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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

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APR 13 2007

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY DM DEPUTY CLERK

JOSEPH GALLOWAY, individually and  
on behalf of all those similarly situated,

Plaintiff

v.

STACEY DELGADO, individually and  
in her official capacity,

MRS. HENRY, in her capacity as executor of  
the estate of Mr. Henry,

MR. WILLIAMS, individually and in  
his official capacity,

MR. SHACKLEFIELD, individually and  
in his official capacity,

MR. RANGEL, individually and in his  
official capacity,

MR. TREVIÑO, individually and in his  
official capacity,

MANUEL TORRES, individually and in his  
official capacity,

MR. BRIGGS, individually and in his  
official capacity,

MR. WATSON, individually and in his  
official capacity,

ROBERT McQUEEN, individually and  
in his official capacity,

VERONICA GAGNE, individually and  
in her official capacity,

DON BRANTLEY, individually and in  
his official capacity,

LINDA REYES, individually,

DWAYNE HARRIS, individually and in

CIVIL ACTION NO.

**A07 CA276 LY**

**COMPLAINT**

his official capacity,

DWIGHT HARRIS, individually,

**BART CALDWELL, individually and in  
his official capacity,**

**J. McDANIELS, individually and in her  
official capacity,**

MS. KITCHENS, individually and in her  
official capacity,

TERI WILSON, individually and in her  
official capacity,

GERALDO PENUELAS, individually  
and in his official capacity,

**DON FREEMAN**, individually and in his  
official capacity,

BLU NICHOLSON, individually and in his official capacity;

**JEROME PARSEE, individually,**

LYDIA BERNARD, individually and in  
her official capacity,

CHESTER CLAY, individually and in his  
official capacity,

KERRI DAVIDSON, individually and in  
her official capacity,

ED OWENS, in his official capacity,

**UNKNOWN TYC STAFF, in their official and individual capacities; and,**

TEXAS YOUTH COMMISSION,

## Defendants

## COMPLAINT

Plaintiff Joseph Galloway, individually and on behalf of those similarly situated who were, are, and will be incarcerated in the facilities of Defendant Texas Youth Commission, files this suit against the Defendants and would show:

### STATEMENT OF THE CASE

1. Plaintiff Joseph Galloway, individually and on behalf of those similarly-situated, complains that the Texas Youth Commission ("TYC") and its current and former staff routinely and daily violated the federal statutory and constitutional rights of children incarcerated in TYC facilities, and, in short, relegated their youthful lives to a living hell.

2. Defendants routinely denied Joseph and other children with qualified disabilities the reasonable accommodations to which they are entitled under Chapter 121 of the Texas Human Resources Code ("Chapter 121"), Tex. Hum. Res. Code Ann. § 121.001 *et seq.*, Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 ("ADA"), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, resulting in physical injuries and continued incarceration.

3. TYC employees, through custom, policy, and individual action, routinely physically and sexually assaulted, and allowed other inmates to assault, Joseph and other children, denied them due process of law under the Fourteenth Amendment to the United States Constitution, denied their right to access to the courts under the First, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 13 of the Texas Constitution, subjected them to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article 1, Section 13 of the Texas Constitution, compelled them to bear witness against themselves in violation of the Fifth and Fourteenth Amendments of the

United States Constitution and Article 1, Section 10 of the Texas Constitution, and retaliated against them for speaking about the problems in TYC in violation of the First and Fourteenth Amendments to the United States Constitution and Article 1, Section 8 of the Texas Constitution. These claims are brought through 42 U.S.C. § 1983.

4. Defendants Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, and Reyes conspired for years to suppress reports of the violations of Joseph and other children's statutory and constitutional rights. These claims are brought pursuant to 42 U.S.C. § 1985(2).

#### JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiff's claims under 28 U.S.C. §§1331, 2201.

6. Venue is proper in this Court under 28 U.S.C. §1391(a)(1) & (2) because TYC's central office and operational, decision-making center is located in this judicial district, because some of the Defendants reside in this district, and because incidents at bar took place within this judicial district. Plaintiff further invokes supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367(a) to consider his state law claims.

#### PARTIES

7. At the time of the below-described incidents, Joseph was an inmate in TYC custody. Similarly situated-children remain in TYC custody, although Joseph has been released and now resides in Houston County, Texas.

8. Defendant TYC is an agency of the State of Texas.

9. In all actions described herein, Defendants Delgado, Williams, Shackelfield, Rangel, Treviño, Torres, McQueen, Briggs, Watson, Gagne, Brantley, Reyes, Dwayne Harris, Dwight Harris, Caldwell, McDaniels, Kitchens, Wilson, Penuelas, Freeman, Nicholson, Parsee,

Bernard, Clay, and Davidson each were acting under color of law and pursuant to legal authority. Each was an employee or contractor of TYC and, as such, were responsible for upholding the laws of the United States and the State of Texas. They each are sued for damages, injunctive, and declaratory relief.

10. Defendant Owens is the executive director for TYC. He is sued for injunctive and declaratory relief only. He can be served at TYC's central offices, 4900 N. Lamar Blvd., Austin, TX 78751.

11. Mr. Henry died shortly after committing the violations of Joseph's rights alleged below. Mr. Henry's wife, Mrs. Henry, is the executor of his estate. *See* Tex. Probate Code § 77(b). Joseph may "enforce the payment [of a claim] by suit against the independent executor" pursuant to Texas Probate Code § 147. Mrs. Henry may be served at the Giddings State School, 2261 James Turman Rd., Giddings, TX 78942.

12. Defendant Stacey Delgado is an employee of TYC. She can be served at the Giddings State School.

13. Defendant Williams is an employee of TYC. He can be served at the Marlin Orientation and Assessment Unit, 2893 State Highway 6, Marlin, TX 76661-6558.

14. Defendant Shacklefield is an employee of TYC. He can be served at the Marlin Orientation and Assessment Unit.

15. Defendant Rangel is an employee of TYC, and can be served at the Giddings State School.

16. Defendant Treviño is an employee of TYC. He can be served at the Evins State School, 3801 East Monte Cristo Rd., Edinburg, TX 78541.

