Consent Decree Paragraph III.K.<sup>1</sup>

2. The United States submits that the State’s compliance rating should be lowered to partial compliance for Consent Decree paragraphs 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).

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<sup>1</sup> Following the lead of the former Independent Monitor, the Internal Monitor used the Compliance Tool (the “Chart”) to measure the State’s compliance with the Consent Decree. *Compare* Internal Monitor’s First Compliance Tool, Doc. 118-2 (Jan. 26, 2024) (“Chart”) *with* Monitor’s Compliance Tool, Doc. 102-1 (April 21, 2023). For ease of reading, this filing will use the term “paragraph” to refer to Consent Decree provisions, including sub-provisions, and “section” to refer to the Chart categories used by the Internal Monitor’s First Compliance Tool.

The Chart’s 44 sections do not directly correspond to individual Consent Decree paragraphs. Instead, the Chart groups multiple paragraphs of the Consent Decree together into separate chart sections to measure compliance.

3. Pursuant to the Court's Order, Doc. 113 at 6 (Oct. 27, 2023), the United States now files this notice so "the parties may bring the concern to the court for discussion." The basis for the United States' position follows.

4. The United States and its expert consultants reviewed documentation produced from the tenure of the former Independent Monitor through December 2023, conducted interviews, and toured the facility on September 19-21, 2023. The results of our and our consultants' review identified concerning patterns with the State's investigative processes and procedures that include: investigative records that are missing vital case information such as interview details, case outcomes, and objective credibility determinations; untimely and delayed investigations; lack of administrative investigations; failure to collect and preserve statements, video, and other evidence; and incorrect classification of "unsubstantiated" cases as "unfounded".

5. These deficiencies would indicate failure to substantially comply with Consent Decree Paragraph III.K, including the following specific sub-paragraphs: 2 (prompt, thorough, and objective investigations), 5 (staff PREA training), 6 (gather and preserve evidence), 7 (credibility assessment), 8 (substantiated, unsubstantiated, unfounded report deadlines), 9 (work with monitor on summary sheet), 12 (notifying inmate about conclusions), 14 (notifying inmate about actions taken against staff), 15 (documenting notifications), and 16 (management incident review team).

6. The Parties and the Internal Monitor discussed the United States' concerns on several occasions including during a January 11, 2024, video conference and the September 2023 tour.

7. The Internal Monitor's report does not provide sufficient detail to justify a substantial compliance rating. For instance, when addressing III.K. 3, 5, 7-10, 14-15, the Internal

Monitor wrote only that “[t]he Internal Monitor determined that ADOC and Tutwiler remained in ‘substantial compliance’ with this requirement from a review of documents and staff interviews, during the reporting period of January 1, 2023, through June 30, 2023.” Chart, Doc. 118-2 at 174-186.

8. The Internal Monitor’s overall conclusion also cannot be reconciled with the Internal Monitor’s separate finding that there is no documentation to support the conclusion that the Sexual Abuse Incident Review Committee has met required investigative timelines. Specifically, the Internal Monitor concluded that the State remained in substantial compliance with Paragraph III.K even though the Internal Monitor has been awaiting records to address a significant documentation gap in the State’s internal review of the adequacy of the Sexual Abuse Incident Review Committee’s investigations. *See* Chart, Doc. 118-2 at 180-181, 190 (14 of 24 reinvestigation reviews not completed and Internal Monitor awaiting more information from the state).

9. Additionally, the Internal Monitor has not responded to concerns raised by the United States about the investigation process and sampled files during the draft monitor report review process or the January 2024 video conference. *See, e.g.*, Sixteenth Monitor’s Report, Doc. 118-1 at 13, 20, 51, 55 (finding compliance despite acknowledged delay in giving Law Enforcement Services Division (LES D) investigative responsibilities and ongoing issues with camera and audio surveillance); Chart, Doc. 118-2 at 2 (Internal Monitor did not list the case reviews requested by the Justice Department as part of her assessment).

10. After the conversations between the parties and the Internal Monitor, the parties were unable to resolve their disagreement as to the appropriate compliance rating for Paragraph III.K.

11. Notably, the investigation provisions in Paragraph III.K. have been of concern for some time. The former Independent Monitor, Dr. Kathleen Dennehy, raised concerns about the soundness of investigations and changes to the Tutwiler investigative process in her last report before her resignation took effect. Dr. Dennehy gave the State an opportunity to address the concerns rather than downgrade the State's compliance rating. Specifically, Dr. Dennehy wrote:

While the monitor has considered reducing the compliance assessment of related Consent Decree requirements to "partial compliance" from "substantial compliance," Dr. Mautz's representation to the monitor gives pause to this action. However, the monitor is very concerned about ADOC's disregard for DOJ and the monitor's feedback and requests, the lack of notification about changes being implemented as far back as November 15, 2022, as well as the absent or late notifications made to the monitor and DOJ regarding significant developments.

Chart, Doc. 102-1 at 184 (April 21, 2023).

12. The State claims that it addressed investigations concerns by reverting responsibilities back to LESD. The United States does not believe that resolves the concerns. After the State returned investigative duties to LESD, the Internal Monitor should have also ensured that LESD was conducting investigations in the timely and thorough manner required by the consent decree. The fact that the transition back to LESD was not even completed until August 2023 makes the Internal Monitor's compliance finding improbable.

13. While the United States remains hopeful that the State's investigations will return to a substantial compliance status quickly, it does not support such a substantial compliance rating for paragraph III.K, including sub-provisions III.K.2, III.K.5-9, III.K.12, and III.K.14-16, and their correlating Chart sections, without further review and documentary confirmation that the State is complying with Paragraph III.K of the Consent Decree. The United States therefore submits that the State is in substantial compliance with 37 of 44 sections in the Chart, rather than the 41 of 44 sections as determined by the Internal Monitor.

Respectfully Submitted this 8th day of February 2024,

s/Christopher N. Cheng  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing United States' Notice of Objections to Sixteenth Monitor's Report has been served via CM/ECF on all counsel of record this 8<sup>th</sup> day of February 2024.

s/Christopher N. Cheng  
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