

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

RYAN DECOTEAU,
ANTHONY GOMEZ, and
DOMINIC DURAN,
on behalf of themselves and others similarly situated,

Plaintiffs,

v.

RICK RAEMISCH, in his official capacity as the Executive Director of the Colorado
Department of Corrections, and

TRAVIS TRANI, in his official capacity as the Warden of the Colorado State Penitentiary and
the Centennial Correctional Facility.

Defendants.

CLASS ACTION COMPLAINT

Plaintiffs Ryan Decoteau, Anthony Gomez, and Dominic Duran (the “Named Plaintiffs”),
and others similarly situated (the “class”), all inmates who are currently or have been previously
incarcerated in the Colorado State Penitentiary (“CSP”), by and through undersigned counsel,
Lindsey Webb, Lauren Fontana, and Amy Robertson, hereby submit this Class Action Complaint
for violations of their rights under the Eighth and Fourteenth Amendments of the United States
Constitution.

I. INTRODUCTION

1. Defendants refuse to provide outdoor exercise to inmates housed in administrative segregation at CSP. Administrative segregation is the most restrictive form of imprisonment imposed by the Colorado Department of Corrections (“CDOC”). At CSP, inmates in administrative segregation spend a minimum of 23 hours per day by themselves in a cell that measures approximately 80 square feet.

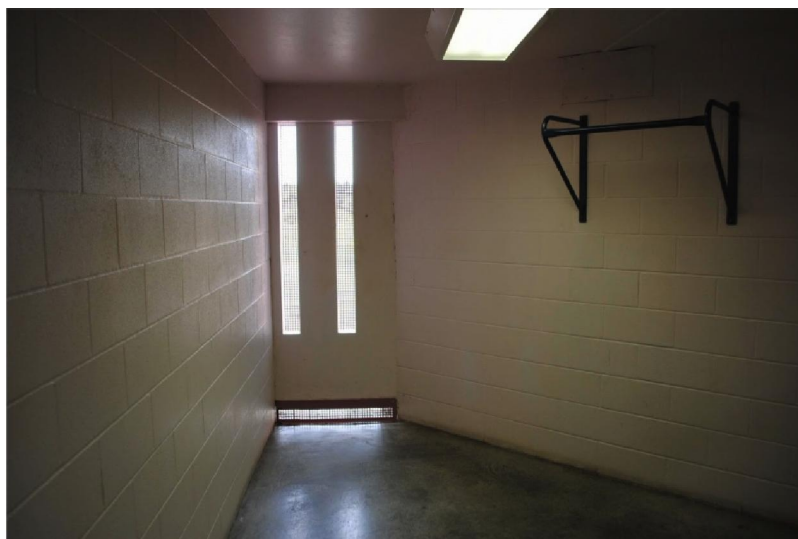


Above: Picture of administrative segregation cell at CSP

2. Except for medical or legal visits, inmates in administrative segregation are only allowed to leave their cells when they are taken to the shower or to out-of-cell exercise. The exercise area in administrative segregation is simply another cell called a recreation room. The

inmates in administrative segregation have access to the recreation room for a maximum of one hour per day, five days per week. The time allotted for access to the recreation room is not guaranteed and is frequently cancelled due to prison lockdowns, staff shortages, and other administrative issues.

3. The recreation room is a completely indoor room with a floor, ceiling, and irregularly angled walls. The recreation room is small, only approximately ten square feet larger than the cells in which inmates are housed for the vast majority of their lives. The recreation room is not outside, and there is virtually no opportunity for individuals in the recreation room to experience the elements. Except when immediately adjacent to the small open grate, inmates cannot feel the wind; they cannot feel the sun on their face; they cannot feel the rain or the snow. This deprivation begins the moment inmates are placed at CSP, and does not end until they are transferred to a facility offering outdoor exercise or released. This claustrophobic room contains only a pull-up bar, and there is no opportunity for inmates to run, except in a small circle.



Above: Picture of recreation room at CSP.