17. Defendant Manuel Torres is an employee of TYC. He can be served at the Evins

State School.

18. Defendant Robert McQueen is an employee of TYC. He can be served at the Crockett State School, 1701 S.W. Loop 304, Crockett, TX 75835.

19. Defendant Veronica Gagne is an employee of the University of Texas Medical Branch ("UTMB"), which contracts with TYC to provide medical care to incarcerated children. She can be served at the Crockett State School.

20. Defendant Mr. Briggs is an employee of TYC. He can be served at the Crockett State School.

21. Defendant Mr. Watson is an employee of TYC. He can be served at the Crockett State School.

22. Defendant Don Brantley is an employee of TYC. He can be served at TYC's central offices, 4900 N. Lamar Blvd., Austin, TX 78751.

23. Defendant Linda Reyes can be served at 706 S. McCarty Ave, Apt. B, Eagle Lake, TX 77434-3212.

24. Defendant Dwayne Harris is an employee of TYC, and can be served at TYC's central offices.

25. Defendant Dwight Harris can be served at 2606 Waterwell Ln., Austin, TX 78728-4420.

26. Defendant Bart Caldwell is an employee of TYC, and can be served at the Evins State School.

27. Defendant J. McDaniels is an employee of UTMB. She can be served at the Crockett State School.

28. Defendant Ms. Kitchens is an employee of UTMB. She can be served at the

Crockett State School.

29. Defendant Teri Wilson is an employee of TYC. She can be served at the Crockett State School.

30. Defendant Geraldo Penueles is an employee of TYC. He can be served at the Evins State School.

31. Defendant Don Freeman is an employee of TYC. He can be served at the Crockett State School.

32. Defendant Blu Nicholson is an employee of TYC. He can be served at the Crockett State School,.

33. Defendant Jerome Parsee can be served at 1410 Lorene Ln., Marlin, TX 76661-9764.

34. Defendant Lydia Bernard is an employee of TYC and can be served at TYC's central offices.

35. Defendant Chester Clay is an employee of TYC and can be served at TYC's central offices in Austin.

36. Defendant Kerri Davidson is an employee of TYC and can be served at TYC's central offices in Austin.

#### CLASS ACTION

37. Joseph and the similarly-situated class members comprise a class of approximately 4,700 individuals who are currently or were recently in TYC custody.

38. Joseph and the class members meet all the prerequisites for a class action as provided under Federal Rule of Civil Procedure 23 for injunctive and declaratory relief.

39. The class for which Joseph and the class members comprise is so numerous that

joinder of class members is impracticable.

40. Questions of law and fact are common to this class, namely:

- a. TYC denies them due process of law through its indeterminate sentencing scheme;
- b. TYC denies them access to courts through its policies and procedures;
- c. TYC violates their protections against self incrimination by requiring confessions as part of their "therapy;"
- d. TYC fails to protect them from harm, in violation of their Eighth and Fourteenth Amendment rights; and,
- e. Defendants Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, and Reyes conspired to suppress reports of physical and sexual abuse occurring in TYC facilities.

41. Joseph and the class member's claims as described herein are typical of the claims of the class. Together, Joseph and the class members support their theories for injunctive and declaratory relief on the same legal theories alleged in this case.

42. Joseph and his counsel will fairly and adequately protect the interests of the other class members. Joseph's counsel, James C. Harrington, Wayne Krause, Sheri Tolliver, and Scott Medlock, are capable of zealously representing class interests and are qualified to litigate this type of action. Joseph and his counsel will adequately assert and support the legal claims that form the basis of this action. Joseph and the students will benefit equally by virtue of this action if the Court recognizes and vindicates their federal statutory and constitutional rights.

43. This class action may be properly maintained under the Federal Rules of Civil Procedure 23(b)(2) because Defendants' conduct pursuant to their procedures, policies, and/or practices denied Joseph and the class members their constitutional rights and final declaratory relief will settle the legality of the Defendants' challenged procedures, policies, and actions for the class as a whole.



44. Joseph also brings his own claim for damages as an individual for the physical and sexual abuse he individually suffered while in TYC custody, separate from his claims as class representative for injunctive and declaratory relief. He seeks no damages for the class.

#### FACTS

45. Joseph is nineteen years old and has been in TYC since he was fifteen. When he was eight years old, he spent time in a state mental hospital, where he was treated for bipolar disorder. Joseph is a thin teenager and also has Tourette's Syndrome and Attention Deficit/Hyperactivity Disorder (ADHD).

46. Tourette's Syndrome is characterized by a collection of symptoms, including involuntary movements and sounds and involuntary compulsive rituals and behaviors. People with Tourette's Syndrome experience obsessions, compulsions, inattention, impulsivity and mood variability. The disability can cause people to involuntarily move, make loud noises, blink, nod, shake, and curse, and may manifest itself more acutely during adolescence. Tourette's Syndrome is a mental impairment that substantially limits one or more major life activities.

47. Joseph has been taking some form of medication for his disabilities since he was five years old. He currently takes Clonidine to control his Tourette's Syndrome. Clonidine is a powerful drug that can cause drowsiness and dizziness.

48. Joseph has been incarcerated in four different TYC facilities: Marlin Orientation and Assessment Unit ("Marlin"), Giddings State School ("Giddings"), Evins State School ("Evins") and Crockett State School ("Crockett"). He was most recently incarcerated in Crockett.

49. When children enter TYC, they are initially processed through Marlin. Most

children spend about two months in Marlin before they are sent to other facilities. Joseph spent approximately forty-five days at Marlin.

50. During their time at Marlin, children are supposed to be tested and evaluated to determine how they will be rehabilitated. Children are provided with an "individualized case plan," or ICP.

51. TYC assembled Joseph's ICP without input from him or his parents. In order to formulate his ICP, it limited all its testing and assessment on Joseph to his responses to a computer program. He and his parents never spoke with a TYC counselor or caseworker about the ICP, and TYC only tested Joseph to see if he had a learning disability or was mentally retarded. The ICP did not consider Joseph's existing disabilities.

