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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

EAMMA JEAN WOODS; RIGOBERTO AGUILAR-TURCIOS; MOHAMMAD MONFOR ALI NESA; WINSTON CARCAMO; FRED NGANGA NGUGI; MARTA MONTEAGUDO-GUERRERO; LUIS ALBERTO TINOCO; SYLVESTER OWINO; GLORIA VANEGAS; ALFREDO TORO; and ROMEO FOMAI, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JULIE L. MYERS, Assistant Secretary, U.S. Immigration and Customs Enforcement (ICE); JOHN P. TORRES, Director, Office of Detention and Removal Operations, ICE; ROBIN BAKER, Director, San Diego Field Office, ICE; ANTHONY CERONE, Officer-in-Charge at San Diego Correctional Facility (SDCF), ICE; NEIL SAMPSON, Interim Director, Division of Immigration Health Services (DIHS); TIMOTHY SHACK,

Case No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

CLASS ACTION

Associate Director, DIHS; CAPT. PHILIP JARRES, Branch Chief of Field Operations, U.S. Public Health Service; LT. TONYA WALSTON, R.N., Managed Care Coordinator for the Western Region, DIHS; LCDR STEPHEN GONSALVES, Health Services Administrator at SDCF, DIHS; ESTHER YUN-LING HUI, M.D., Clinical Director at SDCF, DIHS; DAVID LUSCHE, Physician Assistant at SDCF; EDMUND JEDRY, DDS, Dentist at SDCF, DIHS; SCOTT J. SALVATORE, Psychologist at SDCF, DIHS; CORRECTIONS CORPORATION OF AMERICA, INC. (CCA); and JOE EASTERLING, SDCF Warden, CCA,

Defendants.

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INTRODUCTION

1. Plaintiffs are civil immigration detainees in the custody of U.S. Immigration and Customs Enforcement (ICE), part of the U.S. Department of Homeland Security (DHS). Plaintiffs are housed at San Diego Correctional Facility (SDCF), a contract detention facility in Otay Mesa, California operated by Corrections Corporation of America, Inc. (CCA). CCA is the largest private, for-profit provider of detention and corrections services in the nation. Pursuant to a contractual agreement with ICE, CCA houses approximately 600-800 male and female immigration detainees at SDCF for periods of time ranging from several weeks to several years. On-site medical services at SDCF are provided by the U.S. Public Health Service (USPHS) and contract employees. In order to provide off-site care such as diagnostic testing, hospitalization, and specialty care, medical personnel at SDCF must obtain prior approval from the Division of Immigration Health Services (DIHS), a component of the U.S. Department of Health and Human Services (HHS).

2. Plaintiffs allege that the medical, mental health, dental, and vision care provided to detainees at SDCF is grossly deficient, causing them great physical suffering and mental anguish, that amounts to punishment in violation of the Fifth Amendment to the United States Constitution. SDCF medical staff routinely ignore requests for urgent care by detainees with dangerous and painful health problems. Detainees often must submit multiple written sick call requests, over the course of several weeks or months, before they are able to see a doctor or nurse. When they are seen by medical staff, detainees typically receive superficial or inappropriate care, often by staff unqualified to provide proper care. In many cases, detainees receive nothing more than pain medication for their medical problems and are denied necessary treatments and essential diagnostic tests based on official DIHS policies that result in unnecessary pain and suffering, and create a substantial risk of serious injury or death. Health care for immigration detainees around the country, and at SDCF, is premised on the often-false notion that detention is short-term. In truth, many detainees spend months or years awaiting a final determination of their immigration case, and are forced to suffer needlessly as a result of defendants' polices and practices. In some instances, the denial of treatment—and the physical and mental anguish that result—further

pressure detainees to waive their legal rights in immigration proceedings in order to expedite their removal from the United States and their release from detention.

3. Defendants' actions, detailed herein, deny basic human needs, inflict unnecessary pain and suffering, and put plaintiffs at substantial risk of physical injury, illness, and premature death. Plaintiffs seek injunctive and declaratory relief to remedy this serious and ongoing violation of their rights.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

5. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

6. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C. § 702, and Rule 65 of the Federal Rules of Civil Procedure.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to plaintiffs' claims occurred, and continues to occur, in this district.

PARTIES

I. Plaintiffs

8. Plaintiffs Eamma Jean Woods, Rigoberto Aguilar-Turcios, Mohammad Monfor Ali Nesa, Winston Carcamo, Fred Nganga Ngugi, Marta Monteagudo-Guerrero, Luis Alberto Tinoco, Sylvester Owino, Gloria Vanegas, Alfredo Toro, and Romeo Fomai are immigration detainees in ICE custody who have been detained pursuant to civil immigration laws. They are currently being housed at SDCF.

9. Plaintiff Eamma Jean Woods is a 45-year-old woman from Honduras who arrived in the United States as a three-year-old child. She has been detained at SDCF since July 28, 2006. Woods suffers from neurofibromatosis, and has been complaining throughout her detention of a painful glomus tumor on her finger. Woods also suffers from an untreated seizure disorder, as well as bipolar disorder and depression.

10. Plaintiff Rigoberto Aguilar-Turcios is a 27-year-old man from Honduras who entered the United States when he was 16 years old as a lawful permanent resident. He has been detained at SDCF since November 8, 2005. Aguilar-Turcios has experienced serious dental pain and vision problems at SDCF, and has received no treatment for either condition.

11. Plaintiff Mohammad Monfor Ali Nesa is a 37-year-old Bangladeshi man who has been detained at SDCF since May 2005. Ali Nesa has been diagnosed by a doctor from Survivors of Torture, International, with depression and post-traumatic stress disorder resulting from an incident in which his mother was murdered before his eyes. He has received inconsistent counseling and inadequate medication management for his mental health problems at SDCF. As a result, members of the medical staff at SDCF have recognized that Ali Nesa is at increasing risk of suicide. Ali Nesa also suffers from headaches and chest pain and complains of bleeding in his mouth and a burning pain in his penis when he urinates. Medical personnel at SDCF have not properly explored any of these complaints.

12. Plaintiff Winston Carcamo is a 44-year-old detainee from Belize who has been detained at SDCF since September 25, 2006. Prior to entering ICE custody, Carcamo underwent surgery to completely remove his right eye. For nearly nine months at SDCF, Carcamo regularly requested access to an eye specialist, first to assess his ocular health, and then to implant a prosthesis into his eye socket to preserve the physical integrity of the eye and prevent permanent disfigurement.

13. Plaintiff Fred Nganga Ngugi is a 38-year-old man from Kenya who entered the United States with a student visa on August 11, 1998. He has been detained at SDCF since December 30, 2005. Ngugi has been diagnosed with bipolar disorder and has taken medication for this condition for several years; because of inadequate mental health care at SDCF, Ngugi is currently receiving no treatment for his serious mental health condition. Ngugi has also experienced serious dental problems at SDCF.

14. Plaintiff Marta Monteagudo-Guerrero is a 25-year-old woman from El Salvador who has been detained at SDCF since August 26, 2006, and is currently applying for asylum. Monteagudo-Guerrero suffers from significant dental pain and vision problems, and has not

received adequate gynecological care while in detention.

15. Plaintiff Luis Alberto Tinoco is a 64-year-old man from Nicaragua who arrived at SDCF on September 29, 2003. Tinoco suffers from several medical problems, including Type 2 diabetes, hypercholesterolemia, hypertension, and hemorrhoids.

16. Plaintiff Sylvester Owino is a 31-year-old man from Kenya. He has been detained at SDCF since November 7, 2005. Owino suffers from hypertension and chronic asthma, and has experienced dental pain and vision problems in the 18 months since he arrived at SDCF.

17. Plaintiff Gloria Vanegas is a 42-year-old woman from Colombia who has been detained at SDCF since August 20, 2006. Vanegas is seeking asylum after receiving death threats in Colombia. Vanegas suffers from thyroid problems in addition to a serious medical condition that causes cysts to grow in her breasts and ovaries.

18. Plaintiff Alfredo Toro is a 58-year-old man from Colombia. He first arrived at SDCF on June 23, 2006. Toro suffers from hypertension and requires the use of glasses both for distance vision and for reading.

19. Plaintiff Romeo Fomai is a 36-year-old man from Samoa with gender identity disorder. He first arrived at SDCF on December 13, 2006. Fomai consistently received hormone therapy from 1986 until December 2006, when he entered SDCF. Fomai also is infected with the hepatitis C virus, suffers from depression and has a history of suicidal thoughts.

II. Defendants

20. Defendant Julie L. Myers is Assistant Secretary for U.S. Immigration and Customs Enforcement (ICE), the arm of DHS charged with detaining and removing non-citizens pursuant to federal immigration law. As the top official at ICE, Myers sets detention and removal priorities and has ultimate responsibility for the safety and well-being of persons detained in ICE custody. The Office of Detention and Removal Operations (DRO), a division of ICE, manages the daily detention of approximately 27,000 immigration detainees. Myers supervises the official conduct of all DRO officials and may appoint and remove subordinate defendants named herein. The DHS Secretary, Michael Chertoff, is specifically authorized by Congress to allocate funds to provide necessary clothing, medical care, housing, and security for immigration detainees. *See*

inter alia 8 U.S.C. § 1103; 6 U.S.C. §§ 112, 251 and 557. As Assistant Secretary (under Chertoff) in charge of immigration detention, Myers controls the allocation of monies in the DHS-ICE budget for detention and removal operations and, specifically, the care and treatment of ICE detainees. In a letter dated September 11, 2006, Myers provided the official ICE response to the OIG audit report on the treatment of immigration detainees at five detention facilities, including SDCF. *See* ¶ 56, *infra*.

21. Defendant John P. Torres is the Director of DRO for ICE and is responsible for the safe, secure, and humane housing of immigration detainees in ICE custody. The primary responsibility of DRO is to provide adequate and appropriate custody management of immigration detainees until a decision is rendered regarding their removal or release. ICE-DRO headquarters staff are supposed to conduct annual inspections of each facility used to house immigration detainees, including SDCF, and assess them for compliance with ICE Detention Standards, including medical care standards. Torres oversees the DRO workforce, including ICE field officers, deportation officers, compliance review officers, and officers assigned to detention facilities. Torres is responsible for setting DRO policy with respect to the detention of foreign nationals, and for the administration and operation of DRO.

22. Defendant Robin Baker is the Director of the San Diego Field Office for ICE-DRO, which has jurisdiction over SDCF and official control over detention and removal operations at the facility. Baker oversees transfers of immigration detainees into and out of SDCF and formally approves all placements of detainees at SDCF. Detainees and their advocates often lodge complaints about detention conditions with ICE officers at the local field office responsible for their facility. As director, Baker supervises and oversees all ICE staff at the San Diego Field Office, including staff who field such complaints and have regular contact with detainees.

23. Defendant Anthony Cerone is the ICE Officer-in-Charge at SDCF, and Assistant Field Office Director of the ICE San Diego Field Office. As the Officer-in-Charge at the facility, Cerone is the immediate legal custodian of the ICE detainees at SDCF and is directly responsible for their care and treatment while in detention there. Cerone has authority to transfer detainees

into and out of the facility and supervises all ICE employees at SDCF. On information and belief, Cerone also has significant oversight over the actions of CCA employees at SDCF, including the Warden, pursuant to the DHS-ICE contractual agreement with CCA to house immigration detainees at the facility. Cerone is responsible for ensuring SDCF's compliance with the ICE Detention Operations Manual (ICE Detention Standards), as well as CCA's compliance with its contractual obligations. Cerone supervises a Contracting Officer's Technical Representative (COTR) and a Compliance Review Officer, both ICE employees, who work on-site at SDCF to assist in monitoring compliance with the ICE Detention Standards and other applicable standards. In addition, Cerone and/or his direct subordinates establish, monitor, and oversee detainee grievance procedures and serve as members of the detainee grievance committee at SDCF (along with CCA employees). Under the ICE Detention Standards, Cerone conducts the final level of review for grievances filed at the facility. In addition, detainees frequently file complaints directly with deportation officers operating under the supervision of Cerone, using "Detainee Request Forms" issued by the DRO office on-site at SDCF. Cerone also is required to meet regularly with the on-site U.S. Public Health Service (USPHS) Health Services Administrator to review the effectiveness of the facility health care program and to recommend necessary corrective actions.

24. Defendant Neil Sampson is the Interim Director of DIHS and a Commissioned Corps Officer of the USPHS. DIHS, a component of HHS, provides and oversees health care services to immigration detainees pursuant to an Interagency Agreement between ICE and HHS. DIHS also provides primary on-site medical, mental health, dental, and vision care to detainees at SDCF. As the Interim Director of DIHS, Sampson sets national policy for the provision of health care services to immigration detainees and is ultimately responsible for the determination of what services are covered by DIHS for detainees in ICE custody.

25. Defendant Timothy Shack, M.D. is the Associate Director for Medical Services at DIHS. As such, Shack is responsible for the administration and provision of health care services to individuals in ICE custody, and for developing and ensuring compliance with policies, procedures and clinical guidelines related to detainee health care.

26. Defendant Captain Philip Jarres is the Branch Chief of Field Operations for USPHS and a Commissioned Corps Officer of the USPHS. Jarres receives a copy of all complaints regarding detainee medical and mental health care that are directed to ICE headquarters in Washington, D.C. from immigration detainees and advocates around the country. Jarres supervises the performance of USPHS Health Services Administrators around the country, including the performance of the Health Services Administrator at SDCF. Jarres participates in the implementation and development of national policies on the provision of health care to immigration detainees, and directly oversees each facility's compliance with those policies.

27. Defendant Lieutenant Tonya Walston, R.N., is the DIHS Managed Care Coordinator for the Western Region. As such, Walston is responsible for responding to requests for pre-authorization of detainee health care services from medical providers and ICE officials at immigration detention facilities in the Western Region, which includes SDCF. Pre-authorization from the DIHS Managed Care Services Unit is required for various health care services, including off-site visits with specialists and surgical procedures.

28. Defendant Lieutenant Commander Stephen Gonsalves is the USPHS Health Services Administrator at SDCF. As the Health Services Administrator, Gonsalves is responsible for the daily administration and functioning of the medical, mental health, dental, and vision services at SDCF, and for the quality and adequacy of those services. On information and belief, Gonsalves oversees requests for treatment authorization submitted by SDCF medical staff to the DIHS Managed Care Coordinator, as well as responses by DIHS to such requests.

29. Defendant Esther Yun-Ling Hui, M.D. is the USPHS Clinical Director at SDCF. As Clinical Director, Hui is responsible for the provision of medical services to individuals detained at SDCF, and for the quality and adequacy of those services. On information and belief, as Clinical Director, Hui also oversees the provision of mental health services at SDCF. Hui is also responsible for requesting from the DIHS Managed Care Coordinator authorization to provide certain forms of treatment, diagnostic testing, hospitalization, and specialty care.

30. Defendant David Lusche is a physician assistant at SDCF. Lusche is responsible for providing direct patient care to individuals detained at SDCF, and for requesting from the

DIHS Managed Care Coordinator authorization to provide certain forms of treatment, diagnostic testing, hospitalization, and specialty care.

31. Defendant Edmund Jedry, D.D.S., is the dentist at SDCF. As such, he is responsible for the provision of dental services to individuals detained at SDCF, and for the quality and adequacy of those services.

32. Defendant Scott J. Salvatore is the psychologist at SDCF. As such, he is responsible for providing direct mental health services to individuals detained at SDCF. On information and belief, additional psychiatrists and psychologists perform part-time mental health services at SDCF pursuant to a contract with Pacific Health Systems, L.P.

33. Defendant Corrections Corporation of America, Inc. (CCA) is a for-profit, private corporation incorporated and existing in the State of Maryland and maintaining a principal place of business at 10 Burton Hills Boulevard, Nashville, Tennessee 37215. Pursuant to a contract with DHS-ICE, CCA houses immigration detainees in ICE custody at SDCF, a facility managed and operated primarily by CCA employees.

34. Defendant Joe Easterling, a CCA employee, is Warden at SDCF. As Warden, Easterling has ultimate supervisory authority over all correctional officers, security personnel and other CCA staff at SDCF. He is responsible for establishing and maintaining CCA's policies and practices with respect to accommodating detainees with particular medical needs and carrying out the instructions of SDCF medical personnel contained in special needs forms (*i.e.*, chronos). Easterling is also responsible for CCA's policies and practices pertaining to arranging transportation for detainees scheduled to attend off-site medical appointments, use of force and segregation at SDCF. Easterling oversees the daily administration and functioning of SDCF and is responsible for the safe, secure and humane housing of detainees at the facility. Easterling conducts the final review of grievances filed by detainees at SDCF using the "CCA Inmate/Resident Grievance Form," including those grievances that pertain to inadequate medical care.

35. All defendants are sued in their official capacities.

36. At all relevant times, all defendants were acting under color of federal law,

pursuant to their authority as officials, agents, contractors or employees of U.S. governmental agencies or entities.

37. At all relevant times, defendant Easterling was acting within the scope of his employment as an agent and employee of CCA.

LEGAL FRAMEWORK

38. The Constitution requires government actors to ensure the safety and general well-being of all persons taken into custody, including non-citizens and persons who are not legally admitted to this country. Convicted prisoners are protected by the Eighth Amendment, which prohibits cruel and unusual punishment despite an adjudication of criminal guilt. Immigration detainees, like plaintiffs, are protected by the Fifth Amendment, which prohibits any person acting under color of federal law from subjecting any person in the custody of the United States to punitive conditions of confinement without due process of law.

39. It has long been established that immigration detainees, like pre-trial detainees, are protected from conditions that amount to punishment. *See Wong Wing v. United States*, 163 U.S. 228, 237 (1896). More recently, the U.S. Court of Appeals for the Ninth Circuit has held that conditions of confinement for civil detainees must be superior to those of pre-trial detainees, who, though not adjudged guilty of a crime, are held pursuant to criminal processes. *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004), *cert. denied*, 126 S.Ct. 351 (2005). If a civil detainee is confined in conditions that are identical to, similar to, or more restrictive than those under which pre-trial detainees or convicted prisoners are held, then those conditions are presumptively punitive and unconstitutional. *Id.* at 934. By definition, immigration detainees in the custody of ICE are civil detainees held pursuant to civil immigration laws, and thus are entitled to the higher standard of protection articulated in *Jones*.

40. The Eighth Amendment prohibits "[d]eliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). However, civil immigration detainees need not demonstrate "deliberate indifference" to establish a violation of the constitutional right to due process. *See Blanas*, 393 F.3d at 933-34. A serious medical need exists where "the failure to treat a prisoner's condition could result in further significant injury or the unnecessary and

wanton infliction of pain." *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (internal quotation marks omitted). Other factors to consider include "(1) whether a reasonable doctor or patient would perceive the medical need in question as important and worthy of comment or treatment; (2) whether the medical condition significantly affects daily activities, and (3) the existence of chronic and substantial pain." *Brock v. Wright*, 315 F.3d 158, 162 (2d Cir. 2003) (internal quotation marks omitted).

41. Plaintiffs seek classwide declaratory and prospective injunctive relief against defendants sued in their official capacities for ongoing constitutional violations committed under color of federal law.

FACTUAL ALLEGATIONS

I. The Immigration Detention Health Care System

A. U.S. Public Health Service and the Division of Immigration Health Services

42. USPHS provides medical, surgical, psychiatric, and dental care to immigration detainees around the country pursuant to federal law. *See* 42 U.S.C. § 249(a); 42 C.F.R. § 34.7(a) (2003). This task is largely carried out by DIHS, a component of the Health Resources and Services Administration (HRSA) of HHS. Pursuant to an Interagency Agreement between ICE and HRSA, DIHS serves as the medical authority of ICE and provides a variety of services to immigration detainees around the country in accordance with ICE guidelines and directives. However, ICE explicitly retains the exclusive right to define the requirements of the ICE medical program.

43. In the majority of facilities that house immigration detainees, neither DIHS nor USPHS have any on-site presence. At such facilities, medical care may be provided either by the county or private company that owns or operates the facility pursuant to an intergovernmental service agreement or contract with ICE, or by a private, for-profit company that specializes in correctional health care. At other facilities, such as SDCF, on-site care is directly provided by DIHS, commissioned officers of the USPHS, and contract employees.

44. In *all* facilities that house immigration detainees, including those in which DIHS has no on-site presence, DIHS ultimately manages detainee health care through a managed care

network that must approve or deny certain forms of medical care pursuant to official DIHS policies, including the Detainee Covered Services Package (the "DIHS Benefits Package"). In order for on-site medical personnel to prescribe certain medications, order laboratory tests or procedures to be done, or refer detainees to outside specialists for evaluation, hospitalization, and, ultimately, treatment, prior authorization must be obtained from a DIHS Managed Care Coordinator. Such authorization is sought through the submission of a Treatment Authorization Request (TAR) form. Defendant Tonya Walston is the DIHS Managed Care Coordinator for the Western Region, and is now responsible for handling all such requests from SDCF, in addition to all other facilities in the western region of the United States.

