





Indeed, deaths in MDOC custody, which were already higher than the rest of the country, have been rising at an alarming rate. Between 2001 and 2014, about 51 individuals in MDOC custody died per year, an average of about four deaths per month.<sup>12</sup> annual prison death rate during that period was 324 per 100,000 prisoners, higher than the national rate of 255 over the same period.<sup>13</sup> Since then, deaths have escalated sharply from 62 in fiscal year 2014 to 85 in fiscal year 2018 and 80 in fiscal year 2019.<sup>14</sup> It is impossible to obtain a precise number of deaths resulting from preventable harm because MDOC has failed to conduct or complete investigations into these deaths, notwithstanding family pleas, pressure from advocacy organizations, and a 2018 request from MDOC Commissioner Pelicia Hall for the Federal Bureau of Investigations to assist the Mississippi Department of Public Safety.<sup>15</sup>

is directly linked to the acute understaffing of its prisons. This fact is virtually undisputed, including by Commissioner Hall.<sup>16</sup> In January 2019, MDOC issued an extraordinary press release in which MDOC Commissioner Hall stated that near-capacity prison populations and extreme staff vacancy rates had created a

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Commissioner Hall has called these va

<sup>39</sup> Eldon Vail, the

patterns and testified that the facility was systematically and dangerously understaffed.<sup>40</sup> Reportedly, at Marshall, shifts that require between 19 and 27 officers are routinely staffed by only five or six, sometimes leading to a single correctional officer overseeing an entire unit of more than 200 prisoners.<sup>41</sup> In short, both public and privately-run prisons are dangerously understaffed  
o pay staff an adequate wage.







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conditions of confinement and mistreatment of incarcerated individuals.<sup>57</sup> SPLC has reviewed a video purportedly taken inside Unit 32 since it was reopened that show men walking through standing water in hallways with paint peeling off the walls, covered in black mold, and water faucets and showers that do not turn on.<sup>58</sup> We have received reports that there is no running



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- On January 31, 2018, a security camera captured the murder of Brad Fitch, who spent only six hours on Wilki a way one reporter

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- Also on January 31, 2018, Thomas Burks, 54,

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SMCI said on the record in 2019 that the facility is controlled by gangs because there are not adequate staff to keep control.<sup>80</sup>

representative Jay Hughes and a local newspaper editor that gangs were running the facility and that staff were not safe.<sup>81</sup> The accounts of gang control at SMCI are particularly egregious and shocking: people report that gangs assign residents to cells and beds, overriding the formal MDOC assignments; control access to phones; photograph prisoners, using contraband cell phones, to



Deaths from unchecked violence have also occurred at

medical care for several minutes. Prisoners set a fire before help arrived.<sup>103</sup> In a federal civil rights case concerning conditions at **Eastern Mississippi Correctional Facility (EMCF)**, plaintiffs presented evidence that incarcerated individuals were routinely assaulted by others in the absence of staff presence or intervention.<sup>104</sup> The warden suggested staff were afraid to intervene, and

members.<sup>105</sup> EMCF is located in Meridian, Mississippi and has a capacity of 1500 with a population of 1,235 as of December, 2019.<sup>106</sup> Approximately 80% of the individuals incarcerated at EMCF have serious mental illness.<sup>107</sup>

These are only some of the incidents of violence that rampant overincarceration and systemic understaffing have . Because our knowledge is limited to what is publicly reported and the complaints that we receive, we think it likely that this is only the tip of the iceberg.