52. Most children in TYC are incarcerated for an indeterminate sentence. Theoretically, children are only incarcerated until they are rehabilitated. To be paroled, a child has to complete their "phases" in TYC's "Resocialization©" program. There are five phases (0-4), and each phase has three components (Academic, Behavior, and Correctional). A child can complete one of their phases, and not advance in the others. A child could succeed academically but remain in TYC, if TYC officials arbitrarily determine the child has a "behavior problem."

53. Defendants Brantley and Reyes developed the "Resocialization©" program, and retain proprietary rights in the program. Brantley and Reyes personally profit from TYC's decision to use the "Resocialization©" program, and have a personal financial interest in its continued use.

54. A disciplinary action against a youth is a "225," named for the number of the form completed. A 225 can be either a "category 1" or "category 2." Category 1 is "major," and would include assaulting a fellow student or an officer. A "category 2" is "minor," and would

include using foul language.

55. TYC intentionally discriminates against children with disabilities by assigning them 225s for manifestations of their disability. TYC has given Joseph disciplinary actions for:

- a. Falling asleep after taking his medication which makes him drowsy;
- b. Playing with a banana;
- c. Sitting in the wrong seat during church;
- d. Wearing his socks pulled down;
- e. Wearing pants that were too large, although TYC provided the pants to him;
- f. Wearing an extra shirt when he was cold;
- g. Wearing a long sleeve shirt when he was cold;
- h. "Acting out" because of his disability;
- i. Having cornflakes in his bowl of milk when he was on a "soft food" diet;
- j. Looking out the window during class; and,
- k. Shaking hands with another child.

56. To complete the "B" phase, children must pass through four levels. To achieve the "B-1" phase, a child cannot have more than seven "category 2"s and no "category 1"s in a month. To achieve the "B-2" phase, a child cannot have more than five "category 2"s in a month and no "category 1"s. To achieve the "B-3" phase, a child cannot have more than three "category 2"s, and no more than one "category 2" to achieve the "B-4" phase. The "B" phase is reviewed every 30 days, and each month's number of 225s determines "graduation" to the next phase. A child can only be promoted through one "phase" each month, so it will take a child a minimum of four months to be promoted through the "B" component. TYC refused to promote Joseph through his "B" phase for being "playful and immature," even though Joseph's disability

and age contributed to his “playful and immature” behavior.

57. To complete the “C” phase, a child must identify the “errors in [their] thinking”. Completion of the “C” phase does not constitute actual mental health therapy because TYC “therapists” only require students to memorize and recite a “script.” TYC “therapists” are not credentialed to provide mental health therapy or trained to recognize children’s mental disabilities.

58. “C-1” requires memorizing “nine thinking errors.” “C-2” requires a child to write and memorize their “life story.” “C-3” requires a child to talk about their “offense.” This involves other children ridiculing the student during group therapy. The “therapist” reads the group the police investigation statements and victim impact statements from the student’s offense, although these documents are confidential under Texas Government Code § 508.313. The other members of the group then “make fun” of the student, and a child advances to the next phase only when they show sufficient “empathy,” as arbitrarily determined by TYC. “C-4” requires developing a “success plan,” which outlines what the child will do when they leave TYC custody. Despite requiring children to formulate “success plans,” TYC provides children with no support once they leave prison.

59. TYC requires children to “confess” to elements of their offenses that were not the subject of findings by the trial court. In some cases, these “confessions” are later used against the child or the child’s parents in Child Protective Services investigations or future criminal proceedings. If a child’s confession does not satisfy TYC, the sentence can be extended. A child will only be released when TYC is satisfied the child has fully “confessed,” even if this means admitting things that are not true, were not found by the family court that sentenced the child, and could subject the child or parents to future legal consequences.

60. Due to the discrimination against Joseph's disability and violations of his due process rights, Joseph should have been released years earlier. Instead, TYC illegally held him captive in its hellish system, thereby depriving him of his youth and subjecting him to abuse by its employees and detainees.

61. Joseph completed his "phases" in 2006 but his caseworker, Defendant Penuelas, admitted that Defendants "never put it in the computer system." TYC does not have centralized record keeping or data collection indicating what phases have been completed. TYC only keeps centralized records of the number of 225s a student has accumulated. When children are transferred between TYC facilities, their records do not always transfer with them. TYC keeps the records in a physical file that guards are required to move with the child during transport. Records are frequently lost because of this system. Transfer between facilities can dramatically extend a child's incarceration. This basic record keeping failure requires children to complete their "phases" multiple times and delays their release from TYC. TYC should have released Joseph long ago. But even by its own discriminatory practices, the latest release date would have been October 26, 2006. TYC failed to release him until April 5, 2007.

62. When Joseph arrived at Crockett, he told officials he had completed his "phases" and should be released. The final steps of Joseph's "reintegration" had already been completed. Defendants told Joseph he was "making excuses" for why he had not been released and that it was his fault he was still in TYC.

63. TYC has taken Joseph's "phases" away without due process. Removing his phases was arbitrary and capricious. Joseph once went from B-4 to B-1 without due process, even though it originally had taken him fourteen months to achieve B-1. When a "phase" is taken away, there is usually no due process hearing. Joseph was never provided with counsel for a

hearing, and, when he was a minor his parents were never informed of the hearings.

64. TYC only provides a due process hearing when a student is given a "category 1" 225, even though "category 2" 225s are frequently used to extend a child's sentence. When a "level 2" hearing is held for a "category 1" 225, the decision-makers are the superintendent, program associates, and caseworker at the facility. These individuals are not impartial, and frequently are the same TYC officials whose allegations form the basis of the complaint. When hearings are held, staff frequently refuse to allow witnesses to be called who would support a child's position.

65. Most children are told they will receive nine months in TYC custody when a judge sentences them. When children arrive in TYC custody, TYC staff uniformly tell them they will serve at least two years. When a child complains that a judge only sentenced him to nine months, TYC staff have responded, "Judges don't make rules for TYC. TYC makes its own rules."

