



PC-NJ-0004-0006

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JANE ROE, R. P., K. C., T.O.,	:	
A. D., J. H., J. B., J. A.,	:	
A. T., F. B., L. T., and J. C., on	:	CIVIL NO. 88-1225 (AET)
behalf of themselves and all	:	
others similarly situated,	:	<u>CIVIL RIGHTS ACTION</u>
	:	
Plaintiffs,	:	AMENDED AND SUPPLEMENTAL
	:	COMPLAINT AND DEMAND
vs.	:	FOR JURY TRIAL
	:	(VERIFIED BY AFFIDAVIT)
WILLIAM H. FAUVER, in his official	:	
and individual capacity; GARY	:	
HILTON, in his official and	:	(CLASS ACTION)
individual capacity; JOHN FORKER,	:	
in his official and individual	:	
capacity; JOHN FICARRA, in his	:	
official and individual capacity;	:	
RICHARD REED, M.D., in	:	
his official and individual	:	
capacity; JOHN BELTON, Ph.D., in	:	
his official and individual	:	
capacity; ROBERT WALTON, in his	:	
official and individual capacity;	:	
RUDOLPH ARCHER, in his official and	:	
individual capacity; HOWARD BEYER,	:	
in his official and individual	:	
capacity; ANTHONY TURNER, in his	:	
official and individual capacity;	:	
LOUIS BRANDT, M.D., in his official	:	
and individual capacity; GEORGE	:	
HAYMAN, in his official and	:	
individual capacity; and JOHN DOE,	:	
in his official and individual	:	
capacity,	:	
	:	
Defendants.	:	

I. PRELIMINARY STATEMENT

1. This is a complaint for declaratory and injunctive relief brought by State prisoners diagnosed with AIDS (acquired immune deficiency syndrome) or with AIDS-related illnesses or infection (the spectrum of these diseases are referred to herein as "HIV disease"). Prisoners whom prison medical staff have identified as having AIDS are segregated at the prison ward at St. Francis Medical Center or at the special segregation units ("Special Medical Unit" or "S.M.U.") at Trenton State Prison and at the Edna Mahan Correctional Facility (hereinafter "Correctional Institution for Women" or "C.I.W.") in Clinton. Prisoners with other stages of HIV disease are confined at various prisons across the state. Plaintiffs seek an order and judgment to prohibit defendants' continuing violation of their rights to due process and equal protection of the laws and their right to be free from cruel and unusual punishment through plaintiffs' indefinite isolation or segregation, as well as their categorical exclusion from programs, rights and privileges afforded to other prisoners, solely on the basis of a diagnosis that they have acquired immune deficiency syndrome ("AIDS").

Plaintiffs also seek an order and judgment to prohibit defendants' continuing discrimination against prisoners with the handicap of AIDS, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794 (1982), through plaintiffs' systematic exclusion from any and all work, rehabilitation, education, and vocational programs and activities, as well as reduced custody consideration, solely by reason of their handicap and despite the fact that they are otherwise qualified to participate in such programs.

Finally, plaintiffs seek relief from defendants' continuing violation of their right to be free from cruel and unusual punishment through

defendants' repeated denials or delays in provision of routine and emergency medical care to plaintiffs, and by defendants' unnecessary infliction of pain and humiliation through the excessive use of physical restraints and through defendants' deliberate indifference to plaintiffs' emotional and psychiatric needs.

2. Plaintiffs challenge defendants' policy of subjecting prisoners with an official diagnosis of AIDS (that is, prisoners whom the prison medical staff have identified as having AIDS) to permanent segregation and other restrictions which are not rationally related to their custody status or their actual medical condition. Prisoners with an official diagnosis of AIDS are excluded from participation in virtually all of the programs available to other prisoners including those with AIDS-related illnesses or other serious or terminal diseases. In contrast to the treatment of other prisoners with serious illnesses, plaintiffs are confined under maximum security conditions, are confined to their cells for most of the day, are permitted only limited opportunities for recreation, exercise and visitation, and are denied direct access to the law library and other facilities. Although their place of confinement is designated a "Special Medical Unit," the S.M.U. is in fact a segregation unit where prisoners are subjected to delayed, denied or inadequate medical care.

3. Prisoners with AIDS have been and continue to be housed at St. Francis Medical Center, as a place of confinement, for indefinite periods of time. Prisoners with AIDS are so housed due to the limited housing capacity of the S.M.U. at Trenton State Prison, the absence until recently of a special AIDS segregation unit for women, and the defendants' uniform policy of automatically and permanently segregating prisoners with an official diagnosis of AIDS. In this confinement, prisoners' visitation

rights are additionally restricted, and they are denied opportunities for any form of exercise or recreation, educational or vocational programs, meaningful law library access, or any of the other programs, privileges or rights routinely afforded other state prisoners. Defendants' policy, in turn, through the use of a limited supply of hospital beds as a place of confinement, causes serious and unnecessary delays in the provision of needed hospital care to plaintiffs. Finally, in deliberate indifference to plaintiffs' serious medical needs, defendants' policy of limiting the administration of essential drug therapy for the treatment of AIDS to prisoners confined to the available spaces at the S.M.U. or St. Francis Medical Center arbitrarily denies prisoners with serious AIDS-related illnesses important medical care for non-medical reasons.

