

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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PHILLIP DAVID REECE, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION
	)	
v.	)	No. 82-1251A-RLV
	)	
JAMES DONALD, Commissioner	)	CLASS ACTION
Georgia Department	)	
of Corrections, and	)	
TONY TURPIN, Warden	)	
Lee Arrendale State Prison,	)	
	)	
Defendants.	)	

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AN ORDER  
TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN  
CONTEMPT FOR VIOLATION OF THIS COURT'S FEBRUARY 26, 1991  
CONSENT ORDER AND ADDITIONAL CONSTITUTIONAL VIOLATIONS

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Plaintiffs, the class of all present and future inmates confined at Lee Arrendale State Prison, hereby submit this Memorandum in support of their motion for an order to show cause why Defendants should not be held in contempt for violations of this Court's February 26, 1991 Consent Order and the Eighth Amendment to the United States Constitution. In support of their motion for contempt, Plaintiffs state as follows:

#### I. PRELIMINARY STATEMENT

Lee Arrendale State Prison ("Arrendale") in Alto, Georgia has long had a reputation as a troubled and violent institution. Violence and lack of adequate protection for inmates were central issues in this case, then captioned Reece v. Whitworth when it was filed more than 22 years ago. This Court resolved the Reece case with the entry of a Consent Order in 1991. The Consent Order contained numerous provisions that were designed to reduce the incidence of inmate-on-inmate violence at Arrendale, protect inmates from one another, and protect the rights of inmates under the Eighth Amendment to be free from cruel and unusual punishment.<sup>1</sup> Plaintiffs file this contempt motion because, as a direct and proximate result of Defendants' failure to comply with the Consent Order,

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<sup>1</sup> See Consent Order, dated February 26, 1991 (Exhibit 1).

inmate-on-inmate violence continues today to threaten the health and safety of Arrendale inmates and to violate inmates' Eighth Amendment rights.

Inmate-on-inmate violence at Arrendale affects all incarcerated there, but it disproportionately affects the state's youngest inmates. Arrendale is the prison where children convicted as adults for certain specified offenses are incarcerated.<sup>2</sup> It is also the prison where children convicted of less serious felonies in adult court are incarcerated at age 17 to serve out the remainder of their sentences.<sup>3</sup> There are currently more than 231 inmates under age 21 at Arrendale.

Some, but not all, facilities at Arrendale are separate so that inmates under age 17 are housed separately from adult inmates. When teenage inmates reach age 17, they are moved to the housing units of the prison with inmates in their 20s, 30s, 40s and 50s. The age difference, combined with lax supervision by guards and broken locks on cell doors, has resulted in rapes, other violent assaults (and, in one case, death), of vulnerable, teenaged inmates. Young inmates, in particular, live in constant fear of being sexually assaulted.

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<sup>2</sup> See O.C.G.A. § 17-10-14(c)(requiring children who are convicted of murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery if committed with a firearm to be housed in a "youth confinement unit" of the Department of Corrections until they turn 17). For male inmates, the youth confinement unit is located at Arrendale.

<sup>3</sup> See O.C.G.A. § 17-10-14(a).

Defendants repeatedly have been placed on notice of the chronic and unacceptably high level of inmate-on-inmate violence at Arrendale. See infra § II, ¶ C. Nonetheless, Defendants have failed to take reasonable steps to address this problem. The following are just a few examples of the violence that has resulted from Defendants' failure to comply with the Consent Order:

- Eric Crenshaw was 17 years old when Defendants moved him to Arrendale two years ago.<sup>4</sup> He was placed directly into general population with adult felons. In June 2002, an adult inmate fondled Eric and threatened him with rape. In June 2003, he was dragged into a cell, held down by three inmates, and only managed to avoid rape by telling the inmates that he had AIDS. In August 2003, Eric was choked and beaten in a rape attempt. In January 2004, an adult inmate gave him a drink that caused him to pass out. When he woke up, he was bleeding from his anus. Throughout Eric's incarceration at Arrendale, prison officials were aware that Eric was in danger and failed to protect him.
- James Sanders was age 17 when Defendants moved him to Arrendale.<sup>5</sup> He weighed 139 pounds. In 2002, two inmates tried to rape him. In March 2003, when he was 18 years old, he was raped.
- Demarco Bowles arrived at Arrendale in 2001 when he was age 16.<sup>6</sup> In school, adult inmates sent notes to Demarco and other juveniles threatening sexual assault. When he was 18, Demarco was sent to B-Unit, E-2, one of the most dangerous cell blocks in the prison. He was raped twice.

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<sup>4</sup> See Affidavit of Eric Crenshaw, dated September 14, 2004 (Exhibit 2A).

<sup>5</sup> See Affidavit of James Sanders, dated August 27, 2004 (Exhibit 2B).

<sup>6</sup> See Affidavit of Demarco Bowles, dated June 15, 2004 (Exhibit 2C).

- In February 2004, 18-year-old Wayne Boatwright, Jr., was strangled to death in the course of an attempted rape by other inmates who had a history of violent sexual attacks against other prisoners.<sup>7</sup> Wayne had written to his grandmother asking her to intervene with prison officials because of his fear of being raped. His grandmother contacted prison officials asking that he be protected, to no avail.

Unconstitutionally dangerous conditions prevail in the prison that houses Georgia's youngest inmates. Rapes, stabbings, chokings, and beatings with locks, broomsticks, trash cans, and other objects continually occur at Arrendale, leaving some of the state's youngest inmates with severe physical and psychological trauma. Since February 2004, there have been more than 52 reported violent incidents, including multiple stabbings and multiple sexual assaults. In addition, many major violent incidents go unreported and unnoticed by Defendants.

As set forth below, Defendants have violated several provisions of the Consent Order relating to the prevention of inmate-on-inmate violence, and in so doing, have violated their constitutional duty to protect inmates from known risks of serious harm.<sup>8</sup> Plaintiffs respectfully request that this Court issue an order to show cause why Defendants should not be held in contempt.

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<sup>7</sup> See Boatwright v. Turpin, et al., Civil Action No. 04-cv-079 (2004) (Complaint attached as Exhibit 3).

<sup>8</sup> See Farmer v. Brennan, 511 U.S. 825 (1994) (deliberate indifference to a substantial risk of serious harm, including sexual assault, violates the Eighth Amendment's prohibition on cruel and unusual punishment).

## II. BACKGROUND AND PROCEDURAL HISTORY

### A. The February 1991 Consent Order Required Defendants To Take Concrete Steps To Protect The Security Of Inmates.

In July 1982, Plaintiffs filed suit on behalf of all present and future inmates at Arrendale.<sup>9</sup> Plaintiffs alleged that inmates at Arrendale were subjected to, *inter alia*: overcrowding, inhumane conditions, lack of medical care, lack of a classification system, lack of access to lawyers, dangerous working conditions, and physical abuse. On February 26, 1991, the parties resolved the lawsuit with a detailed Consent Order. On the same day, this Court certified the case as a class action and issued a Class Notice Order. The Court defined the certified class as “all persons who are now or in the future will be incarcerated and confined in [Arrendale].”<sup>10</sup> On June 10, 1991, the Court held a Rule 23(e) hearing, and on June 13, 1991, the Court approved the settlement. This Court extended its jurisdiction pursuant to the Consent Order on December 9, 1994. The case remains open and within this Court’s jurisdiction.<sup>11</sup>

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<sup>9</sup> See Complaint at ¶ 6 (Exhibit 4).

<sup>10</sup> See Class Notice Order, dated February 22, 1991, at p. 1 (Exhibit 5).

<sup>11</sup> In 2002, Willie Burns filed a Complaint alleging that Defendants failed to protect him from a known risk of harm by other inmates. Burns v. Hamrick, Civil Action No. 02-cv-153 (Exhibit 6). The case was assigned to the Hon. Marvin Shoob. On September 6, 2002, Defendants filed a Motion for Preliminary

The Consent Order requires Defendants to take certain steps with respect to institutional security. For example, Section H of the Consent Order, “Security Staffing,” requires Defendants to maintain a designated number of security staff; Section I, “Classification,” requires Defendants to implement an inmate stratification system classifying and separating inmates in accordance with American Correctional Association standards; Section J, “Post Orders,” requires, *inter alia*, that officers perform frequent rounds and security checks.

In addition to the orders specific to Arrendale, the Consent Order incorporates by reference and makes an Order of this Court the following Georgia Department of Corrections Standard Operating Procedures (“SOPs”), among others: Post Orders (IIA07-0007); Initial Security Classification (IIC02-0002); Security Reclassification (IIC02-0003); and Incident Reports (IIA04-0002).

**B. Because Defendants Have Failed To Comply With The Consent Order, Inmate-On-Inmate Violence at Arrendale Continues To Occur At An Unacceptably High Level.**

Defendants have failed to abide by the provisions contained in the aforementioned sections of the Consent Order. Instead, they have consciously disregarded threats to inmates’ safety, in violation of the Consent Order, by failing to provide adequate staffing, failing to ensure that officers supervise inmates

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Injunction, seeking to transfer the Burns litigation to this Court. In their Motion, Defendants argued that this Court retained jurisdiction over Reece (Exhibit 7).

appropriately, failing to patrol and circulate through the cell blocks, failing to repair broken cell doors, and failing to segregate young, vulnerable inmates from inmates with a history of violent, predatory behavior towards other inmates.

1. The Department Of Corrections Itself Has Documented Numerous Episodes Of Serious Inmate-On-Inmate Violence.

The following is a summary of selected, serious, violent incidents at Arrendale. All of the following incidents are documented in reports prepared by Arrendale officials.<sup>12</sup> Accordingly, Defendants are aware of all of these incidents.

- A. 8/26/04: Antonio Jackson, 17, was attacked by four other inmates who punched, kicked and choked him. He had a bruised and swollen face.
- B. 8/1/04: Two inmates attacked Brenddon Dowels, 21, in the kitchen. The inmates threatened Dowels with a shank and punched and kicked him. Dowels's eye was swollen shut.
- C. 7/21/04: A group of inmates punched, kicked, and hit Joshua Gant with steel padlocks. After the fight, which went unnoticed by prison staff, Gant staggered over to an officer. He was vomiting blood, having trouble breathing, and bleeding from cuts near his eyes. Inmates frequently put steel padlocks in socks and use them as weapons to bludgeon other inmates. Other examples of such incidents are documented below.
- D. 7/19/04: Inmate bearing a 9½ inch shank stabbed another inmate in his upper torso. A second inmate involved in the same fight had a bloody and swollen nose.

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<sup>12</sup> Incident Reports and/or Statements documenting each of the following incidents are attached hereto (Exhibits 8A-800).

- E. 7/14/04: Two inmates choked Barron McWhorter. McWhorter's statement says, "I want to sign PC [Protective Custody] cause I fear for my life in E-1."
- F. 7/9/04: A group of inmates dragged a 19-year-old mentally ill inmate into the bathroom in the middle of the night. They assaulted him and pulled his pants down in an attempt to rape him.
- G. 7/6/04: Robert Conley was beaten unconscious in his cell by an inmate bearing a steel padlock. He received seven stitches, had a swollen jaw, and a contusion on his head.
- H. 5/20/04: An inmate hit Danny Shaw in the face with a steel padlock, fracturing his maxillary sinus. This was similar to the injury to Dalvin Stripling on August 10, 2003, when he was hit in the head with a steel padlock, and the injury suffered by inmate Willie Burns on September 15, 2001, when two inmates entered his cell and beat him unconscious and knocked out his teeth with steel padlocks.
- I. 5/14/04: Inmates entered the cell of Frank Parker and stabbed him once in the arm and three times in his upper torso, possibly puncturing his lung and spleen. A second inmate, Mark Tanner, who tried to intervene, was also stabbed in his left thigh.
- J. 4/20/04: Five inmates attacked and attempted to rape Inocente Dykes and James Ferrell. One victim (age 18) had fingernail scratches on his neck and chest; he reported that his life was in danger. The other victim (age 20) had scratches on his neck; he said "these people . . . are trying to rape me."
- K. 4/13/04: Joseph Miller was raped by another inmate. He reported bleeding from his rectum for 1½ days.
- L. 4/7/04: An inmate beat another inmate with a steel padlock attached to a belt. The victim needed four staples to close his head wound.
- M. 2/28/04: Angel Crisostomo was beaten by another inmate. The victim had a temporal contusion with swelling, scratches on his head, and was disoriented. He was taken outside the prison to Habersham County Medical Center for treatment.

- N. 2/22/04: Wayne Boatwright, Jr. 18, was strangled to death in the course of an attempted rape. Wayne had written to his grandmother asking her to intervene with prison officials because of his fear of being raped. His grandmother contacted prison officials asking that he be protected. The inmates responsible had a history of attacking and raping inmates. (See 7/31/03 and 2/4/03 incidents, below.)
- O. 12/15/03: Eighteen-year-old Brandon Williams was severely beaten by a correctional officer. Williams' two front teeth were broken in half, his face was bruised, and he was temporarily confined to a wheelchair.
- P. 12/13/03: Michael Golding was stabbed by a known inmate enemy, after asking not to be housed with him. Golding was stabbed in the throat, tearing his esophagus, as well as in the chest and arm. Golding was in intensive care for several days.
- Q. 12/19/03: There was an inmate assault involving Kris Joiner and Eric Foster. Inmates had injuries including scratches, a bloody nose, and a bruised and swollen eye.
- R. 8/10/03 Dalvin Stripling was hit in the head with a steel padlock in a net bag by Jason Price. Stripling was taken to Habersham Medical Center for a possible skull fracture. He was bleeding profusely. Jason Price said the fight was a result of Stripling coming to Price with a blade threatening to rape him.
- S. 7/31/03: An inmate reported that Maurice Tobler and Thomas Crawford entered Yakir Eckland's cell, saying "give it up or we'll take it." Tobler and Crawford then raped him. (Tobler was one of the inmates who attacked Wayne Boatwright in February 2004).<sup>13</sup>
- T. 7/20/2003: A fight resulted when Dawud Abdullah resisted his cellmate's "sexual advances." Abdullah suffered a black eye.
- U. 4/4/03 & 4/6/03: Anthony Bowen was forced to perform oral sex on three inmates on 4/4/03. Two days later, on 4/6/03, Bowen was

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<sup>13</sup> During the course of the rape, Yakir Eckland was choked. A photograph documenting the injury to his neck is attached (Exhibit 8S).

pulled into a cell in cell block E-2, choked unconscious, and raped. He was taken to Habersham Medical Center, where medical personnel reported signs of rectal trauma.

- V. 3/5/03: Woodley Mosley was assaulted with a metal guide rail by inmate Jacobian Irby. Although Irby was in the Special Management Unit (“SMU”), a part of the prison that is supposed to be especially secure, Irby was able to kick his cell door open, exit the cell, and attack Mosley. Mosley was knocked unconscious.
- W. 2/8/03: Demarco Bowles alleged that inmate Cartledge raped him twice on two consecutive nights.
- X. 2/4/03: Travis McLeod attacked Shane Prather with a shank, stabbing him repeatedly. (McLeod has been charged with the murder of Wayne Boatwright, Jr. in February 2004.)
- Y. 12/8/02: Tommy Mobley reported that he was raped.
- Z. 11/21/02: Steven Williams, 17, was assaulted by an inmate wielding a broomstick. He sustained lacerations and fractured nasal bones.
- AA. 11/5/02: Shane Prather was stabbed by Anthony Malone. Several sutures and staples were required to close the wounds.
- BB. 9/8/02: Quinton Freeman received six stitches to his head, a swollen eye, an abrasion on his nose, and was beaten with a trash can after resisting sexual assault. Five inmates entered his cell, saying, “You are going to fuck or fight.”
- CC. 7/21/02: Jarmarcus Thomas asked to sign in to protective custody after two inmates tried to rape him.
- DD. 6/23/02: Jeffrey Murphy was threatened with rape and fought to avoid it. Among his injuries were cuts on his right arm, scratches on his neck, and a swollen eye.
- EE. 6/8/02: Vincente Trevino and Steven Williams fought. Trevino required eleven staples in his head to close lacerations.

- FF. 4/27/02: An inmate entered the cell of 17-year-old Joshua Stone. Stone was choked and beaten, resulting in black eyes and other bruises.
- GG. 3/9/02: Isa Rameau twice cut Hasheem Gordon's face with a razor.
- HH. 2/8/02: Cedrick Washington hit Horace Simmons in the back of the head, causing him to fall onto a bed rail. Simmons sustained a facial cut, a fracture, and bleeding of the brain. He was taken to the hospital for medical treatment.
- II. 11/28/01: Derrick Hollar and Hugh Aires assaulted Royshun Moore with broken broom handles. Both Hollar and Aires mention "threat of rape" as the reason for the fight.
- JJ. 11/5/01: James Binns was asleep in his cell when two orderlies entered and raped him.
- KK. 9/15/01: Two inmates entered Willie Burns' cell and beat him with steel padlocks. He lost four teeth.
- LL. 8/4/01: Troyless Maxwell, Justin Williams, and Emmanuel Porter raped inmate Lou World.
- MM. 7/27/01: Christopher Manning was raped by Mateen Williams. He was held down during the rape by Levelt Cross.
- NN. 5/19/01: Roderick Smith reported rape. He was taken to Habersham County Medical Center. Blood was found around his anal area.
- OO. 3/12/01: Inmates Strozier and Robinson raped Aaron Stratton. An officer had not secured Stratton's cell door properly.

The foregoing list describes only some of the serious violent incidents documented at Arrendale in recent years. It is not an exhaustive list.

2. Declarations From Inmates At Arrendale Document Numerous Episodes Of Serious Inmate-On-Inmate Violence.

Filed with and in support of this Memorandum as Exhibit 2 are 13 declarations from current or recent Arrendale inmates,<sup>14</sup> including the following:

(a) James Sanders. Mr. Sanders was 17 and weighed 139 pounds when he arrived at Arrendale.<sup>15</sup> In 2002, two inmates tried to rape him while he was in the extended juvenile housing unit. In 2003, at age 18, he was raped. He states:

In March 2003, when I was 18 years old, I was raped in C-Unit, Dorm 15, "C-15." Four men who were bigger than me jumped on me while I was showering. I fought the men for a few minutes until I could no longer fight. I couldn't yell out because one of the men was choking me with a shirt. One of the guys also hit me in the head with a lock. There was blood pouring all over my face from being beat up and hit with the lock. One man penetrated me while the other three held me down. After the rape, I finished my shower and went back to my bunk.

(b) Shane Prather. Mr. Prather arrived at Arrendale when he was 22 years old.<sup>16</sup> Before he was released from prison in April 2003, he was stabbed a total of 20 times and made two trips to the emergency room. On November 5, 2002, Prather was stabbed 15 times with a 15-inch shank by an inmate who was able to leave his unit and enter Prather's unit. Prather had warned prison officials that he

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<sup>14</sup> For the Court's convenience, Plaintiffs have separately bound and filed contemporaneously herewith Exhibits to this Memorandum numbering 1 through 13.

<sup>15</sup> See Exhibit 2B.

<sup>16</sup> See Affidavit of Shane Prather, dated May 28, 2004 (Exhibit 2D).

feared an attack from the inmate, but no action was taken to protect Prather. In February 2003, Prather was placed into a cell with inmate Travis McLeod, who threatened to rape him. Prather wrote to the unit manager asking to be moved to another cell. He never received a response to his letter. Prather was stabbed by McLeod, the same inmate who killed Wayne Boatwright, Jr. in February 2004.

(c) Jefferey George. Jeffrey George arrived at Arrendale in 2001 when he was 16 years old.<sup>17</sup> When he was a juvenile, he was threatened, assaulted, and raped by other inmates. He states: “In approximately December 2001, several inmates ‘tricked’ the lock to my cell, beat me up, and then proceeded to take turns raping me.”

(d) Steven Williams. Mr. Williams arrived at Arrendale in October 2000, shortly before his 15th birthday.<sup>18</sup> He repeatedly was subject to attempted rapes in the juvenile housing unit. He states:

While I was in the juvenile dorm, 3 other juveniles tried to rape me at least 10 times between 2000-2001. I fought the guys each time, and hid after each fight because they told me that if I reported it to the guards they would kill me. They hit me over the head with a lock on one occasion, and got my pants down on another.

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<sup>17</sup> See Affidavit of Jeffrey George, dated March 30, 2004 (Exhibit 2E).

<sup>18</sup> See Affidavit of Steven Williams, dated August 17, 2004 (Exhibit 2F).

These are just a few descriptions of the environment in which inmates at Arrendale live.

C. Plaintiffs' Counsel Have Been Unable To Resolve Complaints Regarding Ongoing Violence at Arrendale Without Litigation.

Plaintiffs' counsel have taken the following steps to notify Defendants' counsel of their concern about conditions at Arrendale and to attempt to resolve these concerns without litigation:

On March 3, 2004, following the death of Wayne Boatwright, Jr., counsel from the Southern Center for Human Rights wrote to Commissioner James Donald. In that letter, counsel described the unacceptably high level of inmate-on-inmate violence and asked the Commissioner to remove all inmates under 21 from the prison.<sup>19</sup> In response, Plaintiffs' counsel received a five-sentence letter from the Commissioner stating that Mr. Boatwright's death would be investigated.

On April 9, 2004, counsel from the Southern Center for Human Rights wrote to William Amideo, General Counsel for the Department of Corrections. Counsel's letter set forth concerns about the high incidence of rape, lax supervision by officers, and broken cell locks. Counsel asked Mr. Amideo to inform them of

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<sup>19</sup> See Letter from Stephen Bright to Commissioner James Donald (Exhibit 9).

what steps were being taken to remedy these problems.<sup>20</sup> Counsel received no response to this letter.

On July 1, 2004, Senator Vincent Fort, Plaintiffs' counsel, and family members of Arrendale inmates attended a meeting of the Board of the Georgia Department of Corrections. Senator Fort and Plaintiffs' counsel asked the Board to take steps to improve security at Arrendale.

On August 4, 2004, Senator Vincent Fort held a legislative hearing on the subject of violence at Arrendale. Plaintiffs' counsel and many family members of inmates testified about the high level of violence at the prison. In response, officials from the Department of Corrections testified that the level of violence at Arrendale was on a par with other institutions that house young offenders.

### III. ARGUMENT AND CITATION OF AUTHORITIES

#### A. Contempt Proceedings Are Appropriate When A Party Has Violated A Court Order.

Federal courts have inherent power to enforce their lawful orders through contempt proceedings. Spallone v. United States, 493 U.S. 265, 276 (1990). A petitioner in a civil contempt proceeding must establish by clear and convincing evidence that

- (a) The respondent violated a court order;

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<sup>20</sup> See Letter from Stephen Bright to William Amideo (Exhibit 10).

- (b) The violated order is valid and lawful;
- (c) The order is clear, definite, and unambiguous; and
- (d) The respondent has the ability to comply with the order.

McGregor v. Chierico, 206 F.3d 1378, 1383 (11th Cir. 2000); Chairs v. Burgess, 143 F.3d 1432, 1436 (11th Cir. 1998). To seek a finding of contempt, the petitioner must move the court to issue an order to show cause why the respondent should not be held in civil contempt. Newman v. Alabama, 683 F.2d 1312, 1318 (11th Cir. 1982), cert. denied, 460 U.S. 1083 (1983).

Plaintiffs' Motion states grounds showing at least a prima facie case of contempt: The violated order is valid and lawful; the order is clear, definite, and unambiguous; and Defendants have the ability to comply with the order.

McGregor, 206 F.3d at 1383. Therefore, the Court should order Defendants to show cause why they should not be held in contempt.

**B. Defendants Have Violated The Consent Order In Several Respects, Resulting In Continued High Levels Of Inmate-On-Inmate Violence.**

Defendants have violated the terms of the Consent Order. Specifically, Defendants have failed (a) to employ a sufficient number of security staff; (b) to ensure that security staff are patrolling cell blocks and living areas at appropriate intervals; (c) to repair broken cell door locks; (d) to document violent incidents;

and (e) to separate young, vulnerable inmates from inmates with a history of violent assault within the prison system.

1. Defendants Maintain An Insufficient Number Of Security Staff, In Violation Of Section H Of The Consent Order.

This Court ordered Defendants to maintain a certain level of security staffing.<sup>21</sup> Defendants have not maintained the number of security staff required by the Consent Order. A Quarterly Audit of Arrendale from 2003 references a “severe staff shortage.”<sup>22</sup> In the most dangerous cell blocks – including the cell block where Wayne Boatwright, Jr. was killed – there is only one roaming officer for nearly 100 inmates. The 52 violent incidents since the murder of Wayne Boatwright, Jr. and many other incidents show that the staffing level is insufficient to ensure that inmates are kept reasonably safe from harm and that Defendants are violating the staffing requirements of the Consent Order.

2. Security Staff Fail To Circulate Through The Cell Blocks And Living Areas, Leaving Inmates Unsupervised, In Violation Of Section H Of The Consent Order And The Department’s SOP On Post Orders.

Both the Consent Order and the Department’s SOPs require officers to patrol the housing areas of the prison for the purpose of monitoring and supervising inmates. The Consent Order states:

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<sup>21</sup> See Consent Order, § H, p. 15-19.

<sup>22</sup> See Quarterly Audit of Lee Arrendale State Prison, dated August 4, 2003 (Exhibit 11).

Staff shall be assigned within each housing unit on a 24-hour post. Staff shall have the ability to leave the housing units only upon relief, except in emergency situations. Staff shall continually move within the housing unit to obtain maximum supervision.<sup>23</sup>

Similarly, the Department's SOP on Post Orders (No. IIA07-0007) states:

You will walk the length of the cellblock as frequently as you feel necessary to be sure that the inmates are doing what they are supposed to be doing. All inmates not housed in general population are to be observed at thirty (30) minute intervals.<sup>24</sup>

Officers at Arrendale routinely disregard these provisions. Instead, they stay seated in a glass-enclosed control booth, leaving inmates unsupervised.

The presence of officers in the living areas is inconsistent, especially on weekends and on the day's third shift. Glendon Edwards, age 19, states:

[S]ecurity checks were performed irregularly in B-Unit when I was housed there. The frequency with which officers walked through the dorm would depend entirely on which officers were on duty; it would also depend on the time of day. On 1<sup>st</sup> shift (early morning to mid-afternoon), there were regular checks every 15-30 minutes because the officers had to prepare for inspections. On 2<sup>nd</sup> shift (mid-afternoon until about 10:00 p.m.), some officers would perform 30-minute checks, some would sit in the control booth for most of the shift. On 3<sup>rd</sup> shift (about 10:00 p.m. until early morning), officers walked through the dorm very infrequently. Thirty-minute checks were rarely performed on weekends, which was when Wayne Boatwright was killed.<sup>25</sup>

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<sup>23</sup> Consent Order, § H, p. 16 (emphasis added).