66. While he was at Marlin, Joseph was sent to security for "disrespecting staff" in Spring 2003. Disturbed by the combination of his incarceration, difficult past, disabilities, and changed circumstances, he had been reduced to beating on the wall in his cell. The security director at the prison taunted Joseph, cajoling him to "keep standing up" and "keep beating on that."

67. Defendants Shacklefield and Williams were called to take Joseph out of his cell. They came in the cell and hit Joseph in the face with their riot shield, breaking his nose and causing serious physical injury. Defendants knocked Joseph unconscious. He woke up in a pool of his own blood, with more running down his face and all over his shirt. Defendants carried him out of the cell in leather restraints to the infirmary.

68. In the infirmary, TYC nurses told Joseph his nose was broken, but only gave him toilet paper to stop the bleeding. When he was taken back to his cell, he saw in the mirror his nose was crooked and continuing to bleed. Defendants having been deliberately indifferent to his injuries, Joseph had to pop his nose back into place himself. TYC videotaped this incident.

69. Because of this incident, Joseph was placed on "BMP," the "Behavior Management Program." BMP is "isolation"—students are taken out of the "dorm" and placed in segregation cells. Students are only supposed to spend two weeks in BMP. Joseph was in BMP for almost three weeks. Children have to "earn their way out" of BMP, as arbitrarily determined by TYC. Only a "level 2" hearing takes place before children are put in BMP. TYC fails to provide parents notice of their children's hearings, and students are not provided counsel before entering BMP. Shacklefield told Joseph he was kept on BMP so long because the "paperwork was lost."

70. Joseph was transferred to Giddings after he left Marlin. He spent approximately three years and three months at Giddings, from mid-2003 until April 2006.

71. When Joseph was first at Giddings, he was living in Dorm 8. Female staff worked in the dorm. Joseph had a job as a "kitchen boy," and would clean up the kitchen, buff the floors and launder clothes from the kitchen.

72. Joseph was putting clothes in the washer when Defendant Delgado approached him. She told him, "It's my turn to touch you." She grabbed his crotch and felt his penis. She started squeezing his penis through his clothes. Delgado deliberately and intentionally performed oral sex on Joseph, even though he was underage and in custody. Delgado intentionally violated Texas Penal Code §§ 21.11 (indecent with a child) and 39.04(a)(2) (improper sexual activity with person in custody).

73. Delgado told Joseph not to tell anyone about what happened. She never worked in



Dorm 8 again after it happened. She had sex with other male inmates at Giddings.

74. Around December 2003, TYC allowed another inmate to rape Joseph at Giddings. Mr. Henry escorted Joseph back to the single cells. When Henry took Joseph to the cells, they were all filled with other detainees. Some inmates were yelling to Henry, "Put him in with me!" and "I want a piece of ass!" Henry chose to put Joseph in a cell with a large, older inmate named Steven, in spite of the fact that Steven yelled at Henry he that planned to rape Joseph.

75. Henry put Joseph in the cell, and made Joseph take off his clothes for a strip search in front of the threatening rapist. Henry forced Joseph to strip and bend over in full view of Steven. Then Henry deserted Joseph while he was putting his clothes back on in the cell.

76. Steven told Joseph to take his clothes back off. Joseph refused. Steven punched Joseph twice in the head. Joseph fell down. Joseph tried to fight back, but Steven was much larger and stronger. Steven turned Joseph around and took off his pants. Joseph told him, "Stop, don't do it." Steven continued punching Joseph. Joseph told him to stop, but Steven sodomized him multiple times, causing serious physical injury.

77. Steven told Joseph, "Don't worry, I won't tell anyone." Joseph was afraid to report what Steven did to him because he would be considered a "snitch," and TYC guards would not protect him from further assault. Joseph spent the next twenty-four hours in the same cell with his rapist.

78. TYC guards, including Henry, are supposed to check the cells every fifteen minutes. Many guards forge their log sheets and only actually perform checks every hour. While Joseph was being raped, TYC guards failed to check his hallway and failed to protect him. Henry was in another hall between two solid doors. Despite knowing Steven planned to rape Joseph, Henry placed Joseph in the cell and left the area. Henry was deliberately indifferent to Joseph's right to



be protected from rape.

79. The same night, a few hours later, Henry took Joseph out of the cell to shower. He saw Joseph's underwear was covered in blood, and asked him, "What's wrong with your ass?" Henry did not report that Joseph may have been sexually assaulted to anyone, even though he had obvious cause to believe Joseph had been raped and even though he had an obligation to report the sexual assault pursuant to Texas Family Code § 261.101. After Joseph showered, Henry returned him to the cell with Steven for another fifteen hours.

80. Steven took Joseph's food that night, so Joseph did not get to eat. Larger, stronger inmates frequently steal food from smaller, weaker students. TYC guards know this takes place, but are deliberately indifferent to it.

81. A few weeks later, Joseph went to the infirmary after complaining of blood in his stool. The nurses failed to report that Joseph may have been sexually assaulted, even though they had cause to believe he was a victim of sexual assault and were required to report suspected child abuse pursuant to Texas Family Code § 261.101. No forensic rape examination was done, and Joseph was only given Metamucil for "constipation."

82. Joseph continues to suffer a serious ongoing physical injury because of Henry's deliberate indifference. A few weeks after Joseph was raped, Henry committed suicide.

83. Records indicate Joseph was also sexually abused by TYC staff during transport between TYC facilities in the back of a van.

84. In February 2006, Joseph attempted suicide twice at Giddings. He was depressed, dwelling on what had happened to him in the hands of Defendants. TYC had caused Joseph to lose his phase and once again did not allow him to go home. He had to call his parents and tell them he would not be coming home again. Joseph felt that he would never get out of TYC.

85. During the first suicide attempt, Joseph cut his wrists several times, causing a physical injury. A guard, Defendant Rangel, found him. Rangel refused to take him to the infirmary. Rangel told Joseph the wounds were "not bad." That night, when the pill call nurse came by, Joseph showed her the wounds were "green," and he was belatedly taken to the infirmary. Joseph still has scars on his wrists from this suicide attempt.

