UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JAC'QUANN (ADMIRE) HARVARD, ET AL.,

***Plaintiffs*,**

v. **CASE NO.: 4:19cv212-MW/CAS**

MARK INCH, SECRETARY OF FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,

***Defendants*.**
_____/

ORDER DENYING DEFENDANT'S MOTION TO TRANSFER

This Court has considered, without hearing, Defendants Mark Inch and Florida Department of Corrections' ("FDC") motions to transfer venue to the Middle District of Florida, Jacksonville or Ocala Division. ECF No. 26. For the reasons provided below, Defendants' motion is **DENIED.**

I

This case is about statewide policies and practices related to isolation promulgated and enforced by Defendants in Tallahassee. Plaintiffs allege that Defendants promulgated a statewide policy and practice of isolating over 10,000 people for at least 22 hours a day in tiny, cramped cells. *See* ECF No. 13, ¶¶ 2, 59, 75. Plaintiffs further allege that this statewide policy and practice exposes all persons

in isolation to a substantial risk of serious harm to their mental and physical health in violation of the Eighth Amendment and that policymakers in Tallahassee have exhibited deliberate indifference towards these risks. *See* ECF No. 13, ¶¶ 5, 7, 54, 59, 75, 83. Finally, Plaintiffs allege that Defendants discriminate against people with disabilities through this same policy and practice. ECF No. 13, ¶¶ 8, 151–160.

Defendants request this Court transfer venue to the Middle District of Florida because the "individual acts" of isolation Plaintiffs complain about occurred in prisons located within the Middle District of Florida. *See* ECF No. 26, at 1–7. In support of their request, Defendants argue that most of the alleged events of isolation occurred in the Middle District of Florida and, therefore, the Middle District is the more convenient forum. *See* ECF No. 26. This Court disagrees.

While a majority of the isolations that give rise to Plaintiffs' claims occurred in the Middle District of Florida, these isolations were merely an implementation of the policy and practice promulgated by Defendants in Tallahassee. Contrary to Defendants' assertion that this case is about "individual acts," Plaintiffs' claims arise primarily from the policy and practice of isolation promulgated in Tallahassee. The fact that Plaintiffs allege specific facts showing implementation of the policy and practice of isolation does not convert Plaintiffs' theory of the case from a statewide policy and practice of isolation to individual acts of isolation.

II

"The decision to transfer a case to another district is left to the sound discretion of the trial court." *Brown v. Conn. Gen. Life Ins. Co.*, 934 F.2d 1193, 1197 (11th Cir. 1991) (citation omitted). A district court may transfer civil actions to any other district or division where the case may have been brought "[f]or the convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. § 1404(a). "It is the movant's burden to persuade the court that a transfer should be granted." *Perlman v. Delisfort-Theodule*, 451 Fed. Appx. 846, 848 (11th Cir. 2012) (citations omitted).

Accordingly, the movant must make two showings to justify transfer under 28 U.S.C. § 1404. As a threshold matter, the movant must establish that the plaintiff could have brought the action in the proposed transferee district. *See* 28 U.S.C. § 1404(a) ("a district may transfer any civil action to any other district or division *where it might have been brought* . . . .") (emphasis added). That is to say, "the moving party must demonstrate that venue, personal jurisdiction, and subject matter jurisdiction would have been proper in the proposed transferee district." *Baker v. Major League Baseball Props., Inc.*, Case No. 3:08cv114/MCR, 2009 WL 1098482, at *2 (N.D. Fla. Apr. 22, 2009) (citing *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960)).

Second, the movant must show that the "convenience of parties and witnesses" and the "interest of justice" would be served by transferring the action to

the proposed district. In short, "[t]he burden is on the movant to establish that the suggested forum is more convenient." *In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989). Further, "[i]n determining the propriety of transfer, the Court must give considerable weight to Plaintiff's choice of forum." *Nat'l Tr. Ins. Co. v. Pa. Nat'l Mut. Cas. Ins. Co.*, 223 F. Supp. 3d 1236, 1242 (M.D. Fla. 2016) (citations omitted); *see also Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996) ("The plaintiff's choice of forum should not be disturbed unless it is clearly outweighed by other considerations") (citation omitted).

