

- COMPLAINT/AIDS-HIV

BRIEF BANK

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

CARMEN HARRIS, JAMES HOLIFIELD,)
LARRY LAMPKIN, MICHAEL MAYOLA and)
LESSLEY CARL PETTWAY, individually)
and on behalf of all persons)
similarly situated,)

Plaintiffs,)

v.)

C.A. No. CA-87-V-1109-N

MORRIS THIGPEN, Commissioner of)
the Alabama Department of)
Corrections;)

JEAN HARE, Warden of the)
Julia Tutwiler Prison for Women;)

J.D. WHITE, Warden of the)
Limestone Correctional Facility;)

LYNN HARRELSON, Warden of the)
Kilby Prison; and)

DR. ROBERT GRANGER Director of the)
Correctional Medical Services,)

in their official capacities,)

Defendants.)

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

In this action, Alabama state prisoners challenge a recently established program of the Alabama Department of Corrections that compels all state prisoners to submit to blood tests for the antibodies to the Human Immune Deficiency Virus

Harris v. Thigpen



PC-AL-012-001

Therefore, Plaintiffs, as representatives of all prisoners who are or will be in the custody of or subject to the supervision of the Alabama Department of Corrections, seek through this action declaratory and injunctive relief from these egregious constitutional and statutory violations.

II. JURISDICTION

1. This is an action to redress injuries suffered by Plaintiffs and the class they represent for deprivations under color of state law of rights secured by the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution and by federal law. The claims for relief are filed under 42 U.S.C. §1983 and §504 of the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., as amended by the Civil Rights Restoration Act of 1987 (effective March 22, 1988). Accordingly, this Court has jurisdiction over the claims pursuant to 28 U.S.C. §1343 (3) and (4).

III. PARTIES

2. Each of the Plaintiffs is currently a prisoner within the Alabama Department of Corrections.

3. Plaintiff Carmen Harris, #147946, is confined in the HIV positive segregation unit, known as the AIDS unit, at the Julia Tutwiler Prison for Women in Wetumpka, Alabama.

4. Plaintiff James Holifield, #111344, is confined in the

HIV positive segregation unit, known as the AIDS unit, at the Limestone Correctional Facility in Capshaw, Alabama.

5. Plaintiff Larry Lampkin, #126026, is confined in the HIV positive segregation unit, known as the AIDS unit, at the Limestone Correctional Facility in Capshaw, Alabama.

6. Plaintiff Lessley Carl Pettway, #148853, is confined in the HIV positive segregation unit, known as the AIDS unit, at the Limestone Correctional Facility in Capshaw, Alabama.

7. Plaintiff Michael Mayola, #85173, is confined at the Kilby Prison in Mt. Meigs, Alabama. He has not been tested yet for HIV antibodies but will be tested against his will in the near future if the challenged testing program is allowed to proceed.

8. Defendant Morris Thigpen is the Commissioner of the Alabama Department of Corrections and as such, he is responsible for the direction, supervision and control of the Department, including the promulgation and enforcement of rules, regulations, policies and practices related to the management and control of Alabama's penal institutions. Commissioner Thigpen, who is sued in his official capacity, is administering the HIV testing and segregation program that is challenged in this action.

9. Defendant Jean Hare is the Warden of the Julia Tutwiler Prison for Women. As such, she exercises powers and duties related to the control, governance and supervision of that facility. Warden Hare, who is sued in her official capacity,

administers the HIV positive segregation unit known as the AIDS unit at Tutwiler.

10. Defendant J.D. White is the Warden of the Limestone Correctional Facility. As such, he exercises powers and duties related to the control, governance and supervision of that facility. Warden White, who is sued in his official capacity, administers the HIV positive segregation unit known as the AIDS unit at Limestone.

11. Defendant Lynn Harrelson is the Warden of the Kilby Prison. As such, he exercises powers and duties related to the control, governance and supervision of that facility. Warden Harrelson, who is sued in his official capacity, will implement the HIV antibody testing program at Kilby unless enjoined from doing so.