86. During the second attempt, Joseph tried to hang himself. He had taken threads from his mattress and braided them together into a two-foot rope. He tied the rope around his neck, and passed out, causing physical injury. Defendant Dwayne Harris, the security director at Giddings, responded to the cell. He told the guards and nurses Joseph was "faking" and "there's nothing wrong." This time, the nurses took Joseph to the infirmary anyway.

87. TYC does not classify children according to offense or propensity for violence. TYC houses physically small and vulnerable children as young as ten years old in the same "dorms" as much older, larger children, some of whom are twenty years old. TYC houses children accused of non-violent offenses, like graffiti or theft, with others who have been involved in murder or sexual assault.

88. TYC transferred Joseph to its Evins facility in Spring of 2006. TYC moved Joseph to Evins, far away from his family, after Joseph's mother began to complain about the conditions in TYC facilities. Because TYC retaliated against Joseph, his family was not able to see him as frequently as when TYC housed Joseph at Giddings. TYC retaliated against Joseph because he and his family exercised their free speech and expression rights.

89. Most of the students at Evins are members of racial minority groups. Joseph is Caucasian. When Joseph first arrived at Evins, he was placed in protective custody, but then was kicked out by a guard who did not like him.

90. At Evins, TYC staff encouraged students to fight. You have to “prove you are not a bitch.” The United States Department of Justice issued a finding letter in 2007 concluding, “Conditions at Evins violate the constitutional rights of the youth residents .... Children at Evins are not adequately protected from harm.” The Department of Justice wrote:

“Our investigation revealed an unacceptably high rate of youth violence at Evins. The atmosphere at Evins is chaotic and dangerous. Youths frequently fight with each other without detection or intervention by staff. Staff members and youths we interviewed consistently reported that staff members are unable to manage youths’ behavior due to inadequate staffing. According to information provided by TYC, there were 1,025 reported youth-on-youth assaults at Evins in 2005, an average of 2.8 per day. For the first six months of 2006, there were 568 reported youth-on-youth assaults, an average of 3.1 per day. This frequency of assaults is a substantial departure from generally acceptable professional standards. Nationally, facilities comparable to Evins typically report an average of .241 youth on youth assaults per 100 days of confinement which, for Evins, correlates to 1.235 assaults per 100 days of confinement. Thus, the average rate of assaults at Evins is approximately five times the national average.”

Defendant Caldwell is the superintendent at Evins, and is deliberately indifferent to these conditions.

91. At Giddings, TYC guards encourage children to participate in “Gladiator Night.” TYC guards encourage children to tie a sock around their ankles, fight and physically injure other children who try to take the sock off. TYC guards allow inmates to assault and physically injure students who refuse to participate in Gladiator Night. Defendants are deliberately indifferent to children’s rights to be protected from harm.

92. Children in TYC rarely get in trouble for fighting. Joseph recalls the kitchen at Giddings was “like a boxing ring.” Joseph estimates he has been in 60 fights since coming into TYC’s custody. Students are frequently physically injured because of fights in TYC facilities.

93. Joseph has gone to the infirmary many times for black eyes and broken noses from these fights. He has always told the nurses he “fell in the shower” or “ran into my bunk” because

he did not want to be a “snitch.” Nurses failed to question these stories typical of abuse victims, and these incidents were never investigated or reported, even though nurses had a legal obligation to report the incidents under Texas Family Code § 261.101.

94. Staff searched the bunks of Joseph and another child at Evins. Defendant Treviño found a poem with racially charged words in the other child’s bunk. Treviño read the poem aloud to the minority students, intending to incite them to attack Joseph. Treviño threatened Joseph, telling him “you’re public enemy number one” and “this is campus wide.”

95. TYC failed to place Joseph in protective custody, despite the guards’ knowledge threats were made against him. Defendants were deliberately indifferent to Joseph’s right to be protected from harm.

96. That next morning, six unknown assailants attacked Joseph and the other child. One of the assailants was an inmate who was much larger than Joseph. Joseph’s head was smashed on the concrete and he blacked out, suffering a physical injury. He woke up soon, and saw the other student being assaulted. He tried to help him, and was beaten more. He was kicked in the head and mouth, suffering serious physical injuries. When the beating was over, a guard, Defendant Torres, told Joseph, “That’s what you get for writing racist shit.” Treviño and Torres encouraged the other students to assault Joseph, and were deliberately indifferent to Joseph’s right to be protected from physical injury.

97. Joseph suffered physical injuries from the beating—the orbiter bone under his eye was bruised, his jaw was broken, and he suffered a concussion. Yet TYC guards failed to immediately take Joseph or the other child, who also suffered physical injuries, to the infirmary.

98. When Joseph tried to eat breakfast the next morning, he could not do so because of terrible pain in his jaw. His friend had to call security for him, and forty-five minutes later the

nurses responded and took him to the infirmary. Forty-five minutes after that, he was taken to the emergency room in an ambulance, where his jaw was wired shut.

99. Joseph's mother reported the incident to TYC and several law enforcement agencies.

100. A few days after this incident, Joseph was transferred from Evins to Crockett, which is nearer his parent's home.

101. Joseph began feeling nauseous at Crockett. Wire cutters had been given to the security staff in Joseph's part of the prison by the infirmary to cut the wires holding his jaw shut if he needed to vomit, because nausea is a common side effect of the pain medication. Joseph was unable to eat because of the wires, which increased his nausea. When Joseph told the guard he needed to vomit, the guard called Defendant McDaniels in the infirmary. McDaniels told the guard that when Joseph needed to vomit, Joseph did not need to have the wires cut—Joseph could just “hang his head upside down over the toilet, and let the vomit drip out.” Joseph had to hold his fingers down his throat to prevent himself from vomiting, because he believed if he did so he would inhale the vomit and die.

