2022 WL 17902736 (C.A.11) (Appellate Brief)
United States Court of Appeals, Eleventh Circuit.

Edward BRAGGS, et al., Plaintiffs-Appellees,
v.
COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, et al., Defendants-Appellants.

Nos. 22-10292, 22-10294.
December 19, 2022.

On Appeal from the United States District Court
for the Middle District of Alabama

Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellees and Urging Affirmance on the Issues Addressed Herein

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***C-1 CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT**

In accordance with Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, the United States as amicus curiae certifies that, in addition to those identified in the briefs filed by plaintiffs-appellees and defendants-appellants, the following persons have an interest in the outcome of this case:
1. Clarke, Kristen, counsel for amicus curiae United States;

2. Hecker, Elizabeth Parr, counsel for amicus curiae United States;

3. Philo, Alisa C., counsel for amicus curiae United States.

The United States further certifies that no publicly traded company or corporation has an interest in the outcome of this appeal.

s/ Elizabeth Parr Hecker

ELIZABETH PARR HECKER

Attorney

Date: December 19, 2022

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*1 INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which concerns the application of the Prison Litigation Reform

Act, 18 U.S.C. 3626 (PLRA), to the entry of prospective relief where a district court has found deliberate indifference to inmates' serious mental-heath care needs in violation of the Eighth Amendment. The Justice Department is charged with enforcing the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997, *et seq.*, which allows the Attorney ***2** General to investigate and seek equitable relief for a pattern or practice of unconstitutional conditions perpetuated by certain state and local authorities. The Department often brings enforcement actions involving allegations of deliberate indifference by prison officials and the proper scope of remedies for constitutional violations. See, *e.g.*, *United States v. Hinds Cnty. Bd. of Supervisors, et al.*, No. 3:16-cv-489 (S.D. Miss. docketed June 23, 2016) (notice of appeal filed June 9, 2022); U.S. Br., *Anderson v. New Orleans*, 38 F.4th 472 (5th Cir. 2022) (No. 21-30072). The United States also has filed numerous amicus briefs in cases alleging constitutional violations in state prison systems. See, *e.g.*, U.S. Amicus Br., *Ball v. LeBlanc*, 792 F.3d 584 (5th Cir. 2015) (No. 14-30067); U.S. Statement of Interest, *Diamond v. Ward*, No. 5:20-cv-453 (M.D. Ga. filed Apr. 22, 2021).

The United States files this brief under Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUES

1. Whether the district court correctly determined that the PLRA, 18 U.S.C. 3626, did not require plaintiffs to re-prove the existence of a current, ongoing constitutional violation before the district court could enter prospective injunctive relief for the constitutional violations that the plaintiffs already had proven.

2. Whether the district court correctly imposed a systemwide remedy based ***3** on its factual findings of systemwide constitutional violations.[1]

STATEMENT OF THE CASE

1. Statutory Background

Cases alleging violations of federal rights involving prison conditions are governed by the PLRA, 18 U.S.C. 3626. Congress passed the PLRA "in the wake of a sharp rise in prisoner litigation in the federal courts." *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). Among other things, the PLRA "imposes limits on the scope and duration of preliminary and permanent injunctive relief" against prison systems. *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Two provisions of the PLRA are relevant here.

In addition to having to satisfy the typical requirements that accompany the entry of equitable relief, Section 3626(a)(1) requires that prospective relief in prison-conditions cases "extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. 3626(a)(1)(A). The court must find that such relief "is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." *Ibid*. (the "need-narrowness-intrusiveness" standard). The court must also "give substantial weight ***4** to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Ibid*.

Section 3626(b) provides for the termination of relief under certain circumstances. The statute states that prospective relief "shall be terminable upon the motion of any party * * * 2 years after the date the court granted or approved" it, or immediately if the relief was entered in the absence of the findings required under Section 3626(a)(1). 18 U.S.C. 3626(b)(1)(A)(i) and (b)(2). Prospective relief may nonetheless be continued "if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3).

2. Factual And Procedural Background

This appeal concerns one part of a class-action lawsuit brought against the Commissioner of the Alabama Department of Corrections and its Associate Commissioner of Health Services (collectively, ADOC). Doc. 3461, at 2.[2] At issue is plaintiffs' Eighth Amendment claim of inadequate mental-health care, ***5** referred to as Phase 2A of the litigation. Doc. 1285, at 6. For this claim, the district court bifurcated its consideration of liability and remedy.

a. For the liability phase, the district court held a bench trial from December 5, 2016 to February 2, 2017. The court issued its liability opinion on June 27, 2017, finding that ADOC failed to provide minimally adequate mental-health care to inmates in its custody, in violation of the Eighth and Fourteenth Amendments. See Doc. 1285.