**B. Failure to Perform Counts, Resulting in Increased Risk of Harm and Escapes**

Due to overincarceration and inadequate staffing, Mississippi fails to ensure the performance of sic correctional t0etaffaie, 91(s)-48( )] TJETQq872 0 612 792 reW\* 872BT/F1 12 Tf1 0 0 1 72.1 423.4 Tm0 g0

- In October 2019, MDOC announced that an individual named Matthew Craig McKamey had escaped from Parchman. In fact, McKamey never left his housing unit, and another man named Darrie Price was missing—a fact that MDOC never publicized.<sup>109</sup>
- In July 2019, one prisoner escaped from Parchman and two others escaped from CMCF in the same week.<sup>110</sup>
- In 2019, at least three people escaped from SMCI.<sup>111</sup>
- At Wilkinson, auditors observed that counts were not properly supervised and were performed in violation of numerous policies, including that prisoners must provide identification, that no movement is allowed during counts, that food slots must be closed, that double counts must be conducted, that cell windows must be uncovered, and that staff must look into cells.<sup>112</sup>

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- falsifying prisoner counts.<sup>114</sup>
- Trial evidence adduced in March and April 2018 showed that counts were not being conducted properly at EMCF in 29 out of 32 months between 2014 and 2017.<sup>115</sup>

The failure to accurately, reliably, and routinely perform counts is one egregious example of

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Michelle Liu, *Remember the Guy Who Escaped from Parchman? It Was Actually a Different Guy. Now the Misidentified Man's Mother Fears Retaliation*, MISS. TODAY, (Oct. 21, 2019), <https://mississippitoday.org/2019/10/21/remember-the-guy-who-escaped-from-parchman-it-was-actually-a-different-guy-now-the-misidentified-mans-mother-fears-retaliation/> (retired Parchman superintendent Emmitt Sparkman: there. .

<sup>109</sup> Michelle Liu, *Remember the Guy Who Escaped from Parchman? It Was Actually a Different Guy. Now the Misidentified Man's Mother Fears Retaliation*, MISS. TODAY, (Oct. 21, 2019), <https://mississippitoday.org/2019/10/21/remember-the-guy-who-escaped-from-parchman-it-was-actually-a-different-guy-now-the-misidentified-mans-mother-fears-retaliation/>.

<sup>110</sup> Jimmie E. Gates, *Escaped Inmates' Prison Clothes Found Near Business. Manhunt On in Rankin County*, CLARION LEDGER (Jul. 8, 2019), <https://www.clarionledger.com/story/news/2019/07/08/2-escaped-prison-in-mates-rankin-county-mississippi/1672169001/>.

<sup>111</sup> Jerry Mitchell, *Ticking Time Bomb: Violence Surges Among Guard Shortage, Lockdown at Mississippi Prison*, USA TODAY (Aug. 19, 2019), <https://www.usatoday.com/story/news/investigations/2019/08/19/prison-violence-surges-mississippi-prison-amid-guard-shortage/2054554001/>.

<sup>112</sup> MANAGEMENT & TRAINING CORP., *Wilkinson County Correctional Facility Comprehensive Audit* 4, 13–14 (Dec. 20, 2018).

<sup>113</sup> MANAGEMENT & TRAINING CORP., *Wilkinson County Correctional Facility Comprehensive Audit* 4 (Dec. 20, 2018).

<sup>114</sup> See Jerry Mitchell, *Inside The Prison Where Inmates Set Each Other On Fire and Gangs Have More Power Than Guards*, PROPUBLICA (Aug. 19, 2019), <https://www.propublica.org/article/leakes-ville-south-mississippi-correctional-institution-prison-gangs>.

<sup>115</sup> Trial Tr. vol. 13, 12:22–13:24, *Dockery v. Hall*, No. 3:13-cv-326 (S.D. Miss. Mar. 13, 2018) (on file with Southern Poverty Law Center).



them to a risk of serious harm. Without accurate counts, staff cannot know if unaccounted-for persons are being assaulted, suffering medical emergencies, or otherwise in need of immediate assistance. Understaffing also puts the broader community at risk because it facilitates escapes, which are distressingly common at Mississippi prisons.

