

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

_____)	
JOSEPH SHEPARD,)	
Plaintiff,)	
)	<u>COMPLAINT</u>
v.)	
)	Civil Action No. 1:21-cv-453
RUI DINIZ, LINDA AMADO, PATRICIA)	
COYNE-FAGUE, and JOSEPH FORGUE, JR.)	Jury Trial Demanded
Defendants.)	
_____)	

INTRODUCTION

1. Plaintiff Joseph Shepard spent 237 days in segregated confinement at the Rhode Island Department of Corrections in unlawful retaliation for criticizing the Warden and correctional officers at the facility where he was incarcerated.
2. He brings this civil rights action pursuant to 42 U.S.C. § 1983 for violations of the First, Eighth, and Fourteenth Amendments of the United States Constitution.

JURISDICTION AND VENUE

3. This action arises under the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over the claims herein pursuant to 28 U.S.C. §§ 1331 and 1343.
4. Venue is proper in this Court because the acts and omissions at issue occurred in the District of Rhode Island.

PARTIES

5. Plaintiff Joseph Shepard is a 28-year-old man who, at the time of the events in this complaint, was incarcerated at the Rhode Island Department of Corrections (RIDOC) Adult Correctional Institutions (ACI).

6. Defendant Rui Diniz was the Deputy Warden of the John J. Moran Medium Security Facility at RIDOC, and at all relevant times acted within the scope of his employment. As Deputy Warden, Diniz was responsible for planning, organizing, and directing custodial and correctional services in the Medium Security facility; ensuring compliance with facility policies; and maintaining humane levels of inmate care. Diniz retaliated against Shepard for criticizing his leadership and the actions of correctional staff under his supervision. He is sued in his individual and official capacity.
7. Defendant Linda Amado is the Associate Director of Classification Services at RIDOC, and at all relevant times acted within the scope of her employment. As Associate Director of Classification, Amado reviews classification board recommendations for each inmate and proposes classification and rehabilitative program assignments for each prisoner to the Director. Amado imposed arbitrary and unnecessary punishment on Shepard in retaliation for his criticism of RIDOC practices. She is sued in her individual and official capacity.
8. Defendant Patricia Coyne-Fague is the Director of the Rhode Island Department of Corrections, and at all relevant times acted within the scope of her employment. As Director, Coyne-Fague has the authority to establish correctional facilities and enforce correctional standards and policies; appoint Department employees; manage, direct, and supervise RIDOC operations; establish, maintain, and administer programs for sentenced and detained prisoners; and establish and oversee the RIDOC classification system. Coyne-Fague authorized or condoned the unlawful retaliation inflicted upon Shepard. She is sued in her individual and official capacity.
9. Defendant Joseph Fogue, Jr. was a Correctional Officer Investigator, and at all relevant times acted within the scope of his employment. As Investigator, Fogue gathered

intelligence on inmate activities; investigated threats to prison security; maintained evidence and contraband; and provided testimony at discipline and parole board hearings. Forgue willfully and knowingly participated in unlawful and retaliatory disciplinary and classification proceedings against Shepard, booking Shepard for possession of written materials that he received in the mail and gave to a DOC discharge planner. He is sued in his individual and official capacity.

STATEMENT OF FACTS

A. Shepard Engaged in Protected Speech in Creating and Disseminating a Packet of Complaints about Conditions of Confinement in Medium Security

10. In January 2019, while in Medium Security, Shepard assembled a packet of complaints about conditions of confinement in Medium Security and perceived legal violations and rule breaking committed by RIDOC staff (“information packet”).
11. The intended audience of this packet was high-level DOC administrators and staff and covered matters of public concern, including issues related to prisoner reentry.
12. The packet criticized the existence of and reliance on “house-made, unpromulgated rules and false policies” and highlighted perceived violations of state and federal law.
13. It also noted the failures of the internal complaint (grievance) system, which rarely led to meaningful investigation of alleged inmate or staff wrongdoing and which was not an effective means of remedying internal issues.
14. On January 27, 2019, Shepard sent the packet to RIDOC Director Patricia Coyne-Fague; Medium Security Warden Rui Diniz; Deputy Warden Kim Lyons; Assistant Director of Rehabilitative Services Barry Weiner; Attorneys Ian Anderson and Michael Grant from the Office of Legal Counsel; and RIDOC Inspector Robert Catlow.