The district court held that "ADOC's mental-health care is horrendously inadequate." Doc. 1285, at 299. The court described numerous problems, including, among other things, failure to identify prisoners with serious mental-health needs, failure to provide adequate mental-health treatment, failure to identify inmates at risk of self-harm or suicide, and placement of inmates with serious mental-health problems in segregation. See Doc. 1285, at 300-301. Across these problems, the court identified "persistent and severe shortages of mental-health staff and correctional staff, combined with chronic and significant overcrowding" as "the overarching issues that permeate each of the * * * contributing factors of inadequate mental-health care." Doc. 1285, at 301.

The court further concluded that ADOC was deliberately indifferent to these risks. See Doc. 1285, at 242-282. "[D]espite being repeatedly informed that significant deficiencies existed," the court found that "ADOC ha[d] disregarded ***6** and failed to respond reasonably to the actual harm and substantial risks of serious harm posed by its deficient mental-health care system." Doc. 1285, at 242-243.

The district court found that these were systemic problems that warranted systemic relief. See Doc. 1285, at 36. The court explained that "[b]y and large, experts from both sides agreed that ADOC facilities are suffering from severe systemic deficiencies that are affecting the delivery of mental health care." Doc. 1285, at 24-25; see also Doc. 1285, at 17. The court rejected ADOC's arguments that plaintiffs needed to present evidence specific to each facility. Doc. 1285, at 46 n.16. As the district court noted, "mentally ill prisoners are subject to a substantial risk of serious harm from practices that are common in ADOC facilities no matter where they are housed currently, because they may be housed in any of these facilities in the future due to ADOC's frequent and unpredictable transfers of prisoners." Doc. 1285, at 46 n.16. The court found that, "[w]ithout systemic changes that address these pervasive and grave deficiencies, mentally ill prisoners in ADOC * * * will continue to suffer." Doc. 1285, at 24.

b. In September 2017, the district court entered an order setting forth a plan to handle the remedial phase in parts. Doc. 1357. The district court entered remedial orders with PLRA findings on some issues, including an order on understaffing (Doc. 1656) and an order on suicide prevention (Doc. 2525). For other issues, the district court entered the parties' agreed-upon stipulated remedial ***7** agreements without making PLRA findings.[3] See, *e.g.*, Doc. 1720 (regarding segregation), Doc. 1792 (regarding mental-health coding), Doc. 1794 (regarding intake), Doc. 1815 (regarding preplacement, mental health rounds, and periodic evaluations), Doc. 1899 (regarding psychotherapy and confidentiality).

In February 2019, ADOC challenged the orders to which it previously had stipulated on the ground that the district court was required to make PLRA findings when issuing those orders. Doc. 3461, at 11; see also Doc. 2382. With the parties' agreement, the court held that the orders "temporarily satisf[ied] the requirements of the PLRA" pending a final determination after an evidentiary hearing. Doc. 2716, at 4. That evidentiary hearing was delayed multiple times--first, to allow the parties to try to reach a resolution; then, in response to the onset of the Covid-19 pandemic; and finally, because ADOC moved to terminate some or all of the relief scheduled for consideration at the hearing. See Doc. 3461, at 12-15. In response to ADOC's motion to terminate (Docs. 2908, 2924), plaintiffs moved to conduct onsite prison inspections (Doc. 2986). When the court granted that motion (Doc. 3000), ADOC withdrew its motion to terminate (Docs. 3004, 3005). See generally Doc. 3461, at 16.

***8** In January 2021, after soliciting the parties' input, the court set an omnibus remedial process to "resolv[e] all of the outstanding issues." Doc. 3461, at 17 (citation omitted). The court held evidentiary hearings from May 24 to July 9, 2021 (Doc. 3461, at 3), and issued a lengthy omnibus remedial opinion on December 27, 2021 (Docs. 3461-3465). In that opinion, the court made PLRA findings for each provision of relief as well as globally. See Doc. 3461, at 28; see generally Doc. 3463.

Given that over four years had passed since it issued the liability opinion, the district court stated that "it would consider

changes in circumstances in ADOC facilities" in deciding whether the relief satisfied the PLRA's need-narrowness-intrusiveness standard. Doc. 3461, at 29-30 & n.2. The court recognized that "[t]he specific relief necessary to remedy the constitutional deficiencies found in the court's liability opinion may have changed since the time of that opinion." Doc. 3461, at 29. "[S]ustained improvements," for example, may have changed or eliminated the need for relief in certain areas. See Doc. 3461, at 29. As a result, the court declined to "look[] only to the circumstances that existed at the time of the liability trial, as the plaintiffs suggested [it] should do." Doc. 3461, at 30.