4. The recreation room has two narrow windows measuring approximately five inches wide by three feet long, which are covered by thick metal grates. These grates block what little access to the elements inmates may have. In order to feel a breeze, the snow, or the rain, an inmate must press his face up to the metal grates and hope that the wind is in his favor. Judge R. Brooke Jackson in *Anderson v. Colorado*, 887 F. Supp. 2d 1133 (D. Colo. 2012), held that this configuration violates the Eighth Amendment prohibition against cruel and unusual punishment.



Above: Picture of windows in recreation room.

5. Despite Judge Jackson's holding in *Anderson*, Defendants still do not provide outdoor exercise at CSP. In many cases, Defendants have simply transferred inmates who have challenged the lack of outdoor exercise rather than providing required outdoor exercise at CSP. This repeated behavior by Defendants has made a class action necessary to obtain relief for those inmates at CSP. Defendants have been deliberately indifferent to the substantial mental and

physical health risks implicated by their decision to deny prisoners in administrative segregation access to outdoor exercise.

II. JURISDICTION AND VENUE

6. This action arises under the Constitution and laws of the United States and is brought pursuant to Title 42 U.S.C. § 1983. This Court possesses subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343, and pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Jurisdiction supporting Plaintiffs' claim for attorney's fees and costs is conferred by 42 U.S.C. § 1988.

7. Venue of this action is proper in the District of Colorado under 28 U.S.C. § 1391(b). All of the events alleged herein occurred in the State of Colorado, and all of the parties were residents of the State at the time of the events giving rise to this litigation.

III. PARTIES

8. Plaintiff RYAN DECOTEAU is a citizen of the United States and resident of Colorado and is, and at all times relevant to this action has been, an inmate incarcerated by CDOC. Mr. Decoteau is currently housed in an administrative segregation unit at CSP. Mr. Decoteau has suffered and will continue to suffer deprivations of his Eighth and Fourteenth Amendment rights as a result of being denied access to outdoor exercise at CSP.

9. Plaintiff ANTHONY GOMEZ is a citizen of the United States and resident of Colorado and is, and at all times relevant to this action has been, an inmate incarcerated by CDOC. Mr. Gomez is currently housed in an administrative segregation unit at CSP. Mr. Gomez

has suffered and will continue to suffer deprivations of his Eighth and Fourteenth Amendment rights as a result of being denied access to outdoor exercise at CSP.

10. Plaintiff DOMINIC DURAN is a citizen of the United States and resident of Colorado and is, and at all times relevant to this action has been, an inmate incarcerated by CDOC. Mr. Duran is currently housed in an administrative segregation unit at CSP. Mr. Duran has suffered and will continue to suffer deprivations of his Eighth and Fourteenth Amendment rights as a result of being denied access to outdoor exercise at CSP.

11. Defendant RICK RAEMISCH is a citizen of the United States and a resident of Colorado. Defendant Raemisch is the Executive Director of CDOC, and is the state official that manages, supervises, and controls the State of Colorado's correctional facilities where the Named Plaintiffs and class are or have been incarcerated. Defendant Raemisch is responsible for developing and implementing, and has the authority to establish and alter, the policies and practices which have resulted in the violation of the Named Plaintiffs' and the class's constitutional rights while incarcerated at CSP, including the denial of outdoor exercise opportunities. All of Defendant Raemisch's acts or omissions alleged in this action have been and are being carried out under color of state law, and he is being sued in his official capacity.

12. Defendant TRAVIS TRANI is a citizen of the United States and resident of Colorado and, as the warden of CSP, is responsible for the custody and care of all inmates while they are incarcerated at CSP. Defendant Trani manages, supervises, and controls all employees and operations at CSP. Defendant Trani is responsible for developing and implementing, and has the authority to establish and alter, the policies and practices which have resulted in the violation

of the Named Plaintiffs' and the class's constitutional rights while incarcerated at CSP, including the denial of outdoor exercise opportunities. All of Defendant Trani's acts or omissions alleged in this action have been and are being carried out under color of state law, and he is being sued in his official capacity.

IV. CLASS ACTION ALLEGATIONS

16. The Named Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all prisoners who are now or will in the future be housed in administrative segregation at CSP and who are now or will in the future be subjected to Defendants' policy and practice of refusing to provide access to outdoor exercise to inmates in administrative segregation at CSP.

17. The size of the class is so numerous as to make joinder impracticable. There are more than 500 prisoners currently being housed in administrative segregation at CSP, and many more prisoners who may be housed there in the future.

18. There is at least one common question of law and fact that applies to all members of the class, namely, whether Defendants' policy and practice of denying outdoor exercise to all inmates in administrative segregation at CSP constitutes a violation of the inmates' Eighth Amendment right to be free from cruel and unusual punishment.

19. The Named Plaintiffs are all currently incarcerated inmates in administrative segregation at CSP; therefore, their claims are typical of the claims of the entire class.

20. The Named Plaintiffs, through counsel, will fairly and adequately protect the interests of the class as a whole. Among other things, the Named Plaintiffs do not have any

conflicts with the class and have retained counsel experienced in prison and class action litigation.

21. Defendants have acted on grounds that apply generally to the class as a whole, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the entire class. Specifically, Defendants have denied outdoor exercise to the class as a whole, and that violation can be remedied by an injunction requiring, among other things, that proper outdoor exercise be made available to the class.

V. FACTUAL ALLEGATIONS

A. Defendants refuse to provide outdoor exercise access at CSP, and thus pose a substantial risk to the mental and physical health of class members.

22. At CSP, inmates in administrative segregation are housed in single-person cells where they spend at least 23 hours per day.

23. The total square footage of the single-person cell (not counting the encumbered space taken up by a protruding sleeping platform and toilet) is approximately 80 square feet.¹ The cells have only one narrow window made of thick safety glass, measuring approximately 44.5 inches tall by 4.75 inches wide and recessed approximately 5.5 inches deep into the cell wall. This window is often located in the rear corner of the cell, over the cell's raised, immovable sleeping platform, resulting in limited views and natural light.

24. At all times relevant to this action, Defendants, in their administration and operation of CSP, have maintained a policy and practice of denying outdoor exercise, or any

¹ These cells measure approximately 13 feet long by 6.5 feet wide at their widest point; they narrow to approximately 4 feet 11 inches wide at certain points. The ceilings are also less than 8 feet high.

regular opportunity to be outside, to all inmates housed in administrative at CSP, including the Named Plaintiffs.

25. CSP allows inmates in administrative segregation only five hours per week of out-of-cell time in a recreation room.

26. In practice, Defendants' provision of out-of-cell time for "exercise" is frequently more limited, due to facility lockdowns or for other reasons.

27. Lockdowns occur for a variety of reasons, including when there is an emergency at the prison, when there is a disturbance at the prison, or when there is a shortage of staff at the prison.

28. Inmates housed in administrative segregation at CSP only receive "exercise" time in an indoor cell. This recreation room is not outside. It is inside the building and is entirely enclosed by irregularly angled walls, a ceiling, and a floor. The room is triangular in shape and measures approximately 13 feet long by 9 feet wide, and provides roughly 90 square feet of floor space. This is only marginally larger than the approximately 80 square-foot cells in which inmates are housed.



Above: Picture of recreation room at CSP.

29. In one corner of the recreation room there are two narrow windows that measure approximately 5 feet high by 5 inches wide, and are recessed into the wall by a depth of approximately 7 inches. Inside each opening, Defendants have placed thick metal grating with approximately 1-inch square holes, through which only a small amount of air is able to pass.

30. The only equipment in the recreation room is a single pull-up bar.

31. As a result of Defendants' policy and practice, the inmates at CSP in administrative segregation are not allowed outside and do not receive the physical and mental health benefits of being outside.

32. Inmates in administrative segregation at CSP are also denied the benefits of feeling natural unfiltered light enter their pupils. Some class members have experienced

deterioration in eyesight, the lack of outdoor exercise has negatively affected the mental health of some members of the class, and all class members are at risk of such harm.

33. Defendants have also denied the inmates in administrative segregation at CSP access to any meaningful physical exercise opportunity that is truly outside. Rather, Defendants' policy and practice at CSP is to escort the inmates a short distance from their approximately 80-square foot cell to an approximately 90-square foot cell. This recreation room lacks sufficient space or equipment to engage in and receive the health benefits of exercise and of being outside. As a result, the inmates in administrative segregation at CSP are unable to experience the recognized benefits of exercising and are suffering -- and are at risk of suffering -- physical and mental health injuries.

