

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

<b>C.B., by and through his next friend,</b>	)	
<b>Charleston DePriest, et al.</b>	)	<b>Civil Action No. 3: 10cv663</b>
	)	
<b>Plaintiffs,</b>	)	
	)	
	)	
<b>WALNUT GROVE CORRECTIONAL</b>	)	
<b>AUTHORITY, et al.</b>	)	
	)	
<b>Defendants.</b>	)	
<hr/>	)	

**MEMORANDUM IN SUPPORT OF MOTION FOR  
ENFORCEMENT AND MODIFICATION OF CONSENT DECREE**

**INTRODUCTION**

Plaintiffs respectfully move the Court to modify and enforce the Consent Decree in this case in order to effectuate a central purpose of the decree, namely, that “at all times, prisoners

seriously wounded. The court-appointed monitors and Plaintiffs' corrections expert have proposed basic remedial measures which MDOC has not implemented. There is an ongoing, substantial risk of serious injury—including death—from the extraordinarily dangerous conditions at Walnut Grove.

Plaintiffs respectfully ask the Court to schedule an evidentiary hearing with testimony by the parties and the court-appointed monitors, to determine whether more specific remedial measures are required to effectuate the purpose of providing all prisoners at Walnut Grove with reasonably safe living conditions, and protecting them from violence by other prisoners; and, if so, to identify the specific remedial measures that are suitably tailored to achieve that purpose.

### **STATEMENT OF FACTS**

The security issues documented in this Motion are of long standing; they were raised in the 2010 Complaint, which contained the following allegations:

WGYCF is an extremely dangerous prison. For years, violent fights have occurred at WGYCF at least every week, and often every day. (Para. 38).

In much of the prison, only one officer is assigned to guard each zone. The prison is constantly short-staffed, so officers sometimes are left responsible for two zones at a time. Youth are often left unsupervised when the assigned officer leaves the zone for other reasons. This understaffing creates violent conditions that subject youth to serious and sometimes permanent injury. (Para. 39)

Defendants have long been aware that the routine understaffing of WGYCF creates a risk of serious harm to the youth incarcerated there. (Para. 40)

Cell doors on many units can easily be rigged to remain unlocked when shut, allowing prisoners to leave their cells and enter the cells of others at any time, resulting in many assaults. (Para. 45)

Defendants have failed to adequately supervise correctional officers to ensure that they routinely and effectively examine doors to check for rigging, or to take adequate measures to ensure that the defective doors are replaced.” (Para. 45)



In their Second Report, the monitors observed that Walnut Grove “continues to be plagued with clear signs of instability,” including “high rates of inmate assaults, lockdowns, contraband control issues, and management of special populations.” Second Report of Monitors, 04/04/13, Doc. 86 at 2. The Monitors noted that “assaults involving weapons continue to occur at alarming levels.” *Id.* They indicated that in order to be found in compliance with the “reasonably safe living conditions” provision of the Consent Decree, violence rates would need

transferred to outside medical facilities for treatment of the serious

hardware be tasked with determining if there are other areas of physical plant construction that could place prisoners or staff at risk. *Id.* at 10.

On April 17, 2014, the monitors submitted their Fourth Report. The monitors found that Defendants were in non-compliance with the provisions of the consent decree requiring reasonably safe living conditions and sufficient numbers of adequately trained staff. Fourth Report, Doc. 101 at 7-8. They addressed the New Year's Eve events and analyzed underlying problems. Among a number of other contributing factors, the monitors found that the security staff on duty during the riot was "very inexperienced," that almost half the officers had less than six months' experience, and that the officer assigned to the pod where the disturbance began had less than two months' service. *Id.* at 8. Moreover, the average level of experience of security staff had markedly *declined* during the reporting period, while during the same period the numbers of Close Custody inmates at the facility had almost tripled:

In March 2011, 33 percent of the security force at WGYCF had less than one year of experience. In December 2013, 48 percent of the security force had less than one year of experience. Commensurate with an increasingly inexperienced staff, between March 2-11 and December 2013, the Close Custody population at the facility increased from 121 to 346.

*Id.* at 8.

The monitors pointed out that they had brought this issue to the attention of MTC and MDOC in strong terms as far back as October 2012, in their 2<sup>nd</sup> Report, and MTC's Deputy Warden of Operations had advised MDOC's Deputy Commissioner that they were implementing new operating procedures at the facility requiring the deployment of more experienced staff. Fourth Report at 9. These reforms, however, if implemented, were not sustained: "Clearly, at the time of the December [2013] Disturbance, MTC management had abandoned the October 2012 Operating Procedures." *Id.* The monitors found once again that Defendants were in non-

compliance with the provisions of the consent decree requiring reasonably safe living conditions and sufficient numbers of adequately trained staff. *Id.* at 7-8.

On May 19, 2014, at the request of the monitors, the parties to the litigation as well as MTC officials and leadership met with the monitors in Jackson to discuss the New Year's Eve riot and more generally the status of implementation of the consent decree. The meeting included a frank discussion of the likely underlying causes of the May 19 riot, and recommendations by the monitors and by Mr. Vail for remedial measures. The monitors stressed the gravity of the event, and that such an event must not occur again. Report of Eldon Vail, 08/04/14, Doc. 105 at 4.

