

IN THE UNITED STATES DISTRICT COURT OF COLORADO

Case no.: 15-cv-00405-NYW

Billy F. May
Plaintiff

RECEIVED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

v.

Juan Segovia
Frankie Cordova

JUL - 2 2015
JEFFREY P. COLWELL
CLERK

SECOND ~~FIRST~~ AMENDED COMPLAINT

Now comes Plaintiff Billy F. May and in support of his Complaint states as follows:

1. Plaintiff Billy F. May is a currently incarcerated at the Federal Prison Camp (FPC) in Florence, Colorado since October 2013.
2. Defendant Juan Segovia is the former Camp Administrator at FPC Florence.
3. Defendant Frankie Cordova is a Nurse Practitioner assigned by the U.S. Public Health Services to the FPC. Both Defendants are charged with responsibility of providing competent and timely medical care to the inmates incarcerated at the FPC.
4. The Court has jurisdiction over the parties and subject matter of this case pursuant to 28 U.S.C. 2241; the Fifth and Eighth Amendments to the United States Constitution; and the U.S. Supreme Court's decisions in Harper v. Washington, 494 U.S. 210 (1985); Hewitt v. Helms, 459 U.S. 460 (1983) and, Estelle v. Gamble, 429 U.S. 97, 50 L.Ed. 251, 97 S. Ct. 285 (1976).
5. Venue is proper in the District of Colorado because the wrongful acts of the Defendants were committed in the District of Colorado at the Florence Prison Camp.
6. There are approximately 540 inmates at the FPC, over 220 inmates have suffered from a serious infectious and contagious skin disease, to one degree or another, since July, 2014. Irrespective of this medical situation the BOP medical staff has failed to examine the entirety of the FPC inmate population for scabies, much less conduct the definitive skin test required by BOP protocol to confirm a scabies diagnosis, on all but a handful of FPC inmates.
7. From on or about July 15, 2014, the BOP admitted, after months of denial, scabies had affected as many as 50% of the inmates incarcerated at the FPC. On December 2, 2014 the BOP finally provided oral medication, Ivermectin to the entire inmate population but did not lockdown the camp. It should be noted that Ivermectin is not a FDA approved treatment for scabies. Again, it is significant to point out that the BOP treated the total inmate population for scabies without examining each inmate individually or testing more than a few of the FPC inmates afflicted with the condition.
9. On or about December 30, 2014, approximately 30 inmates reported to the Health Services United (HSU) complaining of a skin ailment. The BOP was unable to diagnose the inmate's medical condition because most of the HSU medical staff were on leave for Christmas and New Year holidays and only emergency staff from the ADX was available to access the medical situation.
10. An outbreak of scabies infection in inmates is not new to the BOP. In May 2011, the BOP promulgated its policy titled "Federal Bureau of Prisons Lice and Scabies Protocol Clinical Practice." The BOP is required by federal law to follow its own published policies and guidelines. (See Wolf v. McDonnell, 418 F.2d 539. 34 S. Ct. 2963, 41 L. Ed. 395 (1974) Roadway v. United States, 414 F.2d 803 (D.C. Cir 1975). Based upon the verified facts set forth in the Plaintiffs Class Action Complaint and Affidavits of Plaintiffs the BOP did not followed its own policy.

11. The BOP's Lice and Scabies Protocol Clinical Practice states that: "Inmates with suspected or diagnosed Scabies should be housed in a single-cell room and should be restricted from all work assignments and visitation for 24 hours after treatment." Under the BOP policy there is no requirement to place all inmates in 24 hour lockdown whether or not the inmate has diagnosed with scabies or is suspected to have scabies.

12. On January 2, 2015, with the BOP officials posted signs informing inmates that the camp was in "Isolation" due to the scabies problem. However, the BOP did not follow its Protocol and Clinical Procedure requiring that: "Inmates with suspected or diagnosed scabies should be housed in single-cell rooms...and restricted from all work assignments for 24 hours after treatment." Instead, the BOP indefinitely cancelled all visitation for FPC inmates and imposed a 24 hour lockdown. Contrary to BOP policy many inmates were ordered to continue working at their jobs preparing food for BOP personnel and the prison inmates. The vast majority of inmates were placed on 24 hour lockdown.

