IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF LOUISIANA, et al., Defendants.	Civil No. 98-947-B-1
HAYES WILLIAMS, et al., Plaintiffs, v. JOHN McKEITHEN, et al., Defendants, UNITED STATES OF AMERICA, Amicus Curiae.	Civil No. 71-98-B
IN RE: JUVENILE FACILITIES	Civil No. CH 97-MS-001-B
IN RE: JENA JUVENILE JUSTICE CENTER FOR YOUTH	Civil No. 98-804-B-M1
BRIAN B., et al., Plaintiffs, v. RICHARD STALDER, et al., Defendants.	Civil No. 98-886-B-M1

MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR A PRELIMINARY INJUNCTION REGARDING CONDITIONS OF CONFINEMENT AT THE JENA JUVENILE JUSTICE CENTER

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The United States moves this Court for a preliminary injunction pursuant to Fed. R. Civ. P. 65(a), Local Rule 65 of the Uniform Dist. Ct. Rules, D. La., and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The State and Wackenhut Corrections Corporation are jeopardizing the lives and health of many of the juveniles confined in the Jena Juvenile Justice Center, by failing to protect them from harm, providing them with inadequate mental health care, and subjecting them to unreasonable restraints.1/

Therefore, the United States moves for a preliminary injunction to: 1) enjoin the use of corporal punishment or excessive force by Jena staff; 2) hire a sufficient number of qualified staff and provide staffing training to provide adequate safety and security; 3) develop and implement an adequate response to the violence at Jena, including improved abuse reporting mechanisms, an improved investigation system, adequate responses to substantiated abuse, and adequate employment screening; 4) reduce the population density of dormitories to provide adequate safety and security and provide sufficient space for appropriate classification of juveniles; 5) enjoin the use of gas grenades; 6) limit the use of chemical restraints at Jena to

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1/ Through this motion, the United States seeks preliminary relief only for the most serious constitutional deprivations to which the juveniles at Jena are exposed, which need to be and can be corrected through immediate actions by the defendants. We anticipate resolving the constitutional deprivations that require more complex, longer-term remedies through settlement or litigation.

situations where there is a genuine risk of serious bodily harm to another and other less intrusive methods of restraint are not reasonably available; 7) impose limitations on the use of isolation and mechanical restraints on juveniles at Jena; 8) enjoin the use of four and five point restraints by correctional staff; 9) impose limitations on the use of isolation and restraints at Jena on juveniles with mental retardation or mental health needs to situations and methods that comport with accepted professional standards; 10) to provide adequate mental health treatment, supervision, and housing for juveniles who engage in suicidal and self-injurious behavior; 11) enjoin disciplinary or punitive action against juveniles who exhibit self-injurious or suicidal behavior; and 12) eliminate obvious suicide hazards in the facility.

Background

In 1998, before the Court would permit the State to transfer juveniles to the newly-built Jena, the Court requested that the United States, *amicus* in Williams v. McKeithen, No. 71-98-B, and In re: Juvenile Facilities, No. CH 97-MS-001-B (together referred to as "Williams"), evaluate the proposed plans for the opening of the facility. The Court was concerned about the opening of a new secure juvenile correctional facility and stated that Jena was "not opening unless we get everything on board. We're not going to have another Tallulah at Jena." Transcript of August 10, 1998 Status Conference at 19. Together with Williams

plaintiffs, we negotiated a "private settlement agreement"2/ with the State and Wackenhut, which provided for specific measures to govern Jena's operation and contribute to the safety of the juveniles to be confined there. This agreement, called the Jena Interim Agreement, also provided that after Jena was up and running, the United States and its experts would evaluate conditions of confinement at Jena and file reports with the Court. See Exhibit A.

Jena opened in December 1998. Allowing the facility time to get on its feet, we initially monitored conditions by reviewing documents periodically produced by Wackenhut and reading the Court Expert's and the State's reports. The Court Expert, John Whitley, documented problems at the facility right from the start. Mr. Whitley noticed some improvements with security during the summer of 1999 when the State had a presence at Jena, but noted that security problems reverted when the State left Jena in September 1999. Mr. Whitley's reports made clear that over the course of Jena's initial year of operation, some problems have never been resolved. In December 1999, Mr. Whitley concluded: "My impression of the Jena Juvenile Justice Center, if no major changes are made, is that it is a disaster waiting to happen." December 13, 1999 Whitley Report at 13.

2/ Under the Prison Litigation Reform Act, a "private settlement agreement" is defined as an agreement "that is not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled." 18 U.S.C. § 3626(c)(2).

We toured Jena in January 2000 with four experts. At the end of each tour, our experts provided exit interviews to counsel for Wackenhut and the State, as well as to Jena staff, to give Jena the benefit of their initial thoughts and an opportunity to begin to take corrective action immediately. On February 23, 2000, we filed our expert reports with the Court and promised to seek a negotiated agreement with the parties before enlisting judicial assistance. Exhibit B, Response of the United States to the Court's November 6, 1998 Order Concerning the Jena Juvenile Justice Center ("Response")(without attachments) at 2. Part II of the Jena Interim Agreement, which covers limitations on the use of isolation and chemical and mechanical restraints, lapsed with the filing of our expert reports. Efforts to negotiate a consensual remedy to the problems at Jena have been unsuccessful.

In the course of conducting its monitoring obligations under the Jena Interim Agreement, the United States found that juveniles at Jena are subjected to life-threatening and hazardous conditions. The United States attaches affidavits from each of our experts, as well as their respective reports regarding conditions at Jena, in support of its motion for a preliminary injunction as follows: Affidavit and report of protection from harm expert, Dr. Nancy Ray (Exhibit C); Affidavit, updated CV, and report of mental health care expert, Dr. Kathleen Quinn (Exhibit D); Affidavit and report of medical care expert, Dr. Michael Cohen (Exhibit E); and Affidavit and report of juvenile justice expert, Mr. Paul DeMuro (Exhibit F).

I. STANDARD FOR ISSUANCE OF A PRELIMINARY INJUNCTION

The Fifth Circuit's legal standard for issuance of a preliminary injunction is well established. The moving party must carry the burden of persuasion as to all of the following four elements:

1. There is a substantial likelihood of success on the merits;

2. There is a substantial threat that plaintiff will suffer irreparable injury if the injunction is denied;

3. The threatened injury outweighs any damage that the injunction may cause the defendants; and

4. The injunction will not disserve the public interest.

Sugar Busters LLC v. Brennan, 177 F.3d 258, 264-65 (5th Cir. 1999), citing Hoover v. Morales, 164 F.3d 221, 224 (5th Cir. 1998), and Sunbeam Products, Inc. v. West Bend Co., 123 F.3d 246, 250 (5th Cir. 1997); Affiliated Professional Home Health Care Agency v. Shalala, 164 F.3d 282, 284 (5th Cir. 1999). In addition, the injunction sought must comply with the terms of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626 (a)(2).

In the case at bar, an analysis of the relevant facts and law reveals that the issuance of injunctive relief is appropriate because each of the four elements required for the issuance of a preliminary injunction is met and the injunction sought complies with the PLRA.

II. STATEMENT OF FACTS

A. Defendants routinely expose youth to staff abuse and juvenile-on-juvenile violence without adequate response.

1. Staff abuse and juvenile-on-juvenile violence

As fully discussed in our February 23, 2000 Response3/ and as delineated in the attached expert reports, defendants subject juveniles at Jena to routine physical abuse and overly aggressive uses of force by staff, including punches, take downs, and body slams.4/ See Exhibit B at 8-9, Exhibit C at 3-12; Exhibit F at 9-11; Exhibit D at 21-22; Exhibit E at 43. Defendants resort to using force, including physical take downs and restraints, too quickly in addressing minor acts of non-compliance, use group and corporal punishment, and engage in taunting, provoking, and humiliating conduct towards juveniles. See Exhibit B at 8-9; Exhibit C at 5-12, 16-22; Exhibit F at 9-11, 15; Exhibit D at 21-22.

