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[ADDITIONAL COUNSEL LISTED BELOW]

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Victor Parsons; Shawn Jensen; Stephen Swartz; Dustin Brislan; Sonia Rodriguez; Christina Verduzco; Jackie Thomas; Jeremy Smith; Robert Gamez; Maryanne Chisholm; Desiree Licci; Joseph Hefner; Joshua Polson; and Charlotte Wells, on behalf of themselves and all others similarly situated; and Arizona Center for Disability Law,

Plaintiffs,

v.

Charles Ryan, Director, Arizona Department of Corrections; and Richard Pratt, Interim Division Director, Division of Health Services, Arizona Department of Corrections, in their official capacities,

Defendants.

No. CV 12-00601-PHX-NVW (MEA)

SUPPLEMENTAL REPORT OF ELDON VAIL

1. I submit this report as a result of additional materials received from the Defendants. These materials were not available at the time of my rebuttal report. My opinions have not changed as a result of my review of this additional information.

2. In my rebuttal report,[1] I indicated that I had not yet received a post order for the "rover" position referenced in Dr. Seiter's report. I have now had a chance to review that post order and it confirms my previous conclusion that this position does nothing to ameliorate the extreme social isolation experienced by inmates housed in the Arizona Department of Corrections (ADC) isolation units.[2] In fact, the instruction in this post order is for the rover to limit his verbal interaction with inmates to "a few seconds."[3] Apparently the purpose of this position is largely to circulate to make sure inmates aren't hurting themselves while housed in the isolation units. I have never heard of a similar position deployed for this purpose in any jurisdiction of which I am familiar. The numerous acts of self-harm, frequent use of force incidents, and pervasive mental health problems apparent in the inmates on these units, which are exacerbated or caused by the conditions of extreme isolation, are deeply concerning and create serious risks for both inmates and staff. However, ADC's creation of the "rover" position is an inadequate response to the risks its policies and practices create for inmates housed in the system's isolation units. The safer, more appropriate and professional approach would be to remove mentally ill inmates from the isolation units and improve the conditions of confinement for all inmates who remain incarcerated in those units by decreasing the levels of extreme social isolation and idleness. By creating a "rover" position directly ordered NOT to interact with inmates, ADC fails to confront the fundamental problem in the operation of its isolation units. The result is that these staff members are likely to interact with inmates only after some harm has occurred. Instead of using staff primarily in crisis intervention roles, ADC should work to orient their staff to talk to the inmates and develop relationships so that they foster an environment where harm is reduced because of the positive interaction between staff and inmates. Such an environment reduces risks for all. If ADC created more opportunity for meaningful

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[1] Vail declaration 1/31/14, paragraph 31.
[2] ADC S000557-000561.
[3] ADC S000560 and 000561.

interaction between staff and inmates the frequency of self-harm and suicide attempts in the ADC isolation units, and the pain inflicted on all inmates in isolation, but especially the seriously mentally ill individuals would be dramatically reduced.

3. The materials produced by Defendants also included additional Use of Force (UOF) videos and reports cited in Dr. Seiter's report as the basis for his opinions regarding ADC's use of chemical spray. Contrary to Dr. Seiter's conclusions, these materials reinforce the concern articulated in my previous reports that ADC's use of chemical sprays on seriously mentally ill inmates, many of whom are also taking psychotropic medications, creates a risk of unnecessary harm.

4. In a UOF report from Kasson it describes a mentally ill inmate who refuses to submit to restraints in order to be placed in a mental health watch cell.[4] There is no reference in the report that the inmate's actual behavior presented any kind of imminent threat. He simply said that he was unable to move. After being ordered to comply the inmate was sprayed with Oleoresin Capsicum (OC) three separate times and still did not comply. The inmate was then forcibly extracted from the cell. As I said in a previous declaration, "As is the routine practice in many prison systems across the country, mental health interventions should be occurring with all inmates known to be mentally ill prior to implementing use of force in a controlled situation, regardless of whether or not they are housed in a designated mental health unit. In my experience, such interventions will definitely reduce the need to actually use force, which will in turn improve the ability to manage the inmate in the correctional environment, and not inflict unnecessary harm".[5] This example, along with others, supports my opinion that the absence of this requirement in policy and practice in the ADC regarding planned UOF events with mentally ill inmates is deficient and results in use of force that is unnecessary.

5. A review of the related video of this planned UOF reveals additional problems.[6] In this planned use of force there is very poor planning. The staff are not prepared to protect themselves or the inmate once the UOF event begins. They are not

[4] ADC S000177-000188.
[5] Vail declaration 1/31/14, paragraph 30.
[6] ADC S000233, 20121207100952.MP4.

equipped with respirators. Some staff put handkerchiefs over their mouth and nose. After two unsuccessful administrations of OC the staff decide they will need to perform a cell extraction but they are not suited up and prepared to do so. The inmate is left in his cell for approximately ten minutes, exposed to OC while the staff gets suited up in protective equipment in order to perform the cell extraction. Once prepared, the inmate is sprayed again. Staff then developed their tactical cell entry plan in front of the inmate's cell, in full view and hearing of him and the other inmates on the tier. Once the staff do enter the cell you can hear them coughing as they are effected by the OC spray. This lackadaisical custody approach creates a risk of harm to the inmate and to the staff. It is likely a reflection of a common understanding that the situation they are in is not a serious risk and illustrates their casual use of OC on inmates when it is not necessary. A better approach would have been to bring mental health staff to the cell front and attempt to talk the inmate into cooperating. Mental health interventions may not be successful at de-escalating a situation 100% of the time, but in my professional experience and opinion, such an intervention often works and the attempt is absolutely necessary because the goal of policy and practice should be to eliminate the need for use of force. This is especially the case in a situation like this one where there is no imminent threat. Mental health intervention should be required by policy in such situations. The fact that ADC does not require these interventions increases the unnecessary use of force on inmates with mental illness.

