

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

Jauston Huerta, Durand Randle,)
Carl Sherb, Thomas Bolton, Jr.,)
Curtis Gillie, Derek Hicks,)
Individually And On Behalf Of The)
Present And Future Inmates Of)
Vigo County Jail,)

Plaintiffs,)

vs.)

CAUSE NO. 2:16-cv-397-JMS-DKL

GREG EWING, Individually)
And In His Official Capacity As)
Sheriff of Vigo County; The)
VIGO COUNTY COMMISSIONERS:)
Brad Anderson, Judy Anderson,)
and Jon Marvel, In Their Official)
Capacity; The VIGO COUNTY)
COUNCIL: Mike Morris, Mark D. Bird,)
Rick Burger, Timothy Curley,)
Kathy Miller, Ed Ping, and Bill Thomas)
In Their Official Capacity,)

Defendants.)

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
DAMAGES -- CLASS ACTION AND INDIVIDUAL CLAIMS

I.

PRELIMINARY STATEMENT

1. This is a class action for declaratory judgment, preliminary and permanent injunction, and damages, brought on behalf of all present and future inmates of the Vigo County Jail, Terre Haute, Indiana, against officials of Vigo County who are responsible for the custody and care of said inmates. This complaint seeks correction of unlawful prevailing conditions of

the Vigo County Jail such as chronic overcrowding and unconstitutional procedures regarding inmates' rights to adequate protection against exposure to disease, and to remedy continuing violations of due process of law at the Vigo County Jail. Former Assistant Jail Commander, Kim Hawkins, will substantiate the history of overcrowding and the lack of adequate staff. The Indiana Department of Correction jail inspector has reported overcrowding and understaffing in each of the sixteen (16) years since the initial litigation was filed in federal court.

2. In 2000, a class action complaint was brought against the Vigo County Sheriff and the Vigo County Commissioners under the complaint captioned *David Costa, et. al. v. William R. Harris, et. al.* No. TH0-081-C Y/H. The complaint was brought as a class action and alleged overcrowding and unsanitary conditions that violated both the U.S. Constitution and Indiana law. On February 14, 2002, the Vigo County Sheriff and Vigo County Commissioners entered into a binding contract, in the form of a private settlement agreement, which resolved the federal class action lawsuit. For over eleven (11) years the county refused to take positive steps to address the overcrowding, compelling the Plaintiffs in the federal class action, through the efforts of the Indiana ACLU, to bring a complaint for breach of contract and specific performance and individual damages in Vigo Superior Court under the caption *Aaron Hos, individuals and on behalf of those similarly situated v. Vigo County Sheriff; Vigo County Commissioners* under cause number 84D01-1308-PL7173. A class was successfully certified in both of these actions. The case was assigned to a special judge who has overseen the litigation. However, the county has taken minor steps since 2013 and still has not to build a new jail.

3. Preliminary estimates including architectural fees suggest the total cost may be around \$60 million.

II.

JURISDICTION

4. The jurisdiction of this court is invoked pursuant to the provisions of 28 U.S.C. § 1343(3) and (4), this being a suit authorized by 42 U.S.C. §1983 and 1988 to redress the deprivation of rights, privileges and immunities secured by 42 U.S.C. §1983 and the Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States. Declaratory relief is authorized pursuant to 28 U.S.C. §2201 and 2202, and the Federal Rules of Civil Procedure, Rule 57.

III.

VENUE

5. Venue is proper in the Southern District of Indiana under 28 U.S.C. §1391, allowing an action to be brought in the district in the state where the defendants reside or where the cause of action arose. All defendants reside and the cause of action arose in the Southern District of Indiana.

IV.

PLAINTIFFS

6. Jauston Huerta has been detained in the Vigo County Jail at all times relevant.
7. Durand Randle has been detained in the Vigo County Jail at all times relevant.
8. Carl Sherb has been detained in the Vigo County Jail at all times relevant.
9. Thomas Bolton, Jr. has been detained in the Vigo County Jail at all times relevant.
10. Curtis Gillie has been detained in the Vigo County Jail at all times relevant.
11. Derek Hicks has been detained in the Vigo County Jail at all times relevant.