Officers at Jena slam youth against walls and doors, harshly rub their faces on cement floors and walkways, take away their

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3/ In order to avoid as much repetition of the facts as possible, we incorporate herein by reference the facts set forth in our Response, as if fully set forth herein. Furthermore, the United States has several boxes of documents and other materials regarding Jena, many of which were provided by the defendants to the United States, that support our motion. These documents and materials will be introduced at an evidentiary hearing and are available for inspection and copying by the defendants.

4/ Even before the United States' tour of Jena, we received allegations of staff abuse which we forwarded to defendants. See Exhibits G-K (letters from Justice Department attorneys to counsel for the State and Wackenhut)(names of juveniles and staff have been redacted).

clothing, require them to squiggle on their bellies across the floor, and make them squat naked with their buttocks spread apart for several minutes during strip searches. Exhibit C at 5. Defendants even violently restrain some youth with chronic medical conditions that require careful handling. For example, staff used force on LB, a juvenile with a colostomy bag. LB's intestine was pushed out of the colostomy hole, creating a risk of trauma or infection.5/

With respect to juvenile-on-juvenile violence, there is a very high incidence of juvenile fights in the facility with injuries resulting from these altercations. Exhibit C at 3; Exhibit D at 21-25; Exhibit E at 43-44; Exhibit F at 9. Staff sometimes will not and sometimes lack the training to intervene to stop the violence. See Exhibit C at 17. There is also evidence that some staff encourage or recruit stronger juveniles to fight other youth. Exhibit F at 9. Some juveniles have felt so unsafe in the facility, that they reported that they hoped to spend the rest of their time in lock-down without school or recreation in order to ensure their protection. See Exhibit C at 3.

5/ On March 8, 2000, the Orleans Parish Juvenile Court removed LB from Jena and ordered that he be held at the Community Youth Center in Orleans Parish pending appropriate placement. See Exhibit L, In re L.B., 99-032-02-Q-F (Orleans Parish Juv. Ct. 3/8/2000). The court found "constitutional violations of gross proportions in the areas of excessive use of force, mental health treatment, and education." Id. at 13. The court found that "...through the actions of the "system," he [LB] wound up in a place that drives and treats juveniles as if they walked on all fours." Id. at 16.

Juveniles at Jena are sustaining an unacceptably high rate of traumatic injuries, almost all of which are attributed to officers' use of force or fights among youth. Exhibit C at 9-10. For example, Dr. Ray found that in the 54-day period from November 28, 1999 until January 20, 2000:

- There were 104 reported traumatic injuries to youth, or two traumatic injuries per day;
- At least one-fourth of the youth at Jena had been traumatically injured at least once during this brief period;
- There were 66 reported orthopedic injuries to youth at Jena, and in almost all of these cases, youth were x-rayed for suspected fractures or serious sprains or strains to various body parts including hands, wrists, feet, ankles, backs, spines, jaws, shoulders, noses, ribs, knees, and hips;
- Twenty-five youth were sent for assessments, usually x-rays, or other treatment for hand injuries, reflective of the number of physical fights at Jena;
- There were 40 non-orthopedic traumatic injuries, including lacerations requiring sutures, youths having teeth knocked out, and busted lips;
- There were five reports of youth alleging sexual assaults, only two of which had been formally investigated; and
- Eight youth either harmed or tried to kill themselves.

Exhibit C at 9-15.

The incidence of documented use of force has been increasing since November 1999. Exhibit C at 17. Dr. Ray concludes that "the frequency and seriousness of these incidents [of use of force], coupled with the high rate of serious traumatic injuries to youth at the institution, provide hard empirical evidence that the Jena Center is a dangerous place to be." Exhibit C at 18.

The United States' medical expert, Dr. Cohen, and its mental health expert, Dr. Quinn, find that the level of violence at Jena is detrimental to the medical and mental health of juveniles. See Exhibit E at 43-44 (reporting unusually high rates of stress-related disorders such as hypertension and ulcers in the facility); Exhibit D at 21-24 (citing case examples of a pattern of physical, sexual, and emotional abuse with a lack of an organized institutional response).

2. Defendants' inadequate response to the violence

Defendants do not take adequate measures to respond to the violence at Jena. Jena's abuse investigation process is broken, such that it offers juveniles few, if any, protections. See Exhibit B at 9-12; Exhibit C at 9. Dr. Ray delineates serious barriers to reporting allegations of abuse; a pattern of institutional staff not acting on complaints that were filed;6/ many staff not being aware of their obligations to report abuse within and outside of the facility with the predictable consequence of a failure to report many abuses; and critical flaws in the investigation of the complaints that are acted upon, including the failure to follow standard investigation procedures and bias against juvenile accounts of incidents. Exhibit C at 23-29.

Dr. Ray found that "hundreds" of incidents of suspected or

6/ Dr. Ray finds that Jena's senior officials and investigators disregard or fail to take seriously youth reports of sexual abuse. Exhibit C at 14.

alleged staff-on-youth abuse over the past year were never investigated, many of which were more serious than those which were investigated. Exhibit C at 29; See Exhibit B at 11 (citing examples of allegations of abuse that were never investigated).

Despite the routine oversight of the Jena investigator by the State Department of Public Safety and Corrections (DPS&C), there is no evidence that obvious deficiencies in the abuse investigation system were detected, much less remedied, by the State or Wackenhut officials.

3. Other conditions at Jena exacerbate the violence

a. Work force problems at Jena contribute to the unsafe environment

There are tremendously high rates of staff and administrator turnover at Jena, severe staff shortages, and frequent use of overtime. See Exhibit C at 40; see Exhibit B at 14-16. These unremedied problems result in juveniles being supervised by overworked and inexperienced staff. Id. at 43. There is evidence that in some cases officers have simply left their posts rather than stay for mandatory overtime. Exhibit C at 42. There is even evidence that staff have left juveniles in the cell block units unattended. See Exhibit F at 10.

Not only is the correctional staff inexperienced, but many supervisory staff lack juvenile justice experience and do not have the training to match their job responsibilities. Exhibit F at 9. Line staff are also inadequately trained for their positions, especially in using verbal, nonphysical interventions to de-escalate confrontations. Exhibit F at 8, 14; Exhibit D at

25.

Jena is failing to take reasonable measures to ensure that staff do not have past criminal records or employment experiences that make them unsuited to work at the facility. See Exhibit C at 44-50; see Exhibit B at 15, 16. There is evidence that some employees have been hired and maintained on the payroll despite identified histories of criminal arrests and convictions. Jena's inadequate hiring practices have led to an unusually high termination rate at the facility during its first year.

b. Insufficient float space and high density in 48 bed dormitories.

Jena cannot adequately supervise 48 juveniles housed in each of the Falcon C and D and the Eagle C and D units. Dr. Quinn described these 48-bed dormitories as loud, chaotic, and barely in control. Exhibit D at 22. Dr. Quinn reports that these living units exceed the population limit standards set by the American Correctional Association for living units in juvenile training schools such as Jena. Exhibit D at 22. Mr. DeMuro notes that on the 48-bed dormitories, the acoustics are poor and when all 48 juveniles are in the unit, it is difficult for staff to supervise them. Exhibit F at 12. Moreover, there is a lack of float space in the facility - empty beds that staff can use to move juveniles into or out of a particular unit. Dorms generally operate at full capacity, preventing Jena from transferring a youth due to a special need or as a reward for positive behavior without displacing another youth. Exhibit D at 27.

B. Defendants expose many juveniles at Jena to abusive and life-threatening use of chemical restraints and fail to respond adequately to incidents where chemical restraints are used inappropriately.

