

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE STATE OF OHIO;)
 The Honorable John Kasich)
 The Ohio Department of Youth Services)
 Harvey Reed, Director of Ohio Youth Services)
 Indian River Juvenile Correctional Facility)
 Cuyahoga Hills Juvenile Correctional Facility)
 Circleville Juvenile Correctional Facility)
 Scioto Juvenile Correctional Facility,)
)
 Defendants.)
)
 _____)

CIVIL ACTION NO:
2:08-cv-475

SUPPLEMENTAL COMPLAINT

THE UNITED STATES OF AMERICA (“Plaintiff”), by its undersigned attorneys,
hereby files this Supplemental Complaint and alleges upon information and belief:

1. The United States files this Supplemental Complaint in the above captioned matter pursuant to the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, to enjoin the named Defendants from depriving youth confined in the Circleville Juvenile Correctional Facility, Cuyahoga Hills Juvenile Correctional Facility, Indian River Juvenile Correctional Facility, and Scioto Juvenile Correctional Facility (collectively, the “DYS facilities”) of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

Jurisdiction, Standing and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141.

4. Venue in the United States District Court for the Southern District of Ohio is proper pursuant to 28 U.S.C. § 1391.

Defendants

5. Defendant State of Ohio (“State”) is responsible for the administration of juvenile justice in the State and operates, or contracts for the operation of, all juvenile justice facilities in the State. This action concerns the administration of the DYS facilities, which house youth in State custody who are confined for periods of time established by juvenile county courts.

6. Defendant John R. Kasich is the Governor of Ohio and, in this capacity, heads the executive branch of Ohio’s government. The Governor of Ohio, as chief of the executive branch, has the duty to ensure that the departments that compose the executive branch of Ohio government guarantee the federal constitutional and statutory rights of all of the citizens of Ohio, including the youth confined in the DYS facilities.

7. Defendant Ohio Department of Youth Services (“DYS”) establishes the general policy to be followed by its juvenile institutions and contractors; provides leadership in developing programs to rehabilitate youth committed to State custody; and is responsible for the promulgation of all rules and regulations necessary and appropriate to the administration and operation of the DYS facilities.

8. Defendant Harvey J. Reed is Director of the DYS and, in this capacity, exercises administrative control of, and responsibility for, the DYS Facilities.

9. Circleville Juvenile Correctional Facility is a juvenile correctional facility within the State of Ohio, a part of DYS, and under the administrative control of and responsibility of Director Harvey J. Reed.

10. Cuyahoga Hills Juvenile Correctional Facility is a juvenile correctional facility within the State of Ohio, a part of DYS, and under the administrative control of and responsibility of Director Harvey J. Reed.

11. Indian River Juvenile Correctional Facility is a juvenile correctional facility within the State of Ohio, a part of DYS, and under the administrative control of and responsibility of Director Harvey J. Reed.

12. Scioto Juvenile Correctional Facility is a juvenile correctional facility within the State of Ohio, a part of DYS, and under the administrative control of and responsibility of Director Harvey J. Reed.

13. The individual Defendants named in Paragraphs 6 and 8 above are officers or agents of the State of Ohio and are sued in their official capacity only.

Factual Allegations

14. Defendants are legally responsible, in whole or in part, for the operation of the DYS facilities and for the health and safety of the youth confined at the DYS facilities.

15. Defendants are governmental authorities with responsibility for the administration of juvenile justice or the incarceration of juveniles within the meaning of 42 U.S.C. § 14141.

16. Defendants are obligated to operate the DYS facilities in a manner that does not infringe upon the federal rights, as protected by the Fourteenth and Eighth Amendments to the

Constitution of the United States and by other federal law, of individuals confined at the DYS facilities.

17. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

18. On or about November 8, 2013, the lead monitor in *United States v. Ohio*, 2:08-cv-475, investigated the accumulation of seclusion hours among some youth at the Scioto Juvenile Correctional Facility. She wrote that she found the State had secluded ten youths for over 10 percent of their time in custody during a six-month period in 2013.

19. On or about January 17, 2014, DYS released information showing that youths on the mental health caseload at Cuyahoga Hills Juvenile Correctional Facility, Indian River Juvenile Correctional Facility, Circleville Juvenile Correctional Facility and Scioto Juvenile Correctional Facility had spent approximately 59,865 hours in seclusion from approximately July 2013 through December 2013.

20. On November 21, 2013, DYS announced it would close Scioto Juvenile Correctional Facility and the youths would be gradually reassigned to the remaining facilities. Plaintiff believes that some Scioto youth were transferred to Cuyahoga Hills Juvenile Correctional Facility, Indian River Juvenile Correctional Facility and/or Circleville Juvenile Correctional Facility.

21. On or about January 17, 2014, DYS released information showing that some youth on the mental health caseload at Indian River Juvenile Correctional Facility, Circleville Juvenile Correctional Facility and Scioto Juvenile Correctional Facility had been placed in seclusion for long periods of time, including seclusion of 19 days for one youth and 21 days for another youth.

22. On or about January 17, 2014, DYS released information showing that one youth on the mental health caseload at Cuyahoga Hills Juvenile Correctional Facility had been placed in pre-hearing seclusion for 4.88 days, in contravention of DYS policy concerning the maximum length of pre-hearing seclusion.