4. The above restrictions and conditions which defendants impose on plaintiffs and other prisoners similarly situated are not rationally related to legitimate penological or correctional goals and deprive them of their rights guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States and by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 (1982).

5. This complaint contains three counts:

- a. Count One alleges that the defendants have confined and continue to confine the plaintiffs in St. Francis Medical Center in violation of the lawful rights of the plaintiffs. This confinement extends, in many cases, many months beyond the plaintiffs' need of hospital care, and results in the denial of plaintiffs' ability to participate in educational, religious, visitation, vocational, legal rehabilitative and other programs available to prisoners not diagnosed with AIDS. Plaintiffs

allege that defendants' policies and practices described in Count One violate plaintiffs' rights secured by the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

b. Count Two alleges that the defendants irrationally and arbitrarily have segregated plaintiffs diagnosed with AIDS, and have denied plaintiffs diagnosed with AIDS access to educational, religious, visitation, vocational, rehabilitative and other programs available to prisoners not diagnosed with AIDS. Plaintiffs allege that defendants' policies and practices described in Count Two violate plaintiffs' rights secured by the Eighth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 (1982);

c. Count Three alleges that the defendants' policies and practices governing the provision of medical care to all plaintiffs with AIDS-related illnesses are deficient and inadequate to a degree sufficient to establish deliberate indifference to plaintiffs' serious medical needs in violation of the Eighth Amendment of the United States Constitution.

Plaintiffs bring this action pursuant to 42 U.S.C. Section 1983.

II. JURISDICTION

6. This Court has jurisdiction pursuant to 28 U.S.C. Sections 1331, 1343(3) and 1343(4). Plaintiff's request for declaratory relief is authorized by 28 U.S.C. Sections 2201 and 2202.

7. This suit is authorized by 42 U.S.C. Section 1983 to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Constitution of the United States. This suit is also brought pursuant to 29 U.S.C. Section 794 (1982), which prohibits the exclusion of otherwise qualified handicapped individuals from participation in programs operated by agencies receiving federal funds.

III. PARTIES

Plaintiffs

8. Plaintiff Jane Roe is a citizen of the United States and is sentenced to the C.I.W. in Clinton, New Jersey. It is necessary that her true name, and that of the other plaintiffs and class members, not be used in order to preserve the privacy of her medical status and that of the other plaintiffs and class members with AIDS. Jane Roe currently is confined on the Special Medical Unit at the C.I.W., where she has been housed in isolation from other prisoners since May 27, 1988. From June 12, 1987 until May 27, 1988, she had been confined to a hospital room at St. Francis Medical Center in Trenton long after her need for acute medical care had ceased. She is diagnosed as having AIDS and currently is the sole resident of the S.M.U. at Clinton. Roe has not suffered from skin rashes or open sores since her condition was diagnosed, she does not suffer from other incapacitating conditions and she has not been visibly symptomatic for over a year. Nonetheless, because of her diagnosis, Roe is excluded from participation in any of the vocational, educational, rehabilitative, or other programs and benefits available to general population inmates.

9. Plaintiff R. P. is a citizen of the United States and was admitted to the C.I.W. on May 10, 1986. She currently is confined in C Cottage at the C.I.W. She is HIV positive, i.e., known to be infected with the AIDS

virus. She has been diagnosed as having symptoms of AIDS infection, including thrush and fevers. Her physical condition permits her to function normally in general population, and she has been permitted to attend educational and rehabilitative programs.

10. Plaintiff K. C. is a citizen of the United States and was admitted to the S.M.U. at Trenton State Prison, where he currently resides, on or about October 15, 1987. He is diagnosed as having AIDS. He has experienced months of delay in obtaining needed dental and eye care and medications which have been prescribe^d for him. He has been advised by a doctor to take vitamins, but has been told that the prison would not pay for their provision.

11. Plaintiff T. O. is a citizen of the United States and was admitted to the S.M.U. at Trenton State Prison, where he currently resides, on or about July 9, 1987. He is diagnosed as having AIDS. He experienced a delay of several days in seeing a doctor after the onset of symptoms of pneumocystis carinii pneumonia (PCP). When he was hospitalized for this condition, he was placed in leg-irons, handcuffs and a waistchain despite the fact that he was ill and having trouble breathing; he remained in these restraints for hours. He receives only sporadically a non-dairy diet prescribed for him by a treating physician.

