

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS, and

THE DIRECTOR OF THE SOUTH
CAROLINA DEPARTMENT OF
CORRECTIONS, WILLIAM R. BYARS,
JR., in his official capacity,

Defendants.

Civil Action No. 3:13-cv-2664-CMC

COMPLAINT

The United States of America, by its undersigned attorneys, files this Complaint and alleges upon information and belief:

INTRODUCTION

1. The United States of America brings this civil action to enforce Title II of the Americans with Disabilities Act of 1990, as amended ("Title II" and "ADA"), 42 U.S.C. §§ 12131-12134, Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"), 29

U.S.C. § 794, and their implementing regulations, 28 C.F.R pts. 35, 41, and 42 subpt. G, against the South Carolina Department of Corrections, and the Director of the South Carolina Department of Corrections, William R. Byars, Jr., in his official capacity.

2. As set forth more fully below, Defendants have discriminated, and continue to discriminate, against inmates with Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (collectively, "HIV") in violation of Title II of the ADA and Section 504. Inmates with HIV are individuals with disabilities within the meaning of the ADA because HIV substantially limits, inter alia, the major bodily functions of the immune system and reproductive functions. 42 U.S.C. § 12102(2) as amended by the ADA Amendments Act of 2008.
3. Defendants deny inmates with HIV the opportunity to equally participate in and benefit from a variety of services, programs, and activities, and subject inmates with HIV to unnecessary segregation and unequal opportunities at correctional rehabilitation. For example:
4. SCDC routinely denies inmates with HIV the opportunity to participate in a variety of services, programs, and activities, available to other inmates, such as drug treatment (even where a condition of an inmate's sentence or necessary for parole), work release, pre-release preparation, hardship transfers, intermediate psychiatric care, and jobs.
5. SCDC treats inmates with HIV unequally, differently, and separately in other services, programs, and activities, such as reception and orientation, visitation, and housing.
6. Without medical justification, SCDC requires that inmates with HIV be housed in "HIV-only" dorms, in only two of its highest security facilities, regardless of an inmate's individual security classification or behavior. SCDC requires inmates at these facilities to wear clothing that identifies their dorms, and the otherwise confidential HIV status of inmates with HIV is therefore affirmatively publicized to all staff, visitors, other inmates, and members of the public.

7. SCDC categorically bars inmates with HIV from jobs in the cafeteria and canteen, without justification. Because inmates with HIV cannot participate in food service jobs, inmates with HIV are unable to benefit and learn from such jobs and are required to serve longer sentences.

JURISDICTION, VENUE, AND ASSIGNMENT

8. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 12133, and 29 U.S.C. § 794a. The Court may grant the relief sought in this action pursuant to 42 U.S.C. § 12133, 29 U.S.C. § 794a, and 28 U.S.C. §§ 2201 and 2202.
9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 in that all of the claims and events giving rise to this action occurred in this District.
10. Assignment is proper in this Division pursuant to Local Civil Rule 3.01 DSC in that a substantial part of the events and omissions giving rise to the claims occurred in this Division, and the Defendants are headquartered in this Division.

THE PARTIES

11. Plaintiff is the United States of America. The United States Department of Justice ("United States"), is responsible for: administering, issuing technical assistance for, promulgating regulations for, conducting investigations under, reviewing compliance under, and enforcing Title II of the ADA, 42 U.S.C. §§ 12131-12134, and enforcing Section 504, 29 U.S.C. § 794.
12. Defendant South Carolina Department of Corrections ("SCDC"), an executive agency of the State of South Carolina, is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is, therefore, subject to Title II of the ADA and its implementing regulation, 28 C.F.R. pt. 35.
13. Defendant SCDC is a "recipient" of "federal financial assistance" within the meaning of

Section 504, 29 U.S.C. § 794, and its implementing regulation, including 28 C.F.R. pt. 42, subpt. G.