V.

CLASS ACTION

12. The named plaintiffs bring this action on their own behalf and on behalf of all others similarly situated pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure. The members of the class are those persons who are, or may be in the future, confined at the Vigo County Jail, Terre Haute, Indiana.

13. The requirements of Rule 23 are met:

a. The class consists of at least two hundred and sixty-eight (268) persons; the agreed capacity pursuant to agreement of the Vigo County Jail is two hundred and sixty-eight (268) persons. See Exhibit A.

b. There are questions of law and fact common to the class, to-wit:

(i) whether the conditions, practices and policies of the defendants deprive plaintiffs and the class of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

(ii) whether the conditions, practices, and policies of the defendants deprive plaintiffs and the class of their right to be free from cruel and inhuman punishment as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution.

(iii) whether the conditions, practices, and policies of the defendants deprive plaintiffs and the class of rights and privileges guaranteed to them by the First Amendment to the United States Constitution.

(iv) whether the conditions, practices and policies of the defendants, deprive plaintiffs and the class of equal protection of the law as guaranteed by the Fourteenth Amendment to the United States

Constitution.

c. The representative plaintiffs will fairly and adequately protect the interests of the class, inasmuch as they have no interests which are antagonistic to the interests of other class members, and they are represented by counsel.

d. Finally, the parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VI.

DEFENDANTS

14. Defendant Greg Ewing is the duly elected Sheriff of Vigo County, Terre Haute, Indiana. He is the official with the statutory responsibility for maintaining and managing the Vigo County Jail. Ewing is responsible for the care, treatment and protection of the basic rights of the inmates of the Vigo County Jail. He has willfully and wantonly failed to provide and maintain the minimum constitutional standards and continues to do so.

15. The remaining defendants serve on the Vigo County Board of Commissioners and the Vigo County Council which are responsible for the funding, construction, furnishing and maintenance of the Vigo County Jail. These defendants have repeatedly failed to provide adequate funding to maintain minimum constitutional standards in the Jail and they continue to do so, despite repeated notices from the Indiana State Jail Inspector and most importantly contrary to the requests of Defendant Sheriff Ewing.

VII.

INDIVIDUAL CLAIM AND ALLEGATIONS OF PLAINTIFFS

JAUSTON HUERTA

16. Jauston Huerta brings an individual claim for violation of his Fourteenth, Fourth, and Eighth Amendment rights.

17. Mr. Huerta slept on the ground in the Vigo County Jail for several months leading up to and including the night of September 15, 2016.

18. Mr. Huerta was the fifth man forced to sleep on the floor in a four-man cell in A-Block of the Vigo County Jail on or about the night of September 15, 2016.

19. At approximately 5:00 a.m. EST on September 15, 2006, inmate Carl Sherb, who was assigned the top bunk and was still under the influence of a nine (9) day methamphetamine binge, attempted to get down from the bunk to use the toilet and fell on Mr. Huerta causing extensive injuries.

20. As a result, Mr. Huerta suffered shoulder and severe head injuries including a concussion, laceration to his head, and lingering headaches. He woke up in a wheelchair covered in his own blood and urine, possibly the result of a seizure, before being transported to a hospital.

21. On this night, A-Block capacity was twenty-three (23) inmates and the maximum capacity is eighteen (18).

22. Mr. Huerta filed a Tort Claim Notice with the State of Indiana on the same day as this complaint and will amend this complaint after the required ninety (90) days have passed to add Mr. Huerta's state law claims.

23. Mr. Huerta filed grievances relating to the incident that occurred on September 15, 2016, his injuries from that incident, and the lack of medical care he was receiving. The only response Mr. Huerta was given to these grievances, which he filed up the chain of command at the Vigo County Jail, was that his matter had already been addressed.