The district court rejected, however, ADOC's argument that the plaintiffs must again prove a current and ongoing violation at the remedial phase before the court could enter relief. See Doc. 3461, at 30-38. Relying on the plain text of the ***9** PLRA and on this Court's binding precedent, the district court reiterated its holding from a prior order that, "[i]n the absence of a motion to terminate, there is no statutory requirement that the court find a current and ongoing violation of federal law before entering relief." Doc. 3461, at 32 (internal quotation marks omitted) (quoting Doc. 3078, at 24). Because ADOC had withdrawn its motion to terminate, "the plaintiffs were not required to demonstrate current and ongoing deliberate indifference by the defendants." Doc. 3461, at 33.

The district court recognized that, if it had wrongly decided this issue and plaintiffs were required to prove current and ongoing deliberate indifference, then it would have permitted the plaintiffs to present additional evidence. Doc. 3461, at 33 n.3. The court explicitly found that "the current record is inadequate to resolve the question of whether ADOC remains deliberately indifferent on a current and ongoing basis." Doc. 3461, at 33 n.3. The court stated that if the case ultimately were remanded on this ground, "then upon remand the court will allow the parties to engage in the discovery that was disallowed on the issue and the court will resolve the issue based on the evidence presented." Doc. 3461, at 33 n.3.

Finally, the district court rejected ADOC's argument that relief should be ordered on a facility-by-facility basis. See Doc. 3461, at 39-46. The court explained that its "liability findings in this case were systemic" (Doc. 3461, at 43), and, "[f]or the most part, the relief that remains necessary to correct those systemic ***10** violations is also systemic" (Doc. 3461, at 44). But the court made clear that its relief was still tailored to what the evidence showed to be necessary. See Doc. 3461, at 46. "[W]hile system-wide relief is typically necessary for the system-wide violations found in this case, the court will limit relief to specific facilities when the evidence demonstrates that such limitation is appropriate." Doc. 3461, at 46.

c. ADOC filed a notice of interlocutory appeal on January 24, 2022. Doc. 3488.[4] In its notice, ADOC purported to appeal the "Phase 2A Omnibus Remedial Order (Doc. 3464), as well as the accompanying Phase 2A Omnibus Remedial Opinion (Docs. 3461-3463, 3465) and all underlying orders and opinions, including but not limited to the Liability Opinion and Order as to Phase 2A Eighth Amendment Claim (Doc. 1285) and any other Phase 2A liability opinion or order." Doc. 3488.

ADOC sought to stay the district court's remedial order. In the district court, ADOC argued again that the court was required to find current and ongoing deliberate indifference and that its systemwide order was overbroad. Doc. 3490, at 4-12, 19. The district court rejected these arguments once more (Doc. 3526, at 67-75), but issued a limited stay of one part of the order concerning the requirements ***11** for a particular type of prison cell (Doc. 3526, at 75-76). This Court subsequently denied ADOC's motion to stay the injunction pending appeal. Order Denying Mot. to Stay (March 9, 2022).

SUMMARY OF ARGUMENT

1. The district court correctly found that, having proven that ADOC was deliberately indifferent to inmates' serious mental-health needs during the liability phase, plaintiffs were not required under the PLRA to prove a current and continuing violation--specifically that ADOC remained deliberately indifferent--at the remedial phase. This Court's binding precedent in *Thomas v. Bryant*, 614 F.3d 1288 (2010), held that the PLRA's requirement to prove a "current and ongoing" violation governs only the *termination* of injunctive relief. For the initial *entry* of injunctive relief, however, the PLRA requires only that the district court find that such relief "is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a)(1)(A). Changes in prison conditions since the liability phase are undoubtedly relevant to determining whether this standard is met, and the district court took account of those changes when fashioning its remedy. But the mere fact that a defendant undertakes some efforts to remedy the constitutional violations that the court found during the ***12** liability phase does not place an additional burden on the plaintiffs to prove deliberate indifference anew before the court can enter

prospective relief.

2. The district court correctly ordered systemwide relief based on its factual findings regarding systemwide constitutional violations. The court recognized that isolated incidents of harm typically do not warrant systemwide relief, and that, for some issues, relief was appropriately limited to particular facilities. But the district court correctly determined that, for the constitutional violations that were widespread and pervasive throughout ADOC facilities, systemwide relief was necessary.

ARGUMENT

"A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Having found in its liability opinion that ADOC committed numerous constitutional violations, the district court could then "grant appropriate injunctive relief." *Id*. at 846. The PLRA requires this injunctive relief to satisfy the need-narrowness-intrusiveness standard set forth in Section 3626(a)(1). But, absent a motion to terminate relief, the PLRA does not require plaintiffs to reprove the existence of an ongoing constitutional violation at the remedial phase, even where time has passed between the remedial phase and the initial liability ***13** finding. The district court did not err in so holding. Nor did the district court err in ordering systemic relief for the systemic violations that it had found.

I THE PLRA DID NOT REQUIRE PLAINTIFFS TO RE-PROVE A CURRENT AND ONGOING CONSTITUTIONAL VIOLATION AT THE REMEDIAL PHASE BEFORE THE DISTRICT COURT COULD ENTER A PERMANENT INJUNCTION TO REMEDY THE CONSTITUTIONAL VIOLATIONS IT PREVIOUSLY HAD FOUND

To enter prospective relief, the PLRA requires the court to find "that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a)(1)(A). Relief is terminable, upon the motion of a party or intervenor, two years after the entry of prospective relief. Relief is immediately terminable if the court entered prospective relief without the requisite PLRA findings. The relief, however, shall not terminate if the court "makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right," and that the relief meets the need-narrowness-intrusiveness standard. 18 U.S.C. 3626(b)(1)(A)(i), (b)(2) and (b)(3).

A. Section 3626 Does Not Require A Court To Find A Current And Ongoing Violation When Evaluating Whether To Enter Prospective Relief

The question here is whether the PLRA required the district court to find a current and ongoing violation when evaluating the need-narrowness-intrusiveness ***14** standard for the *entry* of prospective relief. Under this Court's binding precedent in *Thomas v. Bryant*, 614 F.3d 1288 (2010), the answer is no.

In *Thomas*, the district court found that prison officials had violated the Eighth Amendment by using chemical agents as non-spontaneous discipline on two inmates with mental illness and permanently enjoined the defendants from employing such tactics without first consulting mental health professionals. *Thomas*, 614 F.3d at 1293-1294. On appeal, the defendants argued that the injunction did not meet the need-narrowness-intrusiveness requirement of the PLRA because the one surviving plaintiff, who was then incarcerated in a different facility, could not establish a "current and ongoing" violation of his constitutional rights. *Id*. at 1319. This Court disagreed, recognizing that the current-and-ongoing violation requirement governing the *termination* of relief "is distinct from the standard governing the initial *entry* of injunctive relief." *Id*. at 1320 (emphasis added) (citing *Cason v. Seckinger*, 231 F.3d 777, 784 (11th Cir. 2000)). For the initial entry of injunctive relief in prison litigation, the court held that "[t]he PLRA's need-narrowness-intrusiveness limitation governs." *Ibid*. "Whether there is a 'current and ongoing' constitutional violation sufficient to avoid termination of the current injunction is a matter to be considered upon motion by either party in a ***15** termination proceeding, at least two years after the district court's initial award of relief." *Ibid*. (quoting 18 U.S.C. 3626(b)(3)).

The Fourth Circuit reached the same conclusion in *Porter v. Clarke*, 923 F.3d 348, 366-368 (2019). First, the court stressed that, despite the two provisions' otherwise parallel language, the "current and ongoing" language appears in Section 3626(b)(3) regarding when relief can be *terminated* but not in Section 3626(a)(1) regarding when initial prospective relief is *entered*. *Id.* at 367. The court explained that "Congress's decision to omit the 'current and ongoing' language from Section 3626(a)(1), when it used such language in Section 3626(b)(3), provides strong evidence that Congress did not intend for the 'current and ongoing' standard to apply outside of the termination context." *Ibid*. Second, the court explained that "[c]onstruing the phrase 'necessary to correct' as demanding a 'current and ongoing' violation would render redundant the phrase 'current and ongoing' violation in Section 3626(b)(3), as that provision also requires that the court find the prospective relief 'necessary to correct.' " *Ibid*. Third, in the absence of a clear statement like that found in Section 3626(b)(3), the court was unwilling to "construe Section 3626(a)(1) as displacing courts' equitable authority to *initially* ***16** impose prospective relief, even when a violation is not 'current and ongoing.' " *Id.* at 367-368.