12. Defendant Dr. Robert Granger is a physician and the Director of Correctional Medical Services, a private entity which is under contract with the Alabama Department of Corrections to provide medical care services to Alabama state prisoners, a function traditionally the exclusive prerogative of the state. As such, he is responsible for their medical screening; diagnosis, care, treatment; counseling; referrals; and maintenance of medical records of and for all such prisoners. Dr. Granger is sued in his official capacity.

IV. CLASS ACTION ALLEGATIONS

13. Plaintiffs seek to bring this action as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

14. Plaintiffs are representative parties of a class composed of all persons (1) who are now or who in the future will be in the custody of or under the supervision of the State of Alabama Department of Corrections, and, (2) who, pursuant to Alabama law or State of Alabama Department of Corrections policy or procedure are subjected to or will be subjected to testing for HIV antibodies, or who are subjected to or will be subjected to segregation and/or other differential treatment as a result of testing positive for HIV antibodies.

15. Plaintiffs are members of the class and their claims are typical of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

16. The class is so numerous that joinder of all members is impracticable. Current members of the class consist of over 9,700 prisoners.

17. There are questions of law and fact common to the class. The lawsuit challenges the mandatory testing of all Alabama prisoners for HIV antibodies and Defendants' policies and practices that derive from this testing program.

18. The defendants 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.

V. FACTUAL ALLEGATIONS

A. TESTING PROGRAM

19. Under a recently enacted state statute, Act. No. 574; Acts of the Legislature; Regular Session 1987, all Alabama state prisoners are required to be tested for antibodies to HIV at the time of their admission to the Department of Corrections. In addition, they are required to be tested 30 days prior to their release from the system.

20. Pursuant to the state statute, the Alabama Department of Corrections has instituted a program of involuntary testing for antibodies to HIV of all prisoners under its jurisdiction upon admission to and prior to release from the Department.

21. By administrative edict, the Department of Corrections has extended the mandatory testing program beyond new admissions and releases and now requires all Alabama state prisoners currently under its jurisdiction to be tested for HIV antibodies.

22. HIV is a retrovirus believed to cause AIDS. HIV attacks certain white blood cells (T-lymphocytes), undermining that part of the body's immune system which normally combats infections and malignancies.

23. AIDS is a clinical diagnosis of a disease complex characterized by a disfunction of the body's immune system against disease. An essential element of the definition of AIDS used for reporting purposes by the Centers for Disease Control (CDC) is affliction with one or more opportunistic diseases which take advantage of the suppressed immune system.

24. There is no test for AIDS itself. The only tests available merely detect the presence of antibodies to HIV. The presence of HIV antibodies does not mean that a person has AIDS or necessarily will ever get AIDS.

25. There are two tests for HIV antibodies. The basic test, known as the HIV antibody test, is an enzyme-linked immunosorbent assay (hereinafter "ELISA"). The ELISA test is not completely accurate. It may produce a significant number of false positives. Medical protocols require that initially positive tests be subjected to a second ELISA test and that a more accurate test, the Western Blot test, be used to confirm the ELISA result. The accuracy of the Western Blot test is dependent on the skill and care of the laboratories conducting the test. As a result, Western Blot confirmations may be inaccurate and in particular tend to produce false negatives. False negatives may also result when a test is administered after exposure to HIV but before antibodies have been produced, a period of time which may extend up to 18 months.

B. CONSEQUENCES OF MANDATORY TESTING

26. The HIV antibody tests are conducted upon blood which must be extracted by use of a needle puncturing the skin of the person to be tested. Many prisoners are not told for what purpose they are being tested. Their consent is not required.

27. Because the tests for HIV antibodies have a significant margin of error, an appreciable portion of the results for Alabama state prisoners may be either false positives or false negatives.

28. Prisoners are provided little or no information or are given misinformation by prison staff about the HIV antibody test and its meaning prior to having blood drawn for the test or when informed of the outcome. No distinction is made between a positive HIV antibody test and a diagnosis for AIDS.

29. As a result, many prisoners who test positive suffer extreme emotional anguish believing they have AIDS. They are told that they have a dread disease for which there is no cure. Some prisoners are told that they will be dead shortly. Prisoners who test positive are provided no emotional support or counseling. Prisoners who falsely test positive needlessly suffer pain and anguish.