102. Joseph ripped the wires out because they were so painful and he was afraid he could inhale his own vomit. TYC nurses Defendants Kitchens and Gagne refused to give him his prescribed painkillers on the prescribed schedule and were deliberately indifferent to his painful physical injury. TYC gave Joseph three disciplinary actions for this incident, which extended his incarceration. Defendants failed to provide Joseph with due process.

103. Joseph was eventually sent to UTMB in Galveston, where a doctor told him the wires were put in improperly. It took two hours to rewire his jaw. At Evins, he was prescribed Tylenol 3, which contains codeine, and told to take it every three to four hours, or as needed. When he was transferred to Crockett, he was told he could only take it three times a day, and

then was only given half doses. Defendants McDaniels and Gagne refused to give him the medication, despite knowing Joseph was in obvious pain. McDaniels and Gagne were deliberately indifferent to Joseph's serious physical needs.

104. When Joseph was transported to UTMB in Galveston, Defendants Briggs and Watson tightly shackled his legs. The shackles cut deeply into Joseph's legs, and his socks became very bloody. Joseph still has scars on his ankles from these physical injuries.

105. TYC refused to house Joseph in the infirmary while his jaw was wired shut, where he could have been under constant supervision by medical staff. Defendants Gagne, Kitchens and McDaniels were deliberately indifferent to Joseph's serious medical problems by refusing to house him in the infirmary and refusing to cut the wires when he began to vomit.

106. During his incarceration in TYC's custody, some of Joseph's adult teeth grew into his mouth. One tooth came out crooked, and emerged through the gum improperly. TYC knew the tooth needed medical attention, and knew it caused Joseph physical pain and injury. TYC deliberately refused to fix Joseph's tooth.

107. Days before Joseph was released, Defendant McQueen struck Joseph in the jaw. Joseph had picked up a tray to eat out of turn, acting impulsively because of his disability. Rather than follow TYC policy, which requires an attempt at a non-violent de-escalation of a situation, McQueen struck Joseph in the face. Attempting to de-escalate the situation is a reasonable accommodation for Joseph's disability. Joseph suffered further physical injury to his jaw, and was taken to the hospital for testing. Joseph was given three 225s for this incident.

108. After the assault, Joseph asked to speak with his mother and his attorneys. Defendant Wilson told Joseph he would not be allowed to contact his mother or attorney. Wilson threatened Joseph that he would not be released from TYC if he reported this incident.

109. Defendants Freeman and Nicholson put a “hit” out on Joseph shortly before he was released. Freeman and Nicholson told TYC guards and inmates they could assault Joseph without consequence.

110. When Joseph began to discuss what happened to him in TYC with his attorneys, Defendant Wilson refused to allow him to have a confidential attorney/client phone call with his lawyer. Despite requests from his counsel to Defendants Freeman and Wilson for TYC’s policies and procedures related to attorney/client visits and phone calls, these policies were not provided. The first time Joseph’s attorney attempted to speak with him on the telephone, Wilson refused to leave the room and would not allow Joseph to confer with his attorney in private.

111. Joseph’s attorneys mailed him confidential legal documents. Unknown TYC staff opened this mail outside Joseph’s presence, and read the confidential and privileged documents inside. The envelope containing the documents was clearly marked “legal mail” on the front and back, but TYC staff deliberately disregarded these labels.

112. When Joseph told Defendant Wilson he wanted to report this abuse to the TYC hotline, she told him he could not call the hotline. Wilson told Joseph if he reported his abuse, TYC would extend his incarceration.

113. Defendants Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, and Reyes conspired to suppress reports of abuse and civil rights violations in TYC for years. Parsee was arrested for obstruction of justice for his role in this conspiracy. Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley and Reyes were deliberately indifferent to the conditions in TYC that violate children’s statutory and constitutional rights, including Plaintiff’s.



## CAUSES OF ACTION

### I. DUE PROCESS OF LAW

114. TYC and Defendant Owens routinely deprive children in TYC custody of their “phases” without affording them due process of law, as required by the Fourteenth Amendment to the United States Constitution. Assigning a child a 225 will extend the child’s sentence because it prevents them from achieving “phase” “B-4”. “Category 2” 225s are routinely and arbitrarily given to children for trivial “offenses,” which extend the child’s imprisonment.

115. TYC and Defendant Owens routinely deprive students of earned “phases” without due process. Depriving students of their “phases” increases their incarceration in TYC facilities.

116. Any prison disciplinary action which would extend a child’s sentence must be accompanied by due process. Children are entitled to due process when a prison disciplinary action would extend the length of their sentence by any amount of time.

117. For “category 1” 225s and placement in BMP, a due process hearing is held. Children, however, must represent themselves at these proceedings. Parents are not informed these proceedings are taking place, or that these proceedings could extend the child’s incarceration. Because the children are minors, they are legally incapable of representing themselves in any proceeding that would alter any legal relationship. TYC and Defendant Owens fail to inform parents of these proceedings and appoint counsel to represent the children.

118. Defendant Owens admits in the “TYC Rehabilitation Plan,” which he authored, that “lack of standardized procedures” results in “extending a youth’s period of incarceration.” Owens admits these extensions “could be viewed as subjective and unnecessarily punitive.”

119. Joseph brings these due process claims on behalf of the class members against Defendant Owens in his official capacity for injunctive and declaratory relief only. Defendant



Owens admits “approximately 190” children in TYC’s custody have “satisfactorily completed their program requirements, but remain confined in TYC institutions.”

120. Joseph brings these due process claims in his individual capacity against Defendants Wilson and Penuelas. Wilson and Penuelas refused to process the documents demonstrating Joseph had completed his “phases,” which would allow him his release. Wilson and Penuelas were deliberately indifferent to Joseph’s due process rights, and intentionally and maliciously deprived him of due process to extend his incarceration. Joseph brings this claim in his individual capacity for damages, injunctive and declaratory relief against Wilson and Penuelas in their individual and official capacities as TYC caseworkers.

## II. ACCESS TO COURTS

121. TYC and Defendant Owens fail to provide children in their custody with meaningful access to courts and counsel, as required by the First, Sixth and Fourteenth Amendments to the United States Constitution, and Article 1, Section 13 of the Texas Constitution. TYC and Defendant Owens refuse to make policies and procedures for visitation and telephone calls available on request to children’s attorneys.

122. TYC routinely reads confidential and privileged attorney/client mail, even when the correspondence is clearly marked “legal mail.” TYC does not open the privileged mail only in the child’s presence, as required by the United States Constitution.

123. TYC denies children the ability to confer in private with their attorneys. TYC does not allow children to make telephone calls to their attorneys, and requires a caseworker to “sit in” on attorney/client phone calls, even when the phone call was scheduled a week in advance and confirmed by correspondence.

124. Joseph brings these access-to-courts claims on behalf of the class members against

Defendant Owens in his official capacity for injunctive and declaratory relief only.

125. Joseph also brings these access-to-courts claims in his individual capacity against Defendant Wilson. Wilson refused to allow Joseph to speak with his attorney in private.

### III. SELF-INCRIMINATION

126. TYC and Defendant Owens require children to confess to facts that were not adjudicated by their trial court as part of the “therapy” they receive while in TYC’s custody. These “confessions” are required before students can be promoted through the “correctional” “phase” component. The “confessions” are made without consultation with counsel or the child’s parents. These confessions are involuntary as they are coerced with the threat of continued incarceration, in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 10 of the Texas Constitution.

127. These “confessions” are frequently untrue, and can be used against children or their parents in future legal proceedings.

128. Joseph brings these claims on behalf of the class members against Defendant Owens in his official capacity for injunctive and declaratory relief only.

129. Joseph also brings these claims in his individual capacity against Defendants Wilson and Penuelas. Wilson and Penuelas forced Joseph to admit to elements of his offense that were not found by the trial court, and were untrue.

### IV. FAILURE TO PROTECT

130. TYC and Defendant Owens do not employ a classification system to protect children in their custody from harm. Children are not separated according to age, stature, offense, or propensity for violence. Young, small, vulnerable children are routinely housed with older, larger, more dangerous children. TYC and Defendant Owens have created an atmosphere

where children are routinely assaulted by staff and other students, causing physical injuries to the students. These conditions violate children's Eighth and Fourteenth Amendment rights under the United States Constitution to be protected from harm, as well as the children's rights under Article 1, Section 13 of the Texas Constitution. TYC and Owens are deliberately indifferent to these conditions.

131. Defendant Owens admits in "TYC's Rehabilitation Plan," which he drafted, that "the problems at TYC are not isolated events, but are entrenched in every vessel that channels to the core of the agency's very existence." Owens describes TYC as "in a crisis state" and concedes "the safety and well-being of the children who are in our custody are at stake."

132. Defendant Caldwell is the superintendent of the Evins State School, where the U.S. Department of Justice recently found students' constitutional right under the Eighth Amendment to be protected from harm was routinely violated during the period Joseph was incarcerated there. Defendant Caldwell is deliberately indifferent to these conditions.

133. Students at Evins and other TYC facilities frequently suffer physical injuries because of these conditions.

134. Joseph brings these failure to protect claims against TYC and Owens on behalf of class members who would benefit from TYC employing a classification system for injunctive and declaratory relief.

135. Joseph brings these failure to protect claims in his individual capacity against Defendant Henry, Defendant Mr. Treviño, and Defendant Torres. Mr. Henry was deliberately indifferent to the obvious risks associated with placing Joseph in the same cell as an inmate clamoring to rape Joseph. Treviño and Torres knew other inmates were threatening Joseph, but failed to place him in protective custody and failed to protect him from harm. Treviño and

Torres were deliberately indifferent to Joseph's rights.

#### V. CONSPIRACY TO VIOLATE CIVIL RIGHTS

136. Defendants Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, and Reyes (hereinafter "the conspirators") conspired to impede, hinder, obstruct and defeat Joseph and the class members from seeking the due course of justice. The conspirators intimidated children and their parents to prevent them from reporting the civil rights abuses taking place inside TYC facilities, and impeded state and federal law enforcement investigations into conditions inside TYC facilities. This claim is brought pursuant to 42 U.S.C. § 1985(2).

137. Defendant Owens admits children in TYC custody "may fall victim to retaliation or unwarranted extended placements."

138. The conspirators instructed their subordinates to carry out the conspiracy in order to deprive Joseph and the class members of their rights under the law and to impede, hinder, instruct and defeat Joseph and the class members from seeking the due course of justice.

#### VI. AMERICANS WITH DISABILITIES ACT, SECTION 504, AND CHAPTER 121

139. Defendant TYC failed to provide Joseph with reasonable accommodations for his mental disabilities. Though TYC was aware of Joseph's disabilities, TYC intentionally and purposefully denied him reasonable accommodations.

140. TYC's denial of reasonable accommodations resulted in:

- a. Lengthening Joseph's incarceration in TYC's custody because due to his disability he was unable to complete TYC's "Resocialization©" plan timely;
- b. Joseph being raped by another inmate because he was placed in a single cell with the other inmate due to his disability;
- c. Joseph being sexually assaulted by TYC's staff because of the vulnerabilities created because of his disability; and,

- d. Excessive force being used against Joseph by TYC staff due to behavior caused by his disability.

141. Defendant Owens admits “numerous assessments” of TYC’s training for new staff have shown the training provided is “inadequate.” TYC does not provide reasonable staff training on accommodating children with disabilities.

142. TYC receives federal funding, and therefore is required to provide reasonable accommodations under Section 504.

143. TYC is a public entity and therefore required to comply with Title II of the ADA.

144. Joseph brings these claims only in his individual capacity.

#### VII. SEXUAL ASSAULT

145. Defendant Delgado intentionally and deliberately engaged in a deliberate and outrageous invasion of Joseph’s bodily integrity that shocks the conscience in violation of his Eighth and Fourteenth Amendment rights.

141. Delgado misused and abused official power granted to her by the state in performance of her official duties thereby causing harm to Joseph.

142. Delgado engaged in this conduct with deliberate indifference to the constitutional rights of Joseph, and in violation of the criminal laws of the State of Texas.