24. Mr. Huerta filed a grievance on April 8, 2016 requesting shower shoes because the Jail did not provide any and complaining that the showers are filled with germs and bacteria of all kinds. The Vigo County Jail's only response was that Mr. Huerta could purchase them off commissary.

DURAND RANDLE

25. Mr. Randle was booked into the Vigo County Jail on August 23, 2016 and assigned to B Block cell 2.

26. On August 23, 2016, four inmates were already assigned and housed in B Block cell 2 when Mr. Randle was assigned to B Block cell 2.

27. Mr. Randle was the fifth-man assigned to B Block cell 2 and was forced to sleep on the floor for at least the first three days and was repeatedly walked over and walked on by other inmates.

28. On September 5, 2016, Mr. Randle was transported to Parke County Jail due to the overcrowding. As a result of being transferred to another county, Mr. Randle's family was unable to visit him due to the distance.

29. On September 20, 2016, Mr. Randle was transported back to the Vigo County Jail and assigned Block B-2 and was forced to sleep on the floor again. He was told to sleep on the floor until someone found him another spot, but no one ever did. He slept on the floor for four nights this time.

30. Mr. Randle was aware of what happened to other inmates as a result of the overcrowding and feared for his safety and health as a result of witnessing other incidents.

31. Mr. Randle became a trustee in the Vigo County Jail on September 24, 2016. As a trustee, on October 17, 2016, at around 2:15 a.m., Mr. Randle was forced to clean up human

waste in another cell as an inmate had defecated on himself inside of a four-man cell in which five inmates were housed and sleeping. The four other inmates had to be housed in the Bench Room until Mr. Randle cleaned up the mess.

32. Mr. Randle is also a diagnosed paranoid schizophrenic and suffers from severe depression, and the Vigo County Jail has refused to provide him his medicine.

33. Mr. Randle has been unable to sleep or had difficulty sleeping every night that he has slept on the floor.

CARL SHERB

34. Mr. Sherb was booked into the Vigo County Jail on September 9, 2016 and assigned to A-block cell 4.

35. On September 15, 2016, Mr. Sherb was sleeping in the top bunk and Justin Huerta, another named plaintiff, was sleeping on the floor. At approximately 5:00 a.m. that morning, Mr. Sherb fell off the top-bunk and landed on Mr. Huerta. Mr. Sherb's back was injured as a result, and he still suffers from numbness and tingling in his fingers and toes as well as pain in his lower back.

36. Mr. Sherb filed medical requests as a result. When Mr. Sherb requested the pain medication the doctor prescribed for his back, the Nurse gave him the wrong medication. Mr. Sherb was given blood pressure medication which he was not prescribed. After complaining to the Nurse, the Nurse laughed and told Mr. Sherb "at least your blood pressure is right."

THOMAS BOLTON, JR.

37. Mr. Bolton, Jr. was booked into the Vigo County Jail on October 31, 2015 and assigned to H Block and told to sleep on the floor.

38. Mr. Bolton, Jr. slept on the floor of H block for two weeks due to the

overcrowding.

39. Mr. Bolton, Jr. was then assigned a bunk, but when the jail staff realized he was in a top bunk, Mr. Bolton, Jr. who is epileptic and has seizures, was told to go back to sleeping on the floor. Instead of switching the cellmate in the bottom-bunk to the top so that Mr. Bolton, Jr. could sleep off the floor, the Vigo County Jail staff told Mr. Bolton, Jr. to sleep on the floor knowing that Mr. Bolton, Jr. had a serious medical condition.

40. Mr. Bolton, Jr. was then forced to sleep on the floor from the middle of November 2015 until June 5, 2016, almost seven (7) months until he was released on house arrest.

41. On October 13, 2016, Mr. Bolton, Jr. was arrested again for violating house arrest and was forced to sleep on the floor of "J-Pod" for four days.

