

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

RONNIE L. MORGAN, JR.
Plaintiff

vs.

**MARLIN GUSMAN, Criminal Sheriff,
Orleans Parish; CORNEL HUBERT,
Warden, Elayn Hunt Correctional
Center; JOHN DOE, Elayn Hunt
Correctional Center**
Defendants

*
*
*
*
*
*
*
*
*

CIVIL ACTION NO.:

SECTION: “ ”

MAGISTRATE: “ ”

COMPLAINT

NOW INTO COURT, though undersigned counsel, comes Ronnie L. Morgan, a person of the age of majority and a resident of the Parish of Orleans and State of Louisiana, who respectfully represents as follows:

JURISDICTION AND VENUE

1. This action seeks relief pursuant to 42 U.S.C. § 1983 the redress the deprivation under color of state law of rights, privileges, and immunities secured by the Constitution of the United States. The rights sought to be redressed are guaranteed by the Eighth and Fourteenth

Amendments to the United States Constitution. Accordingly, the Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1343(3) and (4).

2. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff **Ronnie L. Morgan, Jr.** is currently serving a sentence imposed for a violation of the federal law. Mr. Morgan is a federal inmate, housed at Orleans Parish Prison pursuant to a contract between the Orleans Parish Criminal Sheriff's Office and the U.S. Department of Justice. He has been placed under the care of the Orleans Parish Criminal Sheriff, Defendant Gusman.

4. Defendant **Marlin N. Gusman** is a citizen and resident of Louisiana. At all times material to this action, Mr. Gusman has been the Criminal Sheriff for Orleans Parish. As such, he is the agency official ultimately responsible for the daily functioning and administration of Orleans Parish Prison, hereinafter "OPP", and for ensuring the safety and proper care of OPP inmates. He is sued in his official capacity only.

5. Defendant **Cornel Hubert** is a citizen of Louisiana. At all times relevant to Plaintiff's claim for damages and declaratory relief, Mr. Hubert was the Warden at Elayn Hunt Correctional Center. In that capacity he is responsible for the daily functioning and administration of Elayn Hunt. Defendant Hubert has a duty and obligation under law to ensure, among other things, that inmates are protected against unprovoked assault by other inmates. He is sued in his official and individual capacity.

6. Defendant **John Doe** is a citizen of Louisiana. At all times material to this action, Mr. Doe was an employee at Elayn Hunt Correctional Center. It is believed that his duties included

that of ensuring the safety and protection of inmates incarcerated at Elayn Hunt Correctional. He is sued in his official and individual capacity.

7. All acts and omissions of the Defendants set forth below were done under color of state law and were performed during the scope of their employment.

FACTUAL ALLEGATIONS

8. On August 28, 2005, as Hurricane Katrina headed for New Orleans, Defendant Gusman appeared at a press conference at which he was asked whether the inmates would be evacuated from Orleans Parish Prison. He announced that the facility had backup generators, was fully staffed, was operating under an emergency operations plan, and that the prisoners would remain "where they belong."¹

9. When the storm hit New Orleans on August 29, 2005, the generators at Orleans Parish Prison failed, and the jail plunged into darkness. The inmates did not have food, water, or medical care. The toilets backed up with human waste. Plaintiff was held in the House of Detention facility, as a federal inmate in protective custody. Plaintiff was not evacuated from the jail until on or around Thursday, September 1, 2005.

10. When correctional officers entered Plaintiff's tier in order to evacuate the men from their cells, they told the prisoners to leave everything behind, because they would be able to retrieve everything when they returned. Plaintiff attempted to retrieve his legal paperwork, but was ordered at gunpoint to leave the papers behind.

11. On or around September 1, 2005, Plaintiff was moved by boat from Orleans Parish Prison to Interstate 10. Shortly thereafter, Plaintiff was transported by bus to Elayn Hunt Correctional Center in St. Gabriel, Louisiana.

¹ Transcript of CNN Press Conference, Aug. 28, 2005, *available at* <http://transcripts.cnn.com/TRANSCRIPTS/0508/28/bn.04.html>

12. Upon arrival, the OPP evacuees were being placed on an open field surrounded by guards, such that there were thousands of inmates on one field. Plaintiff and other inmates in protective custody advised Defendant Doe that they were protective custody inmates and should not be placed with other inmates. One protective custody inmate explained that he saw his enemies out on the field, and that he would be attacked if put out there.

