

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

EDWARD BRAGGS, et al.)	
)	
Plaintiffs,)	
)	
v.)	
)	
JEFFERSON DUNN, in his official)	
capacity as Commissioner of the)	
Alabama Department of)	
Corrections, et al.)	
)	
Defendants.)	
)	
)	

CIVIL ACTION NO.
2:14-cv-00601-MHT-JTA
Judge Myron H. Thompson

**PLAINTIFFS’ REPLY TO DEFENDANTS’ RESPONSE TO
PHASE 2A ORDER ON CORRECTIONAL STAFFING TREND
(REDACTED)**

This Court asked Defendants to explain “how they plan to meet” the Court’s order that, “[b]y February 20, 2022, the defendants shall have fully implemented the Savages’ correctional staffing recommendations.” *Braggs v. Dunn*, No. 2:14-cv-601, 2018 WL 7106346, at *1 (M.D. Ala. Feb. 20, 2018); Doc. 2834 at 5. Faced with the inevitability that they will not comply with this order, Defendants now suggest that the Court misunderstands its own order. *See* Doc. 2838 at 4-7.

The Court is appropriately concerned with Defendants’ lack of progress towards compliance with its Understaffing Remedial Order. It has been over two

years since the Court ordered Defendants to implement the Savages' staffing recommendations—to hire some 2,359 officers.¹ Since then, they have increased correctional staff by only 147 officers.² Whether measured in terms of individual officers or Full-Time Equivalents (“FTEs”), Defendants have made dangerously little progress toward complying with their own plan.

In its recent Order, the Court stated that it “stands ready now to assist in addressing this problem if there is one.” Doc. 2834 at 4. Plaintiffs believe that there is a problem and welcome the Court's assistance in addressing it now. Accordingly, Plaintiffs request a status conference to discuss the adequacy of Defendants' plan for complying with the Understaffing Remedial Order and whether additional court intervention is necessary.

¹ The closest staffing report in time to the Court's February 2018 Understaffing Remedial Order—from March 2018—lists 1,467 correctional staff (371 supervisors and 1,096 correctional officers (“COs”)). Doc. 2325-2 at 2. The Savages' report calls for 3,826 total correctional staff, Doc. 1813-1; Doc. 2834 at 3, meaning that ADOC needed to hire 2,359 additional officers around the time of the Understaffing Remedial Order.

² The March 2020 staffing report lists 1,614 total correctional staff, adding supervisors, COs, basic correctional officers (“BCOs”), and “senior COs,” an increase of 147 from March 2018. Doc. 2829-1. Plaintiffs continue to object to the inclusion of correctional cubical officers (“CCOs”) in calculating staffing compliance and have not included them here. In February 2020, the Parties agreed on a process to evaluate whether and how to count CCOs and BCOs towards compliance with the Savages' staffing recommendations. Doc. 2758. That issue is still pending. Doc. 2842 at 2.

PROCEDURAL HISTORY

Recognizing that staffing is central to addressing every other factor that contributed to Defendants' Eighth Amendment violation, *see Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1268 (M.D. Ala. 2017), the Court determined understaffing was the first issue the Parties should address in the remedial phase. In October 2017, Defendants submitted a proposed remedial plan on understaffing. Doc. 1374. The plan called for a comprehensive staffing analysis of all major Alabama Department of Corrections ("ADOC") facilities by the Savages, *id.* at 6, 10, whom Defendants called "the nation's leading experts on security staffing analyses," *id.* at 4. The Court then held an evidentiary hearing to determine whether that plan should be adopted as proposed and whether a remedial order should be entered at that time. After the evidentiary hearing and further briefing, Docs. 1567-1, 1583, the Court largely adopted Defendants' proposed plan and timeline for implementation and ordered, *inter alia*: "By February 20, 2022, the defendants shall have fully implemented the Savages' correctional staffing recommendations, as modified by any agreements between the parties or orders of this court." *Braggs*, 2018 WL 7106346, at *1.

Pursuant to the Understaffing Remedial Order, the Savages conducted a staffing analysis of ADOC and issued a report in May 2018. Docs. 1813, 1813-1. In their report, the Savages recommended that ADOC have 3,326 officers and 500 supervisors. *See* Doc. 2834.

ARGUMENT

I. Defendants' Argument that the Understaffing Remedial Order Includes "Optimal," Not Mandatory, Staffing Requirements is Without Merit

This Court ordered—in no uncertain terms—that Defendants “shall have fully implemented the Savages’ correctional staffing recommendations” by February 20, 2022. *Braggs*, 2018 WL 7106346, at *1. In the accompanying opinion, the Court made clear that the purpose of the Savages’ staffing analysis was “to determine how many officers are needed to address ADOC’s correctional understaffing problem.” *Braggs v. Dunn*, No. 2:14-cv-601, 2018 WL 985759, at *3 (M.D. Ala. Feb. 20, 2018). The Court also found that Defendants’ plan to use the Savages’ staffing recommendations constitutes relief that is “narrowly drawn, extends no further than necessary to remedy the constitutional violation found, and is the least intrusive means of doing so.” *Id.* at *8-9. Thus, this Court found that the Savages’ staffing recommendations constituted the floor for adequate correctional staffing in ADOC.

There have been no modifications to the Court’s order that Defendants implement the Savages’ recommendations by 2022. At no point have the Parties agreed, nor has the Court ordered, that Defendants are only required to fill certain posts recommended by the Savages, as Defendants now argue. *See* Doc. 2838 at 5-6. There is nothing in the record to support such a modified view of the Court’s order. In fact, Defendants’ current argument that the Savages’ recommendations do not depict “necessary, or even adequate” correctional staffing, *id.* at 7, is contrary to

the clear indication [REDACTED]. During the understaffing remedial trial, Meg Savage explained that post plans in the Savages' staffing analyses "indicate whether [a] post is mandatory, essential, or important." Margaret Savage, Dec. 5, 2017 Trial Tr., at 29:19-20. She explained these categorizations as such:

[I]f you were to look at strictly the mandatory posts on that post chart, that would be all of those fixed posts that you cannot operate safely below that level. But the other positions, such as essential -- oh, there it is. You're talking about that -- you can safely operate with that post being filled 75 percent of the time. The importance -- or 50 percent of the time. An example of those would be the type of position that -- and the example that we give in the class is that when this person goes on sick leave for a day, do you fill that position while they're gone, or can that go unfilled for that day while that person is off? So those are the kind of questions you ask to determine whether that's a mandatory, essential, or important post.

Id. at 29:21-30:8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³ Defendants' post-hoc attempt to ignore their own experts' analysis and testimony to lessen the requirements of the Understaffing Remedial Order is thus without merit.

³ Plaintiffs refer to the CM/ECF pagination when it differs from the internal pagination. Plaintiffs file this reply under seal because of this reference to the Savages' report, which was also filed under seal.

In addition, Defendants seek to further cast doubt on what staffing levels they must meet under the Understaffing Remedial Order by pointing out that the Savages' recommendations are for FTEs and not "actual persons." Doc. 2838 at 4. While this is true, the Parties and the Court have, for years, proceeded under the assumption that FTEs are an accurate proxy for total number of people. Plaintiffs do not dispute that a single FTE can be filled in a variety of ways. If the Court agrees that Defendants may measure progress toward adequate staffing in terms of FTEs, as they do for mental-health staffing, Plaintiffs request that the Court order Defendants to (1) provide an explanation for how they are calculating FTEs for correctional staff, and (2) order Defendants' quarterly reports on staffing to include FTE equivalents (in addition to current reporting requirements).

II. Court Intervention Is Necessary to Ensure Defendants Comply with the Understaffing Remedial Order

In anticipation of Defendants' failure to make adequate progress in complying with the Understaffing Remedial Order, Plaintiffs originally requested that the Court "require the defendants to meet specific hiring benchmarks for correctional officers." *Braggs*, 2018 WL 985759, at *7. Though the Court declined to do so, the Court made clear it would intervene should Defendants fail to make progress:

In overseeing the defendants' implementation of their plan, the court will "not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration." Rather, it will remain poised to step in should the defendants fail to uphold their commitment, or should the plan prove

inadequate to remedy, in a timely fashion, the violations shown.

Id. at *8 (quoting *Brown v. Plata*, 563 U.S. 493, 511 (2011)). Defendants' correctional staffing data indicate that the time is ripe for the Court to make such an intervention.

Over two years after the Court issued the Understaffing Remedial Order, Defendants' correctional staffing data reveals little progress in hiring correctional staff. In March 2018, there were 1,467 correctional staff employed at ADOC's major facilities. Doc. 2325-2 at 2. Two years later, in March 2020, there were 1,614 correctional staff, not counting CCOs. Doc. 2829-1. The Court noted other concerning staffing trends in its recent Order, *see* Doc. 2834 at 1-3, which Defendants confirmed were generally accurate, *see* Doc. 2838 at 2. Even if the Court credits Defendants' efforts in recruiting, hiring, onboarding, and retaining correctional staff, as well as their theories on why current staffing levels are so low, and even if the Court were to eventually resolve the BCO/CCO issue in Defendants' favor, the fact remains that—with less than two years until the Court's deadline—Defendants are far from obtaining the staffing levels recommended by the Savages and ordered by the Court.

Defendants' lack of progress in increasing their correctional staffing levels, coupled with their newly stated position that they need not comply with the Understaffing Remedial Order, warrants immediate court intervention, including

but not limited to, the imposition of benchmarks. *See* Doc. 1567-1 at 8. Plaintiffs request that the Court schedule a status conference to further discuss this issue.

CONCLUSION

In the Liability Opinion, the Court found that correctional understaffing “has been a persistent, systemic problem that leaves many ADOC facilities incredibly dangerous and out of control.” *Braggs*, 257 F. Supp. 3d at 1198. The Court concluded, “Taken together, ADOC’s low correctional-staffing level, in the context of its severely overcrowded prisons, creates a substantial risk of serious harm to mentally ill prisoners, including continued pain and suffering, decompensation, self-injury, and suicide.” *Id.* at 1200. The Court’s conclusion rings particularly true in a moment when overcrowding will continue to worsen, correctional staffing remains at dangerously low rates, and the entire ADOC system is strained by the ongoing COVID-19 pandemic.

For the reasons discussed above, Plaintiffs request the Court set a status conference to further discuss Defendants’ correctional staffing trend and whether immediate court intervention is necessary.

Dated: June 24, 2020

Respectfully Submitted,

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I hereby certify that I have on this 24th day of June, 2020 electronically filed the foregoing with the clerk of court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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