143. Joseph brings these claims only in his individual capacity, under 42 U.S.C. § 1983.

#### VIII. EXCESSIVE FORCE

144. Defendants Shackelfield, Williams, McQueen, Briggs and Watson used excessive force causing bodily injury to Joseph, in violation of Joseph’s Eighth and Fourteenth Amendment rights. Shackelfield, Williams, McQueen Briggs and Watson deliberately and indifferently used excessive force against Joseph during his incarceration in a TYC facility.

145. Joseph brings these claims only in his individual capacity, under 42 U.S.C. § 1983.

#### IX. FAILURE TO PROVIDE MEDICAL ATTENTION

146. Defendants Rangel, Gagne, McDaniels, and Kitchens were deliberately indifferent to Joseph's serious medical needs. They violated his right to medical care.

147. Rangel refused to escort Joseph to the infirmary when he discovered Joseph bleeding from his arms after he attempted suicide. Rangel told Joseph his condition was "not serious," even though Joseph suffered permanent physical scars from the incident.

148. Defendant Dwayne Harris refused to escort Joseph to the infirmary when he was discovered unconscious after attempting to commit suicide. Harris told nurses attempting to aid Joseph not to provide him with medical attention because Joseph was "faking."

149. Defendant McDaniels refused to provide Joseph treatment while he was vomiting due to the nausea created by medication for the pain in his jaw. McDaniels was deliberately indifferent to Joseph's Eighth Amendment right to receive medical care for serious medical problems, telling him to vomit into his mouth and let the vomit run through the wires holding his jaw shut, even though this put Joseph at serious risk of suffocating on his own vomit.

150. Defendants McDaniels, Kitchens and Gagne refused to provide Joseph with prescribed painkillers. Kitchens and Gagne were deliberately indifferent to Joseph's serious medical need, causing him severe physical pain and injury.

151. Joseph brings these claims in his individual capacity only, under 42 U.S.C. § 1983.

#### X. FREE SPEECH AND EXPRESSION — RETALIATION

152. Defendants Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, and Reyes retaliated against Joseph by transferring him between TYC facilities because of complaints he and his family raised about conditions in TYC facilities, in violation of the First and Fourteenth Amendments to the United States Constitution and Article

1, Section 8 of the Texas Constitution. These transfers placed Joseph farther away from his family, decreasing their ability to visit him. The transfers also prolonged Joseph's incarceration due to TYC's refusal to transfer his records. The purpose of these transfers was solely retaliatory, and done with deliberate indifference to Joseph's rights to free speech and expression.

#### XI. ASSAULT AND BATTERY

153. Defendants Delgado, Williams, Shackelfield, Briggs, and Watson intentionally caused harmful contacts with Joseph. Delgado intentionally forced Joseph to perform sexual acts with her. Defendants Williams and Shackelfield intentionally struck Joseph in the face with their riot shield, breaking his nose. Defendants Briggs and Watson intentionally shackled Joseph so tightly that the leg irons cut into his ankles and caused him to bleed.

154. Defendants Delgado, Williams, Shackelfield, Briggs, and Watson caused Joseph imminent apprehension by intending to cause him a harmful contact.

155. Joseph brings these claims only in his individual capacity, and not as a class representative.

#### CAUSES OF ACTION — SUMMARY

156. Joseph brings the following claims both in his individual capacity and as the representative of the class members:

- a. Due process, against Defendants TYC and Owens;
- b. Access to Courts, against Defendants TYC and Owens;
- c. Self Incrimination, against Defendants TYC and Owens;
- d. Failure to Protect, against Defendants TYC, Owens and Caldwell; and,
- e. Conspiracy to Violate Civil Rights, against Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, and Reyes.



158. Joseph brings the following claims in his individual capacity only:

- a. Due process, against Defendants Penuelas and Wilson;
- b. Access to Courts, against Defendant Wilson;
- c. Self Incrimination, against Defendants Penuelas and Wilson;
- d. Failure to Protect, against Defendants Henry, Treviño and Torres;
- e. ADA and Section 504, against Defendant TYC;
- f. Sexual Assault, against Defendant Delgado;
- g. Excessive Force, against Defendants Shacklefield, Williams, McQueen, Briggs and Watson;
- h. Failure to Provide Medical Attention, against Defendants Rangel, Dwayne Harris, Gagne, McDaniels and Kitchens;
- i. Free Speech and Expression Retaliation, against Dwight Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, and Reyes; and,
- j. Assault and Battery, against Defendants Delgado, Williams, Shacklefield, Briggs and Watson.

#### DECLARATORY RELIEF

159. Joseph and the class members seek declaratory relief that Defendants conspired to, and did, and continue to, violate their rights under the Constitution of the United States, as described above and summarized in the penultimate paragraph.

160. Joseph also seeks declaratory relief that Defendants did violate his own, individual statutory rights under the ADA and Rehabilitation Act, as well as under the Constitution of the United States, as described above and summarized in the penultimate paragraph.

#### INJUNCTIVE RELIEF

161. Joseph and the class members seek injunctive relief to correct the deficiencies regarding due process, access to Courts, self-incrimination, and failure to protect, as outlined



above. These deficiencies are quantifiable, and thus damages are not an appropriate remedy. However, the deficiencies cause real and lasting injury to the class members.

#### ATTORNEYS' FEES

162. Joseph is entitled to recover attorneys' fees and costs to enforce his constitutional and statutory rights, pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205.

#### PRAYER FOR RELIEF

THEREFORE, Joseph respectfully requests that the Court:

A. Award punitive damages for himself individually against all individual Defendants, as appropriate and as allowed by law;

B. Award compensatory damages for himself individually against all Defendants, jointly and severally, as allowed by law;

C. Grant declaratory and injunctive relief for himself and the class, under federal law, as set out in this Complaint;

D. Grant reasonable attorneys' fees, litigation expenses and court costs; and,

E. Grant such other and further relief as appears reasonable and just, to which Plaintiff may be entitled.

Date: April 10, 2007.

Respectfully Submitted,



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