13. Defendant Doe advised Plaintiff and other protective custody inmates to not disclose their identities to other inmates on the field. Plaintiff advised Doe that he had clothing on that said "Federal." The inmates on the field began to gather at the gate in anticipation of the arrival of the protective custody inmates, calling out to one another to draw attention to the arrival of the protective custody inmates.

14. In spite of their objections, and in spite of the fact that inmates already on the field were gathering to attack the protective custody inmates, Defendant Doe forced the protective custody inmates, including Plaintiff Morgan, onto the field.

15. Within minutes of being placed on the field, one of the protective custody inmates was viciously attacked. He was stabbed and beaten. He sought out the guards for help but was shot at by the guards, possibly with beanbag guns. Other inmates were being attacked and stabbed. Within thirty minutes, Plaintiff was attacked by other inmates. Plaintiff was beaten and stabbed in the head and neck. Plaintiff made his way to the gate and asked the guards for help. The guards laughed at him and refused to help him, leaving him on the field with his attackers.

16. Plaintiff wandered the field in the rain in blood-soaked clothing. He was afraid to sleep, so he continued to walk around to avoid attacks.

17. Plaintiff was finally evacuated from the field at Elayn Hunt on or around September 2, 2005, never having received medical care for his wounds, and never having received protection from the guards, despite requesting both.

18. Plaintiff was moved to David Wade Correctional Center, hereinafter "DWCC", in Homer, Louisiana. Upon arrival, Plaintiff observed guards at entry points beating up inmates. Plaintiff was not himself assaulted at this time. On Saturday, September 3, 2005, Plaintiff requested an Administrative Remedy Procedure form, hereinafter "ARP." He received the form on Monday, September 5, 2005. Plaintiff completed the form and sent it in. He stated that he had been stabbed in the head on the field at EHCC. He requested medical attention.

19. In response to his ARP one Colonel, Colonel Hanson, advised Plaintiff that he could file all of the ARPs he wanted, but that they all came to him, indicating that they would be denied. Plaintiff never received a written response to his ARP.

20. Colonel Hanson brought the ARP to Plaintiff's cell and held it up for him to see. He taunted him, saying "I told you they all came to me" and "you're in our jail, now."

21. Plaintiff wrote a letter to the Warden about this incident, and enclosed his ARP. He did not receive a written response to the ARP, but a nurse visited him.

22. On September 12, 2005, because he had a wound in his head and had yet to receive adequate medical attention, Plaintiff spoke with Colonel Hanson. Colonel Hanson said that all of the inmates from New Orleans were killers. Plaintiff is a Rastafarian, and, as such, is religiously obligated to wear his hair in dreadlocks. Colonel Hanson stated that this meant that Plaintiff might be in a Jamaican gang or something like that, and that he did not care about Plaintiff's religion, but that Plaintiff was going to have his head shaved.

23. Plaintiff's head was shaved, over his strenuous objections about his religious beliefs. Upon information and belief, Plaintiff's protestations angered Hanson and Cummings, because Plaintiff was beaten in the head with the clippers. Hanson said he did not care about Plaintiff's religion.

24. Colonel Hanson instructed his staff, including Sergeant Cummings and other officers, to beat and mace Plaintiff. Plaintiff advised DWCC officers that he had asthma and needed medical attention. He was ignored. Plaintiff requested a grievance, or "ARP" form, and was ignored. Plaintiff finally got an ARP form from another inmate and filed a grievance on Colonel Hanson.

25. When Colonel Hanson found out about the ARP he came to Plaintiff's cell and threatened him, instructing him to drop the ARP that had been filed. Plaintiff refused. Colonel Hanson told Plaintiff that Plaintiff would be sorry he had ever met him.

26. On October 5, 2005, Plaintiff was placed in "the hole," or solitary confinement without a write-up. Plaintiff was kept in solitary confinement for the entire period of his stay at David Wade Correctional Center, until February 6, 2006.

27. Because he was in "the hole" Plaintiff was kept in his cell 23 hours and fifty minutes per day. He was not allowed any recreation, or "yard" time.

28. On February 6, 2006 Plaintiff was transferred back to Orleans Parish Prison, where he remains today.

29. Plaintiff has fully exhausted his administrative remedies in seeking compensation and medical care from the assault.

CLAIM FOR VIOLATION OF CIVIL RIGHTS

30. Defendant Marlin Gusman, through his inaction and inattention to the rights, welfare, health and safety of those inmates in his charge and care, caused harm to the inmates, including Plaintiff. His acts and omissions included a failure to have an adequate evacuation or emergency preparedness plan for the jail, or, in the alternative, a failure to properly execute an emergency preparedness plan. As Criminal Sheriff for Orleans Parish, he failed to develop and pursue emergency policies and customs, which created the substantial risk of bodily harm to the Plaintiff and other inmates, and which evidence a deliberate and gross failure to protect Orleans Parish Prison inmates. These failures were the proximate cause of the assault upon the Plaintiff.

31. Defendant Hubert developed and pursued policies and customs that created the substantial risk of bodily harm to the Plaintiff and other inmates, and which evidence a deliberate and gross failure to supervise his subordinates. His acts and omissions included (a) a failure to adequately house, feed and provide medical care for the inmates evacuated from Orleans Parish Prison, including an especially egregious failure to provide for the safety of inmates in protective custody; (b) a failure to adequately train corrections staff in matters of inmate safety from assault; (c) a failure to train his staff to take steps after an inmate assault to determine whether remedial action was necessary to prevent future assaults; and (d) a failure to provide medical care and protective custody to inmates who had been the victims of inmate-on-inmate assault. In short, this supervisor followed a turn-a-blind-eye approach to inmate-on-inmate assaults and refused to conduct any intervention or investigation into inmate assault and take appropriate remedial action to safeguard against their recurrence. These failures were the proximate cause of the assault upon the Plaintiff.

32. As a result of Hubert's failure to properly control and supervise his subordinates, he condoned and acquiesced in the errors made by his subordinates that led to the assault on the Plaintiff.

33. Defendant Doe similarly failed to take steps to protect the safety of Plaintiff. Doe knew of the substantial risk of injury that Plaintiff faced and took inadequate steps to protect him. Upon information and belief, Doe was the officer in charge of inmate placement as the inmates arrived at Elayn Hunt Correctional Center from Orleans Parish Prison. The protective custody inmates warned him that they could see their enemies on the field, and that they would be attacked if placed out there. Given all the circumstances known to Doe, his efforts were unreasonable and inadequate; at a minimum he should have escorted Plaintiff and the protective custody inmates to another location, and discussed with the other officers on duty the need to monitor their safety. Moreover, based on information and belief, Doe failed to conduct an investigation following Plaintiff's assault, despite the fact that it occurred on an open field in plain view of guards and inmates, thereby acquiescing in and condoning their misconduct.

34. As a result of the actions and inactions of the above-named Defendants, Plaintiff sustained serious bodily injury in the form of stab wounds to the neck and head, which are still visible as scars. Additionally, Plaintiff continues to suffer from headaches, sleeplessness, and emotional damage, stemming from the horrors to which he was subjected.

35. Based upon the facts set forth above, Plaintiff Morgan seeks compensation for all of the damages he has suffered, including but not limited to pain and suffering, mental anguish, and other general damages, against all Defendants, in an amount as may be shown at trial. Relief is sought pursuant to 42 U.S.C § 1983 based on violations of the Eighth and Fourteenth Amendments to the U.S. Constitution.

WHEREFORE Plaintiff respectfully prays that after due proceedings had that judgment be rendered in favor of Plaintiff, and against defendants, pursuant to 42 U.S.C. § 1983, awarding plaintiff compensatory damages and such additional and further relief, including the award of attorney's fees and costs, as warranted by law and the evidence, and the Court may deem proper under the circumstances.

Respectfully Submitted,

Vincent J. Booth, Bar # 18565
Booth & Booth, APLC
138 N. Cortez Street
New Orleans, LA 70119
P:(504) 482-5292
F:(504) 482-5847
*Cooperating Attorney for the American Civil
Liberties Union Foundation of Louisiana*

Katie M. Schwartzmann, Bar # 30295
PO Box 56157
New Orleans, Louisiana 70156
P: (504) 592-8056
F: (504) 522-0618
*Staff Attorney for the American Civil
Liberties Union Foundation of Louisiana
Application for Admission to EDLA Pending*