30. All prisoners who test positive suffer an immediate change in housing and custody status regardless of their current status. All HIV positive prisoners are removed from where they are housed and are transferred to special segregation units for HIV positive (or "seropositive")

prisoners. The men are sent to a special unit at the Limestone Correctional Facility in Capshaw, Alabama, and the women are isolated in a special unit at the Julia Tutwiler Prison for Women in Wetumpka, Alabama. Prisoners who were participating in the Supervised Intensive Restitution program or in work release programs are immediately removed from these programs, returned to prison and placed in an HIV segregation unit. This change in housing and custody status is effected without any hearing and without regard to appropriate classification factors, such as a prisoner's propensity for violence.

31. As a result of this segregation and the prison grapevine, confidentiality of test results is impossible to maintain. Prisoners who merely test positive for the HIV antibodies are inevitably identified as "AIDS victims" or "AIDS carriers" to the entire prison community, including other prisoners, correctional officers and prison staff, as well as those who visit the prison from the outside. Because of this pervasive disclosure inside prison, this information routinely leaks outside and becomes known to persons in the outside world. In some instances, prison staff actually have reported publicly the names of prisoners who have tested positive.

32. Women who test positive were originally required to wear face masks, rubber gloves and special footwear and are currently required to wear face masks at all times outside the segregation unit, even during medical consultations or

visitation. This practice instantly identifies seropositive women as "AIDS victims" to anyone who sees them.

33. Once identified as having tested positive for HIV antibodies, prisoners are regarded as handicapped and are stigmatized and ostracized. Often, they are labeled for life, incorrectly, as persons with AIDS. Upon release from prison, the stigma of being identified as an "AIDS carrier" might result in being denied a job, education, housing, credit or insurance. The stigma and discrimination even attaches to the families of "AIDS carriers", greatly compounding their anguish.

34. The use of the HIV antibody test and the segregation of those who test positive, combined with a pervasive lack of information and misinformation among prisoners and staff about AIDS and the HIV antibody test have serious health consequences for all prisoners. Prisoners who do not understand the meaning of their test results are at risk for unwittingly giving or getting AIDS.

35. Prisoners housed in the HIV positive segregation units who may have falsely tested positive are put at risk for being exposed to HIV or for contracting AIDS from others in the unit who are truly positive. They may assume that because they are already infected and surrounded by others apparently infected, there is no reason not to engage in high risk activity. For similar reasons, segregated prisoners who are truly HIV positive may also be at great risk for converting from HIV

positivity to AIDS because of the potential for repeated exposure to HIV in the HIV units.

36. The health of prisoners who test negative also is at risk. They may believe that they can safely engage in high risk activities but, because of the likelihood of false negatives in this population, some might become infected by those in fact capable of spreading the virus.

37. Despite the harsh and enduring consequences of a positive test result and the possibility of a false result, prisoners who request retesting are denied it.

C. CONDITIONS IN HIV POSITIVE SEGREGATION UNITS

38. Prisoners in HIV positive segregation units are treated as lepers. They have no contact with the general population in their prisons. They are never allowed to leave their units except when sick and required to go to the infirmary. Visitation is held separately and at reduced hours from that afforded the general population. Unlike other prisoners, they eat off paper plates with plastic utensils or wooden ice cream sticks. After using the telephone, the women at Tutwiler are required to wipe the receiver with alcohol or ammonia. Basic services provided to other prisoners, such as chapel, barber and beauty shop, library, canteen, the gym and playing fields, are unavailable to HIV positive prisoners.

39. Food is served at improper temperatures in the HIV positive segregation units rendering the food unpalatable and increasing the risk of food borne disease.

40. Programming is virtually non-existent for HIV positive prisoners. Unlike the situation for most other Alabama state prisoners, there are no educational programs, no vocational training, no jobs, limited choice and opportunity for religious education or expression, and limited and erratic recreational activities for these prisoners.

41. As a result of the lack of meaningful programming, and in contrast to opportunities provided virtually all other prisoners, many prisoners who are segregated because of their status as HIV positive are unable to earn good time credits at high rates, which has a direct and immediate adverse impact on their release and parole eligibility dates and their chances for parole.

42. Prisoners segregated in the HIV positive units are classified, in effect, permanently as medium security. They are unable to advance to lower security levels or to work towards community release because there are no jobs available to them.