14. Defendant SCDC operates "services, programs, or activities" within the meaning of Title II and Section 504.
15. The South Carolina Code vests the SCDC Director with exclusive management and control of the South Carolina prison system, including the proper care, treatment, feeding, clothing, and management of prisoners. S.C. Code Ann. § 24-1-130.
16. The South Carolina Code provides: "[T]he [D]irector [of SCDC] shall have the power to prescribe reasonable rules and regulations governing the humane treatment, training, and discipline of prisoners, and to make provision for separation and classification of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured." S.C. Code Ann. § 24-1-140.
17. The South Carolina Code charges the Director of SCDC with appearing for and defending any actions brought against SCDC. S.C. Code Ann. § 24-1-220.
18. Defendant Director of SCDC, William R. Byars, Jr., is sued in his official capacity.

FACTS

The United States' Investigation and Review of Compliance

19. In June 2009, the United States opened an investigation and compliance review of SCDC under Title II and Section 504 after receiving complaints of discrimination on the basis of disability against inmates with HIV, unnecessary segregation of inmates with HIV, and the exclusion from participation in and the denial of the benefits of services, programs, and activities for inmates with HIV.
20. Among other things, the United States reviewed policies, practices, and procedures; conducted site visits at Broad River Correctional Institution ("Broad River") and Camille

Griffin Graham Correctional Institution ("Graham"); interviewed inmates; and interviewed security, administrative, and other staff, employees, and/or contractors.

21. The United States provided SCDC with significant technical assistance to remediate outstanding violations of Title II and Section 504.
22. On January 21, 2010, the United States provided SCDC with a letter concerning discriminatory acts against inmates with HIV that the United States determined to be in violation of Title II of the ADA and Section 504. The letter set out appropriate methods for remediating such exclusion from and denial of the benefits of services, programs, and activities, and other instances of discrimination.
23. On June 22, 2010, the United States provided SCDC with a letter of findings concerning the denial of the benefits of and exclusion from services, programs, and activities, discrimination against, and unnecessary segregation of inmates with HIV that the United States determined to be in violation of the requirements of Title II of the ADA and Section 504. In this letter, the United States incorporated the findings of the January 21, 2010 letter by reference and again identified appropriate methods for remediating violations of Title II and Section 504.
24. In these letters, the United States made findings of fact and conclusions of law, described remedies for the violations found, and offered to resolve the matter subject to entry into a voluntary compliance agreement.
25. The United States, before filing this Complaint, provided Defendants SCDC, and the Director of SCDC with notice of this enforcement action and sought voluntary compliance.
26. All conditions precedent to the filing of this Complaint have occurred or been performed.

Background to the South Carolina Department of Corrections

27. Kirkland Correctional Institution ("Kirkland") is located in Columbia, South Carolina. Kirkland receives, assesses, classifies, and assigns all male inmates who are at least seventeen years old and sentenced to 91 days or more in prison. All female offenders who are at least seventeen years old are initially processed at Kirkland before their processing is completed at the Graham Reception and Evaluation Center.
28. SCDC has twenty-eight institutions that are categorized into four distinct security levels: high security (level 3), medium security (level 2), minimum security (level 1B) and community-based pre-release/work centers (level 1A). Factors used to determine each institution's security level include architectural design of the institution, type of housing, operational procedures, and the level of security staffing.
29. SCDC provides a variety of services, programs, and activities for inmates for rehabilitation and other purposes, including, inter alia, work/work release programs, visitation, reception and orientation, classification, jobs in the cafeteria and canteen, sanitation and hygiene, drug treatment, pre-release, social services, safety and emergency procedures, and volunteer programs.
30. SCDC's general policy is to assess the level of security risk posed by an inmate based upon the inmate's past criminal behavior and to assign the inmate to appropriate housing according to the results of this risk assessment. SCDC generally determines custody classification and inmate privileges based upon the inmate's behavior.
31. SCDC's general policy, also subject to various laws and standards, is to ensure that inmates are provided health care/medical confidentiality and privacy.

SCDC's Segregation Policy for Inmates with HIV

32. Unlike the general policies applicable to inmates, SCDC's prior Director implemented a policy and practice that categorically segregates from the general inmate population inmates who test positive for HIV upon entry to the SCDC system. This policy and practice excludes

inmates with HIV from participation in, and denies them the benefits of a variety of services, programs, and activities. It also subjects inmates with HIV to other types of discrimination in violation of Title II and Section 504.