III

As a preliminary matter, it is important to note that Defendants have not alleged that Plaintiffs could have brought this action in the Middle District of Florida. While Defendants properly state the standard for transfer under 28 U.S.C. § 1404(a), *see* ECF No. 26, at 7, and allege certain facts that might lead this Court to conclude that Plaintiffs could have brought the action in the Middle District of Florida, *see* ECF No. 26, at 3–7, Defendants do not argue that the Middle District of Florida would be an appropriate forum.[1] Defendants have, therefore, failed to meet their threshold burden of showing that Plaintiffs could have brought this action in

[1] Notably, Plaintiffs do not challenge that the action could have been brought in the Middle District of Florida. However, in their Amended Complaint, Plaintiffs state that "a substantial part of events or omission giving rise to the claims brought by Plaintiffs and class have occurred in [the Northern District of Florida] and Defendants are in [the Northern District of Florida]." ECF No. 13, ¶ 12.

the Middle District of Florida. However, for the sake of completeness, this Court will undertake the required analysis.

The Middle District of Florida has personal jurisdiction over Defendant because FDC is headquartered with its principal place of business in Florida and Defendant Mark Inch is the Secretary of the FDC. Further, upon review of Plaintiffs' claims, it is readily apparent to this Court that subject matter jurisdiction properly lies in the proposed transferee district. On the other hand, whether venue is proper in the Middle District of Florida is a closer question.

Venue in a civil suit is governed by 28 U.S.C. § 1391. Venue is proper in a judicial district where 1) any defendant resides, if all defendants are residents of the state in which the district is located, or 2) a substantial part of the events or omissions giving rise to the claim occurred. *See* 28 U.S.C. § 1391(b). If there is no district in which action may be brought pursuant the above two provisions, then venue is proper in any district in which "any defendant is subject to the court's personal jurisdiction." *See* 28 U.S.C. § 1391(b)(3).

First, venue is proper in the Norther District of Florida because all Defendants reside in this district. *See* 28 U.S.C. § 1391(b)(1). For the same reason, the Middle District of Florida would be improper under 28 U.S.C. § 1391(b)(1). The remaining issue, then, is whether "a substantial part of the events or omissions giving rise to the claim occurred" in the Middle District of Florida. 28 U.S.C. § 1391(b)(2). In a

class action, "the analysis of where a substantial part of the events took place . . . looks to the evens concerning the named plaintiffs' claims, not all of the class members' claims." 2 Newberg on Class Actions § 6:36 (5th ed.). "Substantial part" does not mean venue is only proper where most of the inciting events occurred. *Jenkins Brick Co. v. Bremer*, 321 F.3d 1368, 1371 (11th Cir. 2003). Only those acts within the forum that bear a close nexus to the claims are deemed substantial. *Id.*

Here, the substantial parts of the events that give rise to Plaintiffs' claims occurred in multiple districts.[2] Plaintiffs allege that a statewide policy and practice of isolation, which was promulgated and enforced in Tallahassee by Defendants, exposed over 10,000 people to a substantial risk of serious harm to their mental and physical health. ECF No. 13, ¶¶ 2, 5, 7, 54, 57, 75, 83. The named Plaintiffs are part of the class of 10,000 people that were allegedly exposed to a substantial risk of serious harm to their mental and physical health. The promulgation and enforcement of FDC policy and practice related to isolation does constitute a substantial part of the acts or omission giving rise to Plaintiffs' claims because the development and promulgation of the policies and practices were an inciting event, which had a close nexus to the harm Plaintiffs suffered. Venue is, therefore, proper in the Northern District of Florida.

[2] *See Jenkins*, 321 F.3d at 1371 (holding that the venue statute "contemplates some cases in which venue will be proper in two or more districts.").

However, the acts of solitary confinement, *i.e.*, the manifestation of the policies and practices promulgated in Tallahassee, are also a substantial part of the events that give rise to Plaintiffs' claims. The implementation of the policy and practice of isolation occurred in the Middle District of Florida. *See* ECF No. 26, at 3–7. Plaintiffs would have no claims to bring suit but for their solitary confinement in their respective correctional facilities. Therefore, venue is proper in the Middle District of Florida.

