

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

ROBERT KING WILKERSON, ALBERT WOODFOX, and HERMAN WALLACE	*	CIVIL ACTION
	*	NUMBER 00-304-C-M3
VERSUS	*	CHIEF JUDGE TYSON
RICHARD STALDER et al.	*	MAGISTRATE DALBY
* * * * *	*	JURY DEMAND

**THIRD AMENDED COMPLAINT**

Jurisdiction and Venue

1. This is an action for injunctive, declaratory and monetary relief for violation of the First, Eighth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction lies under §§ 1331, 1343(a)(3) and (4), and 2201. The complaint also asserts state law claims. This Court has supplemental jurisdiction of these state law claims under 28 U.S.C. § 1367.

2. Venue for this action lies in this Court under 28 U.S.C. §1391(b)(2) because the events and omissions giving rise to the claims occurred in the Middle District of Louisiana.

Parties

3. Plaintiff Robert King Wilkerson is a person of the full age of majority who was incarcerated at Louisiana State Penitentiary in Angola, Louisiana (LSP) at all relevant times until his conviction was overturned and he was released from LSP in February 2001.

4. Plaintiff Albert Woodfox is a person of the full age of majority who is and was incarcerated at Louisiana State Penitentiary in Angola, Louisiana at all relevant times.

5. Plaintiff Herman Wallace is a person of the full age of majority who is and was incarcerated at Louisiana State Penitentiary in Angola, Louisiana at all relevant times.

6. Defendant Richard Stalder was the Secretary of the Louisiana Department of Public Safety and Corrections at various times pertinent herein. He was responsible for the overall operation of the Department, including the Louisiana State Penitentiary at Angola, Louisiana. Defendant Stalder is sued in his official and individual capacities.

7. Defendant James M. LeBlanc is the Secretary of the Louisiana Department of Public Safety and Corrections. He is responsible for the overall operation of the Department, including the Louisiana State Penitentiary at Angola, Louisiana. Defendant LeBlanc is sued in his official capacity.

8. Defendant Burl Cain is the Warden of the Louisiana State Penitentiary at Angola. Defendant Cain is aware of the situation of which plaintiffs complain and has refused to take action to correct the situation. He is sued in his official and individual capacities.

9. Defendant Richard Peabody was deputy warden in charge of security at the Louisiana State Penitentiary at Angola at various times pertinent herein. He is sued in his official and individual capacities.

10. Defendant R. Rachal is a major at the Louisiana State Penitentiary at Angola, and at various times pertinent herein was a member of the Lockdown Review Board. He is sued in his official and individual capacities.

11. Defendant Randy Ritchie is a classification officer at the Louisiana State Penitentiary at Angola, and at various times pertinent herein was a member of the Lockdown Review Board. He is sued in his official and individual capacities.

12. Defendant Sam Smith is a colonel at the Louisiana State Penitentiary at Angola, and at various times pertinent herein was a member of the Lockdown Review Board. He is sued in his official and individual capacities.

13. Defendant Paul J. Myers is a major at the Louisiana State Penitentiary at Angola, and at various times pertinent herein was a member of the Lockdown Review Board. He is sued in his official and individual capacities.

14. Defendant Tom Norris is a classification officer at the Louisiana State Penitentiary at Angola, and at various times pertinent herein was a member of the Lockdown Review Board. He is sued in his official and individual capacities.

#### Factual Allegations

15. Plaintiffs Herman Wallace and Robert King Wilkerson are or were inmates at the Louisiana State Penitentiary at Angola who have been held in extended lockdown status for a period of 36 years from approximately 1972 to the present (in Mr. Wallace's case), and for 28 years from 1972 until his release from LSP in 2001 (in Mr. Wilkerson's case). Plaintiff Albert Woodfox also is an inmate at the Louisiana State Penitentiary at Angola who has been held in extended lockdown status from 1972 to the present, except for an intervening three-year hiatus at a parish jail. Mr. Wallace and Mr. Woodfox have remained classified as extended lockdown status inmates, and from mid-March 2008 until mid-November 2008 ~~have spent some time~~ were confined in a new, highly restrictive dormitory. In mid-November 2008, Mr. Wallace and Mr. Woodfox were placed back into lockdown cells, in administrative segregation, or an area of LSP commonly known as the "dungeon." Over one month later, Mr. Wallace and Mr. Woodfox were transferred once again into extended lockdown.