### **C. Lockdowns and Access to Programming**

Even before the recent epidemic of violence at MDOC facilities, prisons around the state were regularly placed on extended lockdown because of violence and understaffing. Mississippi prisons routinely lack sufficient staff to safely allow people housed in general population out of their cells. The result is that prisoners frequently spend days and weeks locked down 22 hours a day or more, with no access to recreation, showers, opportunities to interact with anyone else, no educational or rehabilitative programming, or visitation by family.<sup>116</sup> These lockdowns affect incarcerated people

- Men at Parchman have reported they go weeks at a time on lockdown without access to showers or outside recreation.<sup>121</sup> One mother told SPLC her son had not seen sunlight in seven months.<sup>122</sup>
- In September 2019, individuals at CMCF privately reported that they were locked down 24 hours per day at least two days per week, even in general population, without access to showers or any out-of-cell privileges. People held in protective custody were also not being given any access to classes or other programming, though they should be allowed the same privileges as those in general population of the same custody level.<sup>123</sup>
- logs, those people held in solitary confinement were not being given adequate access to recreation. People held in solitary confinement suffer even greater harm due to inadequate staffing. Because they are locked down in their cells all day, they rely on correctional officers to provide their every need, including meals, medication, medical attention, and access to showers and recreation. Moreover, upon reviewing video evidence, the auditors found that almost all of the recreation time that *was* documented on those logs was falsified and did not actually did not take place.<sup>124</sup> The audit concluded that two whole housing pods received *no recreation at all for sixty days*, and that one pod received recreation on a single day when residents were left outside for more than seven hours so that a drug-sniffing dog could search their cells.<sup>125</sup>

Extended lockdowns may violate the federal rights of people in prison, who can spend days and weeks locked in their cells in conditions amounting to solitary confinement without access to basic privileges including recreation, showers, and visitation.<sup>130</sup> Such conditions may cause substantial harm in violation of the Eighth Amendment.<sup>131</sup> Where they cause people not to receive access to services and programming to which they are entitled under policy, these conditions may also result in the deprivation of protected liberty interests in violation of the Due Process Clause of the Fourteenth Amendment.<sup>132</sup>

### **III. POOR FACILITIES, INADEQUATE HEALTHCARE, AND OTHER CONSTITUTIONALLY DEFICIENT CONDITIONS AT MDOC**

The widespread failure of MDOC to provide constitutional care to the individuals in its custody is not limited to its failure to protect them from harm. MDOC houses individuals in outdated, decrepit facilities with serious sanitation, plumbing, heating, and electrical problems. SPLC has received frequent reports of standing water and sewage, nonfunctioning or malfunctioning lighting, black mold, exposed wiring, gas leaks, contaminated water, and inedible and inadequate food.

Advocates have been attempting to remedy the brutal conditions at Parchman since the 1970s through lawsuits challenging infrastructural, environmental, and medical conditions at the prison.<sup>133</sup> plant, medical services, and mental health care are in a desperate state:

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MISS DEPT OF CORRS., *Lockdown Ended for Remaining Facilities* Press Release (Nov. 21, 2018), <https://www.mdoc.ms.gov/News/PressReleases/Lockdown%20Ended%20for%20Remaining%20Facilities.pdf>.

<sup>130</sup> *E.g., Turley v. Rednour*, 729 F.3d 645, 652 (7th Cir. 2013) (en banc) stated an Eighth Amendment claim by alleging a pattern of prison-wide lockdowns, which . . . occurred for flimsy reasons or no reason at all.

- more than 400 cells with problems such as flooding and leaks, lack of lights, power and water, broken toilets and sinks as well as missing pillows and mattresses.<sup>134</sup>
- In April of 2018, two men were found dead of apparent suicide.<sup>135</sup> Five more prisoner deaths followed that August at the facility.
- In November 2019, a man killed himself at Parchman. Though he had previously complained of suicidal ideation, he was placed in a single-man cell with the means to kill himself and left without staff supervision. Reportedly, staff did not discover his body for as long as 20 hours.<sup>136</sup>
- In 2015, the MacArthur Justice Institute led a campaign to improve the deplorable<sup>137</sup> Death row prisoners reported an initial improvement to the number of leaks and plumbing defects, but recent reports indicate significant backsliding. In addition, several death row prisoners regularly complain of chronic medical care issues, which go ignored in the context of improving conditions.

These systemic conditions problems are not limited to Parchman. Mississippi spent only \$3,770 on healthcare per inmate in 2015. The national median expenditure was almost twice that, at \$5,720.<sup>138</sup> Prisoner deaths related to chronic, but treatable, medical conditions are common, as are suicides, and poor conditions are endemic throughout MDOC. The following are just a few examples:

- 58-year old Ricky Martin died at CMCF after complaining to guards that he was having trouble breathing. The guards went to sleep. Hours later, when help finally arrived, the<sup>139</sup>
- 57-year old Albert McGee died in SMCI in August 2018 allegedly due to complications from diabetes, a chronic illness usually manageable with appropriate care.<sup>140</sup>

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<sup>134</sup> Michelle Liu, *No Water, No Lights and Broken Toilets: Parchman Health Inspection Uncovers Hundreds of Problems, Many Repeat Violations*, MISS. TODAY, <https://mississippitoday.org/2019/08/05/no-water-no-lights-and-broken-toilets-parchman-health-inspection-uncovers-hundreds-of-problems-many-repeat-violations> (Aug. 5, 2019).

<sup>135</sup> Sarah Fowler, *One Month, 16 Dead in MDOC Custody*, MISS. CLARION LEDGER, <https://www.clarionledger.com/story/news/2018/09/04/16-inmates-dead-mdoc-custody-august/1195953002/> (Sept. 4, 2018).

<sup>136</sup> Reported to Southern Poverty Law Center.

<sup>137</sup> See *MacArthur Justice Center Students Enforce Death Row Settlement* (Feb. 9, 2017), <https://law.olemiss.edu/macarthur-justice-center-students-visit-parchman/>.

<sup>138</sup> Matt McKillop, *Prison Health Care Spending Varies Dramatically by State*, PEW, <https://www.pewtrusts.org/en/research-and-analysis/articles/2017/12/15/prison-health-care-spending-varies-dramatically-by-state> (Dec. 15, 2017).

<sup>139</sup> Michelle Liu & Alex Rozier, *Mississippi Short on Answers in Rash of Jail Inmate Deaths*, [https://www.meridianstar.com/news/state/mississippi-short-on-answers-in-rash-of-jail-inmate-deaths/article\\_6000bd8d-053a-5cbb-848a-34aca8ab7d98.html](https://www.meridianstar.com/news/state/mississippi-short-on-answers-in-rash-of-jail-inmate-deaths/article_6000bd8d-053a-5cbb-848a-34aca8ab7d98.html) (Aug. 24, 2018).

<sup>140</sup> Jon Schuppe & Teresa Frenzel, *16 Prisoners Died in One Month in Mississippi. Their families Want to Know Why*, NBC NEWS, <https://www.nbcnews.com/news/us-news/15-prisoners-died-one-month-mississippi-their-families-want-know-n905611> (Sept. 1, 2018).

- In 2017, individuals incarcerated at EMCF went on a hunger strike to protest the conditions inside the facility.<sup>141</sup> In 2018, Plaintiffs presented evidence at a civil rights trial challenging conditions at EMCF of squalor, rats, and preventable deaths.<sup>142</sup> In 2019, at least two men committed suicide at EMCF.<sup>143</sup>

single facility. Rather, they are profound and widespread, resulting from years of neglect compounded by severe understaffing. Only a system-wide constitutional investigation, combined with decarceration efforts, can resolve the crisis.

#### **IV CONCLUSION**

overincarceration and understaffing crisis that has been building for years, resulting in dozens of deaths and culminating in the violence of the last two weeks. State officials acknowledge but simply refuse to address the dangerous, widespread staffing shortages at state and privately-operated MDOC facilities. As a result, some 20,000 people in MDOC custody are systemically

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Sincerely,

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