33. Defendants SCDC and SCDC's Director continue to subscribe to and enforce this policy and practice.
34. Female inmates who test positive for HIV upon admission to the SCDC system are housed at Graham in the B side of the Whitney Dorm. Male inmates who test positive for HIV upon admission to the SCDC system are housed at Broad River in the Marion and Wateree Dorms.
35. Both Graham and Broad River are located at the main SCDC site, which includes Kirkland and several other correctional facilities of various programmatic and security levels, in Columbia, South Carolina.
36. Both Graham and Broad River are level 3 security correctional institutions, which is the highest security level designation in the SCDC system. Inmates who test positive for HIV upon admission to SCDC are housed at Graham and Broad River notwithstanding the fact that they may have a lower security classification.
37. Within Graham and Broad River, inmates with HIV are segregated to dorms which only house inmates who have tested positive for HIV.
38. Male inmates with HIV have been required to have blue dots on their identification badges and/or wear wristbands of a specific color indicating that they live in the HIV-designated dorms. Female inmates are required to wear uniforms with the label "Whitney B" imprinted across the back, which is the dorm designated for female inmates with HIV.

**The Consequences of SCDC's Policy and Practice of Segregation for Inmates
with HIV**

39. Because of the Defendants' policy and practice of unnecessarily segregating inmates with HIV into dorms which inmates are forced to identify on their clothing, and thereby, inmates' confidential disability-related information (HIV status) is publicized to all staff, visitors, other inmates, and members of the public.
40. Defendants' policy and practice of segregating inmates with HIV to particular dorms within Broad River and Graham and other differential treatment of inmates with HIV deny such inmates an equal opportunity to benefit from various services, programs, and activities provided by SCDC, including, inter alia, work/work release programs, visitation, reception and orientation, cafeteria and canteen jobs, drug treatment, pre-release, and volunteer programs.
41. Several SCDC services, programs, and activities are not offered at Graham or Broad River. Because of Defendants' policy and practice of segregation, inmates with HIV are excluded from participation in and denied the benefits of such services, programs, and activities.
42. Inmate participation in work release programs provides inmates with the opportunity to reduce the length of a sentence, and inmate jobs in the cafeteria and canteen, for which inmates with HIV cannot participate under policy, while not paying, provide work credits for inmates. Because they are denied participation in, or equal opportunities to benefit from, these jobs, otherwise qualified inmates with HIV must serve longer sentences than other inmates with the same classification.
43. Though inmates without HIV are permitted to transfer to other facilities for a variety of reasons, inmates with HIV are not permitted to transfer from Graham and Broad River to other facilities. Unlike inmates without HIV, inmates with HIV are ineligible for hardship transfers available under a variety of circumstances, such as where a frequent visitor or family member of an inmate cannot travel because of a medical condition or disability.
44. Unlike other SCDC institutions, Graham and Broad River do not provide intensive drug

treatment programs. Therefore, inmates with HIV are unable to receive drug treatment or its benefits, even when such treatment is a condition of an inmate's sentence or parole.

45. Unlike other SCDC institutions, Graham and Broad River do not provide intermediate level psychiatric care. Inmates with HIV are, therefore, excluded from participation in and denied the benefits of intermediate level psychiatric care because of Defendants' policy and practice of segregation.
46. Visitors of inmates with HIV, such as family members, friends, clergy, and counselors, are often required to travel longer distances for visitation because of Defendants' policy and practice of segregation, which requires inmates with HIV to be housed at Graham and Broad River. Graham and Broad River are also higher custody facilities subject to higher security considerations. Because they are housed at Graham and Broad River based on their HIV status and without regard to other classification factors, inmates with HIV who would otherwise qualify for housing at lower security facilities and their visitors face heavier security restrictions based solely on the inmates' HIV status.