Jena endangers the life and health of juveniles and injures some juveniles through its dangerous and unreasonable use of chemical restraints, as illustrated by the examples below.

1. Defendants' unlawful conduct and the resulting harm to juveniles on November 27, 1999

On November 27, 1999, the defendants deployed a "triple chaser grenade", which is a CS gas grenade, indoors into the Falcon C unit, that at the time housed at least 46 youth (some of whom were being compliant and already in bed) and several Jena staff. The grenade was deployed because allegedly some of the juveniles were yelling and kicking a trash can. Defendants risked the lives of at least 46 juveniles and several staff by using a grenade whose manufacturer's specifications specifically state that it "is designed for outdoor use in crowd control situations . . . . It should not be deployed . . . indoors due to its fire producing capability." (emphasis added). Exhibit F at 6 and attachment to the report. The gas from the grenade permeated some of the other units in the building, which had to be evacuated.

After the use of the grenade, juveniles were ordered to lie face down outdoors on concrete in the cold, some in only their underwear, for approximately five hours. Exhibit E at 7. Defendants also sprayed at least four juveniles with a hand-held canister of "Deep Freeze" mace while they were on the ground.

Exhibit E at 5-6. On at least two occasions, two groups of youths were ordered to go back into Falcon C before the gas had been ventilated - the youth claim for punishment because they were complaining about being cold. Exhibit F at 7.

TH, a youth with a history of a seizure disorder, was exposed to gas three times that evening including being subjected to the grenade, being ordered back into the unit where the gas was still noxious, and then being sprayed in the face with "Deep Freeze" while lying down outside. He began to shake violently immediately after he was sprayed with "Deep Freeze." Exhibit E at 6. A nurse found him unresponsive and he was taken to the emergency room. Id. His face was red and swollen, and he complained of burning in his eyes. Two days after the incident, he complained of blurred vision, face burning, and soreness to his left eye. About four days after the incident, he complained about his face being burned and the nurse observed that his skin was peeling. Dr. Cohen found evidence of repeated failures to provide this juvenile with adequate medical care after his exposure to chemical restraints. Id. at 5-8.

Defendants used the gas grenade and the "Deep Freeze" Spray without regard for the juveniles' chronic medical conditions, such as asthma. Exhibit E at 8. For example, DH, an asthmatic youth, was subjected to the teargas grenade in Falcon C, and was seen by the facility physician after he complained of the after-effects of the chemical agents. His respiratory rate was abnormally high, evidencing active asthma, but he was not

provided treatment for his asthma. Exhibit E at 8.

2. Defendants' inadequate response to the events of November 27, 1999

The Jena Project Zero Tolerance ("PZT") investigator concluded that the use of chemical restraints appeared to be within acceptable limits. Mr. DeMuro finds that the investigation was flawed because the investigator took an active part in the incident, the investigator failed to interview key staff and juveniles, and there was no investigation of the use of chemical spray on the walkway or the taking of juveniles back into the noxious gas. Exhibit F at 6.7/

Defendant Wackenhut's response to the incident is that, other than failing to comply with the notification provisions of the Interim Agreement, they believe their conduct in using the chemical restraints complies with the Interim Agreement.8/ See Exhibit M, Wackenhut Response to December 22, 1999 Report, Jena Juvenile Justice Center at 4-6 (names of juveniles have been redacted). Wackenhut also states that it would be permissible to use the Triple Chaser Grenade in an enclosed space of approximately 4200 square feet. Id. at 4. Defendant Wackenhut

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7/ "Deep Freeze" was used the same night on Eagle D dormitory and Jena's investigative report on that incident also found that the use of chemical spray was within acceptable limits, without the investigator having conducted substantive interviews of staff and juveniles.

8/ The United States believes that in addition to multiple uses of excessive force on November 27, 1999, the Interim Agreement was violated in at least five different ways that evening. The United States discussed these violations in its Response. Exhibit B at 21-22.

did not adequately investigate the staff involved in the use of chemical restraints on the night of November 27, 1999. Nor did Wackenhut take any disciplinary action regarding the involved staff.9/

As for the State, its investigation was also flawed and incomplete. Assistant Secretary of Corrections, Billy Travis, reported to Secretary Stalder on December 3, 1999, regarding the events of November 27, 1999. See Exhibit O, December 3, 1999 Report of Assistant Secretary B.R. Travis to Secretary Stalder re: Jena Juvenile Justice Center. Mr. Travis did not address whether any of the force used that evening was excessive in light of DPS&C's use of force regulations. He stated only that the Assistant Warden made a "terrible mistake" in giving the Lieutenant the authority to use his discretion to deploy the gas grenade, thereby violating the Interim Agreement; and that there was a staffing problem that night. Id. at 3. Thus, the State has not made any finding that excessive force was used, and there is no evidence that the State has taken sufficient remedial

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9/ In a letter regarding the Triple Chaser grenade used at Jena, counsel for Wackenhut indicates that this type of chemical has been removed from the facility. Exhibit N, February 11, 2000, Andrew T. McMains letter to Iris Goldschmidt, at 2. This is an inadequate response, as Jena's arsenal contains another kind of CS grenade (Federal #519) which is encircled by a warning label that states, "...for outdoor use only. May release lethal concentration indoors." (emphasis added). See Exhibit E at 4. Wackenhut also reports that additional instruction and training have been provided to the facility administration to ensure that all responsible staff have adequate knowledge of the provisions the Interim Agreement. Exhibit M at 8. This is insufficient given that Wackenhut interprets the Interim Agreement as having permitted their conduct on November 27, 1999.

measures to address the use of chemical restraints on November 27, 1999, and forcing juveniles to remain on the ground semi-dressed for hours.10/

3. Other inappropriate uses of chemical restraints

The use of a gas grenade on November 27, 1999, is not an isolated event. On December 19, 1998, the facility used a gas grenade indoors to quell a disturbance. Immediately after the incident, the United States wrote to the State and Wackenhut, expressing its concern regarding the inability of the facility to intervene in a timely manner in order to address a behavioral disturbance by juveniles without resorting to using a gas grenade. See Exhibit G. In the same letter, the United States also expressed concern that Mr. Pepper, the State's investigator, made no finding in his report regarding whether the use of the gas grenade constituted excessive force.11/ Id.

Jena also documented 32 chemical spray incidents at the facility in 1999 in its PZT log. Exhibit C at 16. The United States notified defendants of allegations of improper uses of

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10/ Even when the United States wrote to the State and Wackenhut requesting specific information concerning the use of chemical restraints on November 27, 1999, including a question about what remedial measures were being taken, the State simply referred the questions to Wackenhut and did not otherwise respond to our specific questions. See Exhibit P, December 22, 1999, facsimile from Richard Curry to Steven Rosenbaum, enclosing letter to Andrew T. McMains.

11/ During its January 2000 tours of Jena, the United States learned that the grenade that was used in the December 19, 1998, incident was the F519; one of the same grenades stored in the facility's arsenal and labeled "...for outdoor use only. May release lethal concentration indoors" (emphasis added). See Exhibit E at 4.

chemical spray as early as January 8, 1999. See Exhibit H. In response to our letter, Wackenhut admitted that it did in fact spray a juvenile in order to prevent him from breaking a sprinkler head in his room, apparently taking the position that this was not an excessive use of force. See Exhibit Q, January 28, 1999 letter from Amber Rives to Kevin Russell.

As recently as March 7, 2000, the facility used "Deep Freeze," a hand-held chemical spray, on two juveniles who allegedly refused to stop beating and kicking their cell door. Exhibit R, March 7, 2000 Use of Force form and March 8, 2000 facsimile from Asst. Warden Simms to John P. Whitley with attached incident report and Unusual Occurrence Reports (names of juveniles and staff have been redacted). This is another instance where the facility used a chemical restraint for juvenile conduct that did not pose an immediate physical harm to anyone nor was any alternative use of force other than giving orders attempted before these juveniles were sprayed.

C. Defendants routinely isolate juveniles under unduly harsh conditions, for unjustified reasons, and for durations unrelated to the behavior of the juveniles.

Defendants impermissibly isolate juveniles at Jena.12/ Exhibit C at 37-39. Many juveniles in the cell blocks are confined to their cells from the late afternoon to the next morning. Juveniles who do not attend school are locked in their

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12/ Both Mr. DeMuro and Dr. Ray found that Jena's isolation practices violated the Interim Agreement. See Exhibit C at 38, Exhibit F at 16.

cells during the day as well.13/ Id. at 38-39. In addition to these isolation practices, the facility often places juveniles on lockdown. Id. For example, Jena documented at least 98 lockdowns of 63 different juveniles in December 1999; however, Dr. Ray states there is strong evidence that many lockdowns were not documented. Moreover, most facility documentation lacks narratives explaining what the youth had done to warrant lockdown and how the juvenile was behaving on lockdown. Id. at 38-39.

Mr. DeMuro finds that youth placed in Falcon A unit as a result of being judged to be "out of control" or "being a danger to security" are subject to "extensive periods of room confinement and punishment in Falcon A before having a disciplinary hearing." Exhibit F at 12. Even if most of these youth regain control in a short period of time, they are still excluded from the general population and subjected to long periods of room confinement in Falcon A while they await disciplinary hearings, which generally do not occur in a timely fashion. Exhibit F at 11-12. Mr. DeMuro also reports that staff do not visually monitor juveniles in isolation every fifteen minutes. Id. at 11.

The conditions of confinement while youth are locked in their cells is unreasonable. Many youth are confined to small, locked cells with only a metal bunk, covered by a two-inch mattress, and a metal sink and toilet for 15 or more hours per

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13/ Eighty four of the 276 juveniles at Jena live in cell block dorms.

day. Exhibit C at 8. Dr. Ray reports that almost all of the youth on Falcon A, the cell block used for administrative segregation, do not have one full set of clothing to wear and that many of the youth on Falcon A and B are wearing dirty clothes. Exhibit C at 33.

D. Defendants fail to provide adequate supervision, reasonable safety, and adequate mental health care for suicidal and self-injurious youth.

Suicide attempts and self inflicted wounds occur frequently at the facility.14/ Jena's psychiatrist and psychologist describe a pattern of repetitious offender self-mutilation to escape the dangers of the Jena general population, but neither could describe Jena's approach to addressing the root causes of the self-injurious behavior. Exhibit D at 13. Defendants do not have mental health behavioral plans for self-injurious behavior; they do not adequately monitor self-injurious and suicidal youth;

14/ The United States has learned of several recent suicide gestures and attempts which have occurred at Jena since our experts' tours in January 2000. For example, on March 14, 2000, youth JS was discovered in his cell with a rope of socks tied around his neck and to the cell door. When he refused to untie the rope, guards took him to the ground and cut the rope off his neck. JS voiced suicidal ideations. He was escorted to medical, where he talked by phone with Jena's psychologist and signed an "agreement." Officers wrote him a "disciplinary [ticket]" and returned him to his cell. Less than three hours later, JS was discovered in his cell with another instrument of suicide -- this time a shoelace was tied around his neck and to the bed. See Exhibit S, February 14, 2000 Unusual Occurrence Reports regarding JS. On February 25, 2000, juvenile MJ tied a shirt around his neck and tied the other end to an overhead bar. See Exhibit T, February 25, 2000 Duty Officer Report. On February 26, 2000, juvenile LH was discovered with a towel around his neck and was sent to the emergency room because he was shaking and his blood pressure was low. See Exhibit U, February 26, 2000 Duty Officer Report.

they house suicidal and self-mutilating juveniles in unsafe areas where these juveniles are not protected from physical harm. Exhibit D at 13-17, 18-20; Exhibit F at 13. Juveniles with patterns of suicidal and self-injurious behavior are exposed to suicide hazards that are obvious, and many of which have already been used for self harm at the facility.15/ Exhibit D at 13-17, 18-20; Exhibit F at 13. Defendants also use punitive and coercive responses to self-injurious behavior, even though Jena's psychiatrist acknowledges that the use of tickets, chemical spray, and removal of mattresses is not standard practice and is anti-therapeutic. Exhibit D at 13-17, 18-20.

The serious injuries and life-threatening situations that some juveniles at Jena experience are illustrated by TG. TG, a small juvenile with mental retardation and a history of Attention Deficit Hyperactivity Disorder, has attempted to harm himself over 10 times at Jena from methods such as threatening to hurt himself with a syringe, hanging, cutting himself, and attempting to drown himself. Exhibit D at 23. Some of his recent experiences at the facility have included:

- On May 6, 1999, TG threatened to kill himself with a needle and syringe, indicating that he was being victimized by youth wanting sexual favors and taking his canteen. The psychologist's response to TG's allegation was to refer TG to the psychiatrist. Exhibit D at 14.

15/ On March 2, 2000, a DPS&C employee monitoring Jena reported that he had found a glass bottle in a cell on the Falcon A unit which houses special needs juveniles. Apparently, one of the correctional staff had given it to the juvenile. See Exhibit V, Jena Juvenile Justice Weekly Monitoring Report dated March 2, 2000.

- The very next day, on May 7, 1999, the psychologist's note describes that the juvenile was physically assaulted by five other youth in his dorm. Id.

- On May 10, 1999, TG had a sheet tied around his neck. Id. at 20; Exhibit W, TG juvenile record page JJJ003983.

- On June 23, 1999, he had cuts on his inner right arm and a belt around his neck. Id.

- On June 25, 1999, he asked the psychiatrist if he could go to Bridge City, and on June 28, 1999 he made a similar request to the psychologist due to continued physical and sexual victimization. Id.

- On July 2, 1999, he had a belt around his neck and was attempting to drown himself in the toilet. Id. at 20.

- On July 7, 1999, he was found with a sheet around his neck that was affixed to the bar in the window in his cell. He was left in this cell after this attempt. Review of his medical record indicates no mental health order for precaution or initiation of suicide watch. Id.

- On August 1, 1999, he was found threatening to jump off the top bunk in his cell while a shoelace was tied around his neck and was affixed to the window. The shoelace had to be cut off. Id.

- On August 23, 1999, he was found under his bed with a belt around his neck. The facility responded by giving him a disciplinary ticket and a reprimand. Id. at 15.

- On October 28, 1999, the psychologist observed TG with abrasions, a right eye bruised and swollen, as well as his nose and jaw swollen. TG reported that peers were taking his food as well as forcing him to perform sexual acts. If he refused, he was beaten by peers. Although TG denied sexual victimization when directly questioned during our tour, other juveniles reported that he was sexually assaulted on the weekend before the United States' tour of the facility. Id.

Despite all of the serious self-injuries and near successful suicide attempts at the facility, the psychiatrist has not surveyed the units for suicide hazards; the emergency cut down tool has not been kept in units where suicidal juveniles are housed; and suicide watch continues to be held on the cellblocks,

giving juveniles access to the sprinklers, window bars around which to tie ligatures, and beds with protrusions which allow for hanging. Exhibit D at 19. Suicide hazards are even present in the medical isolation rooms at the facility. Exhibit E at 44. Finally, showers throughout the facility pose a risk of hanging. Id.

E. Improper use of mechanical and mental health restraints

Juveniles at Jena are mechanically restrained in ways that grossly deviate from acceptable professional standards. Exhibit D at 27-32. Jena uses restraints without regard to the mental health needs of the juvenile, without adequate authorization, without medical assessments, and without adequate monitoring. The Interim Agreement does not permit use of four and five-point restraints by correctional staff in the facility, we found examples of the use of such restraints by officers. Moreover, there is evidence that correctional staff use mechanical restraints, such as handcuffs, when there is no justification for their use. Examples of unreasonable uses of restraints include:

- Correctional staff ordered CB, a mentally ill youth, into 4 point restraints on his bed in the cell block, without a physician's orders for the restraints, without a mental health professional assessment, and without documented medical monitoring. Exhibit D at 28.