IV

Next, this Court considers whether the "convenience of parties" and the "interest of justice" is served by transferring the case to the Middle District of Florida. *See* 28 U.S.C. § 1404(a). The following factors guide this Court's decision:

> (1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Trans Am Worldwide, LLC v. JP Superior Sols, LLC, Case No. 4:17cv560-MW/CAS, 2018 WL 3090394, at *8 (N.D. Fla. Apr. 30, 2018) (citing *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 n.1 (11th Cir. 2005)).

A. Locus of Operative Facts

"The location of operative facts underlying a claim is a key factor in determining a motion to transfer venue." *Nat'l Tr. Ins. Co.*, 223 F. Supp. 3d at 1245 (citation omitted). "In determining the locus of operative facts, the court must look at the site of the events from which the claim arises." *Id.* (citation omitted); *see also Trans Am Worldwide, LLC*, 2018 WL 3090394, at *9 (citation omitted). The parties' strongly dispute whether Plaintiffs' claims arose primarily in the Northern District of Florida or in the Middle District of Florida. That is to say, the parties strongly dispute the "site of the events from which the claim arises." *See Nat'l Tr. Ins. Co.*, 223 F. Supp. 3d at 1245. Defendants argue that the site of the event from which the claims arise is the Middle District of Florida. Specifically, Defendants argue that the "individual acts" of isolation occurred in the Middle District of Florida and, therefore, the Middle District of Florida is the locus of operative facts. This Court disagrees.

Defendants misunderstand Plaintiffs' claims. The crux of Plaintiffs' complaint is that there are policies and practices related to isolation, promulgated and enforced by Defendants in Tallahassee, that violate Plaintiffs' Eighth and Fourteenth Amendment rights, along with their rights protected under the Americans with Disabilities Act and the Rehabilitation Act. The fact that Plaintiffs also allege facts showing implementation of these policies and practices at prisons in the Middle

District of Florida does not convert their action into a complaint about "individual acts."[3] Plaintiffs have alleged a statewide policy and practice of isolation which was promulgated and enforced by officials in Tallahassee. Therefore, the locus of operative facts underlying Plaintiffs' claims arose primarily in Tallahassee. *See Aracely v. Nielsen*, 319 F. Supp. 3d 110, 129 (D.D.C. 2018) ("[B]ecause Plaintiffs in this case are challenging the application of a purported policy that supposedly emanated from an agency located in the District of Columbia, the Court finds that [the location where the claim arose] factor weights in favor of retaining venue [in the District of Columbia]."); *Swift v. BancorpSouth Bank*, Case No. 1:10-cv-00090-MP-GRJ, 2014 WL 12856701, at *3 (N.D. Fla. June 04, 2014) (finding that the district of defendant's headquarters, not the district where the class representative resided and where some of the disputed transactions occurred, was the locus of the events because in a class-action case, there are "multitudes of other transactions at issue," and the "common factor tying everything together is [defendant's] policy decision . . . ."). For these reasons, this factor weighs against a transfer.

[3] A simple analogy will point out the flaw in Defendants' argument. Let's say, for example, multiple Plaintiffs bring a products liability suit alleging design flaw in a ring that was designed in Mordor. Plaintiffs further allege that they purchased these rings from the manufacturing facility located in Moria. The locus of operative facts would be Mordor because that is where the ring was designed; and simply because Plaintiffs' alleged that manufacturing facilities in Moria implemented the design would not convert Plaintiffs' design flaw claim into a claim about manufacturing defects. That is, the forum would be more appropriate in the district court in Mordor (or, the Court of the Dark Lord, if you will) rather than the district court in Moria (or, the Court of the Dwarves). *See generally* J. R. R. Tolkien, *The Lord of the Rings* (1954) (HarperCollins Publishers, 1994).

B. Convenience of the Parties and Witnesses

"The most important factor under § 1404(a) is the convenience of witnesses, and the moving party must make a specific showing of inconveniences to witnesses" to support transfer. *Trans Am Worldwide*, 2018 WL 3090394, at *8 (citation omitted). "[A] general allegation that witnesses will be necessary, without identifying those necessary witnesses and indicating what their testimony at trial will be, does not merit transfer." *Nat'l Tr. Ins. Co.*, 223 F. Supp. 3d at 1343 (citation omitted). This is because, "in analyzing the convenience of non-party witnesses, the Court must determine whether a witness is 'key.' " *Id.* (citation omitted). "A witness is key if his or her testimony is likely to be significant enough that the witnesses' presence would be necessary at trial." *Id.*

Defendants argue that the key witnesses in the instant case will be employees and former employees of FDC who have personal knowledge either as observers or victims of serious violence and other incidents which resulted in Plaintiffs' restrictive housing. ECF No. 26, at 11. In support of their argument, Defendants provide a laundry list of preliminary witnesses who are current and former employees of FDC. ECF No. 26-1. Defendants assert that because a majority of these witnesses are located in the Middle District of Florida, this factor supports transfer.

While this Court appreciates Defendants' effort in generating its preliminary witness list, Defendants' argument fails for multiple reasons. First, most of the

preliminary witnesses appear to be current FDC employees and parties will be able to compel their testimony at trial. *Nat'l Tr. Ins. Co.*, 223 F. Supp. 3d at 1343 ("[I]n case of [Defendants'] employee witnesses, 'their convenience is entitled less weight because [the parties] will be able to compel their testimony at trial.' ") (citation omitted). Second, as far as non-employee witnesses are concerned, Defendants have not explained why these witnesses will be "key." Specifically, Defendants have not identified non-employee witnesses who will provide relevant, non-cumulative testimony.

Finally, Defendants' preliminary witness list relies on a mistaken belief that Plaintiffs' claims are about individual acts of confinement. As explained before, *supra* Section IV.A., Plaintiffs' claims arise from the policies and practices promulgated and enforced in Tallahassee by high level officials. As such, key witnesses will likely be high-level officials and policymakers identified by Defendants' in their preliminary witness list. All of these witnesses are located in the Northern District of Florida. ECF No. 26, at 27–28.

C. Weight Accorded a Plaintiff's Choice of Forum

"[W]hile a plaintiff's choice is generally given considerable deference, '[t]hat choice is not entitled to the weight it is generally accorded . . . where there is no material connection between the forum and the events underlying the cause of action.' " *Martinez v. Shulkin*, Case No. 1:17cv128-MW/CAS, 2017 WL 10821303,

at *1 (N.D. Fla. Aug. 2, 2017) (citations omitted). As explained *supra* Section IV.A., there is a material connection between the Northern District of Florida and the events underlying Plaintiffs claims—policies and practices related to isolation promulgated and enforced in Tallahassee. As such, this Court gives Plaintiffs' choice of forum substantial weight. *See Starnes v. McGuire*, 512 F.2d 918, 933 (D.C. Cir. 1974) (stating that the court should give plaintiffs' choice of forum substantial weight when plaintiffs allege a national policy promulgated in that forum). Accordingly, this factor weighs against transfer. For these reasons, this factor weighs against transfer.

D. Location of Relevant Documents and Relative Ease of Access to Source of Proof

Since the advent of electronic discovery, "most courts have recognized that the physical location of relevant documents is no longer a significant factor in the transfer inquiry." *Trans Am Worldwide*, 2018 WL 3090394, at *9. Further, Defendants concede that, although there might be hard copy documents, "most relevant documents will be scanned into electronic format . . . ." ECF No. 26, at 14. As such, this factor is neutral and, thus, weighs against transfer.

E. Availability of Process to Compel Witnesses to Attend Trial

Defendants argue that few witnesses are located within the subpoena range to Tallahassee. ECF No. 26, at 15. Further, Defendants argue that although some witnesses will be current FDC employees, there might be non-employees, such as independent medical providers and past FDC employees, who might be outside this

Court's subpoena range. ECF No. 26, at 15. However, Defendants have not identified a single witness who would be unwilling to testify, nor have Defendants demonstrated that compulsory process would be necessary for the witness to testify. *See Trans Am Worldwide*, 2018 WL 3090394, at *9 ("Transfer may also 'be denied where the movant does not show that the witnesses would be unwilling to testify[,] and that compulsory process would be necessary.' ") (citations omitted). Additionally, most of the preliminary witnesses Defendants identified appear to be FDC employees. *See* ECF No. 26-1; *Trans Am Worldwide*, 2018 WL 3090394, at *9 ("Transfer may be denied when witnesses, although in another district, are employees of a party and their presence can be obtained by that party.") (citations omitted). For these reasons, Defendants have failed to persuade this Court that this factor supports transfer.

