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SOUTHERN DISTRICT OF CALIFORNIA

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15 UNITED STATES DISTRICT COURT
16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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

26 Plaintiffs,

27 v.

28 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. 07 CV 1 078 L

RBB

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

CLASS ACTION

CR

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

Defendants.

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INTRODUCTION

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

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

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

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

7 **JURISDICTION AND VENUE**

8 4. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §
9 1331 because it arises under the Constitution and laws of the United States.

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

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

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

17 **PARTIES**

18 **I. Plaintiffs**

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

24 9. Plaintiff Eamma Jean Woods is a 45-year-old woman from Honduras who arrived
25 in the United States as a three-year-old child. She has been detained at SDCF since July 28,
26 2006. Woods suffers from neurofibromatosis, and has been complaining throughout her
27 detention of a painful glomus tumor on her finger. Woods also suffers from an untreated seizure
28 disorder, as well as bipolar disorder and depression.

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

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

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

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

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

1 received adequate gynecological care while in detention.

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

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

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

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

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

19 **II. Defendants**

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

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

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

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

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

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

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

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

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

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

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

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

27 30. Defendant David Lusche is a physician assistant at SDCF. Lusche is
28 for providing direct patient care to individuals detained at SDCF, and for request

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

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

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

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

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

27 35. All defendants are sued in their official capacities.

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

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

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

5 LEGAL FRAMEWORK

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

13 39. It has long been established that immigration detainees, like pre-trial detainees, are
14 protected from conditions that amount to punishment. *See Wong Wing v. United States*, 163 U.S.
15 228, 237 (1896). More recently, the U.S. Court of Appeals for the Ninth Circuit has held that
16 conditions of confinement for civil detainees must be superior to those of pre-trial detainees, who,
17 though not adjudged guilty of a crime, are held pursuant to criminal processes. *Jones v. Blanas*,
18 393 F.3d 918, 932 (9th Cir. 2004), *cert. denied*, 126 S.Ct. 351 (2005). If a civil detainee is
19 confined in conditions that are identical to, similar to, or more restrictive than those under which
20 pre-trial detainees or convicted prisoners are held, then those conditions are presumptively
21 punitive and unconstitutional. *Id.* at 934. By definition, immigration detainees in the custody of
22 ICE are civil detainees held pursuant to civil immigration laws, and thus are entitled to the higher
23 standard of protection articulated in *Jones*.

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

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

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

10 FACTUAL ALLEGATIONS

11 I. The Immigration Detention Health Care System

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

13 42. USPHS provides medical, surgical, psychiatric, and dental care to immigration
14 detainees around the country pursuant to federal law. *See* 42 U.S.C. § 249(a); 42 C.F.R. § 34.7(a)
15 (2003). This task is largely carried out by DIHS, a component of the Health Resources and
16 Services Administration (HRSA) of HHS. Pursuant to an Interagency Agreement between ICE
17 and HRSA, DIHS serves as the medical authority of ICE and provides a variety of services to
18 immigration detainees around the country in accordance with ICE guidelines and directives.
19 However, ICE explicitly retains the exclusive right to define the requirements of the ICE medical
20 program.

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

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

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

10 **B. Necessary Medical Services are Routinely Delayed or Denied**

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

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

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

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

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

22 **II. SDCF's Troubled History in Correctional Health Care**

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

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

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

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

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

18 53. OIG field auditors visited SDCF over a period of approximately ten weeks in early
19 2005. In addition, the OIG conducted seven weeks of document review related to the San Diego
20 facility. On January 16, 2007, after numerous delays, the OIG released its audit report.
21 Department of Homeland Security, Office of Inspector General, *Treatment of Immigration*
22 *Detainees Housed at Immigration and Customs Enforcement Facilities*, OIG-07-01 (December
23 2006), available at http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-01_Dec06.pdf (OIG Audit
24 Report). The OIG Audit Report indicates that 210 detainees at SDCF responded to the OIG's
25 request for information about conditions of confinement and allegations of mistreatment at the
26 facility—more than twice as many as at any of the other four facilities that were audited. *Id.* at
27 39. The report identifies significant failures in the provision of health care at SDCF. More than
28 half the detainees whose files auditors reviewed were not given a physical exam within two

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

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

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

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

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

27
28

1 58. On information and belief, defendant Jarres visited SDCF in or around August
2 2006 with a DIHS Inspection Team and reviewed the facility's compliance with national DIHS
3 health care policies.

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

7 **A. Medical Care**

8 **1. Failure to Timely Respond to Sick Call Requests**

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

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

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

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

1 numerous sick call requests, but often received no response.