42. On October 17, 2016, Mr. Bolton, Jr. was moved to "K-Pod" and again required to sleep on the floor because bottom-bunks were full, and he was not allowed on a top bunk.

43. Mr. Bolton, Jr. continues to sleep on the floor due to the overcrowding.

CURTIS GILLIE

44. Mr. Gillie was arrested and booked into the Vigo County Jail on August 10, 2016.

45. Mr. Gillie was assigned to E Block cell 2 and was the fifth man required to sleep on the floor of a four-man cell.

46. Mr. Gillie slept on a mat on floor in E-Block Cell 2 because that cell is too small for an "EZ Boat."

47. One of the other four inmates in Mr. Gillie's cell, potentially with the last name Livingston, fell off the top bunk, landed where Mr. Gillie sleeps, and suffered a head injury. Mr. Gillie was not sleeping on the floor at this time, but he was sitting on the bottom bunk holding a cup of coffee that was knocked out of his hand by the falling inmate who was subsequently

released after this incident. Mr. Gillie was afraid to sleep on the floor after witnessing this incident.

48. Mr. Gillie alleges that the entire cell block has been very tense and frustrated because of the overcrowding and potential health and medical problems that result.

49. K-Pod in the Vigo County Jail and is a trustee in the jail.

50. Mr. Gillie continues to be housed in overcrowded cells.

51. Mr. Gillie receives little to no recreation at the Vigo County Jail and complains that it suffers from sanitary problems.

DEREK HICKS

52. Mr. Hicks was transported to the Vigo County Jail on a probation violation on February 19, 2015 and was immediately told he would have to sleep on the floor.

53. Mr. Hicks was initially placed in "J-Pod" on the new side of the jail and told to sleep on the floor because the jail was overcrowded.

54. Later that same day, February 19, 2015, Mr. Hicks was assigned to A-block cell 1 on the old side of the jail and told to sleep on the floor again. Mr. Hicks slept on the floor for ten (10) days.

55. One year and seven months later, on September 25, 2016, Mr. Hick was transported to the Vigo County Jail again and told by the same officer that he would have to sleep on the floor because the jail was still overcrowded. This time, Mr. Hicks spent three nights sleeping on the floor.

56. Mr. Hicks has experienced difficulty sleeping on the floor because of the constant fear of someone stepping or falling on to him as Mr..Hick's is aware that this has happened to other inmates who were required to sleep on the floor.

VIII.

CLASS ALLEGATIONS WHICH IN TOTAL

CONSTITUTE CRUEL AND INHUMANE PUNISHMENT

57. The Vigo County Jail (“Jail”) is located in Terre Haute, Indiana.

58. The facility was constructed in 1981 and was partially expanded in 2002. The Jail serves as a detention facility for pretrial detainees.

59. The elected Sheriff at the time, reached a consent agreement in 2002 to hold a maximum of two hundred and sixty-eight (268) persons. Both adult males and females are held in the Jail. According to Jauston Huerta, the Jail has been consistently overcrowded between April 2016 and September 2016. Persistent and daily overcrowding in Vigo County Jail is a breach of a 2002 agreement to keep the Vigo County Jail from further overcrowding. That agreement established two hundred and sixty-eight (268) inmates as the capacity limit. Throughout August and September of 2016 the Vigo County Jail exceeded this amount. During that period, up to two hundred and ninety-five (295) inmates were housed in Vigo County Jail. As recently as October 11, 2016, as many as three hundred and twenty-eight (328) inmates were housed in Vigo County Jail. One former inmate, Lloyd Thomas, is aware of occasions in which dozens of inmates were required to sleep on the floor for extended periods of time.

60. Frequent overcrowding is a constant and systemic problem and is especially apparent on weekends, as the Jail lacks a sufficient number of beds for all incarcerated inmates. Inmates are sometimes transferred to other facilities due to the lack of adequate bed space resulting in a county expenditure of over \$1,000,000 per year. This overcrowding places inmates forty to fifty (40-50) miles away in surrounding counties and potentially two hundred and twenty-nine (229) miles away from Vigo County, which among other problems, places inmates

at a disadvantage in meeting with their public defenders or defense attorneys and families.

