

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

EDWARD BRAGGS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	2:14-CV-00601-MHT-JTA
JEFFERSON DUNN, in his official	)	Judge Myron H. Thompson
capacity as Commissioner	)	
of the Alabama Department of	)	
Corrections, et al.,	)	
	)	
Defendants.	)	

**PLAINTIFFS’ REPLY TO DEFENDANTS’ RESPONSE TO THE  
COURT’S PHASE 2A ORDER ON CORRECTIONAL STAFFING  
REPORTING (DOC. 2703)**

On December 13, 2019, the Court ordered the Parties to submit a joint report including: (1) total numbers of basic correctional officers (“BCOs”), correctional officers (“COs”), and correctional cubicle operators (“CCOs”); (2) a proposal for reporting correctional staffing data going forward; and (3) a comparison of BCO, CO, and CCO qualifications, training, duties, and pay. Doc. 2693. On December 20, 2019, the Parties filed a joint report with the additional staffing data and an agreement for reporting such data going forward. Doc. 2704. That same day, Defendants submitted a separate filing providing information about BCO, CO, and CCO qualifications, training, duties, and pay. Doc. 2703. Plaintiffs hereby submit this reply to Defendants’ separate filing.

**I. ADOC HAS MADE LITTLE PROGRESS TOWARD ADDRESSING CORRECTIONAL UNDERSTAFFING**

In their December 20, 2019 response, Defendants lament that the Court did not “praise” them for the “prompt action and measurable success in recruiting new correctional staff” during the December 6, 2019 status conference. Doc. 2703 at 5. Defendants efforts to address severe and deadly correctional understaffing in Alabama prisons have not yet proven to be effective in addressing both recruitment *and* retention. **Since the Court issued its Liability Opinion in June 2017, ADOC’s total number of COs, BCOs, and supervisors has decreased by 196 officers.** Comparing December 2017 data with the most recent data filed by Defendants shows an increase of only 25 officers over nearly two years, less than 1.5% of the number of officers Defendants are required to add by February 2022. The following chart compares staffing data from June 2017, December 2017, and September 2019:

	Employed BCOs and COs	Employed Supervisors	Total Employed BCOs, COs, and Supervisors	Total Staff Needed <sup>1</sup>	Source
<b>June 2017</b>	1,374 <sup>2</sup>	364	1,738	2,088	Doc. 1397-1 at 16 <sup>3</sup>
<b>Dec. 31, 2017</b>	1,133	384	1,517	2,309	Doc. 2325-1 at 2 <sup>4</sup>
<b>Sept. 30, 2019</b>	1,222	320	1,542	2,284	Docs. 2670, 2704

Defendants have two years to hire approximately 2,284 COs, BCOs, and supervisors as required by the Court’s Phase 2A Understaffing Order and the Savages’ staffing analysis. Rather than demanding “praise” from the Court, Defendants should identify any other means by which the State of Alabama can address the deadly level of correctional understaffing that plagues Alabama prisons.

## **II. THE SAVAGES SHOULD IDENTIFY WHICH POSTS AT EACH FACILITY CANNOT BE FILLED BY BCOS**

The Court’s Phase 2A Understaffing Order requires Defendants to implement

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<sup>1</sup> Calculated by subtracting the number of employed COs, BCOs, and Supervisors from the Savages’ total. The Savages’ totals can be found in the “Assigned” columns in ADOC’s most recently quarterly staffing report. See Doc. 2670 at 2.

<sup>2</sup> This number reflects the total number of COs and correctional training officers (“CTOs”) at the major facilities.

<sup>3</sup> Also available at <http://www.doc.state.al.us/StatReports>.

<sup>4</sup> The totals reflected in Doc. 2325-1 are not the correct sums of the data reported. This chart includes accurate sum totals based on the facility-by-facility data in Doc. 2325-1.

both the Savages' correctional staffing analysis and the Warren Averett Report. *Braggs v. Dunn*, 2:14-cv-601-MHT, 2018 WL 7106346 at \*1 (M.D. Ala. Feb. 20, 2018). Plaintiffs do not object at this time to BCOs filling some posts previously designated for COs, as recommended by Warren Averett. However, the Savages' correctional staffing analysis makes no mention of BCOs. *See* Doc. 1813-1. Meg Savages' December 20, 2019 declaration states only that BCOs may fill all CO posts "except for those posts requiring firearms." Doc. 2703-4 at ¶ 10. The Savages' correctional staffing analysis generally identifies which posts require firearms. *See, e.g.,* Doc. 1813-1 at PDF p.116 ("Transportation . . . This post requires firearms qualification and is a highly sensitive post."). However, the Savages did not identify on a post-by-post basis in their facility post plans which posts require firearms. *See, e.g., id.* at PDF p.121 (listing posts for Bibb and not identifying which require firearms). Thus, the Court cannot assess whether ADOC employs enough COs to fill posts that can only be filled by COs. The Court should therefore order Defendants to file an amended staffing analysis in which the Savages identify which posts may not be filled by BCOs.

### **III. CCOS CANNOT BE COUNTED TOWARDS COMPLIANCE WITH THE COURT'S UNDERSTAFFING ORDER**

The Court should not count CCOs towards compliance with its Phase 2A Understaffing Order and implementation of the Savages' staffing analysis. CCOs are not trained correctional officers and are not permitted to interact directly with

incarcerated people. Doc. 2703-2 (Sanders Dec.) at ¶ 14; Doc. 2703-3 (Stamper Dec.) at ¶ 12. The Savages were clear that the staffing numbers recommended in their staffing analysis do not include CCOs:

Several classifications currently working in traditional security functions were excluded from this analysis for the reasons indicated below . . . Radio Operators and Correctional Cubicle Operators: In response to staff shortages, ADOC has taken a variety of measures to fill posts including using Radio Operators and Correctional Cubical Operators in what would ordinarily be considered correctional officer posts. While these measures are understandable, **the posts included in this report will only identify certified correctional officers as incumbents in these posts.**

Doc. 1813-1 at PDF pp.12-13 (emphasis added). And notably, Meg Savages' December 20, 2019 declaration is silent with regard to CCOs. *See* Doc. 2703-4. Thus, as made clear by the Savages themselves, CCOs cannot be counted toward compliance with the Savages' correctional staffing analysis and the Court's Phase 2A Understaffing Order.

## CONCLUSION

As set forth herein, Defendants have made little progress toward compliance with the Court's Understaffing Order. Plaintiffs do not object to Defendants' creation of the BCO position or employment of BCOs in certain posts but ask that the Court require the Savages to identify which posts in their staffing analysis may not be filled by BCOs. Plaintiffs do, however, object to counting CCOs towards compliance with the Understaffing Order as it is inconsistent with the Savages' recommendations.

Dated: January 3, 2020

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 3rd day of January, 2020 electronically filed the foregoing with the clerk of court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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