13. Lockdown at the FPC is a BOP method used to impose group punishment of all inmates. Lockdown is an extreme method because it punishes all 540 inmates for even though only a few inmates may have been in violation of BOP rules. Lockdown is usually only imposed upon the entire group of inmates for less than eight hours. The BOP policy is only to use lockdown briefly to resolve order after a disruption involving a physical altercation between inmates or involving a correctional officer. There is no legitimate penological reason such as safety, security or medical necessity for the 24 hour lockdown of all 540 inmates at the FPC. The Eighth Amendment prohibits the BOP from punishing inmates for a physical condition as distinct from wrongful acts or rule violations. *Wolf v. McDonnell*, 418 U.S. 539 (1974); *Robinson v. California*, 370 U.S. 660 (1960); *Despears v. Milwaukee County*, 63 F.3d 635 (7th Cir. 1995).

14. There is nothing in any of the BOP policies or even the BOP historical practices that authorizes or justifies a total lockdown of all inmates because a few inmates, despite the BOP's erratic medical treatment, are continuing to suffer from an infectious and contagious skin disease. In fact, a lockdown increases the opportunity for cross-contamination between those infected and those free of the communicable disease afflicting the FPC inmates.

15. Any punishment, such as 24 hour indefinite lockdown, that is not necessary to maintain order is cruel and unusual and prohibited by the Eighth Amendment. *Millhouse v. Carlson*, 652 F.2d 371 (3rd Cir. 1981); *Dearman v. Woods*, 429 F.2d 1288 (10th Cir. 1970). The Court must grant relief to the entire group of prisoners where the punishment is disproportionate to the infraction committed by the prisoner. This is especially true where unsanitary conditions and the BOP's failure to treat scabies for the last six months, in accordance with its own published protocol, is the proximate cause of the lockdown. The 24 hour lockdown is "punishment even though there have been no inmate infractions, only inmates with scabies infection." *Jordan v. Fitzharris*, 257 F. Supp 674 (N.D. Cal 1966); *Wright v. McMann*, 321 F. Supp 127 (N.D.N.Y. 1970); *Holt v. Sarver*, 309 F. Supp 362 (E.D. Ark 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971).

16. The BOP lockdown violated well established case law that requires inmates receive proper meals and allowed at least one hour per day to leave their cell, cubicle, room or other quarters. More importantly, there was no medical or disciplinary reason for the lockdown. The BOP is required, by its own policy, to isolate inmates with scabies not lock them down. In fact, a lockdown which forces all inmates to remain confined to their overcrowded living quarters with other infected inmates violates BOP policy. Furthermore, a 24 hour lockdown has the potential to increase the spread of infectious and contagious disease instead of reducing the amount of sickness and disease in the inmate population.

17. The BOP further violated its own policies because during the first three of the 24 hour lockdowns it provided no medical treatment or medication to all inmates. Inmates who are required to work at the ADX during the lockdown were the only inmates to receive treatment or medication besides those inmates placed in a single cell isolation on December 31, 2014. The reason for the discriminatory practice is obvious, the BOP needed healthy inmates to provide labor necessary to support the food service, sanitation and laundry functions at the ADX, including feeding the BOP personnel. The equal protection clause prohibits the BOP from treating one group of prisoners, the ADX workers differently than prisoners who do not have scabies but who are nevertheless lockdown. *Wolf v. McDonnell*, 418 U.S. 539 (1974). The BOP cannot legally punish all inmates because some continue to be infected with scabies. Lockdown can only be used as disciplinary action in punishing rules violations. *Anderson v. Romero*, 72 F.3d 518 (7th Cir. 1995).

18. Plaintiff May reported to the FPC with a long history of documented medical issues. Due to the fact the Plaintiff was highly allergic and previously had gone into anaphylaxis shock, he brought to the FPC medical records and prescribed medications.

19. Plaintiff was seen, but not examined, by Defendant Cordova shortly after arriving at the FPC. All of the Plaintiffs' medical records and his prescribed medications were taken from him upon his arrival at the camp. Defendant Cordova advised Plaintiff he would not be allowed access to his records or use any of his prescription medications.

20. On or about December 2, 2014, Defendants required every inmate to take a prescription medication, Ivermectin for purposes of treating an infectious and contagious skin condition which had affected over 200 inmates incarcerated at the FPC. Ivermectin is not an FDA approved treatment for scabies.