61. Many plumbing fixtures in the jail are in need of extensive repairs. Toilets require constant maintenance and overflow on the floor and into other cells several times a month. These conditions create a hazardous situation due to many inmates sleeping on the floor and wet surfaces causing inmates to slip and injure themselves entering or exiting the shower area. Additionally, such conditions enable contagious diseases and bacteria to be spread to the population. One such leak resulted in toilet overflow contaminating Mr. Huerta's "EZ Boat" which he uses to sleep on the floor.

62. Toilet and shower facilities throughout the facility fail to meet recommended standards. Mold and mildew are constantly present. Attempts at cleaning it are limited to watered-down cleaning products that are ineffective. Unsanitary conditions, create an unreasonable risk of exposure to diseases.

63. Inmates are not given shower shoes and have been required to shower without shower shoes for several months. At least one inmate contracted the highly contagious skin disease known as scabies.

64. By transferring Vigo County inmates to other counties, the Public Defenders ("PDs") for those in the care and custody of Vigo County are forced to travel some distance to meet with their clients. On many occasions, the inmates report that the PDs do not visit them at all while they are removed from the Vigo County Jail, but rather wait until they are scheduled for a court hearing and transported back to Vigo County in order to meet with them.

65. The current jail has a unconstitutional policy and practice of requiring the individual defendants to participate in their initial hearing by video conferencing. This process deprives the individual defendants of the privacy and confidential legal representation that they

are entitled to, because the public defender or defense attorney is in court and the defendant remains in the jail facility, unable to have a private conversation. The court should require the public defender to stand with the defendant at all proceedings including bond hearings. Former inmate Christopher Payne had not met with his public defender when he was required to appear in a video conference in Vigo County Superior Court 1 on or about March 12, 2016. When Mr. Payne complained that he had never seen his public defender since being arrested in December 2015, approximately four months, and complained about the ineffectiveness of his counsel and his counsel's inability to meet privately with his public defender, the court sentenced Mr. Payne to an extra sixty (60) days in jail and held him in contempt.

66. The Jail's policies and practices for classification and segregation of inmates falls far short of state and constitutional standards. For example, Carl Sherb, who fell on Jauston Huerta, was at risk to himself and others as a result of still being under the effects of a nine (9) day methamphetamine binge and should never have been assigned a top bunk but should have been segregated and given proper medical treatment and observation.

67. Vigo County has failed to provide adequate medical care, isolation, and treatment to inmates. For example, inmate Jerry Shake contracted scabies, a contagious skin disease and was first ignored. Then he received inadequate treatment and was not isolated from the general population. Another example of inadequate medical staff is former inmate Lloyd Thomas was given the wrong medication twice.

68. Vigo County has failed to provide adequate outdoor recreation space and the limited indoor recreation space is too small to meet the needs of all the inmates. The amount of recreation time is also far below the recommended standard of time. These practices expose detainees to less than adequate living conditions and unsafe and unhealthy environment.

69. The design of the Jail facility is unsafe for both staff and detainees. There is no secured area for outside recreation and inside recreation is seldom provided; individuals detained for long periods of time are deprived of exercise and sunlight.

70. The design of the facility is unsafe for detainees because some of the cells in the Jail (specifically A-Block) are too small for temporary beds on the floor, known as “EZ Boats,” only allowing one and a half feet of floor space at night during lockdown between the “EZ Boat” and the cell toilet for all inmates in a single cell. The bunks on both sides of the cell overhang the “EZ Boat” on the floor, completely taking up the available floor space to get down from the top bunk. This was the cause of Jauston Huerta’s injury on September 15, 2016 around 5:00 a.m. EST.