43. Otherwise eligible prisoners in the HIV positive segregation units are denied furloughs.

44. The enforced idleness to which prisoners in the HIV positive segregation units are subjected engenders stress, depression and despair among them and leads to increased tension, suicide threats and violence in the units.

45. Prisoners in the HIV positive segregation unit at Limestone are housed in two wings, the "A" side and the "B" side.

Unless isolated on the "B" side for administrative or disciplinary segregation, or protective custody, prisoners are thrown together on the "A" side without regard to their previous security levels. The previous security levels of prisoners on the "A" side range from minimum to maximum security, creating a volatile and potentially dangerous situation.

46. Prisoners on the "A" side at Limestone are double celled in rooms with solid doors that obscure lines of sight making supervision difficult if not impossible. These factors, combined with the enforced idleness and a sense of doom among prisoners diagnosed as HIV positive, have led many to engage in frequent sexual activity to escape from the horrors of their situation.

47. There is no meaningful legal access for segregated HIV positive prisoners. The Limestone prisoners cannot use the law library and must order their materials in a piecemeal fashion and prepare their habeas corpus petitions or other challenges to their convictions or challenges to their conditions of confinement without trained law clerks to assist them. Tutwiler prisoners may use the law library one hour a week but have no law clerk assistance.

48. Some HIV positive prisoners have been unable to make their scheduled court appearances because court marshals, upon being informed by prison officials of the prisoners' HIV status, have refused to transport the prisoners.

49. There is no justification for the segregation and humiliating and discriminatory treatment of prisoners testing positive for HIV antibodies. AIDS is transmitted by contact with blood, semen or vaginal secretions in sexual relations, by infusion or inoculation of blood in transfusions or intravenous needle sharing activities, or perinatally. It is not transmitted by any form of casual contact with an HIV positive person: breathing the same air; sharing toilets, showers and facilities; sharing plates and utensils; touching the same objects; playing sports together; shaking hands or hugging; eating food cooked by an HIV positive person; or any other ordinary contact.

D. MEDICAL AND MENTAL HEALTH CARE

50. No mental health care or support groups are available for seropositive prisoners to help them cope with their test results or their segregation in an "AIDS unit."

51. Despite the fact that medical and public health authorities agree that the best way to prevent transmission of AIDS is by providing extensive counseling and education on safe sex and safe needle use for intravenous drugs and tattooing, Alabama prisoners are provided no such programs. Moreover, Alabama prisoners are not provided condoms, even though sexual activity takes place in Alabama prisons and the use of condoms is an effective way to reduce the risk of contracting AIDS.

52. Prisoners in the HIV segregation units receive inadequate medical care. Medical complaints are often ignored. Some medical staff refuse to treat or touch seropositive

prisoners. There are often long delays in receiving medical care. For example, one woman hemorrhaged for over a period of three nursing shifts before a nurse finally would see her. Several prisoners have died without receiving adequate medical care.

53. The drug Zidovudine (azidothymidine), or AZT, which can prolong the life of persons with AIDS and also delay the development of end-stage AIDS in infected persons, is not available for Alabama prisoners, regardless of medical need or appropriateness.

54. When the segregation unit for women was established at Tutwiler, the HIV positive women were housed with a woman who had tuberculosis, a highly contagious disease which could weaken or become life-threatening to an HIV positive person fighting the development of AIDS.

55. Special medical diets are not provided to prisoners in the HIV positive segregation units who require such diets.

56. Dental care is inadequate. There are often long delays in receiving dental care. Some dentists and dental assistants refuse to treat seropositive prisoners.

E. FEDERAL FINANCIAL ASSISTANCE

57. The Alabama Department of Corrections receives Federal financial assistance.

VI. CLAIMS FOR RELIEF

A. FIRST CLAIM

58. The mandatory testing program to which all prisoners are required to submit constitutes an unlawful search and seizure in violation of the Fourth Amendment to the United States Constitution.

B. SECOND CLAIM

59. The mandatory testing program to which all prisoners are required to submit denies prisoners due process under the law in violation of the Fourteenth Amendment to the United States Constitution.

