

**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 SEPTEMBER 30, 2021 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 September 30, 2021. Doc. No. 60. The Court’s Order directed the parties to file a “statement . . . as to the status of the consent decree.” *Id.* In addition, the Order directed “the defendants . . . in their part of the statement, [to discuss] internal and informal benchmarks and timetables with regard to the recommendations and requirements discussed at the September 29 status conference.” *Id.*

The Monitor indicated, in her most recent report, her “expectation and interim assessment that [defendants] remain in substantial compliance with requirements they have consistently met during previous compliance visits.” Doc. No. 61-1 at 11. Notably, the “three requirements assessed by the monitor to be in ‘partial compliance’ focus on staffing, recruitment, and the need to validate and gender-norm the physical training requirements Correctional Officer Trainees must meet, . . . and the validation of the gender-responsive classification instrument.” *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 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. 61-1 at 5, 21 (13th 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 significantly increased the percentage of correctional staff positions filled at Tutwiler since the filing of this action nearly seven (7) years ago.¹ However, according to the latest Monitor’s Report, as of December 31, 2021, the ADOC’s recorded combined vacancy rate of senior correctional officers, correctional officers, BCOs and CCOs was over thirty-one percent. *Id.* at 24. When CCOs are excluded from this calculation, the combined vacancy rate is thirty-seven percent.² This reflects an increase in the vacancy rate for correctional staff positions since June 30, 2021 (almost twenty-two percent vacancy including CCOs, and twenty-seven percent excluding CCOs), and only a modest increase in the vacancy rate since December 31, 2020 (almost thirty-four percent excluding CCOs). *Id.* at 22-23. The Monitor recognized the increased vacancy rate was “exacerbated by” the continuing impact of the COVID-19 pandemic. *Id.* at 26-27.

The Monitor commended ADOC on the variety of strategies undertaken to mitigate

¹ Historical correctional staff vacancy rates at Tutwiler have ranged between February 2016 and June 2019 from fifty-four percent to sixty-seven percent. See Doc. Nos. 16-1 at 11; 34-1 at 47; and 37-2 at 16.

² 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).

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; retaining the part-time services of retired uniform staff; placing supervisors in line posts when needed to maintain operations; utilizing CCOs to operate control rooms; and allowing officers from other ADOC facilities to work overtime or otherwise be temporarily assigned to Tutwiler. Doc. No. 61-1 at 26 (13th 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.* 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 Monitor also indicated that, according to the most recent staff survey, forty-five percent of respondents reported having less than three years of experience. *Id.* at 24. “It is a relatively young staff, in need of direction and support, so the recruitment and retention of experienced, qualified supervisors remains a priority.” *Id.* at 24-25. The Monitor indicated that as of December 31, 2021, the Correctional Sergeant vacancy rate has increased to fifty-two percent, compared with a thirty-eight percent vacancy rate on June 30, 2021, and a forty percent vacancy rate as of December 31, 2020. *Id.* at 22-24. Again, these increases in vacancy rates occurred, as the Monitor recognized, during the COVID-19 pandemic. *Id.* at 26-27.

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. 61-1 at 32 (13th Compliance Report). Notwithstanding this conclusion, the Monitor acknowledged her understanding that “ADOC does not have the statutory authority to 1) set APOSTC³ 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 30. 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 29-30.

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 rise to the point that the Monitor will find the State in substantial compliance with

³ 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>.

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.

**DEFENDANT'S STATEMENT REGARDING INTERNAL AND INFORMAL
BENCHMARKS AND TIMETABLES RE: CORRECTIONAL STAFFING**

Pursuant to the Order dated September 30, 2021 (Doc. No. 60), the Court directed the State "to discuss, in their part of the statement [regarding status of the consent decree], internal and informal benchmarks and timetables with regard to the recommendations and requirements discussed at the September 29 status conference." (Doc. No. 60 at 2). As it relates to internal and informal benchmarks and timetables related to correctional staffing, the State identifies the following activities and timetable for completion so that the State can then identify internal and informal benchmarks. However, to be clear, it is the State's understanding from the September 29, 2021 status conference and the Court's Order that any "internal and informal benchmarks" are aspirational goals for the State and shall not be binding on the State, modify the Consent Decree in any way, be used by any person or entity in any federal or state action to enjoin or as a basis to enjoin the State or its officers, employees, and agents, and/or be used by any person or entity in any federal or state action as evidence or to support a liability or damages finding. Instead, the "internal and informal benchmarks" are informal targets for the State based on the correctional staffing analysis, and do not control or affect the State's ability to reach partial or substantial

compliance or otherwise to obtain a modification or termination of the consent decree. The Monitor indicates that she agrees with the State's understanding, and Plaintiff does not dispute the State's understanding or contend otherwise in this case. The internal and informal benchmark procedure agreed upon in *Tutwiler*, and the impact on compliance, is only relevant to *Tutwiler* and has no bearing on any other litigation.