- DC was placed in 4-point restraints by correctional staff for almost three hours. The juvenile was quoted as saying "I hope I hurt my head. I'm gonna try to break my arm", but there was no medical or mental health assessment of him, nor was there any documented medical monitoring of the restraint. Id. at 31.

- NR, who has a long history of self-mutilation, was placed on the floor in cuffs after self mutilating on October 1, 1999. Id.

- RS, a mentally ill youth, was placed in mechanical restraints for beating on a window and door, two hours after he attempted suicide. Id. at 30-31.

- MT cut his wrists. Jena's psychologist ordered that correctional staff constantly monitor the youth. Ignoring the mental health order and not providing staff to constantly watch MT, correctional staff instead restrained MT to the bed in his cell in four-point restraints. Exhibit D at 29. On another occasion, MT was placed in cuffs and shackles after swallowing pieces of metal. MT was "dragged back to mattress" by a Captain and placed in cuffs. MT pressed his wrists against the cuffs to make reds marks and tried to scratch his back with the cuffs. MT bit a hole through his lip. The Jena physician was contacted and he gave a telephone medication order. Id. at 31-30. On yet another occasion, MT threatened to tie underwear around his neck so he was left naked in his cell and placed in handcuffs. Id. at 32.

III. ARGUMENT

A. The United States is likely to succeed on the merits.

A party seeking a preliminary injunction needs to prove that it has a substantial likelihood of succeeding on the merits. The showing required to demonstrate "likelihood of success on the merits" is reduced where the showing of irreparable injury and/or the balance of harms is particularly strong. In Canal Authority of State of Florida v. Callaway, 489 F.2d 567, 576-577 (5th Cir. 1974), the court explained that:

> Although a showing that plaintiff will be more severely prejudiced by a denial of the injunction than defendant would be by its grant does not remove the need to show some probability of winning on the merits, it does lower the standard that must be met. Wright & Miller, Federal Practice and Procedure: Civil § 2948.

In order to prevail on the merits in this action, the United States must demonstrate that defendants have engaged in a pattern or practice of conduct that deprives the juveniles at

Jena of their rights, privileges, or immunities secured or protected by the United States. 42 U.S.C. § 14141. In pattern or practice cases, the burden of proof is satisfied where a preponderance of the evidence reveals instances of sufficient scope, variety, and number to constitute a pattern. See, e.g., Madrid v. Gomez, 889 F. Supp. 1146, 1181 (N.D. Cal. 1995); Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980), aff'd in part, vacated in part on other grounds, 679 F.2d 115 (5th Cir. 1982), modified by 688 F.2d 266 (5th Cir. 1982). Such a conclusion can rest on a variety of evidence, including the opinions of experts with the benefit of having comprehensively reviewed facility records, lay witness testimony, as well as evidence regarding specific instances and practices. Madrid, 889 F. Supp. at 1181.

1. The appropriate constitutional standard

The Supreme Court has not yet decided the appropriate constitutional standard by which to judge conditions in post-adjudication juvenile facilities such as Jena. In 1982, the Court decided Youngberg v. Romeo, holding that a person with mental retardation in state custody has a constitutional right under the Due Process Clause of the Fourteenth Amendment to adequate food, shelter, reasonable care, reasonably non-restrictive conditions of confinement, adequate medical care, and reasonable safety. Youngberg v. Romeo, 457 U.S. 307, 324 (1982). The Youngberg Court recognized that the Fourteenth Amendment implicitly encompasses the protections of the Eighth Amendment. Id. at 315-16.

Three years earlier, the Court had held that the Fourteenth Amendment standard also applies to conditions of confinement of adult jail detainees, who have not been convicted of a crime. Bell v. Wolfish, 441 U.S. 520, 535-36 & n.16 (1979).16/ In Louisiana, juvenile adjudications are not criminal proceedings, and adjudication to the care and custody of the State is not criminal punishment. See, e.g., In re C.B., 708 So.2d 391, 396-97 (La. 1998) ("[T]he unique nature of the juvenile system [in Louisiana] is manifested in its non-criminal, or `civil', nature, [and] its focus [is] on rehabilitation and individual treatment rather than retribution . . . .").17/

In the two decades since Bell and Youngberg were decided, every Circuit that has decided the issue has held that the Due Process Clause of the Fourteenth Amendment is the standard by which to judge conditions in juvenile facilities. Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987); H.C. ex rel. Hewett v. Jarrard, 786 F.2d 1080, 1084-85 (11th Cir. 1986); Santana v. Collazo, 714 F.2d 1172, 1179 (1st Cir. 1983), cert. denied, 460 U.S. 974 (1984); Milonas v. Williams, 691 F.2d 931,

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16/ See also Schall v. Martin, 467 U.S. 253, 268 (1984) (Due Process Clause applies to claims concerning a juvenile detention center).

17/ In Ingraham v. Wright, 430 U.S. 651 (1977), the Court held that "Eighth Amendment scrutiny is appropriate only after the state has complied with the constitutional guarantees traditionally associated with criminal prosecutions." Id. at 671-72 n.40.

942 & n.10 (10th Cir. 1982).18/ Each court relied on either Bell or Youngberg or a combination of the two. Gary H., 831 F.2d at 1432; H.C., 786 F.2d at 1085; Santana, 793 F.2d at 44-45; Milonas, 691 F.2d at 942.

The Fourteenth Amendment test to determine whether conditions in juvenile facilities violate constitutional rights is articulated in Bell and Youngberg. In Bell, the Supreme Court held that conditions and treatment "had to be related to a legitimate governmental objective." The Court made clear that punishment of the individual is not a "legitimate governmental objective." 441 U.S. at 520, 535. To judge the constitutionality of a restriction, a determination must be made of whether there is a legitimate purpose to which the restriction is related and whether the restriction appears excessive in relation to the purpose assigned to it. Id. at 537-538. See Hare v. City of Corinth, 74 F.3d 633, 644 (5th Cir. 1996)(Bell articulates a reasonable relationship test); see also Grabowski v. Jackson County Public Defenders Office, 47 F.3d 1386, 1398 (5th Cir. 1995)("We hold today that in all conditions of confinement actions, medically related or otherwise, it is not

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18/ Two years before Bell, five years before Youngberg, and seven years before Schall were decided, the Fifth Circuit stated, in dicta, that the Eighth Amendment "applies to juvenile detention centers as well as to adult prisons." Morales v. Turman, 562 F.2d 993, 998 n.1 (5th Cir. 1977). The Supreme Court has subsequently made clear that the Fourteenth Amendment Due Process Clause, incorporating the protections of the Eighth Amendment, protects individuals who are detained or confined by the State for reasons other than service of a criminal sentence. See Schall, 467 U.S. at 268; Youngberg, 457 U.S. at 316; Bell, 441 U.S. at 535 n.16.

necessary for a pretrial detainee to establish that the official involved acted with "deliberate indifference" in order to establish a due process violation.")

The Youngberg Court also used a balancing test, instructing that whether constitutional rights have been violated must be determined by balancing the person's liberty interest against the relevant state interests. 457 U.S. at 321. In determining whether rights have been violated, the Court set forth a "professional judgment" test. That is, courts must give due deference to the judgments made by professionals who are "competent, whether by education, training or experience, to make the particular decision at issue." Id. at 322-23 & n.30. Thus, "liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment." Id. at 323.

In Louisiana, the mission of the Department of Public Safety and Corrections with respect to juvenile offenders is to protect the public safety and to provide opportunities for the rehabilitation of juvenile offenders. LA R.S. 15:905. As such, the conditions in the juvenile facilities must be measured in relation to these purposes.

2. The violence and abuse at Jena violates juveniles' right to reasonable safety.

Confined juveniles, like the juveniles at Jena, have a constitutional right to reasonably safe conditions of

confinement. See, e.g., Youngberg, 457 U.S. at 315-16; Bell, 441 U.S. at 546-547; Santana, 793 F.2d at 43; H.C., 786 F.2d at 1083-86, 1089; Milonas, 691 F.2d at 942; Alexander S. v. Boyd, 876 F. Supp. 773, 787 (D.S.C. 1995); Gary W. v. Louisiana, 1990 WL 17537, *29 (E.D. La. 1990); Morgan v. Sproat, 432 F. Supp. 1130, 1138-40 (S.D. Miss. 1977); Pena v. New York State Division for Youth, 419 F. Supp. 203, 208-209 & n.2 (S.D.N.Y. 1976), aff'd, 708 F.2d 877 (2d Cir. 1983).

There is no legitimate governmental interest in subjecting youth at Jena to physical abuse and excessive force by staff and physical abuse from other juveniles. Such force and violence is not reasonably related to the rehabilitation of juveniles or to public safety. Even if defendants take the position that their use of force is for the purpose of maintaining order and security in the facility, the measures that they are using are clearly excessive in light of this purpose.

Furthermore, defendants' failure to take adequate measures to safeguard juveniles from staff and their peers can serve no legitimate governmental interest and substantially departs from current accepted professional standards. Defendants' failure to engage in reasonable hiring practices, to investigate and respond adequately to abuse allegations, and to provide a sufficient number of adequately trained and experienced staff is not reasonably related to any legitimate interest in operating a juvenile training facility.

Courts have held in the context of juvenile facilities that

uses of force similar to that employed by defendants against juveniles at Jena violate the constitutional rights of the confined youth. See, e.g., H.C., 786 F.2d at 1089 (a juvenile's Fourteenth Amendment rights were violated when a juvenile detention facility superintendent slammed the juvenile against a wall and metal cot for laughing and protesting the imposition of isolation on another detainee); Milonas, 691 F.2d at 942 (prohibiting using physical force for any purpose other than to restrain a juvenile who is physically violent and immediately dangerous to himself or others or physically resisting institutional rules); Santana, 533 F. Supp. 966 (D.P.R. 1982)(issuing injunction prohibiting physical abuse and corporal punishment where court found that juveniles who escaped from an institution were beaten after they were recaptured), aff'd in relevant part, and vacated in part and remanded in part, Santana v. Collazo, 714 F.2d 1172 (1st Cir. 1983); Morales v. Turman, 364 F. Supp. 166, 173 (E.D. Tex. 1973)(issuing a preliminary injunction where court found that juvenile facilities' widespread practice of beating, slapping, kicking and otherwise physically abusing juveniles in absence of exigent circumstances violated juveniles' rights); Nelson v. Heyne, 355 F. Supp. 451, 454 (N.D. Ind. 1972)(beating juveniles with boards violated juveniles' constitutional rights), aff'd, 491 F.2d 352 (7th Cir. 1974). The right of juveniles to reasonable safety encompasses juveniles' right to reasonable protection from the aggression of others, whether "others" be juveniles or staff. See, e.g., Alexander S.

876 F. Supp. at 798.19/

In order to afford juveniles their right to reasonable safety, a facility must have a sufficient number of adequately trained staff in order to supervise juveniles. See, e.g., Alexander S., 876 F. Supp. at 773. There is abundant evidence that the current staffing at Jena does not adequately provide for the safety of juveniles.

Furthermore, as a part of providing reasonable safety, the system must have an adequate classification system which separates more aggressive from vulnerable juveniles, and which includes periodic revaluation of placement. Alexander S., 876 F. Supp. at 787. The lack of float beds prevents Jena staff from providing an adequate classification system.

Finally, Jena's inadequate hiring practices, which results

19/ Even in cases involving adult prisoners, where the "cruel and unusual punishment" test of the Eighth Amendment is used, the Supreme Court has made clear that a prison has the duty to provide humane conditions of confinement and to "take reasonable measures to guarantee the safety of inmates." Farmer v. Brennan, 511 U.S. 825, 832 (1994). Prison officials may not use excessive physical force against inmates. Hudson v. McMillan, 503 U.S. 1, 4-7, 9 (1992)(rejecting the Fifth Circuit's previous requirement that a "significant injury" be shown to establish a viable excessive force claim). Adult inmates' constitutional rights are violated where there are uses of force and facility responses to violence that are similar to the circumstances at Jena. See, e.g., Alberti v. Klevenhagen, 790 F.2d 1220, 1225-1226 (5th Cir. 1986)(the level of violence and sexual assault coupled with inadequate supervision in a county jail violated detainees' constitutional rights, noting that it was not necessary for every detainee to be assaulted every day before a federal court could intervene); Ruiz v. Johnson, 37 F. Supp.2d 855, 933-940 (S.D. Tex. 1999)(unjustified and disproportionate use of force on inmates, including officers being quick to take inmates to the ground and punching and kicking inmates violated their constitutional rights).

in the hiring of individuals whose background, personalities, and lack of qualifications render them likely to harm juveniles physically or psychologically, violate juveniles' constitutional rights. Morales, 364 F. Supp. 166, 175 (E.D. Tex. 1973).

3. Defendants' use of chemical restraints violates juveniles' rights to reasonable safety and freedom from unreasonable restraints.

In addition to their right to reasonable safety that was just discussed, confined juveniles, like the juveniles at Jena, have a constitutional right to be free from unreasonable restraints. Youngberg, 457 U.S. at 320. In Alexander S., 876 F. Supp. at 786, the court concluded that where CS gas chemical restraints, like the "Triple Threat Chaser" and the "Deep Freeze" gas at Jena, were repeatedly used to enforce facility orders, such use violates juveniles' constitutional rights. The court held that "gas should be used only when a genuine risk of serious bodily harm to another exists and other less intrusive methods of restraint are not reasonably available". Id.; see also Morales, 364 F. Supp. at 170, 173 (practice of using tear gas and other chemical crowd-control devices is unconstitutional in situations not posing an imminent threat to human life and substantial threat to property).20/

Jena has used chemical restraints on compliant juveniles,

20/ Where a prison used chemical restraints in circumstances similar to the uses at Jena, the court found such use to violate inmates' Eighth Amendment rights. Ruiz, 37 F. Supp.2d at 935-36 (finding gas was used excessively, including an incident where gas was released into a pod of 23 inmates in response to a disturbance in which some inmates were banging on cell doors and plugging up toilets).

juveniles laying face down on the ground, and juveniles whose "property damage" may have consisted of no more than kicking a trash can or banging and kicking a door. In none of these cases, were juveniles posing an immediate threat of serious bodily harm to another or causing any substantial property damage. Moreover, the defendants have twice used indoors gas grenades which were not manufactured for indoor use, violating juveniles' right to reasonable safety.

In these cases, juveniles' rights to be free from exposure to dangerous chemicals and the risk of fire outweighs any state interest that defendants may raise. Uses of gas grenades and chemical spray at Jena do not serve the purpose of rehabilitation or the interests of public safety. In the instances where juveniles were sprayed while they were lying on the ground and when they were taken back into a unit filled with noxious gas, defendants' objectives were clearly to punish, and were thus impermissible. Even if defendants claim that they have a legitimate governmental interest in maintaining internal security and order in the facility, their conduct is not reasonably related to such an objective. Certainly, using gas grenades intended for outdoor use on juveniles indoors is excessive. In addition, where defendants have used chemical restraints to address behavior that does not pose an immediate threat of serious bodily injury to another or substantial property damage, they could have used numerous less intrusive methods to address the behavior.