16. The conditions under which plaintiffs are or have been incarcerated in extended lockdown are the effective equivalent of solitary confinement. Each plaintiff has been continuously

incarcerated alone in cell of approximately 55 to 60 square feet for 23 hours each day. One hour a day, plaintiffs may shower and walk along the tier on which their cell is located. During this hour, three times a week, weather permitting, plaintiffs may elect to be escorted to a fenced exercise yard, where they may exercise without companions. Severe restrictions are placed on items of personal property, the number of books and types of reading material allowed. Access to legal materials and to inmate counsel is also substantially more restricted than in the general prison population, as is contact visitation. Restrictions in administrative segregation are even greater.

17. By contrast, inmates in the general prison population work and socialize. They live in dormitories, and have educational, training and recreational opportunities.

18. The conditions of plaintiffs' incarceration in extended lockdown almost totally deprive them of human contact, mental stimulus, physical activity, personal property and human dignity. Continued and continuing confinement under these conditions for 28 to 36 years is inhumane, and imposes atypical and significant hardship compared to ordinary prison life.

19. On 90-day intervals, an entity called the Lockdown Review Board reviews plaintiffs' continued confinement in extended lockdown. At each review, the Board continues plaintiffs' classification due to "nature of original reason for lockdown." This has been the pattern for 28 to 36 years.

20. Among the members of the Lockdown Review Boards that reviewed and extended plaintiffs' confinement in extended lockdown since March 30, 1999 are defendants Rachal, Ritchie, Smith, Myers, and Norris.

21. The review by the Lockdown Review Board is a sham proceeding, totally devoid of any meaning or substance. No review actually takes place. Board members discuss unrelated

matters, such as hunting, fishing, or the purchase of an old car motor, rather than the inmate's case. If the inmate tries to address why he should be released from extended lockdown, Board members tell him "We're not here to litigate. Litigate somewhere else." Extension of confinement in extended lockdown is automatic. No meaningful attempt is made to determine if plaintiffs are fit for release into the general population or to a less restricted status, or if they constitute a danger to the inmates or employees of the Louisiana State Penitentiary.

22. On information and belief, defendant Peabody influenced or participated in the decisions of the Lockdown Review Board to refuse to release plaintiffs from extended lockdown.

23. Defendant Cain knows of plaintiffs' 28-to-36 year confinement in extended lockdown, and also knows that the Lockdown Review Board will not release plaintiffs into the general prison population without direction from higher up. Nevertheless, with deliberate indifference to plaintiffs' rights, he failed to take any action to facilitate plaintiffs' release from extended lockdown or to secure them a fair hearing on whether they would pose a danger in the general prison population.

24. In particular, in mid-October, 2000, Warden Cain spoke to students at a school in New Orleans. After the speech, a teacher approached Warden Cain and asked about the "Angola Three," as plaintiffs publicly are known. Warden Cain immediately indicated that he knew of whom the teacher spoke and explained that they would not be released from extended lockdown because they had not reformed their political beliefs.

25. In an October 2008 sworn deposition—taken in connection with bail proceedings for plaintiff Albert Woodfox after Mr. Woodfox's underlying conviction was overturned by different judges of this Court—Warden Cain made a number of statements demonstrating that he is penalizing plaintiffs because of their perceived political affiliation and political beliefs, as well as

their race. Among other things, when asked to assume that Mr. Woodfox was not guilty of his underlying conviction, Warden Cain stated: “I would still keep him in CCR [an extended lockdown unit]. I still know that he is trying to practice Black Pantherism, and I still would not want him walking around my prison because he would organize the young new inmates. I would have me all kind of problems, more than I could stand, and I would have the blacks chasing after them.” Warden Cain added that Mr. Woodfox “has to stay in a cell while he’s in Angola.”

