

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

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

Plaintiffs,

v.

Case No. 11-CV-806

DANIEL BRAEMER, DONALD
STRAHOTA, WILLIAM POLLARD,
PAMELA ZANK and MICHAEL THURMER,

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

NOW COME the defendants, Daniel Braemer, Donald Strahota, William Pollard, Pamela Zank and Michael Thurmer, and the Wisconsin Department of Justice, by their attorneys, Attorney General J.B. Van Hollen, and Assistant Attorney General Francis X. Sullivan and answer plaintiffs' complaint as follows:

I. INTRODUCTION

1. Answering the "Introduction" paragraph of plaintiffs' complaint, defendants AFFIRMATIVELY ALLEGE that plaintiffs set forth a legal conclusion to which no response is required, and therefore defendants DENY.

II. JURISDICTION

2. Answering paragraph 1 of plaintiffs' complaint, defendants AFFIRMATIVELY ALLEGE that plaintiffs set forth a legal conclusion to which no response is required, and therefore defendants DENY.

III. PARTIES

Plaintiffs' Information

3. Answering paragraph 2 of plaintiffs' complaint, defendants DENY as to Vasquez; ADMIT all remaining allegations contained therein.

Defendants Information

4. Answering paragraphs 3-10 of plaintiffs' complaint, defendants ADMIT.

5. Answering paragraphs 11-12 of plaintiffs' complaint, defendants AFFIRMATIVELY ALLEGE that pursuant to Court Order dated April 23, 2012, plaintiff was not allowed to proceed on these claims, and therefore defendants DENY.

6. Answering paragraphs 13-14 of plaintiffs' complaint, defendants ADMIT.

7. Answering paragraphs 15-16 of plaintiffs' complaint, defendants AFFIRMATIVELY ALLEGE that pursuant to Court Order dated April 23, 2012, plaintiff was not allowed to proceed on these claims, and therefore defendants DENY.

8. Answering paragraphs 17-24 of plaintiffs' complaint, defendants AFFIRMATIVELY ALLEGE that plaintiffs set forth a legal conclusion to which no response is required, and therefore defendants DENY.

Other Lawsuits

9. Answering paragraph 25 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

10. Answering paragraph 26 of plaintiffs' complaint, defendants ADMIT.

IV. PLAINTIFFS' STATEMENT OF FACTS

Vasquez's Statement of Facts

11. Answering paragraph 27 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

12. Answering paragraph 28 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation regarding "psychological disorder triggering behavior" and therefore defendants DENY; ADMIT all remaining allegations contained therein.

13. Answering paragraph 29 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

14. Answering paragraph 30 of plaintiffs' complaint, defendants ADMIT Vasquez was placed in administrative confinement on December 14, 2007; lack

sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

15. Answering paragraph 31 of plaintiffs' complaint, defendants ADMIT Vasquez was not allowed outdoor recreation while on administrative confinement; DENY all remaining allegations contained therein.

16. Answering paragraph 32 of plaintiffs' complaint, defendants DENY Vasquez was "isolated" and the cell door forced extreme isolation, social isolation, sensory deprivation, and prevented visual-human contact; ADMIT all remaining allegations contained therein.

17. Answering paragraph 33 of plaintiffs' complaint, defendants DENY the cell forced extreme isolation, social isolation, sensory deprivation, and deprivation of direct human contact; DENY the window "emits little sunlight; ADMIT all remaining allegations contained therein.

18. Answering paragraph 34 of plaintiffs' complaint, defendants DENY the recreation room was small and "slightly illuminated;" DENY the recreation cages are similar to those used for confining wild animals; DENY the window prevents inmates from seeing outside; ADMIT all remaining allegations contained therein.

19. Answering paragraph 35 of plaintiffs' complaint, defendants DENY.

20. Answering paragraph 36 of plaintiffs' complaint, defendants DENY the recreation room provides only a pull-up bar and that the pull-up bar is inappropriate for the mentally ill; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

21. Answering paragraph 37 of plaintiffs' complaint, defendants ADMIT that Vasquez did not have access to these items and DENY that these items constitute mechanical exercise equipment for the mentally ill.