COUNT I

TITLE II OF THE ADA

47. The allegations of paragraphs 1 through 45 of the Complaint are hereby re-alleged and incorporated by reference as if fully stated herein.
48. Defendants have discriminated and continue to discriminate against inmates with HIV in violation of Title II and its implementing regulation by excluding such inmates from participation in, or denying such inmates the benefits of, services, programs, and activities, and by otherwise subjecting inmates with HIV to discrimination. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). For example, pursuant to SCDC policy, inmates with HIV are excluded from or denied the benefits of services and opportunities available to other inmates, such as drug treatment (even where a condition of an inmate's sentence or necessary for parole), work release, pre-release preparation, hardship transfers, intermediate psychiatric

care, and jobs.

49. Defendants similarly have discriminated and continue to discriminate against inmates with HIV in violation of the Title II regulatory provision prohibiting public entities from failing to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities by, among other things, unnecessarily segregating inmates with HIV to two high security facilities (Graham for women and Broad River for men), regardless of and contrary to SCDC's inmate security and classification policies, and by further segregating inmates with HIV to particular dorms within those facilities. 28 C.F.R. § 35.130(d).
50. Defendants have engaged and continue to engage in various specific types of discrimination in violation of Title II and its implementing regulation, including, but not limited to the following:
- a. SCDC has denied and continues to deny otherwise qualified inmates with HIV the opportunity to participate in or benefit from aids, benefits, or services offered by SCDC, such as drug treatment, pre-release, work release, jobs, intermediate psychiatric care, and hardship transfers. 28 C.F.R. § 35.130(b)(1)(i).
 - b. SCDC has provided and continues to provide qualified inmates with HIV unequal, different, or separate opportunities to participate in services, programs, and activities, such as SCDC's classification scheme, security policies, and visitation services. 28 C.F.R. §35.130(b)(1)(ii).
 - c. SCDC has provided and continues to provide qualified inmates with HIV benefits, aids, or services that are not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others, such as housing at appropriate security level so as to participate in drug treatment rehabilitation, opportunities gained from work release and pre-release for post-incarceration transition and potential employment,

and opportunities for work credits. 28 C.F.R. § 35.130(b)(1)(iii).

- d. SCDC has provided and continues to provide different or separate benefits, aids, or services to qualified inmates with HIV than are provided to others, e.g., work opportunities, intermediate psychiatric care, medical and disability-related confidentiality, and such action is not necessary to provide qualified inmates with HIV the benefits, aids, or services that are as effective as those provided to others. 28 C.F.R. § 35.130(b)(1)(iv).
- e. SCDC has imposed and continues to impose, directly and through other arrangements, eligibility criteria that screen out or tend to screen out inmates with HIV from participating in or benefiting from services, programs, and activities, such as requiring inmates to not have HIV to be able to participate in or benefit from its security classification policies, drug treatment, work release, pre-release, work opportunities, intermediate psychiatric care, and hardship transfers. 28 C.F.R. § 35.130(b)(8).
- f. SCDC has failed and continues to fail to make reasonable modifications in policies, practices, or procedures to avoid discrimination on the basis of disability, such as ensuring appropriate security classification and resources are afforded to inmates with HIV. 28 C.F.R. § 35.130(b)(7).
- g. SCDC has failed and continues to fail to administer its services, programs, and activities, such as drug treatment, work release, pre-release, work opportunities, intermediate psychiatric care, hardship transfers, and housing, in the most integrated setting appropriate to the needs of qualified inmates with HIV. 28 C.F.R. §35.130(d); 28 C.F.R. §35.152(b)(2).
- h. SCDC has placed and continues to place inmates with HIV in facilities that do not offer the same programs as the facilities where they would otherwise be housed based on legitimate, nondiscriminatory security and classification criteria, such as drug

treatment, work release, pre-release, and intermediate psychiatric care. 28 C.F.R. § 35.152(b)(2)(iii).

- i. Notwithstanding the fact that the SCDC correctional system includes 28 facilities across the State of South Carolina at various security levels, SCDC has deprived and continues to deprive inmates with HIV of visitation with family members by placing them only in high security correctional facilities in Columbia, South Carolina, where they would not necessarily otherwise be housed. 28 C.F.R. § 35.152(b)(2)(iv).