26. Mr. Wallace and Mr. Woodfox have been the victims of targeted, and ongoing mistreatment by LSP officials. Among other things, in mid-November 2008, Mr. Woodfox was forced to urinate with a bathroom door open in close proximity to two female friends who were visiting him. In addition, in mid-December 2008, Mr. Wallace and Mr. Woodfox were given excessive disciplinary sanctions for minor alleged rule violations. According to disciplinary reports concerning these alleged rule violations, plaintiffs were placed in administrative segregation and then returned to further extended lockdown for, inter alia, self-identifying as members of the Black Panther Party, and for making statements that “provoke unfavorable public opinion” about LSP and the Attorney General’s office, as well as statements that are “derogatory” to the New Orleans Police Department and District Attorney’s Office.

27. Upon information and belief, prison officials’ actions are not common practice at LSP, nor are they justified by legitimate penological interests. In addition, upon information and belief, LSP allows inmates to give media statements that, in their view, create “good” publicity. Rather, these incidents reflect targeted, and ongoing mistreatment based on plaintiffs’ race, perceived political ideology and association, perceived viewpoints and particular opinions, and/or perceived success in this lawsuit and in separate proceedings challenging their convictions. Upon information and belief, defendants, including Warden Cain, have either directed or facilitated this

targeted, ongoing mistreatment of plaintiffs, or are aware of this targeted, ongoing mistreatment but have taken no steps to rectify it.

28. On information and belief, defendants Stalder and LeBlanc are aware that plaintiffs have been confined in extended lockdown for 28 to 36 years and have refused to take any action to end this inhumane situation. Plaintiffs base this belief on the high-profile nature of their case, on previous litigation, and on the third-step consideration of plaintiff Woodfox's grievance.

29. Plaintiffs attempted to remedy this situation through administrative grievances, but were told decisions of the Lockdown Review Board were not grievable.

30. At all times, defendants' refusal to release plaintiffs from extended lockdown was made with deliberate indifference to their condition, and in reckless disregard for or knowing violation of their rights.

31. As a result of defendants' acts and omissions, plaintiffs have suffered severe mental anguish and other psychological damage, along with an unwarranted deprivation of the liberties and privileges granted other prisoners. The conditions of their confinement in extended lockdown for this extended status have caused them daily mental anguish and pain and have exposed them to an unduly high risk of psychological harm. Plaintiffs also have suffered physical injury as a result of their extended confinement in extended lockdown, including damage to their eyesight and hypertension/high blood pressure.

#### Causes of Action

32. By the foregoing conduct, specifically continued confinement in extended lockdown for 28 to 36 years, defendants have violated plaintiffs' right to be free of cruel and unusual

punishment, as guaranteed by the Eighth Amendment of the United States Constitution and Article I, Section 20 of the Louisiana Constitution of 1974.

33. By the foregoing conduct, specifically sham review of plaintiffs' continued confinement in extended lockdown after a quarter of a century, defendants have violated plaintiffs' right to due process of law, as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Louisiana Constitution of 1974.

34. By the foregoing conduct, specifically continuing plaintiffs' confinement in extended lockdown for 28 to 36 years and taking other adverse actions against plaintiffs because of their perceived political beliefs and political affiliation, their perceived viewpoints and particular opinions and/or because of plaintiffs' availing themselves of their fundamental right of court access, defendants have violated plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the Louisiana Constitution of 1974.

35. By the foregoing conduct, specifically continuing plaintiffs' confinement in extended lockdown for 28 to 36 years and taking other adverse actions against plaintiffs because of their race, defendants have violated plaintiffs' rights under the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the Louisiana Constitution of 1974.

#### Prayer for Relief

WHEREFORE, plaintiffs pray that this Honorable Court grant the following relief

- A. Declare defendants' conduct unlawful;
- B. Enjoin and restrain defendants from incarcerating plaintiffs in extended lockdown or other similar condition without independent intervening cause other than the original reason for the classification, and further, ordering plaintiff<sup>s</sup>' placement in the general prison population;



C. Enjoin and restrain defendants from taking other adverse actions against plaintiffs because of plaintiffs' race, their political ideology or affiliation, or in retaliation for plaintiffs' availing themselves of their right of access to courts.

- D. Award compensatory damages;
- E. Award punitive damages;
- F. Grant attorneys' fees and costs;
- G. Trial by jury; and
- H. Such other relief as the Court deems just and proper.

Respectfully submitted,

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