71. The Jail has also failed to provide educational programs for inmates. These policies cause deterioration of physical and mental health, and cannot be supported by necessary security needs. Many inmates are detained for over a year. The Sheriff has also removed the law library.

72. The jail inmates are denied necessary psychiatric and mental health services when there is a diagnosed condition which should be treated psychotropically or with counseling. Because in some instances inmates are kept for over a year, their condition worsens and this constitutes cruel and unusual punishment.

73. The prevailing conditions and practices of the Vigo County Jail collectively cause cruel and inhuman punishment, unrelated and unnecessary to accomplish the intended purpose of detention

74. The due process clause accords pretrial detainees rights not enjoyed by convicted inmates. The totality of conditions and practices at the Vigo County Jail effectively punish

pretrial detainees, in clear violation of the Eighth and Fourteenth Amendments to the United States Constitution.

IX.

CAUSE OF ACTION

75. The above-described conditions and practices at the Vigo County Jail collectively deprive plaintiffs and the class of due process of law as guaranteed to them by the Fifth and Fourteenth Amendments to the United States Constitution in that plaintiffs are deliberately subjected to punitive and oppressive incarceration which is not reasonably related to any legitimate non-punitive governmental objective.

76. The above-described conditions and practices at the Vigo County Jail subject plaintiffs and the class to punishment and deprivations in excess of that required for the lawful purpose of ensuring their presence at trial. These conditions and practices deprive plaintiffs and the class of equal protection of law guaranteed to them by the Fourteenth Amendment to the United States Constitution in that they are subjected to far more punitive and oppressive incarceration than sentenced inmates held in the Indiana Department of Correction institutions.

77. The above-described conditions, practices and policies run contrary to the provisions of 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution. The named defendants have deliberately deprived plaintiffs and the class of a safe, decent and humane jail environment and deliberately chosen to punish each inmate by forcing them to be housed in an overcrowded jail.

78. Plaintiffs and the class have suffered and will continue to suffer irreparable and immediate harm until such time as the court orders the Vigo County Jail closed and replaced, or substantially remodeled.

79. The named plaintiffs are entitled to damages because of the punishment inflicted upon him due to unconstitutional conditions of the Vigo County Jail, and the injury he sustained.

XV.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray, on behalf of themselves and on behalf of all other persons similarly situated, that the court:

80. Assume jurisdiction of this action and set this cause down promptly for a hearing.

81. Determine by order as soon as practicable, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action may be maintained as a class action.

82. Enter a final judgment, pursuant to 28 U.S.C. §2201 and §2202 and Rule 54 of the Federal Rules of Civil Procedure, declaring that the conditions, rules and policies of defendants as set forth in this complaint deprive plaintiffs and the class of the right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

83. Enter a preliminary injunction, to be later made permanent, prohibiting defendants, their employees, agents, successors in office, and all other persons in active concert with them from continuing to deprive plaintiffs and the class, as set forth in this complaint, of their rights to due process of law as guaranteed to them by the Fifth and Fourteenth Amendments to the United States Constitutional; of the rights guaranteed to plaintiffs and the class under the Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States; and the rights and privileges guaranteed to plaintiffs under the First Amendment to the United States Constitution.

84. Mandate the Vigo County Commissioners and the Vigo County Council to appropriate sufficient funds to repair the present Jail or in the alternative, to mandate the Vigo

County Commissioners, and County Council members, to alleviate the present conditions in the Jail or construct a new jail in conformity with recommendations to be made by the Indiana Department of Corrections.

85. Award damages to named plaintiffs.

86. Grant plaintiffs the costs of this action, attorney's fees, and such other further relief as is just and proper in the premises.

Respectfully submitted,

s/Michael K. Sutherlin

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s/Bradley C. Lohmeier

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following persons via the ECF/CM system this 17th day of November, 2016:

Michael Wright
Vigo County Attorney for the Defendants
Wrightlawfirm812@gmail.com

s/Michael K. Sutherlin
Michael K. Suterlin
Attorney for Plaintiffs