15. In sending this information packet, Shepard was under the belief that he was engaging in acts helpful to the administration by exposing persistent rule-breaking and policy violations by line officers and by suggesting changes to policies and practices that would improve conditions of confinement, inmate rehabilitation, and re-entry.
16. Shepard received only one formal response. In a letter dated February 5, 2019, Director Coyne-Fague encouraged him to use informal and formal grievance processes to resolve complaints about inmate life—the same grievance processes he had criticized in the letter as ineffective.
17. Dissatisfied with the lack of response from the prison administration, in mid-February Shepard sent the information packet to the New York Civil Liberties Union, the Prison Activist Resource Center, and the Incarcerated Workers Organizing Committee (IWOC).
18. Shepard’s intention in sharing the informational packet externally was to bring public attention to the complaints outlined in the packet in order to spur reform on the part of the administration.

B. Defendants Placed Shepard in Segregation Based on Pretextual “Confidential Information” and Without Due Process

19. On February 22, Shepard was taken to the segregation unit at Medium Security. He was not told why he was in segregation until he received a booking on March 5.
20. In the intervening two weeks, he came to understand—based on verbal statements from correctional officers—that he was in segregation because he documented and shared externally allegations of misconduct at Medium Security and for consequently having “made a major issue” for the Warden. He was told that custodial staff and higher-ups were trying to “get [him] jammed up” and “get [him] out of [Medium]” after having seen his information packet published online.

21. During this time, he was denied access to necessary medical supplies.
22. On March 5, Shepard received a booking for “Mutinous Acts,” specifically the offense of “Organizing, Participating in, or Encouraging Activity(ies) that Threaten(s) Order and Security (Promoting Racism, Work Stoppage, etc.).”
23. Officer Forgue interviewed Shepard as part of his investigation of the booking and was the charging staff member.
24. The Infraction Narrative in the Offender Report for the booking stated that:

“inmate Joseph Shepard **was in possession of documents** from the Incarcerated Workers Organizing Committee (IWOC) which professes to be ‘part of a coalition of inside and outside groups that launched the largest prison strike in US history. Resistance to prison slavery continues with work stoppages, hunger strikes and other acts of resistance to business as usual.’ **Based on this**, inmate Shepard as well as [another inmate], were preparing to organize, participate, or encourage activities in order to promote a work stoppage.” [emphasis added]
25. As the Infraction Narrative in the Offender Report makes clear, Officer Forgue booked Shepard for allegedly being in possession of IWOC documents and the content of those documents.
26. Shepard had briefly been in possession of IWOC documents, which he had also shared with a RIDOC discharge planner.
27. At no point did RIDOC administrators or staff indicate that IWOC material was prohibited contraband.
28. Pursuant to RIDOC policy, all incoming non-privileged mail can be opened, inspected for contraband, and read by RIDOC staff. Where any items need to be removed from mail, including contraband, a written record is made of such action and given to the intended inmate recipient. Shepard thus relied on its entry into the facility in believing that it was not contraband material.

29. Shepard had no knowledge of any other inmates previously being disciplined for possessing IWOC material.
30. Shepard had reason to believe the materials were permitted, given that other similar material critical of prisons was allowed in Medium Security, including books that advocate for prison abolition. These include Angela Davis's "Are Prisons Obsolete?", Atul Gawande's "Hellhole," Michael Foucault's "Discipline and Punish," "The Autobiography of Malcolm X", and "Ten Men Dead," about a prison hunger strike. The first three of these were required reading for a Brown University course co-taught in Medium Security, the syllabus of which was approved by Warden Diniz. The remaining books were all in the Medium Security library.
31. RIDOC prisoners have a right to request witness testimony at disciplinary hearings.
32. Shepard requested to call, as a witness, the DOC discharge planner to whom he had given the IWOC materials. The disciplinary hearing was therefore postponed from March 8, 2019 so that the discharge planner could be called.
33. Upon information and belief, the discharge planner never received any communication from the DOC to testify at the disciplinary hearing.
34. The hearing took place on March 11. The discharge planner was not present and Shepard did not have any witnesses to testify on his behalf. Shepard requested but was not allowed to review or challenge any evidence used against him, the entirety of which was described as "confidential."
35. He was adjudicated guilty and given a sanction of 20 days in disciplinary confinement and 20 days' loss of good time.

36. Warden Diniz reviewed the booking on April 3 and did not find “any justification to alter the decision or sanction” of 20 days based on his review of the investigation.
37. Months later, Officer Forgue told Shepard that the “confidential information” which allegedly formed the basis for his discipline and extended segregated confinement was entirely pretextual and that “whatever [was] going on has to do with the Warden and Director.”

C. Defendants Unlawfully Retaliated Against Shepard by Keeping Him in Solitary Confinement in Violation of RIDOC Policy

38. Shepard completed his 20-day disciplinary sentence on March 13. However, he remained in the Medium Security segregation unit until he was transferred to High Security on May 10.
39. Between March 14 and April 9, Shepard repeatedly asked correctional staff why he was still in segregation but received no response.
40. On April 9, Warden Diniz told Shepard in a cell-side conversation that he was on “AC status” and told Shepard to stop writing letters to RIDOC administrators. “AC status” does not exist in any RIDOC regulations or policies.
41. Per RIDOC policy, Administrative Confinement, or “AC,” is a classification, and not a status. Prisoners can only be placed in Administrative Confinement by a classification board; a Warden cannot unilaterally place someone in Administrative Confinement. Shepard was still classified to Medium Security at this time and had not been reclassified.
42. On April 16, Grievance Coordinator Billie-Jo Gallagher rejected Shepard’s request for a copy of all of his grievances and wrote that the Warden had placed him on “ARS.” Per RIDOC policy, prisoners on ARS, or Administrative Restrictive Status, are housed in

General Population and not in disciplinary segregation. Mr. Shepard continued to be housed in disciplinary segregation, in violation of RIDOC policy on ARS.

43. At Warden Diniz's request, Shepard was brought before the reclassification board on April 23. The board recommended that Shepard remain classified to Medium Security.
44. Linda Amado, Associate Director of Classification Services, rejected and overrode the board's decision. She advised Shepard to "go to High Security and lay low."
45. High Security is a "supermax" facility and RIDOC's most restrictive facility.
46. Shepard was transferred to High Security on May 10, after spending 78 days in disciplinary segregation at Medium Security—58 days longer than the 20-day disciplinary sentence imposed.
47. When he arrived at High Security, Shepard asked a Lieutenant when he could return to Medium Security. The Lieutenant told Shepard, "You're not going anywhere, the Warden doesn't want you there. They f---d you with no lube."
48. A correctional officer at High Security similarly told Shepard, "The Warden doesn't want you in the building, the COs [correctional officers] you mentioned in the packet don't want you there either. They're fighting to keep you out."
49. On May 29, an attorney from the DOC Office of Legal Counsel wrote a letter to Shepard's counsel on behalf of Director Coyne-Fague that "the Classification Administrator recommended that Mr. Shepard be re-classified for an adjustment period." Shepard had not previously been informed that he was being held for an "adjustment period."
50. In this letter, the attorney also indicated that Shepard was ineligible for classification to Maximum Security due to "several enemies that are housed there." In High Security, Shepard was housed in the same block as—and shared recreation and meals with—an

individual who had testified against Shepard in his criminal proceeding and who was serving a life sentence for murdering Shepard's friend.

51. Shepard had two classification hearings in July. On each occasion, the classification board voted to send him back to Medium Security and Ms. Amado overrode those classifications to keep him in High Security.
52. In a letter dated August 6, Director Coyne-Fague informed Shepard that she was denying the classification board's recommendation of classification to Medium, wanting him to "remain booking free at the High Security Center before returning to Medium Security." At that point, Shepard had been booking-free since February.
53. He was only reclassified to Medium Security on October 9 after having been granted parole.

D. Defendants Singled Out Shepard for Retaliatory Punishment

54. Upon information and belief, two other prisoners were booked for the same alleged offense but received vastly more lenient punishment as compared to Shepard.
55. Inmate A received a 20-day sanction and was released after serving 20 days. Inmate B was charged with unrelated additional offenses and spent approximately 45 days in segregation.
56. Shepard was the only prisoner who was held in segregation following completion of the disciplinary time as imposed by the disciplinary board.
57. Inmate A remained in Medium Security following completion of his disciplinary time.
58. Inmate B was reclassified to Maximum Security following completion of his time in disciplinary segregation, but Linda Amado overrode his classification to keep him in Medium Security.

59. Shepard was the only prisoner who was transferred to a higher-security facility as a result of the disciplinary booking, and the only prisoner whose classification was downgraded—rather than upgraded—by Ms. Amado.
60. Shepard had a disciplinary history that was less serious than Inmates A or B.
61. Inmate A, like Shepard, had filed a number of lawsuits against the DOC.
62. Shepard was the only one of the three prisoners who had made public an informational packet of grievances about prison life and DOC staff.

E. Due to his Physical and Mental Disabilities, Shepard Suffered an Atypical and Significant Hardship in Prolonged Isolated Confinement

63. In total, Shepard spent 237 days—almost eight months—in solitary confinement at Medium and High Security as a result of the retaliatory conduct of RIDOC.
64. While in Medium Security segregation, Shepard was kept in his cell for 22-23 hours on weekdays, including for meals.
65. He was not let out of his cell at all on weekends and holidays.
66. He was denied access to his TV, fan, and MP3 player.
67. During his 160 days in High Security, Shepard received between one and two hours of out-of-cell recreation each day, in addition to approximately 30 minutes of out-of-cell time for breakfast, lunch, and showers. Dinners were provided in-cell. For the remaining 21.5-22.5 hours per day, Shepard was confined in his cell.
68. Shepard's cells at High Security measured approximately 8 feet by 10 feet. They contained a metal bed, a toilet and sink, and desk. The remaining floor space was only enough to take five steps in each direction and turn around.
69. Shepard's physical and mental condition deteriorated in segregation, causing him significant hardship.

70. Defendants had reason to know that extended stays in solitary confinement were contraindicated for Shepard due to his physical and mental disabilities.

Effect of solitary confinement on physical disabilities

71. Shepard is permanently disabled from having been shot in his spine and lungs when he was 15 years old.

72. Due to his physical disability, he is mobility-impaired and cannot walk faster than a stroll. The fingertips in his right hand are numb, requiring a medical handball for hand exercises. His spleen and part of his left kidney were removed and he cannot fully control his bladder; as a result, he must catheterize himself daily. Among his other injuries were nerves that control stomach contractions, which affects his ability to defecate. As a result, Shepard must undergo regular colonoscopies and is susceptible to hemorrhoids. He must also exercise regularly to maintain his metabolism and digestive health and take medical supplements. He required an egg crate mattress and a leg wedge at night.

73. Shepard did not receive his medical supplies, including an egg crate mattress, leg wedge, and medical supplements, until the ninth day of his confinement in Medium Security segregation. As a result of this delay, Shepard had difficulty sleeping and had muscle and back spasms.

74. He did not receive his medical handball until October 2019, upon his transfer back to Medium Security. The months-long lack of access to his medical equipment and to physical therapy resulted in muscle atrophy, cramping, numbness, and tingling in his hands and fingers.

75. As a result of the spinal injury, Shepard must exercise regularly, including weight-bearing exercises. Due to his limited out-of-cell time in segregation and lack of access to weights,

he was unable to exercise adequately, which resulted in bowel issues that required a colonoscopy. His colonoscopy, in turn, had to be delayed by over two months due to inadequate preparation stemming from inability to exercise. Shepard's physical therapist told him that he was losing muscle mass and experiencing muscle fatigue which presented additional medical risks given his underlying injuries.

76. While he was in High Security, Shepard was shackled while in biofeedback therapy for urinary control, which delayed his medical progress. The shacking during biofeedback therapy was against medical provider recommendation. He was supposed to attend this treatment weekly but was only taken three or four times over nine months. These delays negatively impacted his ability to urinate.
77. In the first cell he was placed in in High Security, the toilet in his cell would overflow with feces every time his neighbor flushed. Shepard was forced to catheterize himself in these conditions and contracted a urinary tract infection (UTI). A correctional officer to whom he reported the problem suggested that Shepard flush at the same time that his neighbor did. This suggestion would have required Shepard to quickly leave his bed, which he was unable to do. He was then moved to a different cell that had no seat at the desk.

Effect of solitary confinement on mental disabilities

78. Shepard's mental health also deteriorated while in segregation.
79. Shepard has diagnosed mental health disorders. When he was 14 years old, Shepard was removed from his mother's custody and placed in a series of group homes for juveniles, where he was first diagnosed with depression and ADHD. He was additionally diagnosed with PTSD after the shooting, for which received treatment in RIDOC custody.

80. Shepard experiences intrusive thoughts and panic attacks when he is alone for extended periods of time. His PTSD is triggered by silence that is punctuated by loud noises.
81. Solitary confinement is a generally silent environment punctuated by loud outbursts of kicking doors, screaming, and self-harm, all of which triggered in Shepard frequent panic attacks and intrusive thoughts.
82. Shepard informed his counselors about these triggers and effects but his concerns were dismissed.
83. He requested placement in a mental health unit in High Security but never received a response.
84. Conversations with counselors at Medium Security occurred at Shepard's cell and within earshot of other inmates, which limited his ability to receive effective mental health therapy.