34. Defendants' deprivation of the opportunity to exercise outside to inmates in administrative segregation at CSP has posed, and will continue to pose, a substantial risk of serious harm to the inmates' mental and physical health.

B. Defendants knew their actions posed a substantial risk of serious harm, and they deliberately disregarded it.

35. At all times relevant to this case, Defendants had and continue to have knowledge that their acts and omissions denying outdoor exercise to inmates in administrative segregation pose a substantial risk of serious harm to the inmates.

36. In 1987, the Tenth Circuit recognized that "regular outdoor exercise is extremely important to the psychological and physical well being of inmates." *Bailey v. Shillinger*, 828 F.2d 651, 653 (10th Cir. 1987).

37. CDOC began construction of CSP in 1990 - three years after the Tenth Circuit's ruling in *Bailey*.

38. On February 1, 2011, CDOC issued Administrative Regulation 1000-01, which states that it is the policy of the CDOC to ensure all facilities provide a comprehensive recreation program that includes leisure-time activities, outdoor exercise, and recreation activities appropriate to the offenders.

39. Despite the new CDOC administrative regulation, CSP made no changes to its inadequate recreation room.

40. In addition, in October of 2011, the CDOC commissioned a study of its administrative segregation policies through the Prison Division of the National Institute of Corrections, known as the "Austin–Sparkman Report." The resulting report found that outdoor recreation was deficient at CSP. In this report, correctional experts expressly warned Defendant Raemisch's predecessor, Tom Clements, that the denial of outdoor exercise at CSP violated correctional standards and that this practice is extreme and unlike the operation of any other facility in the United States. *See Austin, J., et al., Colorado Department of Corrections Administrative Segregation and Classification Review*, National Institute of Corrections Report, 18 (October 2011).

41. Despite the results of the "Austin–Sparkman" report commissioned by CDOC, CSP made no changes to its inadequate recreation room.

42. Further, on August 24, 2012, Judge Jackson of the United States District Court for the District of Colorado issued his opinion in *Anderson v. Colorado*, finding that the Defendants

were put on notice that “CSP is the only supermax facility in the country, including the notorious federal supermax prison at Florence, Colorado, that does not provide some opportunity for outdoor exercise.” 887 F. Supp. 2d at 1141 (holding that CSP violated the Eighth Amendment because the recreation room was not outside and therefore offered no meaningful opportunity for inmates to exercise out-of-doors).

43. Judge Jackson also held that CDOC was deliberately indifferent to the physical and mental health of Mr. Anderson, an inmate in administrative segregation at CSP who was denied opportunity for exercise out-of-doors, thereby offering further notice to the Defendants that they were violating the Eighth Amendment. *Id.* at 1142.

44. Despite the *Anderson* ruling, CSP made no changes to its inadequate recreation room; instead they simply transferred Mr. Anderson to another facility.

45. Therefore, Defendants have been on notice that the lack of outdoor exercise at CSP is a violation of the Eighth Amendment based on Judge Jackson’s decision in *Anderson*; additionally, several other inmates have filed lawsuits regarding this same issue at CSP since 2009. *See, e.g., Moore v. Arguello*, No. 13-cv-1861-WJM-BNB (D. Colo.); *Oakley v. Raemisch*, No. 10-cv-03052-CMA-MJW (D. Colo.); *Dunlap v. Zavaras*, No. 09-cv-01196-WJM-MEH (D. Colo.); *Parker v. Colo. Dep’t of Corr.*, No. 08-CV-00737-MSK-KLM (D. Colo.).

46. Defendants Raemisch and Trani knew or had constructive knowledge of clearly established law and correctional standards. The established law and correctional standards state that prolonged and continuous denial of outdoor exercise violates the Eighth and Fourteenth

Amendments. Their knowledge, at the very least, was based on the events and judicial findings described above.

47. The Named Plaintiffs have all exhausted their administrative remedies regarding outdoor exercise, thereby giving further notice to the Defendants that the outdoor exercise at CSP is deficient.

48. Defendants Raemisch and Trani have the ultimate duty and power to approve the policy change that could have ended the constitutional violations at issue in this case and, despite having had ample opportunity to do so, have refused to take such action, causing substantial injury to the Named Plaintiffs and other class members. Since becoming Executive Director of CDOC, Defendant Raemisch has participated in an annual review of any and all CDOC policy changes recommended by staff and, through his participation, has had the ultimate, personal responsibility and discretion for approving or denying such changes.

C. Named Plaintiff Allegations

49. The Named Plaintiffs are Mr. Decoteau, Mr. Gomez, and Mr. Duran. Plaintiffs re-allege and reincorporate by reference all other allegations in this Complaint herein.

50. The Named Plaintiffs have not had an opportunity to engage in regular outdoor exercise during the entire period of their incarceration in administrative segregation at CSP.

51. While in administrative segregation, the Named Plaintiffs have not had the opportunity to experience any natural elements, including the sun, wind, rain, snow, aside from the small amount of those elements that make it through the narrow grates of the window in the recreation room.

52. The harms described above are continuing and, unless enjoined by this Court, will continue in the future.

1. Ryan Decoteau

53. Mr. Ryan Decoteau was born on July 10, 1983, and was first received for incarceration by CDOC on or about April 14, 2004, at the age of 21 years.

54. Defendants transferred Mr. Decoteau to a cell in an administrative segregation housing unit at CSP on or about February 18, 2011.

55. Through the denial of access to outdoor exercise by Defendants, Mr. Decoteau has not had access to outdoor exercise for two years and ten months.

56. As a result of Defendants' denial of outdoor exercise, Mr. Decoteau has experienced a number of mental and physical problems.

57. As a result of Defendants' policy and practice, for a period of approximately two years and ten months, Mr. Decoteau has not been outside and has not received the physical and mental health benefits of being outside, including but not limited to the benefits of exposing his skin to sunlight and feeling natural, unfiltered light enter his pupils.

58. Mr. Decoteau is currently incarcerated at CSP. If CDOC transfers him to another facility in the future, he will remain at risk of being transferred back to CSP. Absent a change in CDOC policy and practice, or an injunction issued by this Court, Mr. Decoteau remains subject to denial and at risk of being denied access to outdoor exercise, in violation of the Eighth and Fourteenth Amendments.

2. Anthony Gomez

59. Mr. Anthony Gomez was born on April 3, 1985, and was first received for incarceration by CDOC on or about November 15, 2005, at the age of 20 years.

60. Defendants placed Mr. Gomez in administrative segregation at CSP on or about October 2, 2008.

61. Mr. Gomez remained at CSP for over three years until he was transferred to Sterling Correctional Facility on or about November 4, 2011.

62. During his initial time at CSP, Mr. Gomez was denied outdoor exercise for over three years and one month.

63. Mr. Gomez was transferred back to CSP on or about March 6, 2013, and remains there.

64. As a result of Defendants' denial of outdoor exercise, Mr. Gomez has experienced a number of mental and physical problems.

65. As a result of Defendants' policy and practice, for a cumulative period of approximately three years and ten months, Mr. Gomez has not been outside and has not received the physical and mental health benefits of being outside, including but not limited to the benefits of exposing his skin to sunlight and feeling natural, unfiltered light enter his pupils.

66. Mr. Gomez is currently incarcerated at CSP. If CDOC transfers him to another facility in the future, he will remain at risk of being transferred back to CSP. Absent a change in CDOC policy and practice, or an injunction issued by this Court, Mr. Gomez remains subject to

denial and at risk of being denied access to outdoor exercise, in violation of the Eighth and Fourteenth Amendments.

3. Dominic Duran

67. Mr. Dominic Duran was born on November 3, 1984, and was first received for incarceration by CDOC on or around August 10, 2006, at the age of 22 years.

68. On February 1, 2013, Defendants transferred Mr. Duran to a cell in an administrative segregation housing unit at CSP.

69. Through the denial of access to outdoor exercise by Defendants, Mr. Duran has not had access to outdoor exercise for approximately ten months.

70. As a result of Defendants' denial of outdoor exercise, Mr. Duran has experienced a number of mental and physical problems.