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

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

7 **2. Failure to Monitor Chronic Conditions**

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

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

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

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

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

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

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

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

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

1 frequent seizures since entering SDCF.

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

11 74. The failure to properly monitor detainees with chronic illnesses and to appreciate
12 the complications that can arise from poor disease management has had grave consequences at
13 SDCF. Martin Hernandez Banderas was a detainee at SDCF from October 26, 2006 until January
14 17, 2007, when he was rushed to a nearby hospital. Shortly after arriving at SDCF, Banderas
15 suffered a mild injury to his foot. As the small injury turned into a large, infected ulcer, Banderas
16 repeatedly sought medical attention but was turned away and told that his injury was not an
17 emergency. By the time Banderas was taken to the SDCF medical unit in a wheelchair and
18 diagnosed for the first time with diabetes, the wound had become gangrenous. Although
19 Banderas was given antibiotics, SDCF medical staff did not take a culture of the infected wound
20 and therefore could not have known the nature of his infection. He was returned to the general
21 population after a short stay in the medical unit, despite the fact that his newly diagnosed diabetes
22 had not been brought under control and his wound had not yet healed. Over the next several
23 weeks, Banderas regularly complained of increasing pain in his foot and leg and large amounts of
24 discharge flowing from the wound; he noted that the wound was increasing in size and beginning
25 to emit a foul odor. When Banderas was finally rushed to the hospital emergency room, he was
26 diagnosed with a serious bone infection (osteomyelitis), gangrenous tissue surrounding the ulcer,
27 and no pulses on the infected foot. Incredibly, medical records at SDCF that document
28 Banderas's repeated complaints indicate that only two days prior to his admission to the hospital,

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

7 **3. Delays in Providing Prescription Refills**

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

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

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

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

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

8 **4. Failure to Make Timely Referrals for Specialty Care**

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

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

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

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

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

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

1 injury. Physician assistant Lusche filed a TAR requesting a referral for a Gadolinium MRI on
2 June 2, but when Forero was taken to receive the MRI more than six weeks later, he was turned
3 away because no prescription for the contrast medication had been provided. Lusche was
4 instructed to resubmit the TAR, and did so on July 14. Over the next four weeks, Forero
5 repeatedly asked for updates on the MRI that he was supposed to receive. On August 12, Lusche
6 yet again resubmitted the TAR, noting that although the previous TAR had been approved, it was
7 allowed to expire prior to completion of the Gadolinium MRI. Forero finally underwent a
8 Gadolinium MRI on August 24, 2006, nearly three months after the orthopedic surgeon indicated
9 that a Gadolinium MRI was needed to properly diagnose the injury. When Forero was finally
10 seen by the orthopedic specialist on September 25, 2006, nearly four months after his June 2,
11 2006 visit, the doctor confirmed a complete re-tear of Forero's rotator cuff as well as an
12 additional tear to his subscapularis muscle. Forero has never received authorization from the
13 DIHS Managed Care Services Unit for surgical repair of his re-injured shoulder and remains in
14 ICE detention at the El Centro Service Processing Center.

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

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

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

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

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

25 **5. Critical DIHS Coverage Deficiencies**

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

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

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

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

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

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

24 92. Immediately upon arriving at SDCF, Carcamo began to inquire whether he would
25 be able to get an eye prosthesis if his family agreed to pay for the procedure. USPHS medical
26 personnel informed him that this determination would mostly involve ICE and CCA. On January
27 12, 2007, after months of complaints by Carcamo, and written correspondence by the ACLU to
28 defendants Gonsalves, Cerone, Easterling, and then-DIHS Managed Care Coordinator for the

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

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

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

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

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

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

21 **B. Dental Care**

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

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

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

22 99. In approximately February 2006, plaintiff Rigoberto Aguilar-Turcios began to
23 experience increasingly severe dental pain. In response to his initial sick call requests, Aguilar-
24 Turcios only saw a nurse who provided no medical care. After waiting nearly two months for a
25 response from the dentist, he submitted a grievance at the end of March and received a response
26 in mid-April. When Aguilar-Turcios finally saw Dr. Edmund Jedry, the dentist, in mid-May
27 2006, he was informed that the pain in tooth #2 was caused by the absence of an opposing molar.
28 Dr. Jedry informed Aguilar-Turcios that in order to solve the problem, he would need to get a