The holdings in *Thomas* and *Porter* reflect the understanding that the district court must have found a violation of constitutional rights at the liability phase to order a remedy at all. At the remedial phase, the question becomes what relief is necessary, narrowly tailored, and least intrusive to remedy the violation *already found*. Answering this question does not require the district court to redo the liability phase when entering relief. Indeed, in many cases, "[a] party seeking prospective relief under Section 3626(a)(1)(A) has likely only recently proven a defendant violated their federal rights" and it makes little sense to have the plaintiff "prove the violation again to be awarded prospective relief." *Victory v. Berks Cnty.*, No. 18-5170, 2020 WL 236911, at *18 (E.D. Pa. Jan. 15, 2020).[5]

Though several years have passed between the liability and relief phases of this case, nothing in the statutory scheme or the case law suggests that such a delay would invalidate the district court's prior liability findings. Part of that delay was due to the parties' mutual choice to attempt mediation with the goal of reaching a global resolution on a host of complex issues. Doc. 3461, at 12. Such settlements and mediations are a common way to try to resolve remedial issues, and often take ***17** a fair amount of time given the complex nature of prison reform. Adopting ADOC's approach would mean that plaintiffs who are successful in the liability phase may be hesitant to engage in negotiations concerning relief, while defendants who were unsuccessful in the liability phase may seek to draw out any discussions regarding remediation until they can run out the clock and argue that the court's liability findings have expired. Such results would hardly serve the PLRA's purpose of "expedit[ing] prison litigation." *Georgia Advoc. Off. v. Jackson*, 4 F.4th 1200 (11th Cir. 2021), vacated as moot, 33 F.4th 1325 (11th Cir. 2022) (per curiam).

This does not mean, of course, that improvements in prison conditions since the liability finding are *irrelevant*. Changes in circumstances, of course, can affect what relief is necessary, narrowly tailored, and least intrusive to remedy the violation already found. The district court acknowledged this, and explicitly *rejected* the plaintiffs' position that it should consider only the circumstances that existed at the time of the liability trial. Doc. 3078, at 24 (noting that the court had "grave concerns about implementing relief without ensuring that it is necessary under current conditions"); see also Doc. 3641, at 29-30. The court explained that "[t]he specific relief necessary to remedy the constitutional deficiencies found in the court's liability opinion may have changed since the time of that opinion." Doc. 3461, at 29. It stated that "[o]n some issues, sustained improvements in ***18** ADOC's provision of mental-health care may have rendered some relief inappropriate," while "[i]n other areas, progress may have been partial, making certain relief that would have been essential at the time of the liability opinion now unnecessary." Doc. 3461, at 29.[6]

The district court correctly considered these changes when formulating its injunctive relief, finding that each aspect of the relief it ordered satisfied the need-narrowness-intrusiveness standard. See generally Doc. 3463. But the fact that the court can, and should (and in this case, did) consider changed circumstances in fashioning relief does not mean that plaintiffs are required to prove deliberate indifference again at the remedial phase when they already did so during the liability phase. Instead, as explained below, the burden fell on ADOC to show that subsequent developments mooted the liability findings.

B. ADOC's Arguments That The District Court Was Required To Find Deliberate Indifference Anew Are Meritless

ADOC makes three related arguments to support its contention that the district court erred in failing to find deliberate indifference anew before entering the remedial order in 2021. Br. 58-67. First ADOC argues that a district court ***19** must

find "current deliberate indifference" before entering an injunction, even in the absence of the PLRA. Second, ADOC argues that the district court "misinterpreted" this Court's decision in *Thomas* as authorizing injunctive relief based solely on constitutional violations that no longer exist. And third, ADOC suggests that the corrective actions it has taken since the 2017 liability findings mean that it is no longer deliberately indifferent to any remaining deficiencies. Each of these arguments is meritless.

1. ADOC argues that the Supreme Court's decision in *Farmer v. Brennan*, 511 U.S. 825 (1970), requires a district court to find "current deliberate indifference" before issuing an injunction, even in the absence of the PLRA. Br. 59. But *Farmer* did no such thing. In *Farmer*, the Supreme Court held that an inmate must present "evidence from which it can be inferred that the defendant-officials were *at the time suit was filed, and are at the time of summary judgment*, knowingly and unreasonably disregarding an objectively intolerable risk of harm, and that they will continue to do so." 511 U.S. at 846 (emphasis added). In making this showing, "the inmate may rely, in the district court's discretion, on developments that postdate the pleadings and pretrial motions, as the defendants ***20** may rely on such developments to establish that the inmate is not entitled to an injunction." *Ibid*.

The district court held at the liability phase that the plaintiffs in this case satisfied this standard (Doc. 1285, at 39-46). The court held that "prisoners [in ADOC facilities] with serious mental-health needs, have suffered harm and are subject to a substantial risk of serious harm due to ADOC's inadequate mental-health care." Doc. 1285, at 43; see generally Doc. 1285, at 33-236. The court further held that "despite being repeatedly informed that significant deficiencies existed, ADOC has disregarded and failed to respond reasonably to the actual harm and substantial risks of serious harm posed by its deficient mental-health care system." Doc. 1285, at 242-243; see generally Doc. 1285, at 242-283. Thus, as the district court correctly held, plaintiffs established their eligibility for an injunction when they proved the constitutional violations during the liability phase. Doc. 3461, at 30-36 & n.4.