22. Answering paragraph 38 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

23. Answering paragraph 39 of plaintiffs' complaint, defendants ADMIT Vasquez was not allowed to have his personal shoes and was allowed to wear the state issued shoes; DENY the state issued shoes were of extremely low quality and were extremely thin; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

24. Answering paragraph 40 of plaintiffs' complaint, defendants ADMIT Administrative confinement is an involuntary nonpunitive status; DENY all remaining allegations contained therein.

25. Answering paragraph 41 of plaintiffs' complaint, defendants DENY.

26. Answering paragraph 42 of plaintiffs' complaint, defendants ADMIT defendants were aware of conditions in the segregation unit; DENY all remaining allegations contained therein.

Greenwood's Statement of Facts

27. Answering paragraph 43 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

28. Answering paragraph 44 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of the allegation that Greenwood received segregation due to behavior that was a result of his psychological disorder and therefore defendants DENY; ADMIT all remaining allegations contained therein.

29. Answering paragraph 45 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

30. Answering paragraph 46 of plaintiffs' complaint, defendants ADMIT Greenwood was placed in Administrative Confinement on September 29, 2010; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

31. Answering paragraph 47 of plaintiffs' complaint, defendants ADMIT Greenwood was not allowed outdoor recreation while on administrative confinement; DENY all remaining allegations contained therein.

32. Answering paragraph 48 of plaintiffs' complaint, defendants ADMIT Greenwood was not allowed outdoor recreation on administrative confinement; ADMIT Greenwood's cell is separated from the open-unit by a solid steel door; ADMIT the segregation unit has a wall which runs down the center of the hall; DENY all remaining allegations contained therein.

33. Answering paragraph 49 of plaintiffs' complaint, defendants DENY the cell forced extreme isolation, social isolation, sensory deprivation, and deprivation of

direct human contact; DENY the window provides little sunlight; ADMIT all remaining allegations contained therein.

34. Answering paragraph 50 of plaintiffs' complaint, defendants DENY the recreation room was small and "slightly illuminated;" DENY the recreation cages are similar to those used for confining wild animals; ADMIT all remaining allegations contained therein.

35. Answering paragraph 51 of plaintiffs' complaint, defendants DENY.

36. Answering paragraph 52 of plaintiffs' complaint, defendants DENY the recreation room provides only a pull-up bar and that the pull-up bar is inappropriate for the mentally ill; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

37. Answering paragraph 53 of plaintiffs' complaint, defendants ADMIT but deny that the items described constitute "mechanical exercise equipment for the mentally ill."

38. Answering paragraph 54 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

39. Answering paragraph 55 of plaintiffs' complaint, defendants ADMIT Greenwood was not allowed to have his personal shoes and was allowed to wear the state issued shoes; DENY the state issued shoes were of extremely low quality and were extremely thin; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

40. Answering paragraph 56 of plaintiffs' complaint, defendants ADMIT Administrative confinement is an involuntary nonpunitive status; DENY all remaining allegations contained therein.

41. Answering paragraph 57 of plaintiffs' complaint, defendants ADMIT defendants were aware of conditions in the segregation unit; DENY all remaining allegations contained therein.

42. Answering paragraph 58 of plaintiffs' complaint, defendants AFFIRMATIVELY ALLEGE that plaintiffs set forth no factual allegations to which defendants can respond and therefore DENY.

Salazar's Statement of Facts

43. Answering paragraph 59 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

44. Answering paragraph 60 of plaintiffs' complaint, defendants ADMIT.

45. Answering paragraph 61 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

46. Answering paragraph 62 of plaintiffs' complaint, defendants ADMIT Salazar was placed on Administrative Confinement on December 23, 2008; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

47. Answering paragraph 63 of plaintiffs' complaint, defendants ADMIT Salazar was not allowed outdoor recreation while on administrative confinement; DENY all remaining allegations contained therein.

48. Answering paragraph 64 of plaintiffs' complaint, defendants ADMIT Salazar was not allowed outdoor recreation on administrative confinement; ADMIT Salazar's cell is separated from the open-unit by a solid steel door; ADMIT the segregation unit has a wall which runs down the center of the hall; DENY all remaining allegations contained therein.

