

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LUIS VASQUEZ, DAVID GREENWOOD,  
JAVIER SALAZAR, JULIAN LOPEZ  
and ANTHONY RIACH,

Plaintiffs,

v.

DANIEL BRAEMER, DON STRAHOTA,  
WILLIAM POLLARD, PAMELA ZANK  
and MICHAEL THURMER,<sup>1</sup>

Defendants.

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ORDER

11-cv-806-bbc

This is a group civil action for monetary and injunctive relief brought under 42 U.S.C. § 1983 by plaintiffs Luis Vasquez, David Greenwood, Javier Salazar, Julian Lopez and Anthony Riach regarding the allegedly harsh conditions of segregation at the Waupun Correctional Institution. Plaintiffs contend that defendants Daniel Braemer, Don Strahota, William Pollard, Pamela Zank and Michael Thurmer were aware that the harsh conditions of confinement exacerbated plaintiffs' mental illnesses and caused plaintiffs to experience

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<sup>1</sup> Plaintiffs' amended complaint lists Jeffrey Garbelman and Gary Ankarlo as defendants in the caption, but their names are crossed out. Their names are also crossed out or whited-out throughout the amended complaint. Thus, I am assuming that plaintiffs do not wish to sue Garbelman and Ankarlo and I have excluded them from the caption.

numerous physical health problems. Each plaintiff is proceeding in forma pauperis and has made an initial partial payment. In addition, each plaintiff has notified the court that he understands the consequences of proceeding with this case jointly and that he wishes to do so.

The next step in the case is to screen the complaint under 28 U.S.C. § 1915A to determine whether any portion is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. On February 26, 2012, plaintiffs filed an amended complaint and notified the court that they wish the amended complaint to be treated as the operative pleading in the case. Thus, I will screen the amended complaint.

After reviewing the allegations, I conclude that plaintiffs may proceed jointly on their claims that defendants Braemer, Strahota, Pollard, Zank and Thurmer acted with deliberate indifference to plaintiffs' serious medical and mental health care needs by subjecting them to unconstitutional conditions of confinement in segregation.

In their amended complaint, plaintiffs allege the following facts.

#### ALLEGATIONS OF FACT

Plaintiffs David Greenwood, Javier Salazar, Julian Lopez and Anthony Riach are prisoners at that Waupun Correctional Institution. Plaintiff Luis Vasquez was a prisoner at the Waupun Correctional Institution until sometime in April 2012, when he was

transferred temporarily to the Wisconsin Resource Center in Winnebago, Wisconsin for psychiatric care. Defendants have been employed at the Waupun Correctional Institution in various capacities. Defendant Daniel Braemer is a supervising officer at Waupun; defendant Don Strahota is the security director; defendant Pamela Zank is the segregation unit manager; defendant William Pollard is the warden and defendant Michael Thurmer is the former warden.

Each plaintiff has a history of serious mental health problems that caused them to be placed in non-punitive administrative confinement in the segregation unit at the Waupun Correctional Institution. Starting in December 2007, plaintiff Vasquez was placed in administrative confinement for an indefinite period. Plaintiff Salazar was placed in administrative confinement on December 23, 2008; plaintiff Greenwood was placed on September 28, 2010; plaintiff Lopez was placed on May 26, 2010; and plaintiff Riach was placed on April 21, 2010. In each case, defendants Braemer and Strahota recommended that plaintiffs be placed in segregation.

The cells in the segregation unit where plaintiffs were placed during administrative confinement have concrete floors, brick walls and no windows through which prisoners can see outdoors or that allow in natural light. Plaintiffs were housed in isolation. Dividers run along the center of the corridor outside the cells, preventing plaintiffs from seeing other prisoners.

While they were in administrative confinement, plaintiffs were locked in their cells

for nearly 24 hours a day. They never saw the outdoors and were not exposed to sunlight. They were allowed outside of their cells for four hours each week for “recreation.” The recreation space is a metal cage inside a concrete room with low illumination and only a pull-up bar for exercise. Plaintiffs were too weak to use the pull-up bar and could not engage in other exercise, such as running or jumping, because the shoes they were provided were too thin to be supportive on the concrete floor. When plaintiffs tried to exercise, they developed sore and swollen feet.

The isolation, lack of sunlight and inability to exercise caused plaintiffs to suffer from several health problems, including skin problems, loss of bone strength, vitamin deficiency, high cholesterol, obesity, hypertension, muscle and joint pain, stiffness and poor circulation. In addition, the conditions exacerbated plaintiffs’ mental illnesses and caused them to attempt suicide and engage in acts of self harm on several occasions.

All defendants were aware of the conditions in the segregation unit while plaintiffs were in administrative confinement. Defendants were also aware that the conditions were causing plaintiffs to suffer mental and physical health problems.

