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.
_____/

ORDER

This matter comes before the Court on Defendants' Amended Motion To Dismiss and Incorporated Memorandum of Law (Doc. #39)

filed on December 2, 2003. Plaintiffs filed a Memorandum in Opposition (Doc. #43) on December 8, 2003, which adopted by reference their previously filed Memorandum of Law in Opposition to Defendants' Motion To Dismiss (Doc. #26).

I.

In deciding a motion to dismiss, the Court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiffs. Christopher v. Harbury, 536 U.S. 403, 406 (2002); Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003). A complaint should not be dismissed unless it appears beyond doubt that plaintiffs can prove no set of facts that would entitle them to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted); Marsh v. Butler County, Ala., 268 F.3d 1014, 1022 (11th Cir. 2001) (en banc). To satisfy the pleading requirements of Fed. R. Civ. P. 8, a complaint must simply give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002). However, dismissal is warranted under Fed. R. Civ. P. 12(b)(6) if, assuming the truth of the factual allegations of plaintiff's complaint, there is a dispositive legal issue which precludes relief. Neitzke v. Williams, 490 U.S. 319, 326 (1989); Brown v. Crawford County, Ga., 960 F.2d 1002, 1009-10 (11th Cir. 1992). The Court need not accept unsupported conclusions of law or of mixed law and fact. Marsh, 268 F.3d at 1036 n.16.

This standard applies when the Court reviews issues of standing pursuant to a motion to dismiss. The principal purpose of standing is to ensure that the parties before the Court have a concrete interest in the outcome of the proceedings such that they can be expected to properly frame the issues. Harris v. Evans, 20 F.3d 1118, 1121 (11th Cir. 1994)(en banc), cert. denied, 513 U.S. 1045 (1994). Every complaint must contain sufficient allegations of standing, Church v. City of Huntsville, 30 F.3d 1332, 1336 (11th Cir. 1994), but the Complaint may be dismissed for lack of standing only "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Jackson v. Okaloosa County, Fla., 21 F.3d 1531, 1534 (11th Cir. 1994) (citation omitted). Standing always remains an open issue, and can be revisited under a different standard at the summary judgment stage or at trial. Church, 30 F.3d at 1336; Harris, 20 F.3d at 1121 n.4. This having been said, it is still plaintiffs' responsibility to allege facts sufficient to establish their standing, and the Court cannot "speculate concerning the existence of standing, nor should we imagine or piece together an injury sufficient to give plaintiff standing when it has demonstrated none." Miccosukee Tribe of Indians of Fla. v. Florida State Athletic Comm'n, 226 F.3d 1226, 1229-30 (11th Cir. 2000); see also Shotz v. Cates, 256 F.3d 1077, 1081 (11th Cir. 2001).

II.

The Complaint (Doc. #1) sets forth the following facts, which at this stage of the proceedings are assumed to be true. 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.

III.

Defendants contend that the Complaint must be dismissed because plaintiffs lack standing to pursue their claims. (Doc. #39, pp. 1-8).

In order to establish standing, plaintiffs must adequately allege, and ultimately prove, three elements: (1) that they have suffered an "injury-in-fact;" (2) a causal connection between the asserted injury-in-fact and the challenged conduct of the defendants; and (3) that the injury likely will be redressed by a favorable decision. Shotz, 256 F.3d at 1081, citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). These requirements are the "irreducible minimum" required by the Constitution for a plaintiff to proceed in federal court. Vermont Agency of Natural Res. v. United States, 529 U.S. 765, 771 (2000); Northeastern Fla. Chapter of Associated Gen. Contractors of America v. City of Jacksonville, 508 U.S. 656, 664 (1993).

In addition, plaintiffs seeking injunctive relief lack standing unless they allege facts giving rise to an inference that they will suffer future injury at the hands of the defendants. Shotz, 256 F.3d at 1081. "[A] party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate - as opposed to a merely conjectural or hypothetical - threat of *future* injury." Church, 30 F.3d at 1337, citing City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983); see also Bowen v. First Family Fin. Servs., Inc., 233 F.3d 1331, 1340 (11th Cir. 2000). "[P]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse

effects." Lyons, 461 U.S. at 102 (quotation omitted). Thus, for a court to have jurisdiction to award declaratory or injunctive relief, plaintiffs "must assert a reasonable expectation that the injury they have suffered will continue or will be repeated in the future." Malowney v. Federal Collection Dep. Group, 193 F.3d 1342, 1347 (11th Cir. 1999).

A.

