

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:15-cv-00368-MHT-SRW
	)	
STATE OF ALABAMA AND	)	
ALABAMA DEPARTMENT OF	)	
CORRECTIONS,	)	
	)	
Defendants.	)	

PARTIES' JOINT STATEMENT
PURSUANT TO THIS COURT'S OCTOBER 1, 2020 ORDER

Come now the Plaintiff, the United States of America, and Defendants, the State of Alabama and the Alabama Department of Corrections (“ADOC” and, together with the State of Alabama, the “State”), and provide this joint statement pursuant to the Court’s Order of October 1, 2020. Doc. No. 50. The Court’s Order directed the parties to file a joint report “explaining their understanding of the current status of the understaffing issue.” *Id.*

Pursuant to the Consent Decree in this matter, the State must “ensure that correctional staffing and supervision is sufficient to adequately supervise inmates and staff and allow for the safe operation of Tutwiler.” Doc. No. 11 at 30, section III.C. The parties agree that the State has made, and continues to make, progress in the recruitment and retention of correctional staff. However, and as elaborated below, the Monitor concluded in her most recent monitoring report that she “remains concerned about correctional officer staffing levels at Tutwiler” and that the State is in “partial compliance” with this provision related to correctional staff recruitment and retention. Doc. No. 57-1 at 5, 21 (12th Compliance Report).

Through enhanced recruitment and retention efforts, and the creation of the new positions of Basic Correctional Officer (BCO) and Cubicle Correctional Officer (CCO), the State has increased the percentage of correctional staff positions filled at Tutwiler since the filing of this action six (6) years ago. According to the latest Monitor's Report, submitted on August 31, 2021, "the ADOC's recorded combined vacancy rate of senior correctional officers, correctional officers, BCOs and CCOs is nearly twenty-two percent." *Id.* at 60. The Monitor's Report continues: "When CCOs are excluded from this calculation, the combined vacancy rate is twenty-seven percent."¹ These data indicate recently improved staff recruitment and retention efforts. This is especially noteworthy in the midst of a pandemic." *Id.* As recognized by the Monitor, the twenty-seven percent (27%) vacancy rate for correctional officer and BCO positions constitutes a decrease from the thirty-six percent (36%) vacancy rate reported by the Monitor in the report filed on August 31, 2020. Doc. No. 43-1 at 17 (10th Compliance Report).

The Monitor also commended ADOC on the variety of strategies undertaken to mitigate correctional staffing challenges at Tutwiler, especially given the challenges created by the COVID-19 pandemic. Those strategies include: utilizing mandated overtime for correctional staff; hiring retired officers to work part-time on the correctional staff; filling certain positions with officers who are not certified by the Alabama Peace Officers Standard Training Commissioner (APOSTC), such as monitoring cameras and manning the control room; doubling up housing posts; and using supervisors to fill posts when needed. Doc. No. 57-1 at 26 (12th Compliance Report). According to the Monitor, the pandemic created additional staffing challenges due to members of the correctional staff becoming ill or entering quarantine after an exposure to the virus. *Id.*

¹ According to the Monitor, "Correctional Cubicle Officers (CCOs)... is a relatively new job classification. Their official title is Security Guard I. Previously the number of 'cube' officer vacancies and filled positions were listed on non-security/support staff rosters." Doc. No. 57-1 at 24 (12th Compliance Report).

Nevertheless, throughout the pandemic, “the wardens and captains at Tutwiler” led by example in working “on weekends and after hours to ensure posts were filled.” *Id.*

The most recent Monitor’s Report notes ADOC’s “excellent progress filling supervisory positions” on Tutwiler’s correctional staff. *Id.* at 59-60. As of June 30, 2021, the vacancy rate of correctional lieutenants had shrunk to 10%. *Id.* at 23. However, by the same date, only thirteen of twenty-one allotted correctional sergeant positions were filled, resulting in a vacancy rate of thirty-eight percent.” *Id.* at 60. While this represents a slight improvement over the correctional sergeant vacancy rate of forty percent as of December 31, 2020, *id.* at 23, the Monitor notes the importance of filling these sergeant positions, stating that “[v]acancies, especially in the ranks of supervisors are critical, especially when supervisors are asked to work line posts.” *Id.* at 60. The Monitor concluded that the “recruitment and retention of experienced, qualified supervisors remains a priority.” *Id.* at 25.

Separately, pursuant to the Consent Decree staffing provisions, the State “shall [c]ontinue working with the Alabama Peace Officers Standards and Training Commission [APOSTC] in screening, selecting, or hiring applicants for the entry-level corrections officer positions until such standards, or any other physical test employed are: (a) Validated for a corrections environment; and (b) Examined for the necessity of gender-norming certain components.” Doc. No. 11 at 31, section III.C.1.i.1. The Monitor concluded that “[u]ntil such time as the validation of these standards for correctional officers and evidence that the standards have been examined for the necessity of gender-norming certain components, or the terms of the agreement modified, the monitor determines ‘partial compliance’ with the staffing... and recruitment... provisions of the settlement agreement.” Doc. No. 57-1 at 31 (12th Compliance Report). Notwithstanding this conclusion, the Monitor acknowledged her understanding that “ADOC does not have the statutory

authority to 1) set APOSTC² training standards, 2) require APOSTC to validate the testing for a correction, rather than a policing environment, or 3) require APOSTC to examine the testing for the necessity of gender-norming certain components.” *Id.* at 29. The Monitor also recognized that the APOSTC physical entrance standards do not apply to the BCO position, and that ADOC’s “modifications of the entrance physical standards for BCOs have facilitated the hiring of women in this position,” *Id.* at 28-29.

When assessing staffing at Tutwiler, the Consent Decree requires “substantial compliance with each of the substantive provisions of [the Consent Decree] in three consecutive Compliance Reports” prior to its termination. *See* Doc. No. 11, section X.B. Through ADOC’s continued recruitment and retention initiatives, the State expects that correctional staffing numbers at Tutwiler will continue to rise to the point that the Monitor will find the State in substantial compliance with the Consent Decree’s staffing requirements. While the parties cannot say with certainty when that point will occur, and the State believes it is currently at that point, the State intends to continue expending considerable resources to ensure that the vacancy rate for correctional staff decreases and Tutwiler maintains adequate correctional staffing.

In conclusion, the parties remain committed to working together to ensure “that correctional staffing and supervision is sufficient to adequately supervise inmates and staff and allow for the safe operation of Tutwiler,” Doc. No. 11 at 30, section III.C, and the ultimate termination of the Consent Decree.

² According to Rule 650-X-1-.03 of the Alabama Administrative Code, the “Commission is composed of seven members, each of whom must be a qualified elector of the State who is over the age of 19 years. The State Fraternal Order of Police shall designate one member of the Commission to serve for a term of four years; the Alabama Peace Officers Association shall designate one member to serve for a term of four years; the Law Enforcement Planning Association shall designate one member to serve for a term of four years; and the Governor shall designate four members to serve for terms of four years.” *See* <https://www.apostc.alabama.gov/wp-content/uploads/2019/12/Chapter-1.pdf>.

In compliance with CM/ECF Civil Administrative Procedure II.C.3., the parties hereby certify that they have agreed to have their names electronically signed to this Joint Statement.

Respectfully submitted this 24th day of September, 2021.

/s/Samantha R. Miller

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all participants.

/s/ Carrie G. Shaw
Alabama Assistant Attorney General