As explained above, later developments may be relevant to the injunction that the court ultimately issues. The Court in *Farmer* explained that "defendants may rely on such developments to establish that the inmate is not entitled to an injunction." 511 U.S. at 846. For example, "even prison officials who had a subjectively culpable state of mind when the lawsuit was filed could prevent issuance of an injunction by *proving*, during the litigation, that they were no longer ***21** unreasonably disregarding an objectively intolerable risk of harm and that they would not revert to their obduracy" after the litigation concludes. *Id*. at 846 n.9 (emphasis added). But this places the burden on *defendants* to prove that later developments have mooted the case. It does not suggest that *plaintiffs* bear a continued burden to re-prove deliberate indifference at the remedial phase after already having done so at the liability phase.

Defendants have several procedural vehicles for presenting evidence of changed circumstances. They may file a motion for an evidentiary hearing, a motion to terminate, or a motion to dismiss on the grounds of mootness. See *Rich v. Florida Dep't of Corr.*, 716 F.3d 525, 530-532 (11th Cir. 2013) (applying mootness inquiry where prison developed a plan to provide kosher meals after being sued for failure to do so). But again, absent a motion to terminate, it is the *defendants* that bear the burden of showing that circumstances have changed and that they will not recommence their unconstitutional conduct. See *Thomas*, 614 F.3d at 1320-1321; *Rich*, 716 F.3d at 531-532; see also *LaMarca v. Turner*, 995 F.2d 1526, 1541 (11th Cir. 1993) ("When a defendant corrects the alleged infirmity after suit has been filed, a court may nevertheless grant injunctive relief unless the defendant shows that absent an injunction, the institution would not return to its former, unconstitutionally deficient state."), cert. denied, 510 U.S. 1164 (1994). ***22** Indeed, it is defendants who are best positioned to make such assessments and who have the incentive to bring any material improvements to the court's attention.

2. Second, ADOC argues that the district court "misinterpreted" this Court's decision in *Thomas* "as authorizing the entry of relief based solely on past constitutional violations that no longer exist." Br. 60. Not so. The district court explained that in *Thomas*, this Court "considered precisely the defendants' position" here. Doc. 2954, at 3. The district court directly quoted *Thomas*'s language holding that "[t]he PLRA's need-narrowness-intrusiveness limitation governs the *initial entry of injunctive relief* in prison litigation cases," whereas "[w]hether there is a 'current and ongoing' constitutional violation sufficient to avoid termination of the current injunction is a matter to be considered *upon motion by either party in a termination proceeding*." Doc. 2954, at 4 (emphasis added) (quoting *Thomas*, 614 F.3d at 1319-1320). Indeed, this Court specifically recognized in *Thomas* that "subsequent events, such as improvements in the allegedly infirm conditions of confinement, while potentially relevant, are not determinative of whether injunctive relief is no longer warranted." 614 F.3d at 1320.

ADOC further relies (Br. 60) on the *Thomas* Court's statement that "injunctive relief is available in the first instance 'to prevent a substantial risk of serious injury from ripening into actual harm,' *i.e.* to prevent future harm." ***23** 614 F.3d at 1320 (quoting *Farmer*, 511 U.S. at 845). ADOC argues that this language means that, "when a court initially enters injunctive relief, a plaintiff must at the very least demonstrate a *then-existing* 'substantial risk of serious harm.' " Br. 60. Even if this reading were correct, the district court's Omnibus Remedial Order found that there remains a substantial risk of serious harm to inmates housed in ADOC facilities. See generally Doc. 3462, at 61-186 (detailing serious and substantial continuing problems with the provision of mental-health care in ADOC facilities). This language does not suggest, however, that the plaintiffs must *again* prove at the remedial phase what it already proved at the liability phase--that ADOC is deliberately indifferent to such harm. See Doc. 3461, at 36 n.4.

Failing to distinguish *Thomas*, ADOC relies on a vacated Eleventh Circuit decision and a Seventh Circuit decision, but both are readily distinguishable. See Br. 60-64. In *Georgia Advocacy Office*, this Court considered the PLRA's standard for entering a preliminary injunction, which requires a court to make the requisite need-narrowness-intrusiveness findings. 18 U.S.C. 3626(a)(2). Any relief entered under this section automatically expires after 90 days unless the court again makes the need-narrowness-intrusiveness findings at the end of that time period. *Ibid*. The *Georgia Advocacy Office* court held that if "the defendant fails to implement reforms or implements half-baked or impermanent reforms, the district court should proceed to a trial on the merits, determine whether a ***24** permanent injunction can be issued consistent with" the need-narrowness-intrusiveness "requirements, and if so, make the findings required by that section and enter a permanent injunction." 4 F.4th at 1210. Here, of course, there has already been a trial on the merits, and the district court's liability findings were not preliminary in nature.

Nor does *Rasho v. Jeffreys*, 22 F.4th 703 (7th Cir. 2022), support ADOC's argument. There, the Seventh Circuit considered whether to impose prospective relief based on the defendants' failure to comply with a settlement agreement. The terms of the settlement agreement barred the district court from ordering relief for breach of the agreement unless the breach "cause[d] an Eighth Amendment violation." *Id.* at 707. The Seventh Circuit held that since the entry of the settlement agreement, the defendants had "made reasonable efforts to cure the deficiencies" plaintiffs had alleged, thereby negating a finding of deliberate indifference. *Id*. at 710-711. Because the defendants' breach had not *caused* an Eighth Amendment violation, the court held that the district court had erred in granting prospective relief based on the breach. The difference in procedural posture matters; here, there is no such settlement agreement requiring a renewed ***25** finding of deliberate indifference before granting prospective relief for a breach. *Rasho* is inapposite.[7]

3. Finally, ADOC argues that "[t]he district court's failure to consider whether the Commissioners acted with deliberate indifference in 2021 is particularly egregious because the evidence established that they improved mental-health care since the 2017 Liability Opinion." Br. 58. In other words, ADOC suggests that the steps it has taken since the 2017 liability finding mean that it is no longer deliberately indifferent. Br. 58; see also Doc. 3490, at 10-11. ADOC, of course, already had a chance to convince the district court that injunctive relief was no longer warranted during the omnibus remedial hearings. See *Farmer*, 511 U.S. at 846 (stating that defendants may rely on "developments that postdate the pleadings and pretrial motions * * * to establish that the [plaintiff] is not entitled to an injunction") But ADOC failed to do so. See Doc. 3462, at 61-186 (detailing serious continuing problems with the provision of mental healthcare in ADOC facilities). And ADOC has no basis for its request that this Court make, in the first instance, the host of factual findings about liability that would be required for a ***26** judgment in its favor. Compare Br. 66-67 with *Callahan v. United States Dep't of Health & Hum. Servs.*, 939 F.3d 1251, 1266 (11th Cir. 2019) ("We are, after all, a court of review, not a court of first view.").

4. If this Court disagrees that *Thomas* controls and holds that the PLRA requires the *plaintiffs* to re-prove deliberate indifference at the remedial phase, then it should remand to the district court for this purpose. See Doc. 3461, at 33 n.3 (recognizing that "the current record is inadequate to resolve the question of whether ADOC remains deliberately indifferent on a current and ongoing basis"). On remand, this Court should instruct the district court to bear in mind that " '[s]ubsequent events, such as improvements in the allegedly infirm conditions of confinement, while potentially relevant, are not determinative' of whether injunctive relief is no longer warranted." *Thomas*, 614 F.3d at 1320 (quoting *LaMarca*, 995 F.2d at 1541); see also *Morales Feliciano v. Rullan*, 378 F.3d 42, 54 (1st Cir. 2004) (affirming the district court's "supportable finding that constitutional violations persist" despite "some noteworthy advances"), cert. denied, 543 U.S. 1054 (2005); *Petties v. Carter*, 836 F.3d 722, 729-730 (10th Cir. 2016) (prison officials are not absolved of a prior deliberate indifference finding where they take remedial steps that they know to be insufficient), cert. denied, 137 S. Ct. 1578 (2017). "This is especially true when a defendant corrects the alleged infirmity after suit has been filed * * * for practices may be reinstated as swiftly ***27** as they were suspended." *Thomas*, 614 F.3d at 1320 (internal quotation marks and citation omitted).

II THE DISTRICT COURT CORRECTLY IMPOSED A SYSTEMWIDE REMEDY TO PROTECT THE PLAINTIFF CLASS FROM THE SYSTEMWIDE VIOLATIONS IT HAD FOUND

The Supreme Court has held that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs" and that, in applying that principle, "the scope of injunctive relief is dictated by the extent of the violation established." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Where, as here, the plaintiffs are a class of prisoners challenging a prison system's policies or practices, a court may impose "systemwide relief" if it finds a "systemwide violation." *Lewis v. Casey*, 518 U.S. 343, 359 (1996). ADOC does not appear to contest this standard for systemwide relief, but instead challenges the factual predicate for finding systemwide liability. See Br. 84-85. In particular, ADOC faults the district court for not requiring "an analysis of each issue at each prison." Br. 90.

As an initial matter, the district court recognized that systemwide relief was not warranted on every issue and for every prison. See Doc. 3461, at 42-43, 45-46. The court observed that "a finding of harm to only one or two inmates is insufficient to support a systemwide remedy without evidence that other prisoners ***28** have experienced the same injury." Doc. 3461, at 42. The court explained that "[a]s to certain issues, * * * the evidence may show either that problems are sufficiently limited to particular prisons that only those facilities should be subject to relief in that area, or that particular prisons have sufficiently distinguished themselves from the remainder of the system that they should be excluded from the relief." Doc. 3461, at 45-46. Thus, the court committed to "limit[ing] relief to specific facilities when the evidence demonstrates that such limitation is appropriate." Doc. 3461, at 46.

But as ADOC recognizes (Br. 85), "[s]ystem-wide relief is required if the injury is the result of violations of a statute or the constitution that are attributable to policies or practices pervading the whole system." *Armstrong v. Davis*, 275 F.3d 849, 870 (9th Cir. 2001), cert. denied, 537 U.S. 812 (2002), overruled on other grounds by *Johnson v. California*, 543 U.S. 499 (2005). In addition, systemwide relief is necessary "if the unlawful policies or practices affect such a broad range of plaintiffs that an overhaul of the system is the only feasible manner in which to address the class's injury." *Ibid*. For example, in *Brown v. Plata*, 563 U.S. 493 (2011), the Supreme Court found that an order was "not overbroad because it encompass[ed] the entire prison system, rather than separately assessing the need for a population limit at every institution," in part because the challenged ***29** health-care system was "run at a systemwide level, and resources are shared among the correctional facilities." *Id*. at 532.

So, too, here. Based on its focused analysis of the record, the district court found as a factual matter that many of the problems facing the prison system were interrelated and that relief aimed at addressing those problems would need to be systemwide to be effective. Doc. 3461, at 44. The district court found that the constitutional violations were "far more than isolated incidents of harm," and that there were "serious problems" at "every major facility." Doc. 3461, at 44. And improvements in some areas were often at the expense of others. Doc. 3463, at 369. Given these circumstances, the district court correctly determined that "the relief that remains necessary to correct [the] systemic violations is also systemic." Doc. 3461, at 41. ADOC offers no persuasive reason for this Court to revisit these factbound conclusions.

*30 CONCLUSION

This Court should affirm the district court's holdings that (1) plaintiffs were not required to re-prove at the remedial phase the constitutional violations they already had proven at the liability phase, and (2) plaintiffs were entitled to systemwide relief for the systemwide constitional violations they had proven.

Respectfully submitted,

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Footnotes

[1] The United States takes no position on any other issue in this brief.

[2] "Doc. ___, at ___" refers to the docket entry and page number of documents filed on the district court's docket. "Br. ___" refers to page numbers in defendants' opening brief.

[3] This Court has held that a district court need not make particularized findings on issues on which there is no dispute. See *Cason v. Seckinger*, 231 F.3d 777, 785 n.8 (11th Cir. 2000); see also *Gumm v. Ford*, No. 5:15-cv-41, 2019 WL 2017497, at *3 (M.D. Ga. May 7, 2019).

[4] Plaintiffs also filed a notice of interlocutory cross-appeal. Doc. 3491.

[5] District courts in circuits that have not yet addressed the issue have agreed with *Thomas* and *Porter*. See *Victory*, 2020 WL 236911, at *17-19; *Amos v. Cain*, No. 4:20-cv-7, 2021 WL 1080518, at *6 (N.D. Miss. Mar. 19, 2021).

[6] The district court repeatedly recognized ADOC's progress on certain issues in the Omnibus Remedial Opinion, belying ADOC's insistence that the court failed to consider that progress. See, *e.g.*, Doc. 3462, at 79 (noting "significant, albeit incomplete, progress toward increasing mental-health staffing"), 97 (observing that ADOC has "completely overhauled its intake process since the time of the liability opinion"), 101, 107, 119, 142, 160.

[7] In *Hallett v. Morgan*, 296 F.3d 732, 738 (2002), which ADOC does not cite, the Ninth Circuit held that the plaintiffs were not entitled to an extension of a prior consent decree because the conditions of their confinement no longer violated the Eighth Amendment. This Court in *Thomas* specifically distinguished *Hallet* as having been decided in a different procedural context. 614 F.3d at 1320; see also *Porter*, 923 F.3d at 366-368 (declining to follow *Hallett*).