Defendants contend that plaintiffs have failed to allege adequately that they have suffered an injury in fact. Specifically, defendants contend that plaintiffs have not, and cannot, allege that they will suffer a future injury from the use of any chemical agents because any such injury is too speculative. (Doc. #39, pp. 3-4). The Court disagrees. The Complaint alleges generally that chemical agents have been used against inmates confined with Florida Department of Corrections facilities on thousands of occasions since 1999 and that such use has increased steadily during that period of time. (Doc. #1, ¶¶ 66-71). The Complaint also alleges specifically that chemical agents have been used against the named plaintiffs for various unlawful reasons on multiple occasions in the last several years. (Doc. #1, ¶¶ 92-310). In this regard, the Complaint provides specific information regarding each plaintiff, including the dates of the incidents at issue, the names of the individuals involved, and the specific harm that each plaintiff suffered. The Court concludes that these

factual allegations are sufficient both to allege that each plaintiff has suffered an injury in fact and to allege that each plaintiff faces a real and immediate threat of future injury.

B.

Defendants contend that plaintiffs have failed to allege adequately that there is a causal connection between the asserted injury-in-fact and the challenged conduct of the defendants. (Doc. #39, pp. 4-7). In support of this contention, however, defendants rely on disputed issues of fact outside the confines of the Complaint. For example, defendants argue that "any injury occasioned by Plaintiffs is attributable to their steadfast refusal to conform their behavior to acceptable standards; it is not attributable to Defendants' actions." (Doc. #39, pp. 4-5). Such facts, which are not contained in the Complaint, are not properly considered when deciding a motion to dismiss. GJR Invs., Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1364 n.6 (11th Cir. 1998). Further, defendants have not offered any evidence in support of these assertions such that the Court would be required to convert the motion to one for summary judgment. Fed. R. Civ. P. 12(b) (last sentence). After reviewing the Complaint, the Court concludes that plaintiffs have alleged adequately that there is a causal connection between the asserted injury-in-fact and the challenged conduct of the defendants. (E.g., Doc. #1, ¶¶ 90-91,

99, 122, 130, 152, 161, 180, 195, 199, 210, 220, 223, 231-32, 237, 252, 275, 294, 303-04).

C.

Defendants contend that plaintiffs have failed to allege adequately that the injuries they have suffered likely will be redressed by a favorable decision. (Doc. #39, pp. 7-8). As explained above, plaintiffs are seeking declaratory and injunctive relief. (Doc. #1, pp. 64-66). Defendants do not assert that the Court lacks the authority to award declaratory and/or injunctive relief in this action. Instead, defendants contend that the specific injunctive relief that plaintiffs seek is contrary to the requirements for prospective relief set forth in the Prison Litigation Reform Act (the PLRA), 18 U.S.C. § 3626(a)(1). (Doc. #39, p. 8). The Court disagrees.

Section 3626(a)(1)(A) states that a court "shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." Therefore, as long as this standard is met, the PLRA allows the Court to grant prospective injunctive relief. Defendants do not contend otherwise. Such relief would plainly redress the injuries that plaintiffs alleged to have suffered.

For the reasons discussed above, the Court concludes that plaintiffs have alleged adequately their standing to pursue the present action.

IV.

Defendants contend that the Complaint must be dismissed for failure to state a claim under the Eighth Amendment to the United States Constitution. (Doc. #39, pp. 8-9).

"The Eighth Amendment, which applies to the States through the Due Process Clause of the Fourteenth Amendment, prohibits the infliction of 'cruel and unusual punishments' on those convicted of crimes." Wilson v. Seiter, 501 U.S. 294, 296-97 (1991) (internal citation omitted). The Supreme Court has recognized that the unnecessary and wanton infliction of pain and suffering constitutes cruel and unusual punishment forbidden by the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992), citing Whitley v. Albers, 475 U.S. 312, 319 (1986). The question whether a particular measure taken by prison officials against inmates inflicts unnecessary and wanton pain and suffering turns on "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Hudson, 503 U.S. at 6, quoting Whitley, 475 U.S. at 320-21. Factors to consider in answering this question include: (1) the need for the application of force; (2) the relationship between the need and the amount of force used; (3) the

extent of the injury inflicted; and (4) the extent of the threat to the safety of staff and inmates. Whitley, 475 U.S. at 321.

Defendants contend that plaintiffs have failed to allege facts which support a widespread practice of engaging in unjustified, excessive and malicious use of chemical agents. Further, defendants contend that plaintiffs have failed to provide notice of their exact claims because they have not adequately specified the type of segregation for these plaintiffs. (Doc. #39, p. 9). The Court disagrees. After reviewing the allegations in the Complaint, as outlined above, the Court concludes that plaintiffs have alleged adequately a claim under the Eighth Amendment to the Constitution because it does not appear beyond doubt that plaintiff can prove no set of facts that would entitle it to relief. Brewer-Giorgio v. Producers Video, Inc., 216 F.3d 1281, 1286 n.6 (11th Cir. 2000).

Accordingly, it is now

ORDERED:

Defendants' Amended Motion To Dismiss (Doc. #39) is **DENIED**. Defendants shall file their answer to the Complaint (Doc. #1) within **TWENTY (20) DAYS** of the date of this Order.

DONE AND ORDERED at Fort Myers, Florida, this 14th day of July, 2004.

JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

Copies:
Hon. Douglas N. Frazier
Counsel of record
DCCD
DCLC