## OPINION

Plaintiffs contend that the conditions of confinement for prisoners who are placed in non-punitive administrative segregation at the Waupun Correctional Institution violate the Eighth Amendment’s prohibition on cruel and unusual punishment. As an initial matter,

I conclude that plaintiffs may proceed with their claims jointly under Fed. R. Civ. P. 20(a), which governs the number of persons who may be joined as plaintiffs in any one action. It provides that multiple plaintiffs may file jointly when their claims arise out of “the same transaction, occurrence, or series of transactions or occurrences” and when there is “any question of law or fact common to all plaintiffs . . . in the action.” In this case, plaintiffs are challenging the conditions of confinement for prisoners placed in administrative segregation as a result of mental health problems. Although plaintiffs were in segregation during different time periods, each alleges that he experienced exactly the same conditions and suffered from similar medical and mental health problems as the other plaintiffs. Additionally, each plaintiff is suing the same set of defendants. Thus, plaintiffs’ claims arise from the same “series of . . . occurrences,” namely, defendants’ alleged failure to provide adequate conditions of confinement for prisoners in administrative segregation as a result of mental health issues. Plaintiffs may proceed jointly. However, they should be aware that the court expects plaintiffs to coordinate with each other throughout the pendency of this lawsuit and file only one set of motions, briefs or other documents, although all plaintiffs must sign anything submitted to the court.

The next issue is whether plaintiffs have stated a claim under the Eighth Amendment. Prisoners have a right to receive adequate medical care, Estelle v. Gamble, 429 U.S. 97 (1976), which includes a right to appropriate mental health treatment. Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987); Wellman v. Faulkner, 715 F.2d 269, 272 (7th

Cir. 1983). Adequate care extends not just to things like medication and therapy but also to the conditions of confinement. When these “are so severe and restrictive that they exacerbate the symptoms that mentally ill inmates exhibit,” Jones ‘El v. Berge, 164 F. Supp. 2d 1096, 1116 (W.D. Wis. 2001), or if they cause physical health problems, this may result in cruel and unusual punishment. In addition, prison officials have a duty to protect prisoners from harming themselves as a result of a mental illness. Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). The question for all Eighth Amendment claims regarding conditions of confinement is whether defendants were aware of a substantial risk to plaintiffs’ health or safety and disregarded that risk by failing to take reasonable measures to abate it. Farmer v. Brennan, 511 U.S. 825 (1994).

It is reasonable to infer from plaintiffs’ allegations that the conditions in administrative confinement posed a substantial risk to their health and safety by causing or exacerbating their various physical and mental health problems. In particular, plaintiffs allege that the conditions caused them to attempt suicide, engage in other acts of self harm and develop medical problems such as hypertension, skin problems and vitamin deficiencies.

Plaintiffs allege that all defendants knew about the conditions in the segregation unit for prisoners on administrative confinement. Despite knowing about the alleged harsh conditions, defendants Braemer and Strahota recommended that plaintiffs be placed in administrative confinement. Additionally, plaintiffs allege that while they were in segregation, all defendants knew that the conditions were causing plaintiffs to suffer from

medical and mental health problems, but no defendant took steps to abate the problems. All defendants are in supervisory capacities and it is plausible to infer at this stage that each had some ability to control the conditions of administrative confinement. Accordingly, plaintiffs may proceed with their Eighth Amendment claims against all defendants.

At summary judgment or trial, plaintiffs will have to prove that the conditions of confinement caused or contributed to the mental and physical health issues that they have alleged. Additionally, they will have to prove that defendants acted with “deliberate indifference,” which means that defendants consciously disregarded a serious mental or medical health need by failing to take reasonable measures to address it. Guzman v. Sheahan, 495 F.3d 852, 859 (7th Cir. 2007).

## ORDER

IT IS ORDERED that

1. Plaintiffs Luis Vasquez, David Greenwood, Javier Salazar, Julian Lopez and Anthony Riach are GRANTED leave to proceed on their claims that defendants Daniel Braemer, Don Strahota, William Pollard, Pamela Zank and Michael Thurmer violated the Eighth Amendment by subjecting them to conditions of confinement that caused plaintiffs to suffer serious physical and mental health problems.

2. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiffs’ complaint and this order are being sent today to

the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiffs' complaint if it accepts service on behalf of the state defendants.

3. For the time being, plaintiffs must send defendants a copy of every paper or document that they file with the court. Once plaintiffs have learned what lawyer will be representing defendants, they should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiffs unless plaintiffs show on the court's copy that they have sent a copy to defendants or to defendants' attorney.

4. Plaintiffs should keep a copy of all documents for their own files. If plaintiffs do not have access to a photocopy machine, they may send out identical handwritten or typed copies of their documents.



5. Each plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the officials at the Waupun Correctional Institution and Wisconsin Resource Center of those institutions' obligation to deduct payments until the filing fees have been paid in full.

Entered this 23d day of April, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge