UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IBRAHIM TURKMEN, et al.,

Plaintiffs,

- against -

JOHN ASHCROFT, et al.,

Defendants.

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O R D E R

02-CV-2307 (JG)

JOHN GLEESON, United States District Judge:

I address here, in the first phase of the defendants' motion to dismiss, the motions by defendants Dennis Hasty and Michael Zenk ("the wardens") to dismiss the following causes of action in the Third Amended Complaint: three (alleging outrageous, cruel, inhumane and degrading conditions of confinement) and twelve through sixteen and thirty-one (alleging excessive force).

The wardens claim that they are entitled to qualified immunity. The motions are denied.

Zenk and Hasty can prevail at this early stage only if, accepting the plaintiffs' allegations as true, it appears beyond doubt that there is no set of facts on which they would be entitled to relief. Citibank, N.A. v. K-H Corp., 968 F.2d 1489, 1494 (2d Cir. 1992). The causes of action at issue allege, *inter alia*, that the plaintiffs were subjected to intentional beatings by their jailers at the Metropolitan Detention Center ("MDC"), and were further subjected to other forms of outrageous and cruel conditions of confinement by them. The wardens, among others,

allegedly "created the unconstitutional and unlawful policies and customs relating to the manner" in which the plaintiff-detainees were treated, and "allowed the continuation of these policies and customs" through direct implementation, deliberate indifference and grossly negligent supervision in the jail. Third Amended Complaint ¶ 136.

If these allegations are proved, plaintiffs will be entitled to relief. The wardens do not contend otherwise. Rather, the gist of their motions is their repeated claim that the "fatal flaw" in the complaint is its failure to allege the personal involvement of the wardens in the unconstitutional acts alleged. *See, e.g.*, Memorandum of Law In Support of the United States' and the Named Defendants' Motion to Dismiss, dated August 26, 2002, at 26 (describing the failure to allege the personal involvement of the wardens and others as a "fatal flaw"); Letter dated November 8, 2004, from Michael L. Martinez and Allen N. Taffet to the Court, at 1 ("Here, plaintiffs do not allege *any* personal involvement by either Defendant Hasty or Zenk.").

I find the argument unpersuasive for two reasons. First, I disagree with the implicit argument that the plaintiffs must establish that the wardens themselves committed beatings, slammed detainees against walls or inflicted similar physical abuse in order to hold them liable. Whereas the wardens may not be held liable merely because a corrections officer under his command committed a constitutional tort, that does not mean that personal involvement must be proved. *Cf.* Poe v. Leonard, 282 F.3d 123, 140 (2d Cir. 2002) ("We have held that a supervisor may be found liable [under 42 U.S.C. § 1983] for his deliberate indifference to the rights of others[,] by his failure to act on information indicating unconstitutional acts were occurring[,] or for his gross negligence in failing to supervise his subordinates who commit such wrongful acts, provided that the plaintiff can show an affirmative

causal link between the supervisor's inaction and her injury.").

Second, the wardens' argument misapprehends plaintiffs' pleading obligations. They are not required at this stage to "allege *facts* sufficient to establish" the wardens' liability. Letter dated November 1, 2004 from Messrs. Martinez and Taffet to the Court, at 2 (emphasis added). They are required by Fed. R. Civ. P. 8(a)(2) to give the defendants fair notice of their claims and the grounds on which they rest. "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002). Here, the plaintiffs have alleged with specificity what they were subjected to at the MDC. They have further alleged that the wardens are responsible for those actions. Without discovery, they can hardly be expected to allege the specific facts that establish such responsibility, and the law does not require them to do so.

As the Second Circuit recently observed, these principles make it especially difficult for a defendant to prevail on the qualified immunity defense on a motion to dismiss. McKenna v. Wright, 386 F.3d 432, 437 (2d Cir. 2004). The outcome of the wardens' claim of qualified immunity is intensely factual. If, as alleged in the complaint, beatings and other physical abuse occurred pursuant to policies the wardens created or knowingly allowed to continue, or because of their deliberate indifference to an abusive environment, qualified immunity will be unavailable. Indeed, McKenna specifically addressed allegations that wardens at a prison "had responsibility for enforcing or allowing the continuation of the challenged policies that resulted in" the constitutional tort at issue, holding that such allegations constituted "sufficient personal involvement to justify rejection of their immunity defense on a motion to

dismiss." Id. at 437. The allegations against the wardens here are thus sufficient as well.

In short, "[h]owever the matter may stand at the summary judgment stage, or perhaps at trial," id., the wardens' motion to dismiss the causes of action at issue on qualified immunity grounds must be, and is hereby, denied.

So Ordered.

JOHN GLEESON, U.S.D.J.

Dated: Brooklyn, New York
December 3, 2004