On January 10, 2022, Commissioner John Hamm finalized the process of creating ADOC's Resource Planning Unit (the "Unit"). Among other things, the Unit will develop a policy related to correctional staffing analyses and the staffing of security posts within ADOC's facilities, update existing staffing analyses, and enforce staffing-related decisions made by ADOC's Central Office. Russ and Meg Savage will work with the Unit to update existing staffing analyses for ADOC facilities, as required by the Phase 2A Omnibus Remedial Order in *Braggs v. Hamm*, 2:14-cv-00601-MHT-JTA, in the United States District Court for the Middle District of Alabama. The Savages also will conduct training for the Unit on correctional staffing analyses, including the process for collecting information for and completion of documentation related to a correctional staffing analysis; however, the Unit will bear primary responsibility for gathering the information for, and completing the documentation related to, updating the existing staffing analyses for *Braggs*. ADOC can then evaluate "internal and informal benchmarks" related to correctional staffing.

The State currently anticipates the following timetable related to operationalizing the Unit, updating the existing staffing analyses, and developing "internal and informal benchmarks," although subsequent developments may impact this timetable:

1. March 28, 2022: Develop ADOC's policy related to correctional staffing analyses.

2. April 1, 2022: Begin the collection of information from ADOC's major facilities (including Tutwiler) for updating the existing staffing analyses.
3. May 16-July 15, 2022: The Unit will participate in the training program on correctional staffing analysis taught by the National Institute of Corrections ("NIC").
4. May 23, 2022: Begin visiting ADOC's major facilities (including Tutwiler) to gather information for updating the existing staffing analyses.
5. June 30, 2022: Provide the *Tutwiler* Monitor with the status of these activities insofar as they relate to Tutwiler.
6. July 15, 2022: Obtain information from approximately half of ADOC's major facilities (including Tutwiler) for updating the existing staffing analyses.
7. November 1, 2022: Complete the update of the existing staffing analyses.
8. December 31, 2022: Develop internal and informal benchmarks (e.g., numbers, percentages, or rates such as fill/vacancy rate) for correctional staffing at Tutwiler.
9. January 21, 2023: Provide the *Tutwiler* Monitor with the status of any internal and informal benchmarks established for Tutwiler.

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 21st day of March, 2022.

/s/Samantha R. Miller

Samantha R. Miller
Assistant United States Attorney
United States Attorney's Office | Middle District
of Alabama
131 Clayton Street
Montgomery, AL 36104
Office: (334) 551-1710
Email: samantha.miller@usdoj.gov

Steven H. Rosenbaum
Chief, Special Litigation Section
Civil Rights Division

Laura L. Cowall
Deputy Chief, Special Litigation Section
Civil Rights Division

Joshua C. Delaney
U.S. Department of Justice
Special Litigation Section
Civil Rights Division
950 Pennsylvania Avenue NW
Washington DC 20530
Telephone: (202) 616-2446
Email: joshua.delaney@usdoj.gov

Attorneys for Plaintiff

/s/ Matthew B. Reeves

Carrie Ellis McCollum (ELL037)
Alabama Department of Corrections
General Counsel
301 South Ripley Street
P.O. Box 301501
Montgomery, AL 36130-1501
Telephone: (334) 353-3886
Email: carrie.mccollum@doc.alabama.gov

Bart G. Harmon (HAR127)
Alabama Department of Corrections
Assistant Attorney General
301 South Ripley Street
P.O. Box 301501
Montgomery, AL 36130-1501
Telephone: (334) 353-3859
Email: bart.harmon@doc.alabama.gov

Carrie G. Shaw (GRA133)
Alabama Department of Corrections
Assistant Attorney General
301 South Ripley Street
P.O. Box 301501
Montgomery, AL 36130-1501
Telephone: (334) 353-3884
Email: carrie.shaw@doc.alabama.gov

William R. Lunsford
Matthew B. Reeves
Maynard, Cooper & Gale, P.C.
655 Gallatin Street, S.W.
Huntsville, AL 35801
Telephone: (256) 551-0171
Email: blunsford@maynardcooper.com
mreeves@maynardcooper.com

Attorneys for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2022, 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/ Matthew B. Reeves
Of Counsel