71. As a result of Defendants' policy and practice, for a period of approximately ten months, Mr. Duran has not been outside and has not received the physical and mental health benefits of being outside, including but not limited to the benefits of exposing his skin to sunlight and feeling natural, unfiltered light enter his pupils.

72. Mr. Duran is currently incarcerated at CSP. If CDOC transfers him to another facility in the future, he will remain at risk of being transferred back to CSP. Absent a change in CDOC policy and practice, or an injunction issued by this Court, Mr. Duran remains subject to denial and at risk of being denied access to outdoor exercise, in violation of the Eighth and Fourteenth Amendments.

VI. CLAIM FOR RELIEF

42 U.S.C. § 1983 Eighth Amendment Violation

73. The Named Plaintiffs incorporate herein by reference all other paragraphs of this Complaint as if those allegations were set out explicitly herein.

74. The Eighth Amendment to the United States Constitution forbids cruel and unusual punishment.

75. Defendants have housed and continue to house all inmates in administrative segregation at Colorado State Penitentiary indoors without any opportunity for outdoor exercise.

76. Defendants' denial of outdoor exercise is excessive and disproportionate, and therefore constitutes cruel and unusual punishment.

77. All actions taken by Defendants were committed deliberately and intentionally.

78. Defendants' decision to deny any opportunity for outdoor exercise to all inmates in administrative segregation at CSP has caused serious harm to the physical and mental health of those inmates.

79. Defendants' decision to deny any opportunity for outdoor exercise to all inmates in administrative segregation at CSP creates a serious risk of substantial harm to the physical and mental health of those inmates.

80. Defendant Trani and Defendant Raemisch, and their predecessors, acting under color of state law, knew and continue to know that denying the opportunity to engage in regular outdoor exercise has harmed, and continues to pose a substantial risk of serious harm to, the mental and physical health of inmates in administrative segregation.

81. Defendants were aware and continue to be aware of the past harm and continuing substantial risk of serious harm. The *Anderson* court held that, at least as of May 3, 2010, when Mr. Anderson filed his complaint, CSP was already on notice that its failure to provide outdoor exercise to inmates in administrative segregation was unconstitutional. *Anderson*, 887 F. Supp. 2d at 1141.

82. Even though Defendants are aware of this harm and continuing risk of harm, Defendants have consciously disregarded the harm and risk by failing to improve conditions at CSP, or to provide inmates in administrative segregation at CSP access to sunlight, fresh air, the elements, or outdoor exercise.

83. An actual and immediate controversy exists between the Named Plaintiffs and Defendants, and the Named Plaintiffs and the class are entitled to declaratory and injunctive relief. Defendants are currently enforcing the challenged policy and practice at CSP. As a result of this policy, Named Plaintiffs and class members have suffered irreparable injury. Absent a declaration of their rights and issuance of a permanent injunction by this Court, the Named Plaintiffs and the class will continue to suffer from a real and immediate threat of being subject to the challenged policy and practice, suffering further irreparable injury.

84. Defendants have acted and continue to act deliberately and with indifference to the past harm and continuing risk of harm, and continue to deny any opportunities for any outdoor exercise to administrative segregation inmates at CSP.

85. The Named Plaintiffs and the class have suffered, and continue to suffer, from significant mental and physical harm and damage as a result of Defendants' acts and omissions.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor against Defendants, and award them all relief as allowed by law, including but not limited to, the following:

1. That this Court assume jurisdiction;
2. That this Court certify the class identified in paragraph 16 pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
3. That this Court declare that the acts, omissions, policies, practices and conditions described above violated and continue to violate the Eighth and Fourteenth Amendments;
4. That this Court issue an injunction ordering Defendants to comply with the Eighth Amendment with respect to all inmates at Colorado State Penitentiary by providing regular access to outdoor exercise;
5. That this Court award Plaintiffs their reasonable attorneys' fees and costs; and
6. That this Court award such additional or alternative relief as may be just, proper and equitable.

JURY DEMAND: Plaintiffs seek a trial to the Court.

Dated this 17th day of December, 2013.

Respectfully Submitted,

s/ Amy F. Robertson

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