C. THIRD CLAIM

60. The mandatory testing program to which all prisoners are required to submit violates the prisoners' right not to have personal matters collected and publicly disclosed in violation of the right of privacy under the Fourteenth Amendment to the United States Constitution.

D. FOURTH CLAIM

61. The public disclosure of prisoners' HIV positive test results, through the failure of prison officials to provide for the confidentiality of test results and through the housing of HIV positive prisoners in the HIV positive segregation units, causes these prisoners to be branded forever as "AIDS carriers" and constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

E. FIFTH CLAIM

62. The public disclosure of prisoners' HIV positive test results, through the failure of prison officials to provide for the confidentiality of test results and through the housing of HIV positive prisoners in the HIV positive segregation units, causes these prisoners to be branded forever as "AIDS carriers" denying them due process under the law in violation of the Fourteenth Amendment to the United States Constitution.

F. SIXTH CLAIM

63. The automatic segregation of all prisoners who test positive on the HIV antibody test without regard to appropriate classification factors, such as a prisoner's propensity for violence, denies these prisoners due process under the law in violation of the Fourteenth Amendment to the United States Constitution.

G. SEVENTH CLAIM

64. The treatment of HIV positive prisoners, including their removal from and lack of eligibility for work release and other similar programs; their automatic segregation without regard to appropriate classification factors, such as a prisoner's propensity for violence; and the denial or restricted availability to them of educational programs, vocational training, employment, religious services, recreation and other opportunities, solely because they tested HIV positive, denies these prisoners the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

H. EIGHTH CLAIM

65. The segregation of prisoners who test positive on the HIV antibody test, depriving them of the opportunity provided other prisoners to work and to earn good time credits at high rates and thereby adversely affecting their release and parole eligibility dates and their chances for parole, denies them equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

I. NINTH CLAIM

66. The totality of circumstances at the Limestone and Tutwiler HIV positive segregation units, including the lack of confidentiality; the ostracism; the exposure to and lack of protection from harm; the absence of adequate medical, mental health and dental care; the emotional distress engendered by disclosure without counseling of a positive test result for an incurable and inevitably fatal disease; and the idleness subjects prisoners housed there to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

J. TENTH CLAIM

67. The denial of reasonable legal access to prisoners for the purposes of challenging their convictions or their conditions of confinement denies them their right of access to the courts protected by the First and Fourteenth Amendments to the United States Constitution.

K. ELEVENTH CLAIM

68. The treatment of HIV positive prisoners by the Alabama Department of Corrections, including their removal from work release and other similar programs; their segregation; and the denial or restricted availability to them of educational programs, vocational training, employment, religious services, recreation and other opportunities available to other prisoners, discriminates against them as otherwise qualified handicapped individuals in violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq., as amended by the Civil Rights Restoration Act of 1987 (effective March 22, 1988).

VII. NO ADEQUATE REMEDY AT LAW

69. As a result of the Defendants' policies, practices, procedures, acts and omissions, Plaintiffs have suffered, do suffer and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional harm. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs described herein. They will continue to be irreparably injured by the policies, practices, procedures, acts and omissions of the Defendants unless this Court grants the injunctive relief the Plaintiffs seek.

VIII. PRAYER FOR RELIEF

On the basis of the foregoing, Plaintiffs and the class they represent respectfully ask this Court to do the following:

1. Declare that the policies, practices, acts and omissions described in this Complaint violate Plaintiffs' rights to be free from unlawful searches and seizures, to the right of privacy, to the equal protection of the laws, to due process of law, to be free from cruel and unusual punishment and to access to the courts pursuant to the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution;

2. Declare that the segregated housing and the restriction or denial of opportunities for prisoners who have tested positive for HIV is discrimination against the handicapped in violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, as amended by the Civil Rights Restoration Act of 1987;

3. Permanently enjoin Defendants, their officers, agents, employees and successors in office, as well as those acting in concert and participating with them from subjecting the Plaintiffs and the class they represent to the illegal and unconstitutional conditions and practices described in this Complaint;

4. Retain jurisdiction of this matter until this Court's order has been fully implemented;

5. Award Plaintiffs their reasonable costs and attorneys' fees; and

6. Grant such other relief as may be just and reasonable.

Respectfully submitted,



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