COUNT II

SECTION 504

51. The allegations of paragraphs 1 through 49 of the Complaint are hereby re-alleged and incorporated by reference as if fully stated herein.
52. Defendants, recipients of federal financial assistance, have discriminated and continue to discriminate against inmates with HIV in violation of Section 504 and its implementing regulation by excluding from participation in, or denying the benefits of, SCDC's services, programs, and activities, or otherwise subjecting inmates with HIV to discrimination. 29 U.S.C. § 794; 28 C.F.R. § 42.503(a). For example, pursuant to SCDC policy, inmates with HIV are excluded from or denied the benefits of services and opportunities available to other inmates, such as drug treatment (even where a condition of an inmate's sentence or necessary for parole), work release, pre-release preparation, hardship transfers, intermediate psychiatric care, and jobs.
53. Defendants similarly have discriminated and continue to discriminate against inmates with HIV in violation of the Section 504 regulatory provision prohibiting public entities from failing to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities by, among other things, unnecessarily segregating inmates with HIV to two high security facilities (Graham for women

and Broad River for men), regardless of and contrary to SCDC's inmate security and classification policies, and by further unnecessarily segregating inmates with HIV to particular dorms within those facilities. 28 C.F.R. § 42.503(d).

54. Defendants have engaged and continue to engage in various specific types of discrimination in violation of Section 504 and its implementing regulation, including, but not limited to, the following:
- a. SCDC has denied and continues to deny otherwise qualified inmates with HIV the opportunity accorded to others to participate in the program or activity receiving federal financial assistance, such as drug treatment, pre-release, work release, jobs, intermediate psychiatric care, and hardship transfers. 28 C.F.R. § 42.503(b)(1)(i).
 - b. SCDC has denied and continues to deny qualified inmates with HIV equal opportunity to achieve the same benefits that others achieve in the program or activity receiving federal financial assistance, such as drug treatment rehabilitation, opportunities gained from work release and pre-release for post-incarceration transition and potential employment, and work credits. 28 C.F.R. § 42.503(b)(1)(ii).
 - c. SCDC has provided and continues to provide different or separate assistance to qualified inmates with HIV – such as work opportunities, psychiatric care, medical and disability-related confidentiality – than is provided to others where such action is unnecessary to provide such individuals or classes with assistance as effective as that provided to others. 28 C.F.R. § 42.503(b)(1)(iii).
 - d. SCDC has denied and continues to deny qualified inmates with HIV the opportunity to participate in integrated programs or activities receiving federal financial assistance on the ground that other specialized aids, benefits, or services for individuals with disabilities are available. 28 C.F.R. § 42.503(b)(2).
 - e. SCDC has failed and continues to fail to administer its programs or activities for

inmates with HIV in the most integrated setting appropriate to their needs. 28 C.F.R. 42.503(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Honorable Court enter an order that grants the following relief:

- a. Grants judgment in favor of the United States and declares that the Defendants violated Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. pt. 35; and Section 504, 29 U.S.C. § 794, and its implementing regulation at 28 C.F.R. pts. 41 and 42, subpt. G.
- b. Enjoins the Defendants, their officers, agents, employees, and all other persons and entities in active concert and participation with the Defendants, from engaging in discriminatory policies and practices against individuals on the basis of their disabilities, including discrimination on the basis of HIV status; failing to provide equal opportunity for inmates with HIV to benefit from services, programs, and activities; and otherwise failing or refusing to take appropriate steps to ensure compliance with the requirements of Title II, Section 504, and their implementing regulations.
- c. Orders Defendant SCDC to affirmatively modify its policies, practices, and procedures to comply with Title II, Section 504, and their implementing regulations.
- d. Award monetary damages in an appropriate amount to persons discriminated against by the Defendants, 42 U.S.C. § 12133.
- e. Orders such other appropriate relief as the interests of justice may require.

ERIC H. HOLDER, JR.

Attorney General of the United States

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