21. Plaintiff obtained information about the medication. Based upon the published warnings for the medication Plaintiff believed that there was a high probability that he would have an adverse reaction to the medication. The Plaintiff had not been diagnosed by any medical doctor or medical provider with an infectious skin disease. Plaintiff initially refused to take the medication but was threatened with "other action" by Camp Administrator Segovia and relented. Subsequently, Plaintiff experienced an allergic reaction and was administered an injection of Diphenhydramine to treat the apparent allergic reaction caused by the Ivermectin.

22. On or about December 2, 2014, the BOP again administered to the entire camp population Ivermectin as continuing treatment for the scabies outbreak. In this instance, based on the previous reaction to the Ivermectin, the Plaintiff refused to take the medication. The BOP medical staff, while admonishing the Plaintiff that he was in violation of their prescribed treatment, did not force the Plaintiff to take the medication against his will and did not take any punitive action against him.

23. During the illegal lockdown of the FPC inmate population on or about January 8, 2015, the Defendants again required every prisoner to take Ivermectin as the prescribed treatment for the infectious and contagious skin disease scabies. Plaintiff again refused to take the Ivermectin based on his previous reaction to the medication and the fact that he had not been individually examined, tested or diagnosed by any medical provider for scabies. Upon his refusal Plaintiff was physically removed from the FPC and placed in the Special Housing Unit (SHU) or the "Hole". The SHU is used by the BOP for disciplinary purposes. Inmates are typically placed in the "SHU" after being caught with alcohol, marijuana, cocaine or other contraband that is not allowed at the FPC. The SHU is the equivalent of solitary confinement on a 24 hour, seven days a week basis, with no privileges permitted. Inmates refer to the SHU as being placed in the "Hole".

24.) Former Camp Administrator Segovia stated in his Declaration that: "On or about January 8, 2015, a medical clinic was conducted in the FPC Summit Unit and a second round of scabies medication was administered to the inmate population to prevent further contamination." Segovia's Declaration is false in a number of aspects. First, this was the third time May was ordered to take the medication Ivermectin. It was not the "second round" of forced scabies medication that occurred on December 2, 2014. Second, there was no medical clinic conducted in the FPC Summit unit. Inmates were required to strip down to their shorts to be viewed by a group consisting of Segovia and other unknown BOP personnel who walked by and looked for what appeared to be physical signs of scabies. The inmates were then ordered to line up outside and orally take the Ivermectin pills in front of other BOP personnel to verify that they were actually taking the medication. To describe this process as a clinic is a complete sham and a gross misrepresentation to the Court.

25.) Despite the fact whether or not a "clinic was conducted" it is undisputed fact that any inmate who refused to take the Ivermectin on January 8, 2015 was handcuffed and taken to the "Hole". Segovia states in his Declaration: "During this clinic Plaintiff refused to take the medication Ivermectin (sic) in the presence of medical staff; therefore I made the decision to place him in the Special Housing Unit ("SHU") on administrative detention status." To avoid reinfection, the treatment of cases and contacts must be carefully coordinated so that all inmates are treated within the same period." This is the third part of Segovia's statement that is false. May did not have scabies. He was not going to re-infect anyone. BOP has a written policy statement requiring that any inmate refusing medication must be advised of the proposed treatment. Two staff witnesses must then at least and sign to the fact that the witness understands the consequences of refusing to take the medication. Segovia ignored BOP policy and directed that May be handcuffed and taken to the "Hole".

26.) In sharp contrast to defendant Segovia, May in his Declaration did not describe the activities of January 8, 2015 as a clinic. He was ordered by guards to stand in the line so that BOP personnel could watch him swallow the Ivermectin pills. When May was handed the Ivermectin he explained to Defendant Cordova that he previously had an adverse allergic reaction to the drug and that Dr. Santini had changed his medication by prescribing Permethrin Cream 5% in lieu of the Ivermectin. Cordova responded stating, "May, shut up and take the pills." May refused to take the medication explaining further that he had not been required to take the second round of Ivermectin in accordance with Dr. Santini's written orders. Cordova again responded: "Take the pills or go to the Hole."