F. Shepard was Prevented from Filing Administrative Grievances

85. Shepard filed multiple Level 1 grievances while in Medium Security segregation, including on his classification and placement in segregation, the lack of access to his medical equipment, and the denial of visits and phone calls.
86. Shepard received no response to the Level 1 grievances he filed. Regardless, he appealed them all while still in Medium Security.
87. Upon information and belief, these grievances were not forwarded to the appropriate processing authorities.
88. In mid-April, Shepard asked Grievance Coordinator Billie-Jo Gallagher for a copy of his grievance log and informed her that he had not received a response to his multiple grievances.

89. When he arrived in High Security, still having received no response to his Level 1 grievances, Shepard again filed a grievance based on his treatment in Medium Security but received no response. He also spoke with a Lieutenant at High Security about the lack of grievance process that had been afforded to him.
90. In August 2019, Deputy Warden Lyons suspended Shepard's grievance privileges for 60 days for filing "excessive" grievances. Shepard appealed this decision to Billie-Jo Gallagher and again requested a copy of his grievance log to determine which grievances had been actually received by facility grievance coordinators.
91. His second request for a copy of his grievance log was also ignored.

G. Shepard Remains Under RIDOC Supervision

92. Shepard had a parole hearing on September 16, 2019. His then-placement in High Security was a contributing factor to an 18-month delay in the grant date of his parole being imposed.
93. He was released to community supervision in May 2020 on the basis of his disability and susceptibility to coronavirus infection.
94. Upon release, his parole officer said she kept hearing about Shepard's packet of complaints and requested to see a copy.
95. Shepard continues to face a credible risk of retaliation by RIDOC employees for his actions inside and outside RIDOC custody.

CLAIMS FOR RELIEF

**Count 1: Violation of the First Amendment to the U.S. Constitution
(Freedom of Speech)**

96. Plaintiff incorporates and re-alleges all the allegations in paragraphs 1-97.

97. Defendants violated Shepard's right to free speech and expression by retaliating against him for engaging in protected speech, namely the creation and external dissemination of an information packet of complaints against prison practices.
98. Such retaliation was so serious as to deter Shepard and a similarly situated individual from exercising his or her constitutional rights.
99. Defendants also violated Shepard's freedom to read, a component of freedom of speech, by punishing him for mere possession of written material that had been allowed into the facility.

**Count 2: Violation of the Fourteenth Amendment to the U.S. Constitution
(Equal Protection)**

100. Plaintiff incorporates and re-alleges all the allegations in paragraphs 1-101.
101. Defendants violated Shepard's right to equal protection by disproportionately penalizing Shepard as compared to other inmates facing similar disciplinary charges. Shepard spent an additional 217 days—more than seven months—in solitary confinement, as compared to other inmates.
102. This disparity in punishment had no reasonable relationship to legitimate penological interests.

**Count 3: Violation of the Fourteenth Amendment to the U.S. Constitution
(Due Process)**

103. Plaintiff incorporates and re-alleges all the allegations in paragraphs 1-104.
104. Defendants violated Shepard's right to due process at his disciplinary hearing by refusing to allow him to call witnesses to testify on his behalf; by disciplining Shepard based on pretextual evidence; and by refusing to allow him to review and address any evidence used against him.

105. Defendants further violated Shepard's right to due process by booking Shepard and imposing a punishment for an unconstitutionally vague offense.
106. Such punishment caused Shepard atypical and significant hardship in relation to the ordinary incidents of prison life.

**Count 4: Violation of the Eighth and Fourteenth Amendment to the U.S. Constitution
(Cruel and Unusual Punishment)**

107. Plaintiff incorporates and re-alleges all the allegations in paragraphs 1-108.
108. Defendants violated Shepard's right to be free from cruel and unusual punishment by subjecting him to extremely arbitrary and unnecessary punishment of eight months in solitary confinement with no valid penological basis.
109. Defendants additionally failed to provide adequate medical care while Shepard was in solitary confinement.
110. Defendants were deliberately indifferent to the particularized serious risk of harm to Shepard as a disabled individual in long-term solitary confinement.

RELIEF REQUESTED

Plaintiff requests that this Court grant the following relief:

- A. A declaration that Defendants' conduct violated the U.S. Constitution;
- B. An award of compensatory, punitive, and nominal damages;
- C. An injunction from further retaliation by Defendants against Plaintiff;
- D. An award of costs and attorneys' fees arising out of this litigation; and
- E. Any other relief this Court deems appropriate.

PLAINTIFF,

By his attorneys,

/s/ Natalia Friedlander

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