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

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

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

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

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

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

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

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

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

23 C. Mental Health Care

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **D. Vision Care**

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

1 Reading glasses are similarly not covered.

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

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

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

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

4 122. Essential vision care is also denied to detainees suffering serious chronic
5 conditions. This is a particularly serious problem for diabetics, who require annual eye
6 examinations by a trained specialist to help ensure retinal health and prevent blindness. The risk
7 of diabetic retinopathy is increased in individuals whose diabetes is poorly controlled, as
8 evidenced by elevated blood sugar levels, and whose hypertension is poorly controlled. Plaintiff
9 Tinoco suffers from both diabetes and hypertension, and has been detained at SDCF for nearly
10 four years. Nearly one year after Tinoco first arrived at SDCF, he was taken to see an eye
11 specialist for a retinal exam and ocular health screening. The eye doctor recommended reading
12 glasses, but Tinoco was subsequently refused reading glasses by SDCF personnel. Nearly three
13 years passed before Tinoco was returned to an eye doctor for an examination. Tinoco's diabetes
14 and hypertension have both been poorly controlled at various points during his detention, and on
15 at least two occasions eye examinations by defendant Lusche have revealed abnormalities. On
16 March 14, 2006, early cataract formation was noted, but no further mention of it appears in
17 Tinoco's records. On July 14, 2006, Tinoco was found to have papilledema, which is evidence of
18 serious hypertension that causes a swelling of the optic nerve. Again, no further mention of it
19 appears in the records, and no attempt to refer Tinoco to an eye specialist was made. In March
20 2007, Tinoco finally was returned to an eye doctor, who again recommended that he receive
21 reading glasses. When Tinoco spoke with a correctional officer about the doctor's
22 recommendation, Tinoco was informed that "it is pretty impossible to issue glasses."

23 E. Fatal Consequences

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

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

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

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

28

1 **III. Class Action Allegations**

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

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

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

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

- 21
- 22 • defendants' policies of failing to maintain sick call request forms together with
23 patient medical records and to respond to sick call requests in a timely manner;
 - 24 • defendants' policy of failing to monitor detainees with chronic conditions;
 - 25 • defendants' policy of failing to maintain an adequate system to provide
26 prescription medication refills and to ensure continuity of treatment;
 - 27 • defendants' policy of failing to make timely referrals for specialty care;
 - 28 • defendants' policy of denying necessary medical care, including dental and
vision care, in accordance with official DIHS policies;

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

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

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

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

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

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

1 to the class as a whole.

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

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

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

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

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

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

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

25 **PRAYER FOR RELIEF**

26 WHEREFORE, plaintiffs respectfully request that the Court:

27 a. Issue an order certifying this action to proceed as a class action pursuant to Rules
28

1 23(a) and (b)(2) of the Federal Rules of Civil Procedure;

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

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

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

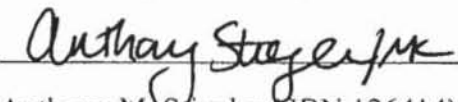
10 e. Grant plaintiffs their reasonable attorney fees and costs pursuant to 28 U.S.C. §
11 2412, and other applicable law; and

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

13
14 Dated: June 13, 2007

Respectfully submitted,

15
16 By:


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28 Judy Rabinovitz (*pro hac vice pending*)
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546767 v1/SD

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

EAMMA JEAN WOODS; RIGOBERTO AGUILAR-TURCIOS; MOHAMMAD MONFOR ALI NESA; WINSTON CARCAMO; FRED NGANGA NGUGI; et al.

DEFENDANTS

JULIE L. MYERS, Assistant Secretary, U.S. Immigration and Customs Enforcement (ICE), et al.

FILED
07 JUN 13 AM 11:41

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY:

PDC
DEPUTY

'07 CV 1 078 L RBB

(c) Attorney's (Firm Name, Address, and Telephone Number)

Cooley Godward Kronish LLP
4401 Eastgate Mall
San Diego, CA 92121
(858) 550-6000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 861 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations Welfare <input type="checkbox"/> 444 Amer. w/Disabilities-Employment <input type="checkbox"/> 445 Amer. w/Disabilities-Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER/PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1331

Brief description of cause: Violation of due process for failure to provide adequate health care (medical, mental, dental, and vision)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Dana M. Sabraw

DOCKET NUMBER 05cv1013

DATE
June 13, 2007

FOR OFFICE USE ONLY
RECEIPT # 139305

AMOUNT \$750

APPLYING IFP

JUDGE

MAG. JUDGE

[Signature]

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

139305 - BH
*** * C O P Y * ***
June 13, 2007
11:29:50

Civ Fil Non-Pris

USAO #: 07CV1078 CIV. FIL.
Judge.: M. JAMES LORENZ
Amount.: \$350.00 CK
Check#: BC# 3793

Total-> \$350.00

FROM: WOODS ET AL V. MYERS ET AL
CIVIL FILING