<sup>24</sup> See SOP IIA07-0007, at p.10 (Exhibit 12) (emphasis added).

<sup>25</sup> See Affidavit of Glendon Edwards, dated May 19, 2004 (Exhibit 2G).

The Consent Order requires staff to “continually move within the housing unit[s] to obtain maximum supervision.”<sup>26</sup> Contrary to this requirement, rounds are not conducted in a thorough manner. As a consequence of failure to perform rounds in a manner so as “to obtain maximum supervision,” violence goes unnoticed by prison staff. For example, Alvin Perkins, age 19, states that he witnessed the rape of a teenage inmate in C-Unit that went undocumented:

I would estimate that officers know of about 20% of the fights and assaults that occur here. One reason for this is that officers in my dorm do not perform regular rounds. For example, after officers perform the 12 p.m. count, you will not see an officer in the dorm until about 2 p.m. Similarly, after the 6:30 p.m. count, officers will often sit in the booth for several hours, without walking around very much. Finally, officers do not perform regular rounds between about 11 p.m. and 3 a.m. Because officers are often absent, there are long periods of the day when inmates are completely unsupervised.

Another reason that officers do not know about all of the fights and assaults that go on is because the fights happen not only in the hallways, where officers walk around, but in inmates’ rooms and bathrooms.<sup>27</sup>

Defendants’ failure to ensure that officers circulate through the cell blocks at appropriate intervals and in a manner that will allow them “to obtain maximum supervision” violates both the specific provisions of the Consent Order and the Departmental SOPs incorporated therein.

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<sup>26</sup> Consent Order, § H, p. 16.

<sup>27</sup> See Affidavit of Alvin Perkins, dated May 5, 2004 (Exhibit 2H).

3. Inmates Are Permitted To Gain Access To Other Cells In Violation Of Departmental Sops Because Prison Officials Do Not Remedy Known Problems With Cell Door Locks.

The SOP on Post Orders prohibits an inmate from entering a cell to which he is not assigned. This SOP, which is incorporated into the Consent Order,<sup>28</sup> states:

Only the inmate housed in a particular cell is to be given access to that cell. . . . The daily assignment sheet provides a list of who is housed in each cell.<sup>29</sup>

In violation of this SOP and the Consent Order, inmates routinely enter each others' cells, often to commit violence against other inmates.

Prison officials do or fail to do three things that directly and proximately result in inmates entering each others' cells. First, Defendants fail to repair broken cell door locks, which allow certain inmates to leave their cells and enter the cells of other inmates. For years, cell doors at Arrendale have not locked properly.<sup>30</sup> Some inmates in disciplinary segregation have been able to open their own cell doors.<sup>31</sup> Despite repeated notice to Defendants that these locks malfunctioned in

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<sup>28</sup> See Consent Order, § J, p. 20.

<sup>29</sup> See SOP IIA07-0007, at p. 17 (Exhibit 12).

<sup>30</sup> See, e.g., Affidavit of Mario Smith, dated March 30, 2004 (Exhibit 2I).

<sup>31</sup> In March 2003, Woodley Ray Mosley was beaten unconscious with an iron bar by an attacker in the Special Management Unit who was able to open his own cell door from the inside. See Incident Report, dated 3/5/03 (Exhibit 8V).

the Special Management Unit, which is supposed to be especially secure, inmates in portions of the SMU still can shake their cell doors open from the inside.<sup>32</sup>

Second, Defendants have been on notice that inmates in general population frequently “tricklock” their cell doors. This means that inmates manipulate the cell door to make it look as though it is locked when it is not. The practice of “tricklocking” cells enables inmates to enter and leave their cells as they please.

As a consequence, many rapes and assaults take place inside cells. For example:

- Steven Williams was housed in B-Unit, E2, when two adult inmates entered his cell in the middle of the night, one bearing a foot-long shank. They threatened to rape him. He was 17 at the time.<sup>33</sup>
- Jeffrey George was raped by several inmates who were able to enter his cell, manipulate the cell door so that it appeared to be locked, and exit when they were finished assaulting him.<sup>34</sup>

The practice of “tricklocking” is common, notorious, and ongoing.<sup>35</sup>

Third, officers seeking to release certain inmates from their cells often open all cell doors remotely from the control booth, instead of opening individual cells as Departmental SOPs require. This practice enables violent, predatory inmates to slip out of their cells and enter the cell of a victim. For example:

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<sup>32</sup> See Exhibit 2B.

<sup>33</sup> See Exhibit 2F.

<sup>34</sup> See Exhibit 2E.

<sup>35</sup> See Affidavit of Brenddon Dowels, dated September 27, 2004 (Exhibit 2J).

- In November 2003, two inmates ran into the cell of a third inmate after an officer “popped” all of the cell door locks at once. The victim suffered a swollen face.<sup>36</sup>
  - Michael Golding was attacked in his sleep by an inmate who was able to enter Golding’s cell because an officer had “popped” all of the cell door locks. Golding’s throat was cut and he spent time in intensive care.<sup>37</sup>
4. Defendants Fail To Follow Departmental Sops Requiring Documentation Of Major Violent Incidents.