4. Defendants' use of excessive, unjustified and unmonitored isolation violates juveniles' right to freedom from unreasonable restraint.

Confined juveniles, like those at Jena, have a right to be free of inappropriate isolation. Milonas, 691 F.2d at 942 (prohibiting defendants from placing youth in isolation for any reason other than to contain a juvenile who is physically violent); Morales, 364 F. Supp. at 174, 177 (juveniles' constitutional rights were violated where duration and intensity of isolation was left to unfettered discretion of staff; prohibiting the use of solitary confinement unless such confinement was clearly necessary to prevent imminent physical harm to the youth or to other persons or clearly necessary to prevent imminent and substantial destruction of property); Morgan v. Sproat, 432 F. Supp. 1130, 1138-1140 (S.D. Miss. 1977) (housing juveniles with disciplinary problems in cells without providing adequate treatment or counseling services, where staff did not know why youth were confined, where youth ate meals in the cells, and where juveniles were only getting out to take showers violated juveniles constitutional rights; enjoining isolation that exceeded 24 hours); Pena v. New York State Division for Youth, 419 F. Supp. 203, 210 (S.D.N.Y. 1976) (isolation causes clearly anti-therapeutic hostility and frustration and limiting isolation to six hours except "in the most extreme circumstances"); Gary W. v. Louisiana, 437 F. Supp. 1209, 1229 (E.D. La. 1976)(limiting isolation to 12 hours unless renewed by a qualified professional).

A court has prohibited the use of isolation for youth with mental retardation and mental illness. See Morgan, 432 F. Supp. at 1140 n.15, citing Welsch v. Likins, 373 F. Supp. 487, 503 (1974), and New York State Ass'n for Retarded Children v. Rockefeller, 357 F. Supp. 752, 768 (E.D.N.Y. 1973). The Morgan court enjoined defendants from isolating youth "whose psychological, emotional or intellectual status make isolation inappropriate." Jena isolates many juveniles with mental retardation and mental illness.

In Santana, the First Circuit found "that if the need for restraints, in this case the need for extended isolation, can be significantly reduced or eliminated by other equally effective but less confining methods requiring minimal additional effort, it is unreasonable not to use them." 793 F.2d at 45.21/

At Jena, youth, including youth with mental retardation and mental illness, are isolated for long periods of time in bare cells with little or nothing to do and with no social stimulation. Youth who do not go to school spend virtually the entire day in isolation, eating in their cells. Youth who are judged to be "out of control" or a danger to security are subject

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21/ Courts have found that inappropriate isolation also violates adult prison inmates' constitutional rights. Gates v. Collier, 501 F.2d 1291, 1305 (1974) (prison's isolation practices violated inmates' rights and prohibiting the use of isolation of any inmate for a period in excess of twenty-four hours); Ruiz v. Johnson, 37 F. Supp.2d at 907-915 (where prison housed inmates in cells virtually devoid of property, personal contact, and mental stimulation, rights were violated; mentally ill inmates "whose illness can only be exacerbated by the depravity of their confinement" could not be isolated).

to extensive periods of isolation before having a disciplinary hearing. Jena's routine isolation of juveniles who are not posing an immediate threat to others is unreasonable and excessive as juveniles could easily be permitted to be in the day room area of the unit if they were adequately supervised.

Defendants' excessive use of isolation is not reasonably related to the legitimate governmental objective of rehabilitation of the juveniles. Indeed, given that isolation is anti-therapeutic, defendants' excessive use of isolation is contrary to the objective. Even if defendants take the position that their uses of isolation serve the purpose of maintaining order and security in the facility, the measures that they are using are clearly excessive in light of this purpose. For example, short periods of isolation could serve this same objective. And for youth with mental disabilities, the mental health problems of the youth, which are exacerbated by isolation, outweigh any purported state interest in maintaining security.

5. Defendants' failure to adequately supervise and protect suicidal and self-mutilating youth violates their rights to reasonable safety and adequate mental health care.

Confined juveniles such those at Jena have a constitutional right to adequate mental health care. Morales v. Turman, 383 F. Supp. 53, 105 (E.D. Tex. 1974), rev'd on other grounds, 535 F.2d 864 (5th Cir. 1976), rev'd, 430 U.S. 322 (1977); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354, 1374 (D.R.I. 1972). Where a facility fails to provide adequate mental health treatment to youth who are attempting suicides and engaging in

self-mutilating behaviors, juveniles' constitutional rights are violated. Gary H., 831 F.2d at 1436-37; Inmates of Boys Training School, 346 F. Supp. at 1359, 1360, 1361-62 (juveniles' constitutional rights violated where, among other deficiencies, juveniles received no psychiatric care proximately following suicide attempts); Martarella v. Kelley, 349 F. Supp. 575, 586 & n.9 (S.D.N.Y. 1972)(same).22/

Under the Fourteenth Amendment, juveniles with mental disabilities are entitled to adequate mental health care, supervision, and an environment free of obvious suicide hazards unless the failure to supply these is reasonably related to a legitimate government objective. No such legitimate government objective exists. Moreover, there is substantial evidence that Jena's failure to adequately treat, supervise or protect suicidal and self-mutilating juveniles is a substantial deviation from current accepted professional standards in treating mentally ill, suicidal, and self-injurious youth. See Exhibit D at 13-24.

22/ Courts have recognized that constitutionally-mandated medical care in prisons includes psychiatric care. See, e.g., Ruiz, 37 F. Supp.2d at 906. Prisons have a duty to properly supervise suicidal inmates. Vest v. Lubbock County Com'rs Court, 444 F. Supp. 824, 831 (N.D. Tex. 1977)(where inmates who had a tendency toward suicide were not given proper supervision to prevent a suicide attempt, such as close observation, and in some cases had access to instruments of harm that were left in cells, inmates' rights were violated).

6. Jena's inappropriate use of mental health and mechanical restraints violates juveniles' rights to freedom from unreasonable restraints, to reasonable safety, and, for mentally disabled juveniles, to adequate mental health care.

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." Foucha v. Louisiana, 504 U.S. 71, 80 (1992). The manner in which defendants use mental health and mechanical restraints violates juveniles' rights to be free of unreasonable restraint and to receive adequate mental health treatment.

Cases involving juvenile facilities have held that use of restraints in manners similar to those used at Jena violate the constitutional rights of juveniles. See, e.g., H.C., 786 F.2d at 1083, 1089 (a juvenile's rights were violated when correctional staff shackled the juvenile to his bunk with metal cuffs because he was banging on the door of the cell in which he was isolated); Pena, 419 F. Supp. at 211 (use of handcuffs and plastic straps to restrain boys for hours at a time and restraining of boys to their beds violated juveniles' constitutional rights); Gary W., 437 F. Supp. at 1229-30 (limiting use of mechanical restraints to situations where alternative techniques have failed).23/

In the case at bar, defendants use correctional restraints in lieu of appropriate therapeutic restraints; restrain juveniles to their beds; restrain juveniles for prolonged periods; and

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23/ In the adult context, in Campbell v. McGruder, 580 F.2d 521, 553 (D.C. Cir. 1978), the court affirmed an injunction limiting restraints on adult detainees.

restrain juveniles when the use of mechanical restraints is unjustified, such as when a juvenile bangs on his cell door. Moreover, mentally ill juveniles have been placed in restraints in unsafe and suitable settings, without appropriate medical authorizations, without adequate monitoring, and without the record keeping required for therapeutic restraints.

The use of restraints at Jena grossly deviates from current accepted professional standards. Exhibit D at 27. Moreover, there is no governmental interest in inappropriate and prolonged uses of restraints that would justify the unsafe restraints to which juveniles in the facility are exposed.

