

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

|                           |   |                  |
|---------------------------|---|------------------|
| C. ALLEN POWELL, ET AL.,  | : |                  |
|                           | : |                  |
| Plaintiffs,               | : |                  |
|                           | : |                  |
| v.                        | : | CIVIL ACTION NO. |
|                           | : | 1:04-CV-1100-RWS |
| JACQUELINE H. BARRETT, ET | : |                  |
| AL.,                      | : |                  |
|                           | : |                  |
| Defendants.               | : |                  |

**ORDER**

This case comes before the Court for a determination of the scope of additional discovery and on Plaintiffs' Motion for Leave to File Reply [296].

As an initial matter, the Plaintiffs' Motion [296] is **GRANTED**, and the Court has considered Plaintiffs' Reply [296-1].

**Background**

On November 11, 2010, Defendant filed a Motion for Summary Judgment [269] based on the defense of qualified immunity. In response, Plaintiffs filed a Rule 56(d) Motion [282] arguing that they were unable to present facts essential to justify their opposition to Defendant's Motion. Plaintiffs argued that in order to properly respond they needed information

regarding the releases of a broader number of inmates than just the named Plaintiffs. The Court granted Plaintiffs' Motion [282] and allowed additional discovery to obtain information on the extent of the over-detention problem. (Dkt. [290] at 8). In that same Order [290], the Court granted Defendant's Motion for Summary Judgment as to the AL and CR Classes, and denied the Motion without prejudice as to the Over-Detention Class.

Pursuant to the Court's Order [290], Defendant filed its Objections to Additional Discovery [291] on March 20, 2011. Plaintiffs filed a Response [292], to which Defendant filed a Reply [295], to which Plaintiffs filed a Reply [296-1].

### **Discussion**

Having examined the arguments set forth by parties in regards to the scope of additional discovery, the Court agrees with the rationale set forth by Defendant [291, 295] and will not allow Plaintiffs to take additional discovery. In particular, Defendant admits that she was aware of a significant backlog of releases during late 2003 and early 2004. As a result of this knowledge, she asserts that she "took significant steps to address it at a systemic level." (Dkt. [291] at 3). Because she took these steps, Defendant argues that she was not

deliberately indifferent to the problem and therefore is protected by qualified immunity and entitled to summary judgment.

The Court stated in its Order:

Under the doctrine of qualified immunity, government officials performing discretionary functions may not be held individually liable for civil damages unless their conduct violates “clearly established statutory or constitutional rights of which a reasonable person would have known.” Lassiter v. Alabama, 28 F.3d 1146, 1149 (11th Cir.1994)(en banc) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)) The court may ascertain whether this standard has been met by making two determinations: (1) whether the defendant committed a violation of the plaintiff’s constitutional rights, and (2) whether the violation was governed by clearly established law. See West v. Tillman, 496 F.3d 1321, 1327 (11th Cir. 2007) (citing Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)). In addition, where the plaintiff seeks to hold the defendant liable for acts not taken by the defendant personally but by staff under the defendant’s supervision, the plaintiff must show that the defendant acted with deliberate indifference to the plaintiff’s constitutional rights. Id.

(Dkt. [290] at 5-6 (footnote omitted)). Defendant argues that additional discovery as to the extent of the over-detention problem is irrelevant for three reasons: (1) Defendant was aware, and thus admits, that a significant backlog of releases existed; (2) she took steps to remedy this problem and thus was not deliberately indifferent to it; and (3) any violation of constitutional rights resulting from the over-detention was not governed by clearly established law.

Plaintiffs respond [292] by proposing three primary areas of additional discovery, only one of which addresses the contentions set forth in Defendant's Objections [291]. On that ground, Plaintiff proposes an extension of discovery on the remedial steps taken by Defendant stating:

Plaintiffs propose depositions of persons with information of actual steps defendant took to resolve over-detentions. When plaintiffs deposed defendant plaintiffs did not have the benefit of signed responses. When plaintiffs deposed Mr. Lane (the jailer) defendant's interrogatory responses had not listed these steps as affirmative defenses and so plaintiffs did not focus the deposition on these issues. Barrett Supplemental Interrogatory Responses, interrogatory # 3 (attached). This is why defendant had to submit affidavits on these issues rather than relying on deposition testimony. Moreover, to the extent that defendant contends that the over-detention rate went down as a result of her hiring Mr. Lane plaintiffs need discovery on this issue too.

(Dkt. [292] at 4). The Court finds that Plaintiff had an adequate opportunity to explore the actions taken by Defendant to remedy the over-detention problem.

Defendant's Supplemental Response to Interrogatories states in response to interrogatory number 3, which sought identification of each defense she intended to assert, "[Defendant] asserts and relies upon the affirmative defense of qualified immunity." (Dkt. [292-1] at 10). Defendant's answer to this interrogatory also states:

During her tenure as sheriff, Defendant implemented many procedures and practices to improve the efficiency of the release

process, such as borrowing personnel from the courts; exchanging some sworn positions for more civilian positions; requesting judges' staff to fax all orders to one standard number; ceasing to fingerprint Atlanta Police Department arrestees on the APD system; implementing jail-based first appearance hearings; cross-training personnel; amending paperwork with an inmate's real name, as it takes additional time to process each alias; etc.

(Id. at 15-16). Defendant's Supplemental Response [292-1] was filed on April 2, 2010, more than two months before Plaintiffs deposed Mr. Lane. Therefore, Plaintiffs contention that "[w]hen plaintiffs deposed Mr. Lane (the jailer) defendant's interrogatory responses had not listed these steps as affirmative defenses and so plaintiffs did not focus the deposition on these issues," is untenable. (Dkt. [292] at 3). Plaintiffs were on notice that Defendant intended to assert the defense of qualified immunity and intended to argue that she took steps to improve the backlog of over-detained inmates. Plaintiffs chose not to focus on the remedial steps taken in its deposition of Mr. Lane, and the Court will not now allow them additional time to do so.<sup>1</sup> The Court will also not allow any of the other additional discovery sought by Plaintiffs, because the

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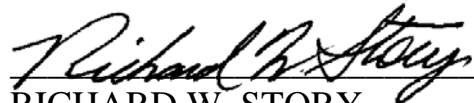
<sup>1</sup> Plaintiffs assert that they could not discover this defense because Defendant produced 122 pages of documents pertaining to remedial steps taken by Mr. Lane only two days before his deposition. Even assuming that two days was an insufficient amount of time to properly process the newly produced documents, Plaintiff was nonetheless on notice of Defendant's defense no later than the first week of April 2010—more than two months before Mr. Lane's deposition.

Court does not find that it is necessary to respond to Defendant's claim of qualified immunity as to the Over-Detention Class.

### **Conclusion**

For the aforementioned reasons, the Court **VACATES** its March 3, 2011 Order [290] to the extent it granted Plaintiffs' Rule 56(d) Motion. Upon reconsideration, Plaintiffs' Rule 56(d) Motion [282] is **DENIED**. Plaintiffs are **ORDERED** to respond to Section II.A of Defendant's Motion for Summary Judgment [269] no later than 21 days from the date of this Order. Plaintiff shall also file a response to Defendant's Statement of Undisputed Material Facts [269-2] as set forth by Local Rule 56(b)(2)(a)(2). Defendant shall have 14 days from the date of Plaintiffs' response to file a reply.

**SO ORDERED**, this 8th day of August, 2011.

  
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RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE