IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MARVIN JONES,	)	**Civil Action No. 4:10CV-011-P-S**
Plaintiff	)	
v.	)	
TYSON FOODS, INC.; HALEY BARBOUR, in his official capacity of Governor of the State of Mississippi; CHRISTOPHER EPPS, in his individual and official capacities as Commission of the Mississippi Department of Corrections; LEE McTEER, in his official capacity as Community Correctional Director for Region I and in his individual capacity; and JONATHAN BRADLEY, in his official capacity as Correctional Supervisor of Leflore County Restitution Center and in his individual capacities	)	
Defendants.	)	

MEMORANDUM BRIEF IN OPPOSITION OF DEFENDANTS LEE McTEER AND JONATHAN BRADLEY'S MOTION TO DISMISS

COMES NOW the Plaintiff, MARVIN JONES, by and through counsel, and files this his brief in opposition to the Defendants Lee McTeer and Jonathan Bradley's, (hereinafter "Defendant McTeer" and "Defendant Bradley"), Motion to Dismiss, and would show the following:

INTRODUCTION

The Defendants have filed a Motion to Dismiss seeking to dismiss the Plaintiff's Section 1983 claims brought against Defendants McTeer and Bradley in their ***official*** capacity as employees

of the Mississippi Department of Corrections. Even if the Eleventh Amendment did bar the Plaintiff from recovering a monetary damages award against the "official capacity" defendants, the Eleventh Amendment does not bar the Plaintiff's Section 1983 claims brought against the Defendants in their individual capacities.[1] Additionally, it does not bar the Plaintiff from seeking declaratory relief against Defendants McTeer and Bradley.

FACTUAL BACKGROUND

Plaintiff is a former inmate/resident of the Leflore County Restitution Center (hereinafter "LCRC") whose life was forever changed when he received a letter from the Mississippi Department of Health. (First Amended Complaint ("FAC") ¶20, **Doc. 12**).

"During your employment at Tyson you may have been exposed to an individual who has been diagnosed with Mycobacterium tuberculosis (TB)," the letter from Rebecca James, MD stated. (FAC ¶ 42, **Doc. 12**). "The chance of others in the work area developing TB is small, but possible." *Id.* For Plaintiff, the chance was not as small as the Department of Health had described. *Id.*

After receiving the aforementioned letter Plaintiff went for his tuberculin skin test and his results were positive. (FAC ¶ 42, **Doc. 12**). As the Department of Health stated in its letter, Plaintiff was exposed to an individual diagnosed with TB while fulfilling his restitution at Defendant Tyson. Plaintiff was subsequently diagnosed with the same, life-threatening, disease. *Id.*

Plaintiff Assigned to Defendant Tyson to Fulfill Restitution; Health Deteriorates

Plaintiff was sent to the Leflore County Restitution Center (hereinafter "LCRC") as a condition of his sentence for embezzlement. *Id.* Plaintiff's sentence was the least of his concerns.

After arriving at the LCRC Plaintiff was immediately assigned to fulfill his restitution at Defendant Tyson's Carthage, Mississippi plant to work as a chicken hanger. (FAC ¶ 21, **Doc. 12**).

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[1] Plaintiff's First Amended Complaints contains claims against Defendants Bradley and McTeer in their individual capacity. Since these claims are not the subject of the Motion to Dismiss, they are not addressed in detail in this memorandum brief. (Defendants' Memorandum p. 3, **Doc. 17**).

The chicken hanging process is unpleasant, as chickens are collected, crammed into a cage, left without water or food and transported to the chicken plant. *Id.*

Once inside the chicken plant, Plaintiff was responsible for hanging the chickens. (FAC ¶ 22, **Doc. 12**). To fulfill his state-ordered duties to Defendant Tyson, Plaintiff had to hang the chickens upside down, by their feet, while they were still alive. *Id.* Because of the nature of such methods, many chickens continually released feces and such feces would cover Plaintiff. (FAC ¶ 24, **Doc. 12**). Working in a plant in which employees, including Plaintiff, are forced to work while covered in feces constitutes an unsanitary and unhealthy work environment. *Id.*

While fulfilling his restitution at Defendant Tyson, Plaintiff's health quickly deteriorated. His neck, face and hands began to swell and when he approached a Tyson supervisor about these ailments, the supervisor refused to let Plaintiff see a company nurse. (FAC ¶ 32, **Doc. 12**).

Defendants Remove Plaintiff from Tyson

Eventually Plaintiff's health temporarily prevented him from fulfilling his restitution at Defendant Tyson's plant. (FAC ¶ 33, **Doc. 12**). Plaintiff was forced to return to LCRC where he waited for his next assignment. (FAC ¶ 34, **Doc. 12**).

During this time he ***was not*** free to seek employment on his own. *Id.* Plaintiff contends Defendant Bradley's failure to reassign Mr. Jones was based upon the fact he angered Defendant Bradley because he could not fulfill his duties at Defendant Tyson, thus negatively impacting any and all personal benefits Defendant Bradley is believed to have received from Defendant Tyson as a result of Plaintiff's placement. (FAC ¶ 35, **Doc.12**). It was well known among residents at LCRC that Defendant Bradley wanted as many of his residents as possible to be assigned to Defendant Tyson, even when other opportunities were available. *Id.*

Plaintiff, rather, was forced to wait months until Defendant Bradley assigned him to the Greenwood County Club; a place where Plaintiff excelled. (FAC ¶ 36, **Doc. 12**).

Plaintiff Re-Assigned to Tyson by Defendant Bradley

Plaintiff's time at Greenwood was short lived as Defendant Bradley reassigned Plaintiff to Defendant Tyson fulfill the remainder of his restitution. (FAC ¶ 37, **Doc. 12**). Plaintiff never had a choice as to where he was, or was not, assigned to fulfill his restitution. *Id.*

Though he was productive in his new assignment, Defendant Bradley, once again, assigned him to Defendant Tyson in March of 2008. (FAC ¶ 37 **Doc. 12**). This was done contrary to Mr. Jones's best interest and despite the fact he had a medical condition, hampering his productivity at Tyson. *Id.* This decision was arbitrary and capricious, and upon information and belief, the reassignment personally benefited Defendant Bradley. *Id.* Furthermore, by ordering Plaintiff back to Tyson, Defendants precluded Plaintiff from receiving his freedom after he satisfied the terms of his sentencing. (FAC ¶¶ 1-2, **Doc. 12**).

Plaintiff Contracts TB

Because of his arbitrary assignment to Defendant Tyson and because Defendant Tyson intentionally took risks that exposed Plaintiff to a deadly disease, Plaintiff now suffers from TB. Since his diagnosis a deluge of agonizing symptoms has befallen Plaintiff. He currently suffers from muscle spasms, acute fevers, night sweats, loss of appetite, weight loss and a host of dire effects from the medications he must take. (FAC ¶ 43, **Doc. 12**). This has left him unable to work. *Id.*

ARGUMENT

The Plaintiff will concede his Section 1983 monetary damages claim against Defendants McTeer and Bradley in their ***official*** capacity only, but such a concession should not result in the dismissal of the official capacity claims made against Defendants McTeer and Bradley as Plaintiff has sought declaratory relief, as well. The Eleventh (11th) Amendment, however, does not bar the Plaintiff's Section 1983 claims brought against these defendants in their ***individual*** capacities.

I. PLAINTIFF'S REQUEST FOR DECLARATORY RELIEF NEGATES THE DISMISSAL OF THE OFFICIAL CAPACITY CLAIMS MADE AGAINST DEFENDANTS McTEER AND BRADLEY.

Plaintiff's First Amended Complaint asks this Court to "[d]eclare that Defendants' actions, as herein described, violated Plaintiff's constitutional rights under the Eighth, Thirteenth and Fourteenth Amendments to the United States Constitution." As such, the "official capacity" Defendants should ultimately remain defendants in this case. *See Ex parte Young*, 209 U.S 123 (1908) (carving out exception to Eleventh Amendment and specifically authorizing private suits against state officials for injunctive relief and declaratory relief in situations where defendants violate federal law).

While it is true Supreme Court precedent has rejected the notion "any form of relief may be awarded against a state officer, no matter how closely it may in practice resemble a money judgment payable out of the state treasury, so long as the relief may be labeled 'equitable' in nature," valid declaratory relief, even if it does impact the State's treasury, is not outside *Young's* carefully carved exceptions.[2] *Edelman v. Jordan*, 415 U.S. 651, 665-667 (1974).

"As in most areas of the law, the difference between the type of relief barred by the Eleventh Amendment and that permitted under *Ex parte Young* will not in many instances be that between day and night." *Id.* at 667. Thus, when a Plaintiff seeks a declaration holding the actions of a State, or its officers, has unconstitutional, the monetary costs associated with the command to comport to the constitution are not be enough to justify Eleventh Amendment immunity. *Id.*

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[2] Defendants McTeer and Bradley cite *Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (internal citations omitted) to support the contention federal courts cannot declare past acts of state actors unconstitutional under ***any*** circumstances. This is wrong. The internal citations omitted by Defendants, *Green v. Mansour*, 474 U.S. 64, 73 (1985), held when the "issuance of a declaratory judgment in these circumstances would have much the same effect as a full-fledged award of damages or restitution by the federal court" a declaratory judgment constitutes an "end-run" around established precedent and the Eleventh Amendment. As explained in this memorandum, such circumstances are not created by Plaintiff's case, thus a declaratory judgment would not be barred by the Eleventh Amendment.

"State officials, in order to shape their official conduct to the mandate of the Court's decrees, would more likely have to spend money from the state treasury than if they had been left free to pursue their previous course of conduct. Such an ancillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in *Ex parte Young, supra.*" *Id.* at 668.

When the relief sought is prospective, i.e. intending the State and/or its officers to comply with federal law in the future, Eleventh Amendment immunity does not bar the lawsuit. *See Papasan v. Allain,* 478 U.S. 265, 279 (1986) (*holding* the Court will 'look to the substance rather than to the form of the relief sought, ... and will be guided by the policies underlying the decision in Ex parte Young"). *See also Milliken v. Bradley,* 433 U.S. 267, 290 (1977) (The Court upheld a decree requiring state payments to programs intended to redress past wrongs because those programs were "part of a plan that operates prospectively to bring about the delayed benefits of a unitary school system").

Plaintiff has alleged the actions of Defendants McTeer and Bradley violated his Eighth, Thirteenth and Fourteenth Amendment rights. Plaintiff's Eighth Amendment claim includes, but is not limited to, his assignment to a poultry plant where he was forced to work covered in chicken feces. Such an environment is cruel and unusual.[3]

Plaintiff's Thirteenth Amendment claims includes, but is not limited to, his being detained by Defendants longer than required due to a 42 U.S.C. § 1985 conspiracy to deprive him his civil rights and, upon information and relief, to further an agreement between Defendants to exploit Plaintiff and others similarly situated.

Plaintiff's Fourteenth Amendment claims are both procedural and substantive.

Plaintiff's request for declaratory relief is independent of any compensatory damages he may or may not have been seeking. Instead, his request for declaratory relief against Defendants McTeer

[3] *See Ruiz v. Estelle,* 679 F.2d 1115 (5th Cir. 1982) (*holding* unsafe working conditions in the Texas prison system constitute cruel and unusual punishment as proscribed by the Eighth Amendment.

and Bradley was made for the purpose of finding their past behavior unconstitutional and ordering any future behavior to be consistent with the U.S. Constitution. Furthermore, the facts support such violations occurred and are not, despite the wishful thinking of Defendants McTeer and Bradley that such facts are vague.

After arriving at the Leflore County Restitution Center, Defendant Bradley assigned Plaintiff to Tyson's Carthage, Mississippi to perform the functions of a chicken hanger. (FAC ¶ 20, **Doc. 12**). In recent years, the dangers associated with the poultry industry have been exposed.

U.S. lawmakers have also recognized the inherent danger associated with the poultry industry and voiced concern that harsh demands issued by poultry employers place poultry worker's health in jeopardy. (FAC ¶ 28, **Doc. 12**). Former U.S. Sen. Ted Kennedy, D-Mass., admitted the dangers poultry workers face when he testified, "'Poultry workers' health and safety is threatened every day in a variety of ways. Their hands are crippled by hours on an assembly line that moves too fast. They are forced to work when they are sick or seriously hurt." *Id.*

Furthermore, Defendant Tyson has a reputation of placing the bottom line before worker safety and has been charged with hiring illegal immigrants from Latin America who may have carried the TB virus into the Carthage, Mississippi plant. (FAC ¶ 31, **Doc. 12**).

Crippled hands and disease wielding illegal immigrants, however, are just the tip of the iceberg. By forcing Plaintiff to work in a chicken plant, Defendants McTeer and Bradley exposed Plaintiff to an environment in which he was routinely covered in chicken feces. Plaintiff's work environment, thus, was clearly an unsanitary example of cruel and unusual punishment because Plaintiff had to conduct his work among chickens compelled to release feces due to the nature in which Defendant Tyson was processing the poultry. (FAC ¶ 24, **Doc. 12**).

Because Plaintiff seeks declaratory relief as part of this cause of action, the Eleventh Amendment does not bar Plaintiff's lawsuit made against Defendant McTeer and Bradley in their official capacity and it would be inconstant with Supreme Court precedent to dismiss such claims.

II. THE ELEVENTH AMENDMENT DOES NOT BAR THE CLAIMS MADE AGAINST DEFENDANTS McTEER AND BRADLEY IN THEIR INDIVIDUAL CAPACITIES.

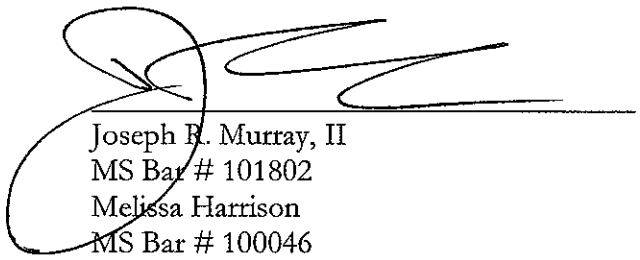
In *Ex parte Young*, the Supreme Court held that a state official cannot invoke the shield of sovereign immunity if the official has acted in violation of the Constitution. *Ex parte Young*, 209 U.S. at 160. Under *Young*, when a state officer acts unconstitutionally, he is acting outside his authority and is "stripped of his official or representative character." *Id.* at 160. *See also Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 101 (1984). Thus, "The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Id.*

Because the Plaintiff has sued the defendants in both their official and individual capacities, his claim falls within *Ex parte Young* and he can maintain an action against the defendants in their individual capacities under 42 U.S.C. § 1983. *See e.g. American Civil Liberties Union of Mississippi v. Finch*, 638 F.2d 1336, 1340-41 (5th Cir. 1981).

CONCLUSION

For all the reasons stated herein, Plaintiff's request for declaratory relief against Defendants McTeer and Bradley in their *official* capacity is not barred by Eleventh Amendment immunity and such claims should not be dismissed. In addition, The Plaintiff's Section 1983 claims against the Defendants in their individual capacities are viable and should not be dismissed. Thus, Plaintiff requests the Court deny Defendant's Motion to Dismiss on such grounds and deny Defendants' request for other relief sought.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Joseph R. Murray, II, attorney for Plaintiff, do hereby certify that I have filed the forgoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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