B. Necessary Medical Services are Routinely Delayed or Denied

45. Requests for necessary medical services are routinely delayed or denied by DIHS in order to reduce the cost of medical care. Because immigration detention is perceived to be short-term, medical personnel and persons charged with authorizing treatment delay or deny treatment in the hope that detainees will be removed from the United States or released from detention sooner, rather than later. This perception is often incorrect, as detainees with serious medical needs may spend months or years in detention pursuing their right to remain in the United States or seek refuge here. The denial of treatment increases pressure on immigration detainees to abandon their requests for relief and any available appeals in order to expedite their removal from the United States.

46. The general principles reflected in the DIHS Benefits Package form the foundation for DIHS's pervasive practice of refusing to provide necessary medical services to immigration detainees. From the outset, DIHS policy states that "[t]he DIHS Detainee Covered Services Package primarily provides health care services for emergency care. Emergency care is defined as 'a condition that poses an imminent threat to life, limb, hearing, or sight.'" The DIHS Benefits Package goes on to state that "[e]lective, non-emergent care requires prior authorization," but that "[r]equests for pre-existing, non-life threatening conditions, will be reviewed on a case by case basis." The Benefits Package recognizes that "[o]ther medical conditions which the physician believes, if left untreated during the period of ICE/BP custody, would cause deterioration of the

detainee's health or uncontrolled suffering affecting his/her deportation status will be assessed and evaluated for care"; however, in practice this simply encourages delaying treatment until the period of ICE custody is coming near to an end, at which point treatment becomes even less likely to occur pursuant to the Benefits Package.

47. The specific coverage determinations that flow from these principles and guide the authorization decisions of the DIHS Managed Services Unit and the treatment decisions of the medical staff at SDCF further reflect a policy of delay and denial of care. Detainees experiencing dental pain are routinely told that no dental care is provided within the first year of detention. Outside of an emergency (*i.e.*, "imminent threat to life, limb, hearing, or sight"), detainees are not entitled to hearing tests or screening; virtually all forms of eye surgery, including cataract removal; short-term or long-term rehabilitation services; orthopedic devices, such as shoes or braces; prescription eyeglasses or reading glasses; and routine eye examinations for non-acute vision loss. Routine gynecological examinations, including pap smears, will only be considered for detainees who have been in ICE custody for one year and there is no indication that removal is imminent.

48. Defendants Sampson, Shack and Jarres participate in the formulation, implementation, and management of these polices. In August 2006, Jarres led a DIHS Inspection Team on a tour of all detention sites at which USPHS and DIHS provide patient care for the purpose of conducting a comprehensive review of each facility's compliance with national detainee health care policy. On information and belief, these defendants are aware of the deleterious effect these polices have on immigration detainees around the country.

II. SDCF's Troubled History in Correctional Health Care

49. In many of the facilities that CCA runs, CCA provides medical services to the people in its care. This was once true at SDCF. On or about June 1, 2002, DIHS relieved CCA of this responsibility, making SDCF one of the only contract detention facilities in the country in which immigration detainee health care is provided directly by DIHS and USPHS.

50. The decision to end CCA's provision of health care was made following a tour of SDCF conducted by Captain Neal Collins, M.D., then Medical Director of the Clinical Services

Branch of DIHS. Collins concluded that the level of health care provided by CCA was deficient, and suggested that CCA was attempting to increase its profits by decreasing the medical services provided to detainees.

51. Even after DIHS assumed responsibility for medical care at SDCF, however, serious problems remained. In August 2003, the Detention Management Division of the Department of Homeland Security conducted a review of SDCF's level of compliance with ICE's National Detention Standards. The reviewers identified immediate staffing needs in the provision of medical care, including a full-time psychologist; increased psychiatric services; increased use of registered nurses, rather than licensed vocational nurses; and a second primary care physician. The reviewers also found the pharmacy space to be substandard.

52. The DHS Office of Inspector General (OIG) publicly revealed additional serious problems following an audit of the facility that took place in 2005. Out of more than 300 jails, prisons and other facilities around the country holding immigration detainees, the OIG initially decided to focus its review on ten facilities. That list of ten facilities was ultimately reduced to only five facilities due, at least in part, to the volume of complaints received from those facilities, particularly SDCF. Auditors toured the facilities, reviewed written complaints by detainees, and conducted numerous in-person interviews of detainees.

53. OIG field auditors visited SDCF over a period of approximately ten weeks in early 2005. In addition, the OIG conducted seven weeks of document review related to the San Diego facility. On January 16, 2007, after numerous delays, the OIG released its audit report. Department of Homeland Security, Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, OIG-07-01 (December 2006), available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-01_Dec06.pdf (OIG Audit Report). The OIG Audit Report indicates that 210 detainees at SDCF responded to the OIG's request for information about conditions of confinement and allegations of mistreatment at the facility—more than twice as many as at any of the other four facilities that were audited. *Id*. at 39. The report identifies significant failures in the provision of health care at SDCF. More than half the detainees whose files auditors reviewed were not given a physical exam within two

weeks of entering SDCF, and were not seen by a physician or qualified medical officer within three days of submitting a request for medical attention. *Id*. at 4.

54. On information and belief, all defendants were made aware of the OIG's concerns with respect to inadequate medical care at SDCF at the time of the audit, and of the auditors' findings regarding the facility—including findings that may not have been published in the official OIG Audit Report. Despite this knowledge, defendants failed to take or sustain meaningful corrective action in response to these findings.

55. The OIG Audit Report also concluded that ICE DRO's annual detention review of SDCF in 2004 failed to identify problems regarding health care and general conditions of confinement observed by the OIG during its audit, and that a final rating of "Acceptable" was granted to SDCF despite the aforementioned problems. *Id*. at 36. On information and belief, as Director of DRO defendant Torres was made aware of the results of ICE DRO's annual detention reviews and approved both the inspection methods and the final rating given to facilities such as SDCF.

56. Defendant Myers, who provided the official ICE response to the OIG draft report in September 2006, specifically rejected the OIG's recommendation that ICE "[a]scertain the reasons that areas of non-compliance identified by ICE inspections of detention facilities were significantly less than the non-compliance deficiencies identified by [the OIG]." *Id*. at 51. Myers asked that the recommendation be considered resolved and closed. *Id*. at 52.

57. Despite identifying many serious problems at SDCF, the OIG Audit Report's findings barely scratch the surface of SDCF's grossly inadequate provision of health care. Although the auditors noted that not all detainees on suicide watch received regular, required monitoring, the OIG Audit Report fails to mention that a mentally ill detainee committed suicide at the facility prior to the auditors' visit. The OIG Audit Report also fails to mention that an immigration detainee with serious medical problems died shortly before the OIG visit, and that another detainee with medical problems died in June 2006.

58. On information and belief, defendant Jarres visited SDCF in or around August 2006 with a DIHS Inspection Team and reviewed the facility's compliance with national DIHS health care policies.

59. On information and belief, all defendants are aware or should be aware of the systemic deficiencies in the provision of medical, dental, mental health, and vision services at SDCF.

A. Medical Care

1. Failure to Timely Respond to Sick Call Requests

60. At the time that the OIG visited SDCF, the facility's policy allowed medical personnel 72 hours to respond to a sick call request. *Id*. at 4. Despite the fact that even this policy does little to ensure a prompt response to serious medical needs, in more than half of the cases reviewed by OIG auditors, detainees did not receive any response within 72 hours of making a request for medical care.

61. One critical flaw in the preservation of medical records at SDCF is that sick call request forms are not maintained in the medical file. As a result, based on a simple review of a detainee's medical records it is impossible to tell when a detainee first submitted a sick call request in connection with a medical problem, and unless the substance of the sick call request was transcribed into the medical records it is impossible to tell whether the subject matter of the sick call slip was actually responded to. By separating sick call requests from a detainee's medical records, it is difficult for medical personnel to make quality assessments about whether sick call requests are responded to in a manner that is timely, effective, and complete.

62. Additionally, when detainees submit a sick call request they are neither provided with a carbon copy of the sick call request, nor provided a written response. As a result, it is difficult for detainees to track their past requests for medical treatment and to advocate for an immediate response to a serious medical condition.

63. Abdelwahab Mohamed Abdelwahab was recently deported from the United States, after having spent approximately ten months in detention at SDCF. Abdelwahab suffers from diabetes, hypertension, and dyslipidemia. Throughout the course of his detention he submitted

numerous sick call requests, but often received no response.

64. After filing multiple sick call requests in connection with severe dental pain, plaintiff Fred Nganga Ngugi was informed that his complaint would be forwarded to the facility dentist. Months later, prior to receiving any follow-up, Ngugi's tooth crumbled in his mouth.

65. On information and belief, many other detainees, including several of the named plaintiffs, also have experienced delays in receiving a response to sick call requests.

2. Failure to Monitor Chronic Conditions

66. Medical care for detainees with chronic conditions is seriously deficient at SDCF. Detainees who suffer from chronic illnesses such as hypertension, diabetes, and asthma, have serious medical needs that require adequate monitoring and consistent, comprehensive care. Until August 25, 2005, the DIHS Benefits Package mandated follow-up care and testing for such detainees every three months. On August 25, 2005, the Benefits Package was modified to eliminate mandatory follow-up for detainees with chronic conditions. However, even before this change chronically ill detainees at SDCF have long faced difficulties receiving appropriate monitoring and treatment. Many detainees with chronic conditions receive no monitoring at all, while others receive chronic care appointments in name only.

67. Plaintiff Luis Alberto Tinoco suffers from diabetes, hypertension, and hypercholesterolemia. In November 2005, before Tinoco required insulin to control his diabetes, Tinoco complained that his blood sugar had not been checked for approximately two weeks despite orders that his blood sugar be checked three times per week. On November 16, 2005, Tinoco met with Dr. Gerard Bazile, the former clinical director of SDCF. Tinoco's visit was termed a "chronic appointment" for hypertension, but his hypertension was not addressed at the visit. Rather, Tinoco reiterated his complaint that his blood sugar was not being checked and Dr. Bazile issued another order requiring that Tinoco's blood sugar be checked three times per week for two months. Dr. Bazile did not, however, have Tinoco's blood sugar checked during the appointment. One month later, on December 16, Tinoco returned for a "chronic appointment" in connection with his diabetes and hyperlipidemia. At this point Tinoco's blood sugar still not had been checked, and he had gone nearly two months without having his blood sugar monitored.

The physician assistant who met with Tinoco again issued an order that Tinoco receive blood sugar tests three times a week for two weeks, but it was not until eight days later that he finally had his blood sugar checked.

68. Chronic care for Tinoco's diabetes has been seriously deficient in many other areas as well. Although diabetics should have an annual check up with an ophthalmologist, Tinoco went nearly three years without visiting an ophthalmologist for an eye exam. This is particularly disturbing in Tinoco's case, given that defendant Lusche, the physician assistant who has occasionally examined Tinoco's eyes at SDCF, has identified abnormalities on at least two occasions without taking any action. Although medical staff have issued numerous orders stating that Tinoco is to receive a special diabetic diet, he is routinely provided with the same food that is served to the rest of the detainees. When he is provided with a special diet for diabetics, the diet generally consists of the same food as the rest of the detainees, plus one piece of fruit and a small container of milk.

69. Tinoco's experience is hardly unique. Abdelwahab Mohamed Abdelwahab also suffered from diabetes, hypertension, and dyslipidemia. Throughout his nearly ten months in detention, Abdelwahab's blood sugar, blood pressure, and cholesterol were rarely checked; he often went several months without any monitoring of his serious chronic conditions. On multiple occasions when his blood pressure was checked, Abdelwahab's blood pressure readings were elevated. Notwithstanding the fact that it is particularly dangerous for diabetics to have high blood pressure, medical staff took no actions to acknowledge the elevated readings or respond appropriately. Abdelwahab never had his eyes examined at SDCF and regularly complained about swelling in his feet.

70. Plaintiff Sylvester Owino was diagnosed in childhood with asthma, and arrived at SDCF from state custody in November 2005 with two asthma pumps. Owino's asthma pumps were placed in his property box and he was informed that he would receive new asthma pumps from USPHS at SDCF. Owino complained about difficulty breathing on several occasions and requested asthma medication, but it was not until June 2006 that medical staff examined him and confirmed his persistent asthma. He was prescribed a steroid inhaler to be used twice daily, but

was not prescribed a rescue inhaler such as Albuterol for emergency use. Despite the fact that his steroid inhaler was supposed to be used twice daily as prescribed and then refilled, Owino did not receive a refill until nearly four months after he first received the inhaler. On at least one occasion when Owino felt tightness in his chest and difficulty breathing, due in part to the poor ventilation in the cells and the humidity caused by having three men housed in a two-person cell, Owino borrowed another detainee's inhaler. Although asthma is a chronic medical condition, Owino's asthma has never been monitored at SDCF, and he has never received proper and consistent medication for this serious condition.

71. Plaintiff Romeo Fomai is infected with the hepatitis C virus. Fomai received this diagnosis while he was in state custody, prior to arriving at SDCF. While in state custody, Fomai received pamphlets and other informational materials concerning the hepatitis C virus. Fomai has received no information about this condition since arriving at SDCF. Several weeks before arriving at SDCF, while still in state custody, Fomai began a course of vaccinations against hepatitis A and B. Upon intake at SDCF, Fomai informed officials of his medical conditions and stated that he had recently received the first injection for his hepatitis vaccinations; Fomai has received none of the additional injections required to complete the vaccination. Since arriving at SDCF six months ago, Fomai has received no treatment or diagnostic testing about his condition.

72. Plaintiff Eamma Jean Woods suffers from a myoclonic seizure disorder that causes her body to shake and jerk. As a result of this condition, Woods is often unable to sleep, and the jerking exacerbates the severe pain she experiences in her finger due to the presence of a glomus tumor. Prior to her detention, Woods received treatment for her seizure disorder at the University of California, San Diego Medical Center (UCSD), where she was prescribed Klonopin; the medication largely controlled her seizure disorder. When Woods first arrived at SDCF she was placed in a two-person cell containing three women and was assigned to the top bunk. Out of fear that her seizure condition would cause her to fall from the top bunk, Woods moved to a bed in the dayroom, where she slept on a bottom bunk. Despite complaining about her seizure disorder since arriving at SDCF, and repeatedly requesting Klonopin, Woods has received no treatment for this condition and has been denied necessary medication. Woods has experienced increasingly

frequent seizures since entering SDCF.

73. Tjiak Wie Wong, a detainee who was recently released from SDCF, suffered throughout his detention at the facility from chronic back pain due to a bulging disk. When he was in state custody, Wong was provided with a second mattress to relieve the pain in his back. Wong requested a second mattress for his condition when he was initially transferred to SDCF, but the request was refused. Over the next nine months, due to overcrowding at SDCF, Wong spent large portions of time sleeping in a plastic "boat" on the floor of a three-person cell designed for two people. The boat exacerbated Wong's significant back pain. When he requested medical attention for his back he was instructed to exercise, but even standing for long periods of time caused him pain.

74. The failure to properly monitor detainees with chronic illnesses and to appreciate the complications that can arise from poor disease management has had grave consequences at SDCF. Martin Hernandez Banderas was a detainee at SDCF from October 26, 2006 until January 17, 2007, when he was rushed to a nearby hospital. Shortly after arriving at SDCF, Banderas suffered a mild injury to his foot. As the small injury turned into a large, infected ulcer, Banderas repeatedly sought medical attention but was turned away and told that his injury was not an emergency. By the time Banderas was taken to the SDCF medical unit in a wheelchair and diagnosed for the first time with diabetes, the wound had become gangrenous. Although Banderas was given antibiotics, SDCF medical staff did not take a culture of the infected wound and therefore could not have known the nature of his infection. He was returned to the general population after a short stay in the medical unit, despite the fact that his newly diagnosed diabetes had not been brought under control and his wound had not yet healed. Over the next several weeks, Banderas regularly complained of increasing pain in his foot and leg and large amounts of discharge flowing from the wound; he noted that the wound was increasing in size and beginning to emit a foul odor. When Banderas was finally rushed to the hospital emergency room, he was diagnosed with a serious bone infection (osteomyelitis), gangrenous tissue surrounding the ulcer, and no pulses on the infected foot. Incredibly, medical records at SDCF that document Banderas's repeated complaints indicate that only two days prior to his admission to the hospital,

his wound apparently had a "normal, healing tissue type odor" with "no sign of active infection, pus or purulence" and "pulses intact." Doctors at the hospital advised Banderas to have an amputation, but he declined and instead underwent more than six weeks of intravenous antibiotics and multiple surgeries to cleanse the wound of infection, remove dead tissue, and graft skin onto the wound in an effort to assist healing. Banderas was released from detention while at the hospital, but remains in danger of losing his leg as a result of his poor treatment at SDCF.

3. Delays in Providing Prescription Refills

75. In a correctional setting it is critical that prescription medications be monitored to ensure continuity of treatment. At SDCF, detainees often go days or weeks without medications while they wait for prescriptions to be accurately filled or refilled. Plaintiff Alberto Toro suffers from hypertension for which he has been prescribed atenolol. On multiple occasions during his detention he has run out of medication prior to receiving a prescription refill. Toro has at times had to file two to three sick call requests asking for a refill on his prescription. He most recently ran out of atenolol on May 30, 2007, and filed sick call requests on May 31 and June 1 asking for a refill. As of June 4, Toro still had not received a prescription refill.

76. Plaintiff Owino also receives prescription medication for hypertension. Owino most recently ran out of medication on April 30, 2007, and did not receive a prescription refill for more than three weeks despite being informed that he needed not only a refill, but an additional medication. Owino has also experienced significant delays receiving medication for his asthma. When he first arrived at SDCF, Owino's asthma medication was confiscated and placed in his personal property. He did not receive new asthma medication until several months had passed. Owino experienced significant additional delays getting refills of his inhaler, and has been without an inhaler for many months.

77. Jose Arias-Forero, a former SDCF detainee, received prescription medications for several chronic conditions, including hypertension, and hyperlipidemia. Forero also received tramadol for chronic pain related to a serious rotator cuff injury that was never properly treated at SDCF. *See* ¶¶ 80-83, *infra*. Throughout his detention, Forero often went weeks without receiving refills of his medications. According to a notation in Forero's medical records, on

August 7, 2006, Joanne Galano, R.N., advised Forero that "if needs refills of medications, to submit sick call request and write down the name of the medication; this form will then go to Pharmacy. Handed det. a sick call form, he then filled it out with the name of th emedicine, [sic] and is now forwarded to Pharmacy."

78. SDCF's failure to properly keep track of prescription refills results in frequent medication interruptions. The common disruption of prescription medications poses an unnecessary and unreasonable risk to detainees' health.

4. Failure to Make Timely Referrals for Specialty Care

79. In order to refer detainees to outside specialists for diagnostic testing (*e.g.*, MRIs, biopsies), treatment, and/or surgery, medical personnel at SDCF must first obtain authorization from DIHS headquarters in Washington, D.C. Such requests are made through TAR forms that are submitted to defendant Tonya Walston, the DIHS Managed Care Coordinator for the Western Region. Requests for necessary medical care are routinely denied without explanation or are approved only after excessive delays. In many cases, TARs are neither denied nor approved, but instead are responded to with unnecessary requests for additional information that further delay essential medical care.

80. The experience of Jose Arias Forero exemplifies the excessive delays that many detainees face in obtaining referrals to outside specialists. Forero suffered a serious shoulder injury while detained at the El Centro Service Processing Center. Soon after suffering this injury, Forero was transferred to SDCF. He immediately complained about his severe pain to his right arm and shoulder, which was aggravated by the fact that Forero was handcuffed behind his back during transport from El Centro to SDCF. Although his complaints were serious enough for SDCF medical staff to issue one chrono directing staff to only handcuff and bellychain Forero in front of his body, and a second chrono directing staff not to force Forero to raise his arm over his head, Forero was repeatedly denied a proper medical examination. Several months after arriving at SDCF, a TAR was submitted on Forero's behalf seeking approval for an x-ray. Forero was taken to Alvarado Hospital for an x-ray. When he received the results of the x-ray, SDCF medical personnel told him there was nothing wrong with his arm and he was faking the pain.

Forero pleaded for additional follow-up, but it was not until July 29, 2005 that he was finally taken to the Alvarado Hospital Medical Center for an MRI of his right shoulder. The MRI confirmed a complete tear of his rotator cuff.

81. Two weeks after Forero returned from the hospital, Dr. Gerard Bazile, then SDCF Medical Director, submitted a TAR for surgical repair of Forero's complete rotator cuff tear; the TAR noted that an MRI confirmed the tear and could be faxed upon request. Eight days later the TAR was denied by Claudia Mazur, R.N., then Managed Care Coordinator for the Western Region. Mazur's denial describes the clinical information as "not clear. Do you intend to send this detainee to a General Surgeon for an opinion?" After three additional weeks, Dr. Bazile again submitted a TAR to Mazur, this time requesting evaluation only by an orthopedist. Five days later, the request was approved "for Orthopedic consult only." Forero finally saw an orthopedist on October 14, 2005, one month after authorization was granted. One week later, Dr. Bazile filed another TAR requesting approval for surgery. Two weeks passed before the request was approved by DIHS, and two additional weeks passed before Forero's massive rotator cup tear was surgically repaired on November 16, 2005—approximately eight months after he arrived at SDCF and began complaining about his severe pain.

82. After receiving the surgery, Forero was returned to the specialist for one follow-up visit on December 1, 2005. The doctor ordered that he return for a follow-up visit in four weeks, at which point he was to begin physical therapy. TAR forms were submitted seeking approval for this second follow-up visit, but they were repeatedly pended by the DIHS Managed Care Services Unit and Forero was never returned to the specialist for a follow-up visit and was denied all requests for the physical therapy that his surgeon had ordered.

83. In late April 2006, Forero suffered a complete reinjury of his shoulder following the use of excessive force by a CCA officer. Two weeks passed before defendant Lusche submitted a TAR seeking a referral to the orthopedic surgeon. Lusche explained in the TAR that Forero "[r]ecently re-injured shoulder when right arm was placed behind-the-back for hand-cuffing in a rather forced manner." Forero visited the orthopedic surgeon on June 2, 2006, and the orthopedist requested that a Gadolinium MRI be performed in order to assess the extent of the

injury. Physician assistant Lusche filed a TAR requesting a referral for a Gadolinium MRI on June 2, but when Forero was taken to receive the MRI more than six weeks later, he was turned away because no prescription for the contrast medication had been provided. Lusche was instructed to resubmit the TAR, and did so on July 14. Over the next four weeks, Forero repeatedly asked for updates on the MRI that he was supposed to receive. On August 12, Lusche yet again resubmitted the TAR, noting that although the previous TAR had been approved, it was allowed to expire prior to completion of the Gadolinium MRI. Forero finally underwent a Gadolinium MRI on August 24, 2006, nearly three months after the orthopedic surgeon indicated that a Gadolinium MRI was needed to properly diagnose the injury. When Forero was finally seen by the orthopedic specialist on September 25, 2006, nearly four months after his June 2, 2006 visit, the doctor confirmed a complete re-tear of Forero's rotator cuff as well as an additional tear to his subscapularis muscle. Forero has never received authorization from the DIHS Managed Care Services Unit for surgical repair of his re-injured shoulder and remains in ICE detention at the El Centro Service Processing Center.

84. Tjiak Wie Wong, a recently released detainee, was diagnosed in May 2005 with stones in both testicles and a cyst on his right testicle. The urologist who diagnosed his condition prior to his detention informed Wong that he might require surgery to remove the painful stones and cyst. From the time that he arrived at SDCF in April 2006, Wong complained about his medical condition and requested to see a urologist; he was told that USPHS will not spend the money to send him to a urologist. In lieu of treatment or further diagnostic testing, Wong was given Tylenol for his pain. Subsequent to the filing of the *Kiniti* lawsuit regarding overcrowding at SDCF, Wong was temporarily moved to an immigration facility in Florence, Arizona. At that facility, Wong was prescribed tramadol, a stronger pain reliever than Tylenol, and received an appointment to see a urologist. Before Wong was able to see the urologist he was transferred back to SDCF, at which point Wong's tramadol was confiscated and his requests for referral to a urologist were once again denied.

85. Eamma Jean Woods suffers from neurofibromatosis, a genetic disorder of the nervous system that causes tumors to develop on a person's body. Prior to being taken into

immigration custody in July 2006, Woods was undergoing treatment for this condition at the UCSD Neurology Clinic and was scheduled to meet with a surgeon on August 2, 2006, to remove a painful glomus tumor that had developed on her right ring finger. Several years before entering ICE custody, Woods underwent surgery to partially remove this tumor. As a result of her detention, Woods was unable to continue treatment at the Neurology Clinic or meet with the surgeon to remove the painful tumor. Throughout her nearly eleven-month detention at SDCF, Woods has complained about severe pain emanating from the tumor on her finger, but has received no treatment for her condition aside from occasionally being prescribed ibuprofen or naproxen. She used to carry with her at all times a hot water bottle that helped to decrease the pain, but CCA officers no longer permit her to take the hot water bottle out of her cell. Woods has not been referred to a neurologist or an oncologist to review her genetic disorder and determine the proper treatment for her glomus tumor.

86. Luis Alberto Tinoco suffers from hemorrhoids that prevent him from sitting down or walking for long periods of time without severe pain. Several years ago, Tinoco stopped receiving the suppository that was provided to him as treatment. Tinoco was instead provided only Advil. Tinoco requested surgery to remove his hemorrhoids, but SDCF staff informed him that surgery could not be provided within the budget.

87. Since approximately February 2007, Romeo Fomai has been suffering from a painful rash that began on his arms and now covers most of his body. Various medical personnel have at times referred to the rash as a fungus or eczema and have prescribed several different medications, including anti-fungal foot cream, Benadryl, hydrocortisone, and calamine lotion. Most recently, Fomai was informed that the rash might be related to the fact that he has been denied hormone therapy since arriving at SDCF. Fomai has repeatedly requested to see a specialist for proper evaluation of his skin condition, but he has never received such a visit.

5. Critical DIHS Coverage Deficiencies

88. On-site medical personnel at SDCF provide medical care to detainees in accordance with official DIHS policies, including the DIHS Benefits Package. Decisions regarding off-site care for SDCF detainees are also made in accordance with such policies.

Detainees at SDCF are routinely denied necessary medical care pursuant to official DIHS policies that are formulated, implemented, and maintained by defendants Sampson, Shack, and Jarres, and carried out by defendants Walston, Gonsalves, Hui, Lusche, Jedry, and Salvatore.

89. The example of Francisco Castaneda, a former detainee at SDCF, exemplifies the grave consequences that can result from USPHS's application of the DIHS Benefits Package. Castaneda was detained at SDCF from March 2006 until late November 2006. From the time that he first arrived at SDCF, Castaneda regularly complained about an increasingly painful lesion on his penis that was bleeding and discharging fluid. After several months, Castaneda was finally approved by DIHS to see an off-site oncologist. The oncologist concluded that Castaneda could be suffering from penile cancer and determined that "urgent urologic assessment and definitive treatment" were required. SDCF medical staff declined to have Castaneda admitted for a urologic consultation and biopsy, and instead indicated that they would pursue an outpatient biopsy that would be more cost effective. But Castaneda never received a biopsy while in ICE custody. Approximately one week after returning from the oncologist's office, Castaneda filed a grievance explaining that the oncologist "gave his professional opinion and recommended that I should be admitted and that surgery should be performed. At this time, Dr. Hui decided against the proposed surgery and denied the admittance. I am in a considerable amount of pain and I am in desperate need of medical attention." On July 26, 2006, more than six weeks after filing his grievance, Castaneda's grievance was denied on the grounds that "the type of surgery he requests is a procedure he will need to seek after he leaves this facility; it is elective surgery." In late August, Castaneda was seen by a urologist who stated that circumcision was the proper treatment for the infection and bleeding associated with Castaneda's lesion; in addition to alleviating Castaneda's ongoing pain, the circumcision would also provide a biopsy that could confirm whether Castaneda was suffering from penile cancer. One week after Castaneda returned from the urologist's office, he received a memorandum prepared by defendant Stephen Gonsalves, USPHS Health Services Administrator at SDCF. According to the memo, any surgical intervention for Castaneda's condition "would be elective in nature." The memorandum concludes that "[t]he care you are currently receiving is necessary, appropriate and in accordance

with our policies." Although Castaneda continued to complain about the increasingly painful lesion on his penis, and would occasionally show CCA officers blood and discharge in his underpants in an effort to get medical attention, he was never provided the procedure prescribed by the oncologist and urologist. In late November 2006, Castaneda was transferred to the San Pedro Service Processing Center, where he spent an additional two months in the care of USPHS medical staff at that facility. In early February 2007, Castaneda was released from ICE custody on account of his serious medical condition. Within days of his release he went to the emergency room for a biopsy and was diagnosed with penile cancer. He was quickly admitted to the hospital and underwent surgery on February 14, 2007, to remove nearly all of his penis. By the time doctors were finally able to perform a biopsy and surgery, the cancer had already spread to his groin lymph nodes. He has now undergone three rounds of chemotherapy, is scheduled to have his lymph nodes surgically removed, and is awaiting the results of additional testing that will reveal whether the cancer has spread to other parts of his body.

90. Plaintiff Romeo Fomai has a gender identity disorder for which he has consistently taken hormone therapy since 1986. At the time that Fomai was transferred to SDCF from Donovan State Prison in December 2006, he was taking Premarin and Provera. Upon intake, SDCF staff confiscated Fomai's 30-day supply of hormones and placed them in storage with the rest of his personal property. While at SDCF, Fomai has repeatedly been denied hormone therapy by medical staff, including defendant Hui, pursuant to DIHS policy. Hormone therapy works both physically and mentally. Since being taken off of hormone therapy, Fomai has experienced the physical symptoms of withdrawal, such as extreme pain in his breasts, hair loss, hot flashes, weight gain, and decreasing breast size. He is also becoming increasingly depressed and withdrawn. Fomai has a history of depression; while at Donovan, Fomai was placed in a padded room after slicing his wrists in a suicide attempt. He currently has thoughts of suicide in connection with his severe anxiety about his inadequate medical care and the rash that now covers his body. While at Donovan, Fomai received prescription medication for his depression, but he is not currently receiving any such medication and has not been seen by any mental health staff at SDCF despite numerous requests for counseling.

91. Prior to arriving at SDCF, plaintiff Winston Carcamo suffered trauma to his head that resulted in severe damage to both of his eyes. Carcamo received treatment for his injury in Mexico, which resulted in the restoration of vision to his left eye; his right eye was surgically removed. At the time of surgery, Carcamo was informed that upon healing he would need to have a prosthesis implanted both to preserve the physical integrity of his eye socket and to prevent the spread of an infection that could result in the loss of his remaining eye and render him completely blind. When Carcamo arrived at SDCF in September 2006, he complained immediately of extreme headaches and asked to meet with an eye doctor to get prescription glasses and the necessary prosthesis. Carcamo was instructed that "glasses and vision related care are not covered benefits." Nine days after arriving at SDCF, Carcamo met with physician assistant Serrano, who informed Carcamo that he would begin a TAR for a referral to an ophthalmologist. After two weeks passed, Carcamo again met with Serrano. At that time, Serrano had not yet submitted a TAR for Carcamo's condition. Over the next two weeks, Carcamo submitted sick call slips complaining of pain and asking for information regarding the status of the TAR. On November 1, Carcamo met with a nurse when he complained of yellow pus draining from his enucleated eye. Carcamo was prescribed medicated eye drops, but was informed that the TAR had been denied by the DIHS Managed Care Coordinator. According to the DIHS Benefits Package, eye prostheses are not covered services except in emergency situations. Serrano further informed Carcamo that his "boss" said that the procedure would not be covered because "it didn't happen here." Carcamo filed a grievance regarding the refusal to treat his medical problem on December 9, 2006. The grievance was denied by physician assistant Lusche on December 24, when he noted that he had "reviewed with Mr. Carcamo what are our limitations for completely resolving his desire for an eye prosthesis."

92. Immediately upon arriving at SDCF, Carcamo began to inquire whether he would be able to get an eye prosthesis if his family agreed to pay for the procedure. USPHS medical personnel informed him that this determination would mostly involve ICE and CCA. On January 12, 2007, after months of complaints by Carcamo, and written correspondence by the ACLU to defendants Gonsalves, Cerone, Easterling, and then-DIHS Managed Care Coordinator for the

Western Region Claudia Mazur regarding the failure to treat Carcamo's serious medical condition, Carcamo was permitted to visit an eye specialist who referred him to another doctor capable of fitting Carcamo for a prosthesis. Following this visit, Carcamo filed a grievance renewing his request to see a specialist about the prosthesis. On January 25, Carcamo met with Serrano, who told him that the government would not pay for the prosthesis, but that Carcamo could arrange to have his family pay for the procedure. On February 2, in response to one of Carcamo's grievances, defendant Gonsalves responded that "[b]ased on the specific medical condition, and the circumstances relating to your eye condition, we are not authorized to cover the medical service you are seeking. The Division of Immigration Health Services, Detainee Services-Package provides for emergency care and not elective or pre-existing conditions." Gonsalves's reply mistakenly states that Carcamo was referred to an eye specialist "in late 2006," and that "there are no time constraints for later placement of the eye prosthesis." Over the next two months, Carcamo waited first for DIHS to grant permission for him to receive the procedure that his family had agreed to pay for, and then for ICE and CCA to arrange for transportation.

93. On or about April 1, 2007, shortly after the ACLU conducted a series of legal visits with Carcamo and other detainees at SDCF, Carcamo received a telephone call from ICE Supervisory Deportation Officer Kent Doug Haroldsen. Haroldsen informed Carcamo that ICE was not required to take him to get an eye implant, and that if they took him it would be "an act of goodwill." Haroldsen then referred to ACLU communications with SDCF detainees and asked whether Carcamo was "participating" with the ACLU and had spoken with the ACLU about his medical problems. Carcamo responded that he would not talk to the ACLU because he wanted to see the eye specialist. Because his necessary medical care had already been delayed for more than six months, Carcamo feared that additional communications with the ACLU would result in further delay. He was subsequently informed that his request to see the eye specialist had been approved.

94. On April 17, Carcamo was transported to the eye specialist and provided the eye prosthesis that he needed. The procedure lasted many hours and was incredibly painful; Carcamo suffered significant pain during the procedure because his bones had shifted and the eye socket

had already begun to close due to the delay in receiving this procedure. Had the structural integrity of Carcamo's eye socket further deteriorated from additional delay, it would have been impossible for him to have a prosthesis implanted, which would have resulted in permanent disfigurement. Carcamo was scheduled to receive a follow-up visit with the eye specialist in late May, but he has not been returned to the eye doctor since undergoing the procedure.

95. For the first four months of her detention at SDCF, 25-year-old Marta Monteagudo-Guerrero did not menstruate. She requested to see a gynecologist to discuss the problems with her menstrual cycle, but did not receive an appointment to speak with medical personnel about this issue until the end of May 2007, several months after the problem appeared to resolve itself. At that visit, SDCF medical staff informed her that the facility does not provide detainees with referrals to gynecologists and does not cover pap smears.

96. Gloria Vanegas suffers from a medical condition that causes cysts to grow in her breasts and ovaries. In July 2005, Vanegas underwent surgery to remove the larger cysts in her breasts and ovaries, but not the smaller cysts. Because of her strong family history of breast cancer, while in Colombia Vanegas saw a doctor who monitored the growth of her cysts every six months. While in detention, Vanegas's cysts have grown increasingly painful. In response to requests for medical attention, she has been given only ibuprofen to reduce the pain. In February or March 2007, Vanegas met with physician assistant Serrano and asked to see a specialist for a breast examination; Serrano informed her that such examinations are not covered and cannot be provided to detainees.

B. Dental Care

97. Dental care is systemically inadequate at SDCF. DIHS's official policies pertaining to the provision of dental care are particularly draconian, and necessary care is denied in accordance with those policies. This problem is exacerbated by the presence of only one dentist at SDCF who is charged with providing care to 600-800 ICE detainees as well as several hundred more detainees in the custody of the U.S. Marshals Service. In accordance with DIHS policies, detainees are routinely denied dental care unless they have already spent one year in detention at SDCF. As a result, detainees often spend months filing sick call slips complaining of

tooth pain, broken molars, and bleeding gums only to be denied access to treatment. The delay in treatment often results in the need to extract teeth that may have been salvageable had treatment been provided in a timely manner. Even when treatment can be provided, detainees are often informed that the treatment is too expensive and is not covered by DIHS; in such cases, detainees are only offered extraction.

98. Adams Pelich, a detainee who first arrived at SDCF in November 2000 and was detained at the facility until late 2006, complained of severe dental pain for years, writing complaints to ICE, USPHS staff, and CCA. In response to his requests for assistance from ICE, he was instructed to ask the dentists at SDCF for treatment. In a written response to one such grievance, he was explicitly encouraged to agree to his removal from the United States so that he might get dental care in the country that receives him. "CCA dentist will provide dental work as authorized. As your removal officer, I am not authorize[d] to grant your request. On the same token, maybe your country can provide a better service but that's only when you decide to go home." He filed a subsequent response complaining that his teeth were bleeding and that his crowns were moving. The reply that he received stated simply: "Sign our travel document form and we will get you out of here." One of his requests for assistance to USPHS was rejected for not having been filed on a CCA grievance form, despite the fact that USPHS, and not CCA, provides dental care to detainees. His written grievances to CCA were also regularly denied. In one case, the Grievance Officer's Response explained that the requested care was denied because it was "not covered in benefits package;" the grievance that he had submitted complained that he was in great pain and in need of two root canals, three crowns and one bridge replacement.

99. In approximately February 2006, plaintiff Rigoberto Aguilar-Turcios began to experience increasingly severe dental pain. In response to his initial sick call requests, Aguilar-Turcios only saw a nurse who provided no medical care. After waiting nearly two months for a response from the dentist, he submitted a grievance at the end of March and received a response in mid-April. When Aguilar-Turcios finally saw Dr. Edmund Jedry, the dentist, in mid-May 2006, he was informed that the pain in tooth #2 was caused by the absence of an opposing molar. Dr. Jedry informed Aguilar-Turcios that in order to solve the problem, he would need to get a

fixed or removable bridge once he was released from custody, because neither implant is covered for detainees. In the alternative, Dr. Jedry said, he could extract the otherwise healthy tooth. Aguilar-Turcios was also informed that he could use Sensodyne toothpaste to relieve some of the pain, but he would have to buy the toothpaste from the commissary. It has been approximately 16 months since Aguilar-Turcios first experienced this dental pain, and the pain has only increased in severity during that time.

100. Plaintiff Ngugi has also routinely complained about dental pain at SDCF but has received virtually no treatment. On March 28, 2006, Ngugi met with Dr. Jedry pursuant to a sick call request about dental pain. Dr. Jedry prescribed a one-week course of amoxicillin and informed Ngugi that he required a root canal. Ngugi's follow-up appointment for treatment was cancelled because when he was to be called for this appointment he was in segregation for refusing to be triple-celled. Ngugi filed multiple sick call slips requesting medical attention for his dental pain, but he never received a response. In June, Ngugi began to have dental pain again. He filed sick call requests and ultimately spoke to a nurse who noted that Ngugi was complaining of pain and sensitivity in his upper right molars. The nurse stated that she would refer him to the dentist, but Ngugi was never called to see the dentist. Ngugi was instructed to continue brushing his teeth twice daily, and he did so believing that this might alleviate the pain. Sometime in August, the tooth that was causing him pain broke into multiple pieces while he was brushing his teeth.

101. In November 2006, Ngugi began to file new sick call slips requesting that his teeth be checked because of sensitivity and pain. Ngugi feared that other teeth would break in his mouth if he did not have an appointment. One dental appointment in late December was cancelled and never rescheduled. Ngugi continued to request dental attention and filed a grievance about the lack of care he was receiving. On January 17, 2007, Ngugi met with Dr. Jedry, who agreed to extract the remainder of the tooth that had broken in Ngugi's mouth. Dr. Jedry began Ngugi on a ten-day course of amoxicillin and prescribed ibuprofen for pain, but before Ngugi could get a follow-up appointment with Dr. Jedry he was transferred to an immigration detention facility in Arizona subsequent to the appearance of the ACLU in the *Kiniti*

lawsuit regarding chronic and severe overcrowding at SDCF. Even after returning to SDCF in February 2007, Ngugi was not called in to the dentist for additional care until approximately one month had passed. At that visit, Dr. Jedry provided no care but indicated that Ngugi would be called for treatment at a later date. In late March or early April, Ngugi finally received a cleaning of three teeth and a root canal, but the dentist still did not extract the molar that broke in or around August 2006. Ngugi received no explanation from the dentist and he has received no response to two sick call slips he has filed requesting dental care.

102. Since February 2007, plaintiff Sylvester Owino has experienced bleeding gums and dental pain, and has submitted requests for dental treatment. When he was taken to see the dentist he was told that he required a cleaning and was placed on a waiting list. In response to a grievance that he filed on March 6, 2007 requesting attention, Owino was informed that "he is eligible, but not entitled, to a cleaning. Sick calls and emergencies have priority over routine elective care that he presents with." Owino appealed the decision, explaining that he had experienced serious dental pain and bleeding gums for two weeks, and that he should not have to suffer long waits because the facility only employs one dentist. The appeal was denied by defendant Warden Easterling on April 9, 2007, more than one month after Owino saw the dentist and reported dental pain and bleeding. Warden Easterling's justification for denying the appeal was "They have put you on its [sic] list." Owino still has not received the needed cleaning, and he continues to experience bleeding gums and dental pain.

103. Detainees at SDCF also receive seriously deficient dental care when it comes to the provision of dentures. Abdelwahab Mohamed Abdelwahab wore partial dentures in the bottom of his mouth. Beginning in August 2006, Abdelwahab requested a liquid dietary supplement that would be easier to eat than the food that is provided. This request was never responded to. In November 2006, Abdelwahab complained during a chronic care appointment for his diabetes that his dentures were causing extremely painful sores on his gums. Upon examination by a nurse practitioner, Abdelwahab was found to have three ulcerations in his lower gingival area caused by friction from his ill-fitting dentures, and he was instructed not to wear the dentures any longer. The nurse practitioner granted him permission to obtain an additional set of

dentures located in his personal property. Despite receiving a DIHS chrono authorizing him to retrieve dentures from his property, it took more than one month for this to take place. On information and belief, the delay was the result of CCA's failure to accommodate chronos provided to detainees by SDCF medical personnel. Once he obtained the dentures and asked that the new dentures be properly aligned, Abdelwahab was informed that this service is not provided at SDCF. As a result, he continued to wear the old pair of dentures that caused painful sores until the time of his deportation. When apples were substituted for oranges in the diabetic meal that was inconsistently provided to Abdelwahab, he was unable to eat the fruit because of his dental problems. Abdelwahab requested a soft food supplement, such as a liquid protein shake or a banana, but received no accommodation, notwithstanding his serious medical condition.

104. As a result of an accident that occurred while detained at SDCF, plaintiff Marta Monteagudo-Guerrero lost two of her front teeth, exposing the nerve and creating significant pain. Monteagudo-Guerrero asked for a dental crown to protect the area but was refused by the dental assistant because it was a "luxury." Instead, Monteagudo-Guerrero was given a temporary dental prosthesis made of wax that is easily removed, does not completely reduce the pain she regularly experiences, and was once inadvertently swallowed.

105. One former detainee, Roberto Ledda, was transferred to SDCF after having already spent over two years in immigration detention elsewhere. Ledda had neither upper nor lower molars, which made it extremely difficult for him to chew any solid food. After two months of requesting partial dentures through the sick call system, Ledda was told that he would not be eligible for partials until he had been detained at SDCF for a full year; by that time Ledda had already been in immigration detention for just under three years.

C. Mental Health Care

106. In any correctional setting, it is imperative that the mental health staff closely monitor mentally ill patients. This requires not only mental health screening to identify individuals suffering from serious mental illnesses, but also proper monitoring to adequately treat mentally ill individuals whose mental illness may be exacerbated by the experience of confinement. Mental health care is systematically inadequate at SDCF.

107. SDCF is one of very few immigration detention centers that specifically accepts detainees from around the country with serious mental illnesses. Detainees with serious mental health problems that affect their competence are often unable to participate in their removal proceedings. Because immigration detainees are not entitled to government-funded counsel, mentally ill detainees can have a particularly difficult time appearing before the immigration court and pursuing all available appeals. In some instances, immigration judges may administratively close removal proceedings in order to permit ICE and USPHS time to restore a detainee to competence. At other times a detainee may receive a final order of removal, but because of the significant problems created by his/her mental illness, either the detainee will be unable to assist the government in obtaining travel documents to effect removal or the country of removal will simply refuse to accept the detainee. In such cases, individuals may spend years in immigration custody with no clear end in sight.

108. Defendants place detainees with mental illnesses in a variety of different housing locations at SDCF. L Unit consists of two pods, each of which contains a series of beds located in a single common room. F Med, also called "F Seg," contains individual segregation cells in which detainees with serious mental health problems are housed. Some of the cells in F Med contain a bed, while others contain no bed; in those cells in which detainees do not have a bed they sleep either on a plastic "boat," or on the floor. Detainees in F Med receive showers three days a week and rarely, if ever, receive exercise. SDCF also has two "rubber rooms," which are fully padded rooms containing no fixtures that have an uncovered hole in the center of the floor to be used as a toilet. The "rubber rooms" are ostensibly used to monitor detainees for possible suicidal ideation.

109. Aside from rooms dedicated for use by detainees with serious mental illnesses, mentally ill detainees are regularly housed in the general population. Disturbances in the housing unit often result from such placements, caused in part by behavioral problems that lead to conflicts with detainees and guards. Plaintiffs Rigoberto Aguilar-Turcios and Sylvester Owino have been kept awake at night and subjected to extreme distress due to the excessive noise generated by mentally ill detainees housed in the general population who bang on the doors and

walls of their cells throughout the night. Aguilar-Turcios and Owino have both filed grievances complaining about the placement of detainees with serious mental illnesses in general population, but neither has received a response to these grievances. Aguilar-Turcios and Owino are also subjected to unsafe and unsanitary conditions created by a mentally ill detainee in their pod who regularly smears feces on the walls of his cell.

110. Mentally ill detainees who cause problems in general population may then be placed in administrative segregation cells, or charged with disciplinary violations and held in segregation cells, which results in additional problems for their regular monitoring and treatment by mental health staff. Mentally ill detainees who are housed in segregation pods such as A/B or A/C receive diminished access to mental health professionals, who are located in a different part of the facility. Moreover, isolation exacerbates mental illness. In May 2007, Aguilar-Turcios was sent to segregation for a disciplinary infraction. During that time, he was routinely disturbed throughout the day and kept awake throughout the night by mentally ill detainees in nearby segregation cells who banged loudly on their cell doors and walls. Aguilar-Turcios was further disturbed by the noxious smell created by one such detainee who repeatedly smeared feces on the walls of his cell. On one occasion, that detainee was left for several days in his cell with no clothing. Aguilar-Turcios complained to CCA officers about the behavior of mentally ill detainees in segregation and was told by one officer that he should "enjoy" it, because "it is just part of the show."

111. Plaintiff Ngugi suffers from bipolar disorder, and has taken medications for this condition for several years; because of inadequate mental health care at SDCF, Ngugi is currently receiving no treatment for his mental health condition. When Ngugi arrived at SDCF on December 30, 2005 and went through intake on December 31, he reported a history of bipolar disorder and stated that he was taking Depakene, a psychotropic medication, twice daily. For the next four days, Ngugi received no medication. On January 3, 2006, without seeing Ngugi, defendant Lusche filled out a one-week prescription for valproic acid, the generic form of Ngugi's medication, and scheduled to see Ngugi on January 6. Lusche did not see Ngugi on January 6. Over the next eight weeks, defendant Lusche and other SDCF medical personnel

repeatedly renewed Ngugi's prescription for valproic acid despite the fact that Ngugi had not yet met with a mental health professional. Several appointments for medication evaluation and treatment—including a February 15 appointment with defendant Scott J. Salvatore, psychologist—were cancelled without explanation. Throughout the time that he has been detained at SDCF, Ngugi has never received regular mental health counseling or treatment in connection with his past medical history of bipolar disorder. In June 2006, because of the completely inadequate psychiatric treatment that he has received at SDCF and the undesirable side effects of his medication, Ngugi began refusing medication for his bipolar disorder. Since that time he has received absolutely no mental health follow-up.

112. Plaintiff Woods suffers from depression and bipolar disorder. Although she has seen mental health professionals, her visits rarely last longer than five minutes and are insufficient to ensure proper care. At times, Woods has gone one month without seeing a mental health professional. Her medical records do not indicate a treatment plan, and changes in her medication have been made without any written explanation for the modifications.

113. Plaintiff Fomai also suffers from severe depression and is currently experiencing suicidal thoughts. Fomai has a history of suicidal thoughts, and was placed in a padded room while in state prison after slicing his wrists. Despite numerous requests to meet with mental health staff at SDCF, Fomai has received no mental health care at SDCF. He is experiencing significant anxiety in connection with the facility's refusal to provide him with hormone therapy and his lack of access to information about and treatment for his serious medical conditions.

114. All forms of detention can exacerbate depression. One aspect that separates the immigration detainee's experience from that of a convicted prisoner is that the immigration detainee is not serving a definite term of incarceration, so it is difficult to look forward to a projected release date.

115. On July 31, 2003, Bill Roy Kurt Marion, a Canadian national detained at SDCF, committed suicide. According to the San Diego County Medical Examiner's investigative narrative, Marion was known to be suffering from depression and was extremely agitated about the length of time he was being detained. Days before he committed suicide by hanging, other

detainees noticed that Marion had a large red mark on his anterior neck, and asked Marion's cellmate whether he had tried to commit suicide. Because Marion was demonstrating signs of severe distress, his cellmate notified CCA correctional officers that he required attention, but nothing was done. Marion hanged himself with a bed sheet tied to the bunk bed. An after action review regarding the suicide was conducted and produced to the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Office of Detention and Removal.

116. Although mental health services are often required for prisoner populations, immigration detainees have unique needs pertaining to mental health care. For many detainees, especially those who are fleeing persecution and torture, the detention experience exposes them to significant re-traumatization. One study of detained asylum seekers found that 86 percent of those surveyed manifested symptoms of clinical depression, more than three quarters had anxiety-related symptoms, and half exhibited signs of post-traumatic stress disorder. Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention on Asylum Seekers* (Boston and New York City, June 2003), 57, available at http://physiciansforhumanrights.org/library/report-persprison.html.

117. Plaintiff Ali Nesa applied for asylum from Bangladesh, where his mother was murdered before his eyes. Despite being diagnosed with depression and post-traumatic stress disorder, Ali Nesa has rarely spoken with SDCF mental health staff in the two years he has been detained. Members of the medical staff at SDCF have recognized that Ali Nesa is at increasing risk of suicide, yet he has received little attention from mental health professionals and is not receiving counseling services or medication for his mental health condition.

D. Vision Care

118. There is virtually no vision care available at SDCF for immigration detainees. This is due in large part to the official policies of DIHS, pursuant to which virtually no vision care services are covered. With limited exceptions, the DIHS Benefits Package explicitly states that "[e]yeglasses are *not a covered benefit*." (Emphasis in original). Although detainees who experience "*[a]cute* vision loss" may be approved for referrals to an ophthalmologist, detainees whose eyesight deteriorates during their detention will not be authorized for an eye exam.

Reading glasses are similarly not covered.

119. Plaintiff Aguilar-Turcios is near-sighted and has not received an eye exam since entering ICE custody in November 2005. Despite the fact that his vision has worsened, he regularly experiences migraine headaches, and he suffers from extremely dry eyes, his requests to see an eye doctor have all been denied. In response to a sick call request for glasses and eye drops, Aguilar-Turcios was informed on July 5, 2006 by Cindy Butler, R.N., that glasses are not a covered benefit and that the eye drops provided by the medical department are the same as the ones that can be purchased in the commissary; so if they are ineffective, Aguilar-Turcios should not purchase them.

120. Plaintiff Owino's vision has also deteriorated during his detention, to the point where he can no longer see distances and has difficulty reading or doing legal work. He also suffers from recurring severe headaches and dry eyes. Owino has filed multiple grievances pertaining to his vision problems, all of which have been denied. In response to one grievance Owino filed regarding the lack of vision care, physician assistant Lusche responded: "Mr. Owino is requesting eye glasses. Eye glasses are not included in the health benefits package. I explained to Mr. Owino that he may have glasses, including non-prescription reading glasses, sent to him from a friend or family member." In response to Owino's appeal of the grievance, in which he stated that without a proper eye exam he cannot determine what kind of glasses, if any, he requires, defendant Warden Easterling responded simply: "I concur with PHS."

121. Jose Arias-Forero, a former SDCF detainee, was approved for a visit to an eye specialist in June 2005. Upon examination by the eye doctor in July 2005, Forero was found to have early cataracts, ocular hypertension, and was suspected to be developing glaucoma. The eye doctor prescribed medicated eye drops and ordered that Forero return in three months. Forero's appointment was cancelled by SDCF staff, and he was informed that the government no longer provides eye doctors to immigration detainees. The medicated eye drops that had been prescribed by the eye specialist were discontinued. Despite regular requests to return to the eye doctor for a follow-up appointment, including complaints of increasing problems over a period of months with his peripheral vision, Forero was only returned to the eye doctor in September 2006, one

year after the date on which he was supposed to have a follow-up appointment. In advance of the appointment, physician assistant Lusche once again prescribed Forero the medicated eye drops that had been prescribed 15 months earlier by the eye specialist, then discontinued by SDCF staff.

122. Essential vision care is also denied to detainees suffering serious chronic conditions. This is a particularly serious problem for diabetics, who require annual eye examinations by a trained specialist to help ensure retinal health and prevent blindness. The risk of diabetic retinopathy is increased in individuals whose diabetes is poorly controlled, as evidenced by elevated blood sugar levels, and whose hypertension is poorly controlled. Plaintiff Tinoco suffers from both diabetes and hypertension, and has been detained at SDCF for nearly four years. Nearly one year after Tinoco first arrived at SDCF, he was taken to see an eye specialist for a retinal exam and ocular health screening. The eye doctor recommended reading glasses, but Tinoco was subsequently refused reading glasses by SDCF personnel. Nearly three years passed before Tinoco was returned to an eye doctor for an examination. Tinoco's diabetes and hypertension have both been poorly controlled at various points during his detention, and on at least two occasions eye examinations by defendant Lusche have revealed abnormalities. On March 14, 2006, early cataract formation was noted, but no further mention of it appears in Tinoco's records. On July 14, 2006, Tinoco was found to have papilledema, which is evidence of serious hypertension that causes a swelling of the optic nerve. Again, no further mention of it appears in the records, and no attempt to refer Tinoco to an eye specialist was made. In March 2007, Tinoco finally was returned to an eye doctor, who again recommended that he receive reading glasses. When Tinoco spoke with a correctional officer about the doctor's recommendation, Tinoco was informed that "it is pretty impossible to issue glasses."

E. Fatal Consequences

123. The failure to provide adequate medical care to detainees has resulted in multiple deaths at SDCF. In July 2003, a detainee known to be suffering from depression committed suicide by hanging at SDCF. *See* ¶ 115, *supra*.

124. On January 4, 2005, a detainee named Ignacio Sarabia-Villasenor died of a heart attack or seizure while in the shower at SDCF. When Sarabia fell to the ground and was having

serious difficulty breathing, other detainees called for assistance from the CCA correctional officer who was observing the pod from a secure surveillance area. After several minutes, the officer reported to the pod and immediately ordered the pod on lockdown. Once all of the detainees were locked in their cells, the officer stood over Sarabia for at least 15 minutes until medical personnel arrived. Although Sarabia's chest was still heaving and it was clear he could not breathe, no one began cardiopulmonary resuscitation (CPR) until approximately 25 minutes after Sarabia collapsed. Detainees were shouting for the officers to do something, but they were ordered to remain quiet or be sent to the hole (*i.e.*, segregation). By the time someone finally initiated CPR Sarabia was already dead.

125. Early in the morning of June 27, 2006, in Unit C, Pod J, a detainee named Yusif Osman died of coronary vasculitis while locked in his cell. Osman was a national of Ghana who had complained of chest pain one month prior to his death. Plaintiff Ali Nesa, who was housed in a nearby cell, urged Osman, his friend, to visit the doctor. On information and belief, when the medical staff saw him, Osman was told that there was nothing wrong with him, and that he probably ate too much. Osman received no medication for his chest pain. During the night on which he died, Osman and his cellmate banged on the cell door and used the intercom system to call for help. According to the medical examiner's investigative narrative, Osman awoke his cellmate and complained of chest pains. Osman's cellmate then used the intercom system to notify the control officer that Osman was diabetic and was unable to walk. The control officer notified a pod officer who walked by Osman's cell and saw him kneeling on the floor of the cell. Osman's cellmate again explained that Osman was diabetic and was unable to walk. The officer notified the control officer, who contacted the medical department. The medical unit supervisor pulled Osman's chart, which allegedly contained no documented medical history, and subsequently informed the control officer to instruct Osman to file a written sick call request. By the time any officer returned to check on Osman he was unresponsive and cool to the touch. More than one hour passed between the time Osman and his cellmate first reported the medical emergency and the time that a 911 call was placed to American Medical Response.

III. Class Action Allegations

126. Plaintiffs Woods, Aguilar-Turcios, Ali Nesa, Carcamo, Ngugi, Monteagudo-Guerrero, Tinoco, Owino, Vanegas, Toro, and Fomai bring claims based on the Fifth Amendment to the United States Constitution on behalf of themselves and all others similarly situated, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

127. Plaintiffs seek to represent a class consisting of "all immigration detainees in ICE custody who are now or in the future will be confined at San Diego Correctional Facility" (hereinafter the "SDCF Class"). As a result of their confinement at SDCF, members of the SDCF Class including plaintiffs have been, are, and will be subjected to violations of their constitutional rights as described in this Complaint. Plaintiffs represent a class of persons seeking declaratory and injunctive relief to eliminate or remedy defendants' policies, practices, acts, and omissions depriving them of those rights.

128. There are currently approximately 600-800 male and female immigration detainees confined at SDCF. The proposed SDCF Class is so numerous, and membership in the class so fluid, that joinder of all members is impracticable. Because ICE detainees are frequently removed from the country, released from detention, and transferred between SDCF and other facilities that house immigration detainees, the membership of the class changes constantly.

129. All SDCF Class members are equally subject to the conditions described in this Complaint. The policies and practices of defendants to which all class members are equally subject include, but are not limited to:

- defendants' policies of failing to maintain sick call request forms together with patient medical records and to respond to sick call requests in a timely manner;
- defendants' policy of failing to monitor detainees with chronic conditions;
- defendants' policy of failing to maintain an adequate system to provide prescription medication refills and to ensure continuity of treatment;
- defendants' policy of failing to make timely referrals for specialty care;
- defendants' policy of denying necessary medical care, including dental and vision care, in accordance with official DIHS policies;

- defendants' policy of failing to hire sufficient staff to care for the serious dental needs of detainees; and
- defendants' policies of failing to provide adequate screening and monitoring of detainees with serious mental health needs and to provide safe and appropriate housing for such detainees.

130. Common questions of law and fact exist as to all SDCF Class members. These common questions include, but are not limited to:

- whether defendants provide systemically inadequate medical, mental health, dental, and vision care to class members;
- whether defendants have placed class members at unreasonable risk of developing serious medical, mental health, dental, and vision problems;
- whether necessary detainee health care is delayed or denied by official DIHS policies without medical justification;
- whether plaintiffs' conditions of confinement are effectively punitive;
- whether defendants' conduct violates the Fifth Amendment; and
- whether defendants' conduct shows a pattern of officially sanctioned behavior that violates plaintiffs' rights and establishes a credible threat of future injury.

131. Plaintiffs are immigration detainees with a range of serious health care needs typical of the SDCF Class as a whole. Plaintiffs and the class they represent have been directly injured by defendants' unconstitutional policies, practices, acts, and omissions with respect to health care, and are all at risk of future harm from continuation of these policies, practices, acts and omissions.

132. Plaintiffs will fairly and adequately represent the interests of the SDCF Class. Plaintiffs have no interests separate from those of the SDCF Class, and seek no relief other than the relief sought on behalf of the class. Plaintiffs' counsel are experienced in class action, civil rights, immigrants' rights, and conditions of confinement litigation.

133. Defendants have acted and refused to act on grounds generally applicable to the SDCF Class, thereby making appropriate final injunctive relief and declaratory relief with respect

to the class as a whole.

CLAIM FOR RELIEF
(Fifth Amendment to the U.S. Constitution)

134. Defendants' failure to treat plaintiffs' serious medical, mental health, dental, and vision needs causes avoidable pain, mental suffering, and deterioration of plaintiffs' health. In some cases, it has resulted in premature death.

135. Defendants' policies, practices, acts, and omissions place plaintiffs at unreasonable, continuing and foreseeable risk of developing or exacerbating serious medical, mental health, dental, and vision problems.

136. Defendants' policies, practices, acts, and omissions pertaining to the failure to provide adequate care to plaintiffs' serious health needs are not reasonably related to any legitimate governmental objective.

137. Defendants' policies, practices, acts, and omissions constitute de facto punishment without due process of law in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

138. Although plaintiffs, as civil immigration detainees rather than convicted prisoners, need not prove deliberate indifference to establish a violation of their substantive due process rights, defendants' policies, practices, acts, and omissions with respect to the provision of medical care at SDCF nevertheless constitute deliberate indifference to plaintiffs' serious medical needs.

139. As a proximate result of Defendants' unconstitutional policies, practices, acts, and omissions, plaintiffs are suffering and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury and the risk of death. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive relief sought by plaintiffs is necessary to prevent continued and further injury.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

a. Issue an order certifying this action to proceed as a class action pursuant to Rules

23(a) and (b)(2) of the Federal Rules of Civil Procedure;

b. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;

c. Issue a judgment declaring that defendants' policies, practices, acts, and omissions described herein are unlawful and violate plaintiffs' rights under the Constitution and laws of the United States;

d. Permanently enjoin defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting plaintiffs to the unconstitutional conditions described herein, and issue injunctive relief sufficient to rectify those conditions;

e. Grant plaintiffs their reasonable attorney fees and costs pursuant to 28 U.S.C. § 2412, and other applicable law; and

f. Grant such other and further relief as this Court deems just and proper.

Dated: June 13, 2007

Respectfully submitted,

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