23. On or about January 17, 2014, DYS released information showing that some youth on the mental health caseload at Cuyahoga Hills Juvenile Correctional Facility, Indian River Juvenile Correctional Facility, Circleville Juvenile Correctional Facility and Scioto Juvenile Correctional Facility had been placed in seclusion despite DYS' observation that the youths had displayed suicidal ideation, self-injurious behavior or were on suicide watch.

24. Numerous national studies have established that seclusion of youth with mental health disorders even for short periods of time can severely harm youth. ACLU, "Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities" (Nov. 2013); American Academy of Child & Adolescent Psychiatry, Policy Statements: Solitary Confinement of Juvenile Offenders" (April 2012); Lindsay Hayes, Office of Juvenile Justice and Delinquency Prevention, Juvenile Suicide in Confinement: A National Survey (2009).

25. On or about January 10, 2014, the lead monitor in *United States v. Ohio*, 2:08-cv-475, found that Scioto youths who spent long periods of time in seclusion often were not receiving mental health treatment via group during their seclusion time. She found instead that these youths were receiving daily visits by mental health staff during the seclusion period, but these visits were documented as brief checks per protocol, and were not treatment oriented.

26. On or about December 16, 2013, a subject matter expert in *S.H. v. Reed*, No. 2:04-cv-1206, stated that if a youth with a mental health disorder is placed in seclusion, it is

incumbent on DYS to modify the youth's integrated treatment plan. If a youth with a mental health disorder is placed in seclusion and DYS does not modify the youth's integrated treatment plan, seclusion may exacerbate the youth's behavioral problems. On information and belief, DYS has not so modified youths' treatment plans.

27. Defendants have engaged, and continue to engage, in a pattern or practice of failing to provide adequate mental health care and rehabilitative treatment to youth at the DYS facilities in the following specific respects, among others:

- a. the provision of adequate screening and assessments;
- b. the provision of adequate treatment planning; and
- c. the provision of adequate psychological services.

28. Defendants have engaged, and continue to engage, in a pattern or practice of failing to ensure that youth with mental health disorders at the DYS facilities are adequately protected from harm and from undue risk of harm in the following specific respects, among others:

- a. protection from the unnecessary use of seclusion; and
- b. protection from the use of seclusion as a barrier or obstacle to receiving adequate mental health care and rehabilitative treatment at the DYS facilities.

29. Defendants have engaged, and continue to engage, in a pattern or practice of subjecting youth with mental health disorders at the DYS facilities to unnecessary periods of seclusion with:

- a. the specific intent to punish; or
- b. no reasonable relation to a legitimate governmental objective and instead as a form of punishment.

Violations Alleged

30. The United States incorporates by reference the allegations set forth in Paragraphs 14 through 29 as if fully set forth herein.

31. The acts and omissions alleged in Paragraphs 18 through 29 constitute a pattern or practice of conduct that violates the federal rights, as protected by the Eighth and Fourteenth Amendments to the Constitution of the United States, of youth confined at the DYS Facilities.

32. Unless restrained by this Court, Defendants will continue to engage in the acts and omissions set forth in Paragraphs 18 and 29 that deprive youth confined at the DYS facilities of rights, privileges, or immunities secured or protected by the Constitution of the United States and federal law, and will cause irreparable harm to these youth.

PRAYER FOR RELIEF

33. The Attorney General is authorized, pursuant to 42 U.S.C. § 14141, to seek equitable and declaratory relief.

WHEREFORE, the United States prays that this Court enter an order:

a. Declaring that the acts, omissions, and practices of Defendants set forth in Paragraphs 18 through 29 above constitute a pattern or practice of conduct that deprives the DYS facilities' youth of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, and that those acts, omissions, and practices violate the Constitution and laws of the United States;

b. Permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in Paragraphs 18 through 29 above, and

requiring Defendants to take such actions as will ensure that lawful conditions of confinement are afforded to youth at the DYS Facilities; and

c. Granting such other and further equitable relief as the Court may deem just and proper.

DATE: March 31, 2014

CARTER STEWART
United States Attorney
Southern District of Ohio

/s/ Deborah F. Sanders
DEBORAH F. SANDERS (0043575)
Assistant United States Attorney
Southern District of Ohio
303 Marconi Boulevard, Suite 200
Columbus, Ohio 43215
(614) 469-5715 (T)
(614) 469-5653 (F)
Deborah.Sanders@usdoj.gov

Respectfully submitted,

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division
United States Department of Justice

JONATHAN M. SMITH
Chief
Special Litigation Section

BENJAMIN O. TAYLOE, JR.
Deputy Chief
Special Litigation Section

CYNTHIA COE
ALEXANDRA L. SHANDELL
Trial Attorneys
Special Litigation Section

/s/ Silvia J. Dominguez-Reese
SILVIA J. DOMINGUEZ-REESE
Trial Attorney
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-8547 (T)
(202) 514-4883 (F)
Silvia.Dominguez-Reese@usdoj.gov

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this date, March 31, 2014, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will simultaneously serve notice of such filing to counsel of record and the Court Monitor to their registered electronic mail addresses.

s/Silvia J. Dominguez-Reese
SILVIA J. DOMINGUEZ-REESE
Trial Attorney
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Telephone: (202) 616-8547
Facsimile: (202) 514-4883
Email: Silvia.Dominguez-Reese@usdoj.gov

Attorney for Plaintiff