49. Answering paragraph 65 of plaintiffs' complaint, defendants DENY the cell forced extreme isolation, social isolation, sensory deprivation, and deprivation of direct human contact; DENY the window provides little sunlight; ADMIT all remaining allegations contained therein.

50. Answering paragraph 66 of plaintiffs' complaint, defendants DENY the recreation room was small and "slightly illuminated;" DENY the recreation cages are similar to those used for confining wild animals; ADMIT all remaining allegations contained therein.

51. Answering paragraph 67 of plaintiffs' complaint, defendants DENY.

52. Answering paragraph 68 of plaintiffs' complaint, defendants DENY the recreation room provides only a pull-up bar and that the pull-up bar is inappropriate for the mentally ill; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

53. Answering paragraph 69 of plaintiffs' complaint, defendants ADMIT but DENY that the items described constitute "exercise equipment for the mentally ill."

54. Answering paragraph 70 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

55. Answering paragraph 71 of plaintiffs' complaint, defendants ADMIT Greenwood was not allowed to have his personal shoes and was allowed to wear the state issued shoes; DENY the state issued shoes were of extremely low quality and were extremely thin; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

56. Answering paragraph 72 of plaintiffs' complaint, defendants ADMIT Administrative confinement is an involuntary nonpunitive status; DENY all remaining allegations contained therein.

57. Answering paragraph 73 of plaintiffs' complaint, defendants ADMIT defendants were aware of conditions in the segregation unit; DENY all remaining allegations contained therein.

Lopez's Statement of Facts

58. Answering paragraph 74 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

59. Answering paragraph 75 of plaintiffs' complaint, defendants ADMIT Lopez received a disposition (sentence) of 360 days program segregation for rule violations on June 4, 2007; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

60. Answering paragraph 76 of plaintiffs' complaint, defendants ADMIT Lopez was placed on Administrative Confinement on May 26, 2010; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

61. Answering paragraph 77 of plaintiffs' complaint, defendants ADMIT Lopez was not allowed outdoor recreation while on administrative confinement; DENY all remaining allegations contained therein.

62. Answering paragraph 78 of plaintiffs' complaint, defendants ADMIT Lopez's cell is separated from the open-unit by a solid steel door; ADMIT the segregation unit has a wall which runs down the center of the hall; DENY all remaining allegations contained therein.

63. Answering paragraph 79 of plaintiffs' complaint, defendants DENY the cell forced extreme isolation, social isolation, sensory deprivation, and deprivation of direct human contact; DENY the window provides little sunlight; ADMIT all remaining allegations contained therein.

64. Answering paragraph 80 of plaintiffs' complaint, defendants DENY the recreation room was small and "slightly illuminated" preventing direct contact with heat and sunlight; DENY the recreation cages are similar to those used for

confining wild animals; ADMIT Lopez was allowed out of his cell only 4 hours a week for recreation which was indoor with a concrete floor in the segregation unit; DENY all remaining allegations contained therein.

65. Answering paragraph 81 of plaintiffs' complaint, defendants DENY the recreation room provides only a pull-up bar and that the pull-up bar is inappropriate for the mentally ill; ADMIT the segregation unit recreation room did not provide access to mechanical exercise equipment; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

66. Answering paragraph 82 of plaintiffs' complaint, defendants ADMIT Lopez was not allowed to have his personal shoes and was allowed to wear the state issued shoes; DENY the state issued shoes were of extremely low quality and were extremely thin; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

67. Answering paragraph 83 of plaintiffs' complaint, defendants ADMIT Administrative confinement is an involuntary nonpunitive status; DENY all remaining allegations contained therein.

68. Answering paragraph 84 of plaintiffs' complaint, defendants ADMIT defendants were aware of conditions in the segregation unit; DENY all remaining allegations contained therein.

Riach's Statement of Facts

69. Answering paragraph 85 of plaintiffs' complaint, defendants lack sufficient knowledge or information to form a belief as to the truth of these allegations and therefore defendants DENY.