Departmental Standard Operating Procedures on Incident Reporting require prison officials to report all “major incidents.” Major incidents are defined as

[t]hose activities that are outside normal routine and might cause public concern or notoriety. Such incidents affect the health, safety, custody, control, or management of the inmate/probationer, or the health, safety and management of staff.<sup>38</sup>

The SOP further states that whenever a major incident occurs, it is to be documented in an Incident Report Form. This SOP is incorporated by reference into the Consent Order.<sup>39</sup>

At least as recently as July 2004, Defendants were in violation of this SOP. Jason Hembree, a 19-year-old inmate with serious mental illness, was asleep in his

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<sup>36</sup> See Affidavit of James Harland, dated May 5, 2004 (Exhibit 2L).

<sup>37</sup> See Affidavit of Michael Golding, dated March 22, 2004 (Exhibit 2M); see also Incident Report, dated December 13, 2003 (Exhibit 8P).

<sup>38</sup> See SOP IIA04-0002, at p. 1 (Exhibit 13).

<sup>39</sup> See Consent Order, Section A, p. 4.

bunk on July 9, 2004 when he was awakened by two adult inmates. The inmates told Jason that they were going to sodomize him. They attacked him and dragged him out of his bed and into the bathroom area. They pushed Jason against the sink and pulled his pants down. Jason managed to struggle free and notify an officer.<sup>40</sup>

In violation of the SOP, the attempted rape was not documented in an Incident Report.<sup>41</sup> Defendants have also failed to write Incident Reports about other serious incidents, including the rape attempt and the rape of Eric Crenshaw.<sup>42</sup>

5. Defendants Routinely Place Young, Vulnerable Inmates In Housing Units With Older Inmates Who Have Histories Of Predatory Behavior, In Violation Of The Consent Order And The Constitutional Rights That The Consent Order Was Entered To Protect.

The Consent Order was intended to, and does, implement standards for inmate classification. Section I requires Defendants to implement the classification standards set forth in a publication by the American Correctional Association entitled “Managing Adult Inmates.” The Consent Order further required Defendants to develop an SOP to replace this publication:

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<sup>40</sup> See “Form 1” Statement by Jason Hembree, dated 7/9/04 (Exhibit 8F).

<sup>41</sup> Pursuant to the Open Records Act, Plaintiffs’ counsel routinely request and review Incident Reports concerning inmate-on-inmate assault at Arrendale. The attempted rape of Jason Hembree was not disclosed in any Incident Report provided to Plaintiffs’ counsel under the Open Records Act. Plaintiffs’ counsel found out about it only because the inmate’s mother contacted their office.

<sup>42</sup> See Exhibit 2A.

Defendants shall implement the Adult Internal Management System as set forth in ‘Managing Adult Inmates’ published by the ACA and attached hereto as Exhibit ‘10.’ In the future, defendants shall develop an SOP [Standard Operating Procedure] which will replace Exhibit ‘10’ as the operative document.<sup>43</sup>

Plaintiffs’ counsel made three requests (on July 1, July 14, and August 27, 2004) of Defendants for the SOP that replaced “Managing Adult Inmates.” On August 27, Plaintiffs’ counsel was informed that Defendants no longer use the “Managing Adult Inmates” stratification program, but that they are “in the process of developing” an SOP that incorporates the principles of a different stratification program. Plaintiffs’ counsel have not been provided a copy of that draft SOP.

Defendants are in violation of the requirement in the Consent Order that they develop an SOP to replace “Managing Adult Inmates” and are in violation of the Consent Order by no longer using “Managing Adult Inmates” without adopting an SOP to replace this standard. When complete, the replacement SOP will be incorporated into the Consent Order. Discovery will reveal whether the proposed replacement SOP also violates the terms of the Consent Order.

What is certain is that young inmates are being placed in an environment in which they are subject to an unreasonable risk of serious physical assault.

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<sup>43</sup> See Consent Order, § I, p. 20.

Defendants routinely place young, vulnerable inmates in cell blocks and/or housing units that house adult inmates with a history of predatory behavior.

Of the housing units in the prison, B-Unit, cell blocks E-1 and E-2 are among the most dangerous. And yet at age 17, Demarco Bowles was housed in B-Unit, E-2. There, he was raped by his cellmate.<sup>44</sup> At age 17, James Harland was housed in B-Unit, E-2. There, an older inmate tried to rape him.<sup>45</sup> Michael Cole, a mentally ill 19-year-old, was also housed in B-Unit, E-2. There, a man followed him into his cell from the shower and assaulted him.<sup>46</sup> Eric Crenshaw, age 18, was placed in B-Unit, E-1, despite having received disciplinary reports for nothing more than oversleeping and smoking.<sup>47</sup> There, he was subjected to repeated rape attempts. Finally, Wayne Boatwright, age 18, was killed in B-Unit, E-2 by inmates with a history of sexual assaults against inmates.

C. Defendants Know About The Unacceptably High Level Of Violence At Arrendale, But Deliberately Failed To Take Reasonable Steps To Remedy The Problem, In Violation Of The Eighth Amendment.

Failure to protect inmates from assault by other inmates can violate the Eighth Amendment's prohibition on cruel and unusual punishment. See U.S.

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<sup>44</sup> See Exhibit 2C.

<sup>45</sup> See Affidavit of James Harland, dated May 5, 2004 (Exhibit 2L).

<sup>46</sup> See Affidavit of Michael Cole, dated June 9, 2004 (Exhibit 2N).

<sup>47</sup> See Exhibit 2A.

Const. amend. VIII. To demonstrate a constitutional violation, plaintiffs must show: (1) the harm alleged is sufficiently serious; (2) defendants have knowledge of a substantial risk of serious harm; and (3) defendants have failed to take reasonable actions to avert the harm. Farmer v. Brennan, 511 U.S. 825 (1994).

1. Rape And Assault And The Risk Thereof Constitute “Serious Harm.”

Plaintiffs live in constant fear of rape and assault. This constitutes a risk of “serious harm.” The Supreme Court stated in Farmer:

Prison conditions may be “restrictive and even harsh,” but gratuitously allowing the beating or rape of one prisoner by another “serves no legitimate penological objective,” any more than it squares with “evolving standards of decency.” Being violently assaulted in prison is simply not “part of the penalty that criminal offenders pay for their offenses against society.”

Farmer, 511 U.S. at 833 (internal citations omitted). Similarly, in passing the Prison Rape Elimination Act of 2003 (“PREA”), Congress stated that “the high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution.”<sup>48</sup>

2. Defendants Have Long Been Aware That Inmates At Arrendale Are Constantly At Substantial Risk Of Being Assaulted Or Raped.

Defendants have been aware of the unacceptably high number of inmate-on-inmate assaults at Arrendale. Proof of Defendants’ knowledge includes:

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<sup>48</sup> See 42 U.S.C. § 15601(13). The PREA calls for gathering national statistics about prison rape, developing standards for states to use to address prison rape, and providing grants to support state programs to prevent prison rape.

(1) Plaintiffs' counsels' having placed Defendants on notice (see supra, § II ¶ C); (2) Incident Reports prepared by Defendants' staff describing hundreds of violent incidents in the last several years; (3) the lawsuit filed by the family of Wayne Boatwright, Jr. in 2004; (4) the lawsuit filed by inmate Willie Burns in 2002; (5) inmate grievances alleging a lack of safety; (6) Congress's passage of the PREA and its related findings regarding the increased vulnerability of juvenile and mentally ill offenders to prison rape.<sup>49</sup>

3. Defendants Have Failed To Take Reasonable Steps To Reduce The Incidence Of Violence At Arrendale.

Plaintiffs' counsel repeatedly have asked Defendants to identify the steps being taken to reduce the level of violence at Arrendale (see supra, § II ¶ C). To date, Defendants have provided no substantive response of any kind, save an oral representation by Defendants' counsel that the level of violence at Arrendale is on par with that of other institutions housing young offenders. Meanwhile, Plaintiffs' counsel continue to receive reports of serious assaults, rapes, broken cell door locks, and unsupervised inmates. Plaintiffs request discovery to determine what, if any, steps Defendants have taken to reduce the level of violence at Arrendale.

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<sup>49</sup> In enacting the PREA, Congress found that two categories of prisoners are at increased risk for sexual victimization by other inmates: the mentally ill and young offenders. See 42 U.S.C. §15601(3),(4).

Defendants have long considered the high level of violence at Arrendale an unfortunate but acceptable fact of prison life. As a result of this deliberate indifference, Defendants have failed to take reasonable steps to reduce the ongoing substantial risk of rape and assault. Thus, Defendants have violated the constitutional rights that this Court entered the Consent Order to protect.

#### IV. CONCLUSION

Defendants have violated this Court's Consent Order and the Eighth Amendment to the U.S. Constitution. Accordingly, Plaintiffs respectfully request:

- (1) that the Court enter an order requiring that Defendants answer and show cause why they should not be held in contempt for failure to comply with this Court's Consent Order;
- (2) that the Court enter an Order establishing a discovery schedule and scheduling an evidentiary hearing on this Motion;
- (3) that the Court find Defendants in contempt of the Consent Order;
- (4) that, within 20 days of this Court's Order, the Court require Defendants to submit a detailed written plan describing the steps they intend to take to remedy the violations of the Consent Decree and the constitutional violations described herein;

- (5) that the Court order the parties to confer on the selection of a monitor who will assist Defendants in ensuring that this plan is implemented appropriately and expeditiously;
- (6) that the Court modify the Consent Order as necessary to protect the constitutional rights of Plaintiffs, including juvenile inmates, consistent with the intent and spirit of the Consent Order;
- (7) that the Court order Defendants to pay Plaintiffs' reasonable attorney's fees and costs;
- (8) that the Court take such other action and award such other relief, including, but not limited to fines and penalties, that it deems necessary to enforce and ensure compliance with its Consent Order.

Respectfully submitted this \_\_\_\_\_ day of September, 2004.

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing document has been prepared in 14-point Times New Roman font and complies with Local Rule 5.1B.

Dated: September \_\_\_\_, 2004.

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Sarah Geraghty

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Memorandum in Support of Plaintiffs' Motion For An Order To Show Cause Why Defendants Should Not Be Held In Contempt For Violation Of This Court's February 26, 1991 Consent Order And Additional Constitutional Violations upon all defendants by causing a true and correct copy thereof to be deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to defendants' counsel of record as follows:

Mr. John C. Jones  
Senior Assistant Attorney General  
Department of Law  
State of Georgia  
40 Capital Square SW  
Atlanta, GA 30334-1300

This \_\_\_\_\_ day of September, 2004.

\_\_\_\_\_  
Sarah Geraghty