F. Relative Means of the Parties

Defendants concede that Plaintiffs themselves are unable to fund this litigation. *See* ECF No. 26, at 16. However, Defendants rely on Federal Rule of Civil Procedure 23(g)(1)(A)(iv) to argue that this Court must consider Plaintiffs' counsels' means in analyzing this factor. Even assuming this Court may consider Plaintiffs' counsels' means, this factor would be neutral, as Defendants concede. ECF No. 26, at 16. As such, Defendants have not shown this factor supports transfer.

G. Forum's Familiarity with the Governing Law

"The forum's familiarity with governing law 'is one of the least important factors in determining a motion to transfer, especially where no complex questions of foreign law are involved.' " *Trans Am Worldwide*, 2018 WL 3090394, at *10 (citing *Posven, C.A. v. Liberty Mut. Ins. Co.*, 303 F. Supp. 2d 391, 405 (S.D.N.Y. 2004)). Defendants concede that both the Northern District and Middle District of Florida are familiar with the governing laws. ECF No. 26, at 17. This factor is neutral and, therefore, Defendants have not shown this factor supports transfer.

H. Trial Efficiency and Interest of Justice

Defendants argue that this factor supports transfer because individual acts of confinement occurred in the Middle District of Florida. ECF No. 26, at 17. However, as explained *supra* Section IV.A., Defendants fundamentally misunderstand Plaintiffs' allegations. Plaintiffs' complaint centers around policies and practices related to isolation that were promulgated and enforced in Tallahassee, and not around specific instances of implementation of those policies in other parts of the state. As such, the relationship between this forum and the claims is strong. Plaintiffs allege that these policies and practices have a statewide implication. Therefore, contrary to Defendants' assertion, the effects of this case will be limited to the specific institutions located in the Middle District of Florida.

Additionally, Defendants argue that "[p]risoner cases and especially cases involving prisoner conditions of confinement are traditionally centered in the district in which the institution or institutions in question are located," and, thus, this factor favors transfer. ECF No. 26, at 17. For this assertion, Defendants primarily rely on a decision from the United States Court of Appeals for the District of Columbia. *See* ECF No. 26, at 8–11. This Court disagrees. The D.C. Circuit's decision in *Starnes* does not favor transfer but, in fact, suggests retaining venue in this Court where the Plaintiffs allege a statewide policy. *See* 512 F.2d 918 (1974). Specifically, the court in *Starnes* considered a hypothetical in which a "number of prisoners from different institutions . . . bring suit in which the pleading alleges a pattern of action by the Bureau of Prisons that evidences an unwritten national policy . . . and challenge that pattern as a denial of constitutional rights." *Id.* at 933. In such cases, the court said, "plaintiffs' choice of forum should be given substantial weight." *Id.* This is essentially the case here.[4] *See supra* Section IV.A. For these reasons, this factor weighs against transfer.

[4] Defendants' also rely on cases from the courts in Florida. However, these cases are distinguishable. In most of these cases, all events and parties were located in the Middle District, unlike the present case where Defendants reside in the Northern District and Plaintiffs' allegation, as explained *supra* Section IV.A, arise from policy actions or inaction occurred in Tallahassee. *See, e.g.*, *Armington v. Atkinson*, Case No. 4:18cv541-MW-CJK, 2018 WL 7019057, at *1 (N.D. Fla. Dec. 11, 2018), *report and recommendation adopted*, Case No. 4:18cv541-MW/CJK, 2019 WL 176936 (N.D. Fla. Jan 11, 2019); *Jemison v. Fla. State Prison*, Case No. 16-20034-CIV, 2016 WL 8671826, at *2 (S.D. Fla. Jan. 08, 2016). In certain other cases, venue was not proper in the Northern District, which is not the case here. *See, e.g.*, *Kidrowski v. Rossamano*, Case No. 5:2019-cv-65-MCR/MJF, 2019 WL 2455262 (N.D. Fla. Mar.

V

Defendants have failed to meet their burden of demonstrating that transfer would be appropriate under 28 U.S.C. § 1404(a). Therefore, Defendants' motion to transfer venue to the Middle District of Florida, ECF No. 26, is **DENIED.**

SO ORDERED on October 11, 2019.

s/Mark E. Walker
Chief United States District Judge

19, 2019); *Walker v. Grubb*, Case No. 3:18-cv-2182-MCR/EMT, 2019 WL 542113 (N.D. Fla. Jan. 10, 2019).