70. Answering paragraph 86 of plaintiffs' complaint, defendants ADMIT Riach was placed in program segregation on May 28, 2009; ADMIT Riach was placed on Administrative Confinement on April 21, 2010; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

71. Answering paragraph 87 of plaintiffs' complaint, defendants ADMIT Riach was not allowed outdoor recreation while on administrative confinement; DENY all remaining allegations contained therein.

72. Answering paragraph 88 of plaintiffs' complaint, defendants ADMIT Riach's cell is separated from the open-unit by a solid steel door; ADMIT the segregation unit has a wall which runs down the center of the hall; DENY Riach was isolated in a cell; DENY the cell forced extreme isolation, social isolation, sensory deprivation, and deprivation of direct human contact; DENY the window provides little sunlight; ADMIT all remaining allegations contained therein.

73. Answering paragraph 89 of plaintiffs' complaint, defendants DENY the recreation room was small and "slightly illuminated" preventing direct contact with heat and sunlight; DENY the recreation cages are similar to those used for confining wild animals; ADMIT Riach was allowed out of his cell only 4 hours a

week for recreation which was indoor in the segregation unit; DENY all remaining allegations contained therein.

74. The complaint does not contain a paragraph 90.

75. Answering paragraph 91 of plaintiffs' complaint, defendants DENY the recreation room provides only a pull-up bar and that the pull-up bar is inappropriate for the mentally ill; ADMIT the segregation unit recreation room did not provide access to mechanical exercise equipment; ADMIT Vasquez was not allowed to have his personal shoes and was allowed to wear the state issued shoes; DENY the state issued shoes were of extremely low quality and were extremely thin; lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations and therefore defendants DENY.

76. Answering paragraph 92 of plaintiffs' complaint, defendants ADMIT Administrative confinement is an involuntary nonpunitive status; DENY all remaining allegations contained therein.

77. Answering paragraph 93 of plaintiffs' complaint, defendants ADMIT defendants were aware of conditions in the segregation unit; DENY all remaining allegations contained therein.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

78. Answering paragraph 94 of plaintiffs' complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations complained therein and therefore DENY.

VI. CLAIMS FOR RELIEF

79. Answering paragraph 95 of plaintiffs' complaint, defendants DENY plaintiffs are entitled to any relief they seek therein.

80. Defendants DENY any and all allegations contained in plaintiffs' complaint not specifically admitted above.

AFFIRMATIVE DEFENSES

1. Plaintiffs' complaint fails to state a claim upon which relief can be granted.

2. The action must be dismissed under the doctrine of qualified immunity.

3. The action must be dismissed under the doctrine of sovereign immunity and the Eleventh Amendment to the United States Constitution.

4. Upon information and belief, plaintiffs may have failed to exhaust their administrative remedies.

5. At all times relevant to matters alleged in plaintiffs' complaint, the defendants acted in good faith in accordance with established laws and administrative rules.

6. The action must be dismissed because it names the defendants in their official capacity.

7. The action must be dismissed because defendants had no personal involvement whatsoever in the events leading to or surrounding the incident which is the basis of this lawsuit.

8. Any state law claims in this action are subject to the requirements, provisions, terms, conditions, and limitations of Wis. Stat. § 893.82, including limitations on damages.

9. Any federal law claims in this action are subject to the requirements, provisions, terms, conditions, and limitations of the Prison Litigation Reform act, including the physical injury requirement and limitations on recovery of monetary damages and attorney fees.

10. The defendants reserve the defense of plaintiffs' failure to mitigate damages.

11. The defendants reserve the right to name additional affirmative defenses, as they may become known through further discovery or otherwise in this action.

12. Some or all of plaintiffs' claims may be barred by res judicata.

Dated June 4, 2012, at Madison.

J.B. VAN HOLLEN
Attorney General

/s/FRANCIS X. SULLIVAN
FRANCIS X. SULLIVAN
Assistant Attorney General
State Bar #1030932
Attorneys for Defendants Braemer,
Strahota, Pollard, Zank and Thurmer

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2222
(608) 267-8906 (Fax)
sullivanfx@doj.state.wi.us