6. Most troubling to me about this video and in another made available to me[7] is that the staff cuff the inmate behind his back and place him on a gurney face down while they transport him to decontamination and placement in a mental health watch cell. This practice is extremely dangerous and has been associated with positional asphyxia. The US Department of Justice, National Law Enforcement Technology Center instructs, "As soon as the subject is handcuffed, get him off his stomach".[8] This apparently routine practice should be eliminated and ADC should follow the guidance of the DOJ.

[7] ADC S000233, 20121227085906.MP4.

[8] US Department of Justice, National Law Enforcement Technology Center, *Positional Asphyxia—Sudden Death*, June 1995, page 2, available at https://www.ncjrs.gov/pdffiles/posasph.pdf.

7. This video of the use of force at Florence Kasson unit illustrated another troubling aspect of ADC's treatment of mentally ill prisoners. During my inspections of ADC facilities in July and August of 2013, inmates told me that placement in a mental health watch cell sometimes occurred simply as punishment and not because someone was actually at risk for suicide or self-harm. The conditions of confinement for the mental health watch cells are much more restrictive than any other kind of confinement I have witnessed in ADC. Inmates are forced to wear suicide smocks and are stripped of personal property. They even have to ask for toilet paper. Quite understandably, most inmates see placement on watch as punishment. In this video, you can actually hear custody staff threaten to place an inmate on watch as punishment.

8. In this video the inmate is incapacitated on his stomach with his hands cuffed behind his back and is on a gurney in a hallway.[9] An unidentified staff member says to him that if he starts to fight the officers he will be placed in a watch cell. If he does not, he can return to a regular cell. I believe the implication here is clear. While fighting the officers can never be condoned and must be addressed, the proper response would be to get the inmate into a secure cell where he can't fight the officers. Threatening to place him in a watch cell graphically illustrates that this is about punishment –rather than the prevention of self-harm—and that such a placement is actually meant to be punishment without due process. It is also another clear illustration of unprofessional conduct in ADC's use of force and its treatment of mentally ill prisoners.

9. In another use of force video I reviewed from Lumley, the willingness to quickly use OC spray when it might not have been necessary is again illustrated.[10] In this situation the inmate is angry about a recent disciplinary hearing. She is in her cell armed with a weapon and threatens the hearing officer who is not present on the scene. There is another inmate in the cell with her. The officer provides proper notification of the situation and requests a supervisor and a response team. The officer then coaxes the inmate to lie down her weapon and back away from the cell door so that her cell partner can exit the cell. This occurs as directed but rather than close the door after the cell partner leaves and

[9] ADC S000233, 20121227085906.MP4.
[10] ADC S000234.

wait for a team, the officer decides to administer several seconds of OC spray while the cell door is opened. The officer then pulls the inmate out of the cell by himself and takes her to the ground. The inmate's face hits the pavement and you can see the blood from the injury caused by this action. The cell door should have been closed after the cell partner exited the cell and the officer should have waited until a team could be assembled. The opportunity for a mental health intervention was missed and if that was unsuccessful, a planned cell extraction could have taken place once the team arrived and the injury to the inmate may well have been avoided. The review by the officer's supervisors failed to see how the officer increased risk to himself and to the inmate from his rash action of unnecessarily initiating use of force on his own. Their internal use of force review process was not meaningful.

10. In my first report I wrote extensively about the ADC's policy of unnecessarily assigning inmates to maximum custody.[11] In my second report I expanded on this concern.[12] The ADC makes no distinction between maximum custody general population and placement in isolation. If an inmate is designated as maximum custody based on Arizona's classification policy, he or she will be placed in an isolation unit, regardless of whether or not such extreme segregation and social isolation is necessary for the actual safety of the inmate or others. In the additional materials made available there is a lengthy study of the ADC classification system.[13] The study concludes that the ADC system is "valid" and makes recommendations for improvement.[14] As I said in my first report, "A prison system's classification scoring system, no matter if it has or has not been validated bears no necessary relationship to the actual conditions of confinement found in that system's prisons".[15] Despite its irrelevance to conditions of confinement and the harm

[11] Vail declaration, November 8, 2013, paragraphs 21-25.

[12] Vail declaration, January 31, 2013, paragraphs 10- 16.

[13] Validation of the Arizona Department of Corrections Objective Classification System: Final Report, Patricia L. Hardyman, June 26, 2013 (hereinafter "Hardyman report") (ADC_S000747-837).

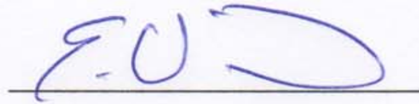
[14] The report lists a document entitled "Maximum Custody Placement Process" as an ADC classification document provided to the researchers by ADC. No such document was produced to the Plaintiffs although its title indicates that it would clearly fall within the scope of discovery requests about the isolation units. Hardyman report, page 4.

[15] Vail declaration, January 31, 2013, paragraph 10, lines 17-20.

created by the isolation units, however, this study does illustrate one of my points related to the unnecessary use of isolation in the ADC system. It finds that there are populations of inmates placed in the isolation units in ADC who clearly don't need to be there, especially those with life sentences.[16] As I said in both of my previous reports, placement in isolation simply because of the committing offense is not necessary as many of these inmates are quite capable of living in general population. However, because of ADC's flawed isolation policies, these inmates are placed at unnecessary risk of harm.

[16] Hardyman report, page 36.

Executed on the 24th day of February 2014 in Olympia, WA.



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