Following the May 19, 2014 meeting, Mr. Vail submitted a memo to MDOC and Plaintiffs' counsel and the monitors, summarizing his recommendations. He concluded:

Last, Dr. Austin said at the meeting that the disturbance, which occurred this past New Year's Eve, cannot happen again. He was absolutely correct. While bad events will always happen in the prison environment, what cannot happen is for Walnut Grove to lose control of one close custody pod after another, in rapid succession, and then be so completely ill equipped to manage the incident as they

staff do not enforce basic security rules, and that “whether there wa



acknowledged this is a problem in a number of their prisons and said they were working on it.

“Working on it” is not good enough. It is astonishing to me that this enormous gap in basic security is not being treated as an emergency. It is a basic and fundamental necessity for prisoners, staff and the community to know that a prison can actually keep prisoners locked in their cells. Not having confidence that cells doors are secure can be terrifying to both staff and inmates and creates a severe risk of significant injury for the prisoners. This is a problem that demands an immediate solution.

*Id.* at 7-8. Mr. Vail concluded that he has deep concerns

about the operation of the prison, the escalating level of violence, and the ongoing extreme danger to the inmates housed there—as well as the staff who work there. The monitors and I have already repeatedly made a number of strong recommendations to MDOC in the wake of earlier outbursts of violence, but these recommendations, it appears, have largely been ignored. In my view, the most recent outburst on July 10 reinforces the urgent necessity for these remedial measures. It has been shown twice in the past seven months that MTC is incapable of controlling the living units that house close custody inmates. The result, especially in the most recent event, was extreme violence and serious injury to several prisoners. Loss of life could have easily occurred as a result of the July 10 riot -- or for that matter, even during the disturbance last New Year’s Eve.

Finally, Mr. Vail made the following recommendations:

1. Close custody inmates should not be housed at Walnut Grove.
2. Unless and until close custody inmates are removed from Walnut Grove, there should be a mandatory staffing requirement, 24 hours per day, 7 days per week, of two security officers in each close custody pod at all times, absent an occasional break for one officer to use the rest room. Until the cell doors are fixed and are proven to be secure, the pods should never be without a staff member on the floor.
3. If close custody inmates are allowed to remain at Walnut Grove, sufficient supervisory staff should be deployed on each shift until the rules of the pod, such as the prohibition from entering a cell to which a prisoner is not assigned, is routinely followed.
4. The locking mechanism on the cell doors must be replaced with a system that cannot be readily defeated.
5. MDOC must require that MTC have an effective ERP in place, that officers have been trained to follow the plan and that their performance is tested in real time drills: Even if the close custody inmates are removed from Walnut Grove, this is a critical requirement. The ERP must include measures to ensure that officers have adequate

- safety equipment to respond to an emergency. Officers should be required to be actually present in the housing units at all custody levels whenever the inmates are out of their cells.
6. An independent security hardware expert should be retained to inspect the facility and identify risks, including the existence of items that could easily be turned into weapons.
  7. Cleaning equipment should be secured when not in use and microwaves should be bolted down. Items such as milk crates should be removed from the units when not in use.
  8. If MTC cannot attract and retain quality staff and fill their mandatory posts, then MDOC must recognize that this vendor is not qualified to house the inmates.
  9. MDOC and MTC should remain focused on addressing serious allegations of staff corruption.
  10. MTC officers must learn how to control the living units and the prisoners housed at their facility; they must be retrained in Direct Supervision of inmates.
  11. MDOC and MTC should work to reduce the influence of gangs by offering inmates good programs as alternatives to participation in gangs.
  12. Sufficient program opportunities for inmates should be offered so that they are productively occupied the better part of each day, five days a week.

### **LEGAL STANDARD**

The federal courts have inherent authority to modify injunctive relief, including consent decrees, in order to account for changed circumstances and effectuate the basic purpose of the original decree. *See, e.g., United States v. Swift and Co.*, 286 U.S. 106, 114-15 (1932) (“A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. The result is all one whether the decree has been entered after litigation or by consent. In either event, a court does not abdicate its power to revoke or modify its mandate, if satisfied that what it has been doing has been turned through changed circumstances into an instrument of wrong.”); *Chrysler Corp. v. United States*, 316 U.S. 556, 562 (1942) (stating that the test to be applied to a proposed modification of a consent decree is

whether “the change served to effectuate or to thwart the basic purpose of the original consent

*Rufo,*

*Id.* at 1946.

In this case, two years of rising violence at Walnut Grove show the lack of efficacy of the provisions of the Consent Decree aimed at securing a reasonably safe environment for the prisoners housed there. Experience shows the need to modify that decree to achieve its intended purpose.

## **CONCLUSION**

Jacob W. Howard  
McDuff & Byrd  
767 N. Congress  
Jackson, MS  
Phone: (601) 969-0802  
Fax: (601) 969-0804  
[jake@mcdufflaw.com](mailto:jake@mcdufflaw.com)

Margaret Winter  
National Prison Project of ACLU  
915 15th Street, NW, 7th Floor  
Washington, DC 20005  
Phone: (202) 393-4930  
Fax: (202) 393-4931  
[mwinter@npp-aclu.org](mailto:mwinter@npp-aclu.org)  
(admitted *pro hac vice*)

**CERTIFICATE OF SERVICE**

I, Jennie Eichelberger, hereby certify that a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by electronic mail to all parties by the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

SO CERTIFIED, this 6th day of August, 2014.

/s/Jennie Eichelberger  
Jennie Eichelberger