27.) When May continued to refuse to take the Ivermectin medication Cordova told him to get out of the line and to stand and wait "over there". Segovia then arrived at the line where other inmates were standing and waiting to take the medication. According to May, Cordova told Segovia, "May won't take the pills." Cordova then stated, "Take the pills or you will go to the Hole." Neither Cordova or Segovia contest May's recollection of their statements in their Declarations. In fact, Segovia confirms the conversation when he states May "refused to take the medicine Ivermectin (sic) in the presence of a medical staff; therefore, I made the decision to place him in the... SHU."

28.) Segovia conveniently omits to state in his Declaration that on January 8, 2015, May was handcuffed and paraded to the "Hole" out in front of all his fellow inmates. In his Declaration nurse Cordova states: "I was not involved in the decision to place Mr. May in the Special Housing Unit following his refusal to take Ivermectin in January 2015." This statement has a dubious quality in light of the fact that Cordova admits in paragraph 12 of his Declaration that he "renewed" the prescription for Permethrin Cream 5% for exposure to scabies after "... May refused to take the Ivermectin drug." Additionally Cordova fails to include in his Declaration that he visited May in the "Hole" shortly after renewing his prescription. During that visit on January 13, 2015 Cordova woke up May in his cell in the Hole and asked him: "How do you like your new digs?" May responded that being in the hole was better than having another allergic reaction and possibly going into anaphylactic shock. Cordova then said: "You are in the "Hole" because you defied me. You will be charged and shipped out from the Camp."

29.) Cordova in his Declaration did not deny he made these statements. His conduct and statements are also independently corroborated by the Declaration of Marquis Dennis who does not have an interest in the case. But even if Cordova denied he made these statements he admits in his Declaration that May was put in the "Hole" because he refused to take the Ivermectin drug on January 8, 2015. Cordova also does not deny that he breached BOP policy when he provides for specific procedures that must be followed by BOP medical personnel when a prisoner refuses to take a prescribed medication.

30.) Billy May remained in the "Hole" for 28 days until February 5, 2015. At no time did he receive any type of hearing to determine whether or not his refusal to take the Ivermectin drug was a violation of any BOP regulations. He was simply punished for 28 days and then allowed to return to the general population of the camp. Despite BOP Lieutenant Gutierrez' order stating May would be held in the "Hole" pending an "investigation of a violation of Bureau regulations" no investigation was even conducted. May to this day has not been told what BOP regulation he allegedly violated.

31. Twenty five years ago in *Washington v. Harper*, 494 U.S. 210 (1990), the United States Supreme Court held that a prisoner had an absolute right to refuse any medication. Once a prisoner refuses a prescription medication he can only be forced to take the medication by the BOP after his rights to due process are protected through a hearing. Before any prisoner is forced to take the medication the BOP must obtain an opinion from a qualified, licensed medical doctor that the benefits of the medication outweigh the risks of not taking the medication. The inmate is then entitled for a court of law to review the BOP's decisions requiring the inmate to take the medication against his will.

32. The United States Supreme Court ruled that a prisoner cannot be punished for not taking the medication or refusing medical treatment without a hearing. *Hewitt v. Helms*, 459 U.S. 460 (1983). The Defendant's may be able to force the prisoner to take the medication by following the due process procedures outlined by the Supreme Court. However, the Defendants may not punish him for his decisions not to take the medication. *Anderson v. Romero*, 72 F.3d 518 (7th Cir. 1995); *Roberson v. California*, 370 U.S. 660 (1962). Plaintiff was incarcerated in the Special Housing Unit or "The Hole" because the BOP refuses to recognize or follow the Supreme Court's mandate issued 25 years ago in *Washington v. Harper*, 494 U.S. 210 (1990).

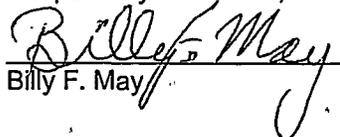
RELIEF REQUESTED

Plaintiff respectfully request that the Court enter judgement in favor of May and order the following:

- A. Immediate release of Plaintiff Billy F. May so he can obtain immediate and competent medical care. His scheduled release date is August 12, 2015.
- B. Punitive damages in the amount of \$280,000 or \$10,000 per day for the 28 days in incarceration in the "Hole" to punish the defendants for acting in bad faith.
- C. Any other relief the Court deems just and proper.

Dated June 28 2015

Respectfully Submitted,


Billy F. May