

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DANNY E. BROWN, SYLVESTER BUTLER,
KENNETH CAUDILL, SAMMY J. DOUSE,
WILLIE ENGLISH, SIDNEY EVERETT,
KELVIN FRAZIER, MORRIS J. GILBERT,
JIJUAN T. HAGANS, TROY D. HALL,
BENJAMIN LAFLOWER, CURT MASSIE,
ANTONIO J. MCCLOUD, LAMAR A. MIFFIN,
MICHAEL L. MONTGOMERY, KUNTA PORTER,
ISSAC SHARPE, SAMUEL STROTHER,
JEREMIAH THOMAS, EUGENE E. ULRATH,
GLENN WHEELER, and REGINALD
WILLIAMS, individually, and on
behalf of a Class of all persons
similarly situated,

Plaintiffs,

vs.

Case No. 2:03-cv-526-FtM-29DNF

JAMES V. CROSBY, JR., in his
official capacity as Secretary,
Florida Department of Corrections;
GERALD H. ABDUL-WASI, in his
official capacity as Inspector
General, Florida Department of
Corrections; JOSEPH THOMPSON, in his
official capacity as Warden, Florida
State Prison; CHESTER LAMBDIN, in
his official capacity as Warden,
Charlotte Correctional Institution;
JOSEPH PETROVSKY, in his official
capacity as Warden, Santa Rosa
Correctional Institution; and
WENDELL WHITEHURST, in his official
capacity as Warden, Washington
Correctional Institution,

Defendants.

/

OPINION AND ORDER

This matter comes before the Court on Plaintiffs' Motion For
Preliminary Injunction (Doc. #139) and Memorandum of Law in Support

(Doc. #140) filed on August 26, 2004. Plaintiffs have filed declarations and other material in support of their motion. (Docs. #139, Exhs. 1-23; #143-46). Defendants filed a Response and Memorandum of Law in Opposition (Doc. #147) on September 7, 2004. Plaintiffs also have filed a Request for Oral Argument (Doc. #141). Because the Court concludes that oral argument is not necessary, that request will be denied.

I.

Plaintiffs are individuals who are currently in the custody of the Florida Department of Corrections. Defendants are employed within the Florida prison system and are being sued in their official capacities. Each plaintiff alleges that he has been the victim of unjustified or excessive use of chemical agents by employees of the Florida Department of Corrections. Specifically, each plaintiff alleges that while locked in his cell defendants have used chemical agents, including pepper spray and tear gas, against them for the improper purpose of causing harm and not in a good faith effort to restore order or maintain discipline or for any other legitimate reason. Plaintiffs, on behalf of themselves and on behalf of a class of similarly situated individuals, seek (1) a declaratory judgment that defendants' policies, practices and customs for the use of chemical agents violate the Eighth and Fourteenth Amendments' prohibition against cruel and unusual punishment, and (2) injunctive relief requiring defendants to cease

their unlawful conduct and to implement measures to prevent its continuation.

In their motion for preliminary injunction, plaintiffs seek an injunction that "bars the non-spontaneous use of chemical agents on inmates located in a cell, including a shower cell, in a segregated housing unit" unless certain conditions are met. The injunction plaintiffs seek would allow such use if (1) "used in a good faith effort to prevent actual physical harm to the inmate, to another inmate, or to staff," (2) "recorded by a camera which includes both video and audio," (3) "approved by a psychiatrist or licensed psychologist, which approval may only be given after a cell-front interview by the psychiatrist or psychologist with the inmate" for certain inmates with known mental health problems, and (4) it occurs after "prior consultation and approval by a medical doctor is given" for inmates with medical conditions that can be aggravated by chemical agents. (Doc. #139, pp. 16-17).

II.

In the Eleventh Circuit the issuance of "a preliminary injunction is an extraordinary and drastic remedy that should not be granted unless the movant clearly carries its burden of persuasion on each of [four] prerequisites." Suntrust Bank v. Houghton Mifflin Co., 252 F.3d 1165, 1166 (11th Cir. 2001), reh'g and reh'g en banc denied, 275 F.3d 58 (11th Cir. 2001); see also Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320

F.3d 1205, 1210 (11th Cir. 2003); McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). The four prerequisites for a preliminary injunction are: (1) a substantial likelihood of succeeding on the merits; (2) a substantial threat of irreparable injury if relief is denied; (3) an injury that outweighs the opponent's potential injury if relief is not granted; and (4) an injunction would not harm or do a disservice to the public interest. Four Seasons Hotels & Resorts, 320 F.3d at 1210; Suntrust Bank, 252 F.3d at 1166; American Red Cross v. Palm Beach Blood Bank, Inc., 143 F.3d 1407, 1410 (11th Cir. 1998); Gold Coast Pub'ns, Inc. v. Corrigan, 42 F.3d 1336, 1343 (11th Cir. 1994), cert. denied, 516 U.S. 931 (1995).

In Turner v. Safley, 482 U.S. 78, 84 (1987), the Supreme Court noted the court's obligation to protect the constitutional rights of prison inmates:

The first of these principles is that federal courts must take cognizance of the valid constitutional claims of prison inmates. Prison walls do not form a barrier separating prison inmates from the protections of the Constitution. . . . Because prisoners retain these rights, when a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights.

Miller v. King, ____ F.3d ____ (11th Cir. September 14, 2004) recently summarized the Eighth Amendment principles in the prison context. Additionally, Turner noted:

A second principle [], however, is the recognition that courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. . .

. [T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint. Where a state penal system is involved, federal courts have . . . additional reason to accord deference to the appropriate prison authorities.

Id. at 84-85 (internal quotation and citation omitted).

III.

After a careful review of the record and consideration of all material submitted by plaintiffs in support of their motion for a preliminary injunction, the Court concludes that plaintiffs' motion is due to be denied. As explained above, plaintiffs seek an injunction that "bars the non-spontaneous use of chemical agents on inmates located in a cell, including a shower cell, in a segregated housing unit" unless other conditions are met. Plaintiffs have not shown a substantial likelihood of prevailing on the merits, or that the requested preliminary injunction is required, or even allowed, by the Eighth Amendment. As the Eleventh Circuit has cautioned, courts do not have "carte blanche to impose their theories of penology on the nation's prisons." Bass v. Perrin, 170 F.3d 1312, 1316 (11th Cir. 1999). The Court concludes that plaintiffs' motion for a preliminary injunction is due to be denied.

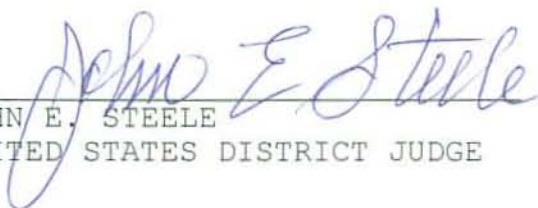
Accordingly, it is now

ORDERED:

1. Plaintiffs' Motion For Preliminary Injunction (Doc. #139)
is **DENIED**.

2. Plaintiffs' Request For Oral Argument (Doc. #141) is
DENIED.

DONE AND ORDERED at Fort Myers, Florida, this 20th day of
September, 2004.



JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

Copies:
Hon. Douglas N. Frazier
Counsel of record