

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JUSAMUEL RODRIGUEZ
MCCREARY, et al.,
Plaintiffs**

v.

**FEDERAL BUREAU OF PRISONS, et
al.,
Defendants**

Civil No. 1:17-cv-1011

**(Kane, J.)
(Schwab, C.M.J.)**

Filed Electronically

**PLAINTIFFS' OBJECTIONS TO
REPORT & RECOMMENDATION**

Plaintiffs, by and through counsel, hereby respond to certain recommendations in the Magistrate Judge's Report & Recommendation.

I. BACKGROUND

On June 9, 2017, Plaintiffs Jusamuel Rodriguez McCreary, Richard C. Anamanya, and Joseph R. Coppola (collectively, "Plaintiffs") filed a class action complaint against Defendants, alleging unconstitutional treatment of mentally ill prisoners within the Special Management Unit ("SMU") at the United States Penitentiary at Lewisburg ("USP Lewisburg"). On October 2, 2017, the Defendants filed a motion to dismiss, or in the alternative, motion for summary judgment. Plaintiffs opposed Defendants' motion on November 24, 2017, and Defendants filed a reply on December 22, 2017. Defendants also filed a motion for a protective order

to stay discovery until 30 days after a decision on the motion to dismiss. Plaintiffs opposed this motion, and Defendants replied.

On June 28, 2018, the Magistrate Judge issued a Report and Recommendation, recommending that Defendants' motion to dismiss, or in the alternative, motion for summary judgment be denied, and that the motion to stay discovery be denied.

II. ARGUMENT

The Report and Recommendation suggests that Plaintiffs amend their Complaint to clarify the extent to which Plaintiffs are challenging the duration of their sentences. *See* Report & Recommendation ("R&R"), ECF No. 58 at 40, 54. Plaintiffs are not challenging the duration of their confinement, and, therefore, an amended complaint is not necessary.

The Report and Recommendation raises the possibility that two sets of allegations in the Complaint may be intended to challenge the duration of the Plaintiffs' confinement. First, the Report and Recommendation states that allegations related to Plaintiff Coppola's loss of good conduct time may support a claim challenging Mr. Coppola's sentence. *See* R&R at 39 (citing Compl. ¶¶ 155, 160). These allegations were not intended to challenge the duration of Mr. Coppola's confinement. Rather, as the Court recognized, Plaintiffs were "simply providing context to the alleged fact that untreated mental health issues can lead to

disciplinary issues for prisoners who need treatment or medication to help control their behavior.” *Id.* at 38.¹ Additionally, Plaintiffs sought to illustrate the retaliation faced by inmates at USP Lewisburg who challenged unfair treatment by BOP officials, and the resulting negative impact this retaliation had on their mental health.² The allegations related to Mr. Coppola’s loss of good time are not an attempt to challenge the duration of his sentence.³

Second, the Report and Recommendation reasons that “the Plaintiffs have explicitly addressed the Defendants’ disciplinary system in the claim for relief section of the complaint” and therefore may be challenging their sentences. R&R at 39 (citing Compl. ¶ 169(b)). Again, this assertion merely relates to Plaintiffs’ allegation “that a prisoner’s confinement in isolation combined with the harsh

¹ *See* Compl. ¶ 155 (“While Mr. Coppola has been incarcerated, he has made over 80 requests, including 25 at USP Lewisburg, for treatment of his bipolar disorder. Every one of these requests has been refused or ignored. According to Mr. Coppola, this lack of treatment during his incarceration—especially when it was for 24 hours-a-day, seven days-a-week in a SHU setting—has triggered extreme mood swings, worsening his bipolar disorder and resulted in his loss of over two years of good time.”).

² *See id.* ¶ 160 (“[O]n August 28, 2016, Mr. Coppola was involved in a disciplinary incident that resulted in his placement in restraints for 22 hours, from which he still has marks on his wrists. Mr. Coppola filed a misconduct charge over the incident, but it was rejected at every level. As punishment for this incident and for his filing the misconduct charge, Mr. Coppola lost good time and was notified that his SMU completion had been ‘cancelled.’ Mr. Coppola withdrew a lawsuit he had filed against the BOP for fear he would face additional, severe retaliation.”).

³ Moreover, Mr. Coppola has already been released from BOP custody.

disciplinary practices (such as four pointing) pose a substantial risk to that prisoner’s mental health.” *Id.* at 38-39.⁴

Finally, the Report and Recommendation states that “it does not appear that the Plaintiffs are actually raising an Eighth Amendment conditions of confinement claim,” but suggests that if Plaintiffs object to this finding, then Plaintiffs should “be instructed to more clearly define that claim in an amended complaint.” *Id.* at 41-42. Plaintiffs agree that they are not bringing a separate conditions of confinement claim under the Eighth Amendment.

III. CONCLUSION

For the foregoing reasons, Plaintiffs object to the recommendation that they amend the Complaint to clarify the extent to which Plaintiffs are challenging the duration of their sentences. Plaintiffs are not challenging the duration of their confinement, nor are they raising an Eighth Amendment conditions of confinement claim, and, therefore, should not be required to amend the Complaint.

Dated: July 5, 2018

Respectfully submitted,

/s/ Kevin H. Metz
Attorneys for Plaintiffs:

⁴ *See id.* ¶ 169(b) (“Defendants’ policies, practices, and procedures systemically violate the Eighth Amendment rights of individuals with mental illness. Such policies, practices and procedures include, without limitation: . . . A disciplinary system that does not consider a prisoner’s serious mental illness and the impact of isolation in assessing whether to sanction the prisoner or, if so, the nature of the sanction”).

Kevin H. Metz
PA ID No. 324044
Marissa R. Boynton (admitted
pro hac vice)
Katherine B. Palmer-Ball
(admitted *pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004
Tel.: (202) 637-2200
Fax: (202) 637-2201
kevin.metz@lw.com
marissa.boynton@lw.com
katherine.palmer-ball@lw.com

Alexandra Morgan-Kurtz
James Davy
PA INSTITUTIONAL LAW
PROJECT
100 Fifth Ave.
Suite 900
Pittsburgh, PA 15222
Tel.: (412) 434-6175
amorgan-kurtz@pailp.org
jdavy@pailp.org

Philip Fornaci (admitted *pro
hac vice*)
WASHINGTON LAWYERS'
COMMITTEE FOR CIVIL RIGHTS
& URBAN AFFAIRS
11 Dupont Circle NW
Suite 400
Washington, DC 20036
Tel.: (202) 319-1000
Fax: (202) 319-1010
phil_fornaci@washlaw.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Plaintiffs' Reply Brief in Further Support of Plaintiffs' Motion to Seal was served upon the following via ECF on July 5, 2018:

Timothy S. Judge
United States Attorney's Office
Middle District of Pennsylvania
235 N. Washington Ave.
P.O. Box 309
Scranton, PA 18501
Tel: 570-348-2827
Email: timothy.judge@usdoj.gov

DATED: July 5, 2018

By: /s/ Kevin H. Metz
Kevin H. Metz (*admitted pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004
Tel.: (202) 637-2200
kevin.metz@lw.com

Counsel for Plaintiffs