B. There is a substantial threat that juveniles at Jena will be irreparably injured if the injunction is denied.

Where, as here, a deprivation of a constitutional right has been threatened, no further showing of irreparable injury is required. Elrod v. Burns, 427 U.S. 347, 373 (1976) (where First Amendment rights were clearly threatened or in fact impaired at the time that a preliminary injunction was sought, irreparable injury was shown); Deerfield Medical Center v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. 1981)(where constitutional right of privacy was "either threatened or in fact impaired," the conclusion mandated a finding of irreparable injury); Jolly v. Coughlin, 76 F.3d 468, 482 (1996)("the alleged violation of a constitutional right ... triggers a finding of irreparable harm"); Causeway Medical Suite v. Foster, 1999 WL 498187, *1 (E.D. La. 1999)("when constitutional rights to privacy and

liberty are threatened, or being impaired, there is a substantial threat of irreparable injury").

Moreover, the United States establishes irreparable harm when it seeks enforcement of a federal statute, here the Violent Crime Control and Law Enforcement Act of 1994, which expressly authorizes the Court to render injunctive relief. "When an injunction is expressly authorized by statute, and the statutory conditions are satisfied, the movant need not establish specific irreparable injury to obtain a preliminary injunction" since irreparable harm is presumed. EEOC v. Cosmair, Inc., L'Oreal Hair Care Division, 821 F.2d 1085, 1090 (5th Cir. 1987). Indeed, when a civil rights statute is violated, "irreparable injury should be presumed from the very fact that the statute has been violated." United States v. Hayes Int'l Corp., 415 F.2d 1038, 1045 (5th Cir. 1969). In White v. Carlucci, 862 F.2d 1209 (5th Cir. 1989), the Fifth Circuit stated that the irreparable harm presumption set forth in Cosmair and Hayes applies only in cases, like this one, where the government or a government officer seeks enforcement of a federal statute and the statutory requirements are met. Id. at 511.

Even if the irreparable harm presumption is not invoked, the United States will prove that the juveniles at Jena are threatened with irreparable harm if the injunction does not issue. The Fifth Circuit has held that an "injury is 'irreparable' only if it cannot be undone through monetary remedies." Enterprise Intern., Inc. v. Corporacion Estatal

Petrolera Ecuatoriana, 762 F.2d 464, 472 (5th Cir. 1985). Here, the threatened harm to the juveniles at Jena includes physical and emotional injuries, and possibly death. In such cases, the harm is irreparable. Jolly v. Coughlin, 76 F.3d 468, 481 (2d Cir. 1996) (money damages inadequate to compensate physical injuries resulting from defendant's conduct); Morales v. Turman, 364 F. Supp. 166, 175 (E.D. Tex. 1973)(preliminary injunction necessary where practices at juvenile facility "would work irreparable injury, both physical and psychological" if allowed to continue); Doe v. Dolton Elementary Sch. Dist. No. 148, 694 F. Supp. 440, 447-48 (N.D. Ill.1988) (money damages inadequate to compensate emotional and psychological injury resulting from defendant's conduct). As the Supreme Court stated in Hellig v. McKinney, 509 U.S. 25, 33 (1993), "Courts of Appeals have plainly recognized that a remedy for unsafe conditions need not await a tragic event."

Even if the defendants claim that they have taken some remedial measures since the United States' filed its suit and this motion, a preliminary injunction is still necessary. Just a few months ago, the Supreme Court stated in Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC) Inc., 120 S. Ct. 693, 698 (2000) that "it is well settled that `a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" (citation omitted). The Court further held that the party alleging mootness bears "the burden of showing that the

allegedly wrongful behavior cannot be expected to recur." Id. at 698. An earlier Supreme Court case also made clear that "the power of the court to grant injunctive relief survives discontinuance of the illegal conduct." See United States v. W.T. Grant, 345 U.S. 629, 633 (1953).

In the context of prison litigation, the Fifth Circuit made clear that in cases involving constitutional violations in prisons, "[c]hanges made by defendants after a suit is filed do not remove the necessity for injunctive relief, for practices may be reinstated as swiftly as they were suspended." Jones v. Diamond, 636 F.2d 1364, 1375 (5th Cir.1981), cert. dismissed, 453 U.S. 950 (1981), and overruled on other grounds, Int'l Woodworkers of America v. Champion Int'l Corp., 790 F.2d 1174 (5th Cir. 1986). Given the facts at bar, the defendants cannot make a showing that the wrongful behavior cannot be expected to recur.

C. The threatened injury outweighs any damage to the defendants.

The threatened injuries that juveniles will suffer in this case if an injunction does not issue include serious impairments to mental health, physical injuries, and possibly death. This preliminary injunction seeks to ameliorate the most egregious of the alleged violations of juveniles' rights. They can and should be immediately remedied to prevent further harm to juveniles.

Whatever burden will fall on the defendants as a result of the preliminary injunction is clearly outweighed by the continued physical and mental injuries that juveniles will suffer if the

injunction is not issued.

Moreover, this burden cannot be properly classified as damage to the defendants. Defendants cannot be harmed by remedies designed to bring them into compliance with constitutional standards and federal laws. This preliminary injunction seeks to compel the defendants to meet their basic and fundamental obligation to provide reasonably safe conditions in a juvenile facility — care and conditions to which juveniles confined at Jena are entitled. See Youngberg, 457 U.S. 307 (1982). The defendants cannot be injured by remedies designed to bring them into compliance with constitutional standards. See, e.g., Bolthouse v. Continental Wingate Co., 656 F. Supp. 62, 630 (W.D. Mich. 1987)("defendants cannot claim that they will be harmed by complying with [the law] since an injunction will only require that which the law already requires"); Hunt v. United States Securities & Exchange Comm'n, 520 F. Supp. 580, 609 (N.D. Tex. 1981)(preliminary injunction requiring the Defendant agency to do what the law requires could not result in any harm to the agency).

D. The injunction will not disserve the public interest.

The entry of the requested preliminary injunctive relief will not disserve the public interest. On the contrary, it will further the public interest. Congress, by enacting the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, recognized that there was an interest in protecting the rights of confined juveniles. Congress authorized the Attorney General to

bring suit, for or in the name of the United States, to ensure those protections. The Act specifically provides that the United States may obtain appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct by juvenile justice administrators that deprives juveniles of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. 42 U.S.C. § 14141 (a),(b).

The long-standing and clear public interest in protecting the constitutional and legal rights of its citizens along with the greater need to protect those who cannot help themselves, compels the conclusion that the United States has met its burden of demonstrating that a preliminary injunction satisfies the public interest. Essentially, a preliminary injunction will serve to protect the physical safety of the youth at Jena and provide some improvements in mental health care, which are of critical necessity.

E. The relief sought complies with the Prison Litigation Reform Act.

The preliminary injunction sought by the United States in its proposed order complies with the requirements of the Prison Litigation Reform Act, 18 U.S.C. § 3626 (a)(2). Section (a)(2) provides in pertinent part that "[p]reliminary injunctive relief must be narrowly drawn, extend no further than to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm."

The proposed order is narrowly tailored to the specific harm that the United States found and extends no further than to

correct the harm which is occurring at the facility. The United States will present evidence regarding the necessity for each of the injunctions sought in its proposed order.

Such an order is required in this case, where the limitations in the now-defunct sections of the Jena Interim Agreement, regarding the use of chemical and mechanical restraints and the use of isolation, have not worked. Thus, less intrusive methods of trying to persuade defendants to engage in legal conduct at Jena have failed, necessitating the imposition of enforceable measures by the Court.

The PLRA also requires that the court give substantial weight to any adverse impact on public safety or the operation of the criminal justice system caused by the preliminary relief. The United States believes that the injunction will in no way negatively impact on the operations of the criminal justice system or public safety.

CONCLUSION

For the foregoing reasons, the United States' Motion for Preliminary Injunction Regarding Conditions of Confinement at the

Jena Juvenile Justice Center should be granted and the proposed order should be entered.

Respectfully submitted,

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