12. Plaintiff J. H. is a citizen of the United States and was admitted to the S.M.U. at Trenton State Prison, where he currently resides, on or about February 18, 1988. He is diagnosed as having AIDS. He had been without disciplinary infractions in over six years of incarceration and was eligible for gang minimum custody status at the time of his transfer to the S.M.U. He has experienced weeks of delay in receiving prescribed

medication, and has erroneously received medications prescribed for other prisoners.

13. J. B. is a citizen of the United States and was admitted to the S.M.U. at Trenton State Prison, where he currently resides, in or about October, 1987. He is diagnosed as having AIDS. Prior to his admission to the S.M.U., he had full minimum custody status and was confined at the Leesburg honor camp at Ancora, where he was eligible for furloughs, college studies and other educational programs, and eventually work release.

14. Plaintiff J. A. is a citizen of the United States and was admitted to the S.M.U. at Trenton State Prison, on or about May 28, 1987. He is diagnosed as having AIDS. As of June 21, 1988, he was confined to a hospital room at St. Francis Medical Center with two to three other persons. Although he is not in need of acute hospital care, he was awaiting the availability of space in the S.M.U. While housed at the S.M.U., he experienced extended delays in receiving care for painful, treatable medical conditions.

15. Plaintiff A. T. is a citizen of the United States and has been assigned to the S.M.U. at Trenton State Prison, where he currently resides, since its opening in April, 1986. A. T. has been subjected to prolonged periods of idleness due to the severe shortage of opportunities for activity in the unit and the extended amount of time spent locked in a cell, as have other prisoners confined to the S.M.U. He has experienced severe pain and discomfort from misprescribed medications for which he had had prior allergic reactions. He has been forced to remain in full restraints for hours while awaiting emergency medical care despite the presence of armed guards. He has experienced delays of weeks and longer for treatment of infections and other routine medical needs.

16. Plaintiff F. B. is a citizen of the United States and was admitted to the S.M.U. at Trenton State Prison, where he currently resides, in or about since September, 1987. He is diagnosed as having AIDS. Prior to his admission to the S.M.U. he had full minimum custody status and was on work release. He also was permitted to go on furloughs from the institution, and was able to spend several days at a time with his family.

17. Plaintiff A. D. is a citizen of the United States and has been confined in the S.M.U. at Trenton State Prison, where he currently resides, since October, 1987. Although he is confined in the S.M.U. at Trenton State Prison and had been informed prior to his transfer to the S.M.U. that he had ARC, he does not know whether he has an actual diagnosis of AIDS. He was forced to remain in full restraints for a period of about two hours for a brief hospital procedure despite the fact that approximately six corrections officers accompanied him to the hospital. Like a number of prisoners assigned to the S.M.U., much of his personal property was never returned to him subsequent to his diagnosis.

18. Plaintiff L. T. is a citizen of the United States. He currently is confined at Trenton State Prison in Unit 2EE, which is a general population medical ward. He has been diagnosed as having ARC. He has suffered skin infections and disorders, symptoms of mental distress or disorder, and loss of weight. For weeks, he received only superficial responses to requests for medical attention to these symptoms. He is not receiving azidothymidine (AZT), the only approved drug that has been proven effective in the treatment of AIDS and ARC. For several years he worked as an aide in the infirmary, which required that he retrieve and tend to sick prisoners who were incontinent or bleeding. He has never received supervision, training or instructions on precautions for exposure to body

fluids as recommended by the Centers for Disease Control, and he generally did not wear protective clothing when performing his job functions.

19. Plaintiff J. C. is a citizen of the United States and has been confined in the S.M.U. at Trenton State Prison, where he currently resides, since July, 1987. Prior to his admission to the S.M.U., he was housed at the Rahway State Prison Camp, where he was classified as full minimum custody status and was on work release. He experienced extended delays prior to receiving actual treatment for developing pneumocystis carinii pneumonia (PCP). When he was hospitalized for PCP he was extremely weak, yet he was placed in full restraints for his transportation to the hospital and his wait for a bed in a hospital room.

Defendants

20. Defendant William H. Fauver, as Commissioner of the Department of Corrections, has the ultimate responsibility pursuant to N.J.S.A. 30:1B-6 to determine all matters of corrections policy and to regulate the administration of State correctional institutions, including the C.I.W. At all pertinent times, he had, and continues to have, ultimate control of plaintiffs' place of confinement and the policies and practices governing persons with AIDS, ARC and HIV infection in the prison system. Defendant Fauver either participates in or has actual knowledge of the acts alleged herein and is sued in his individual and official capacities.

21. Defendant Gary Hilton is, and at all pertinent times was, Assistant Commissioner of the Department of Corrections, and participates in and shares responsibility for formulating and implementing policies and practices concerning the custody and confinement of persons with AIDS, ARC, and HIV infection in the State prison system. These policies and practices have determined and continue to affect the conditions of confinement of

plaintiffs and members of the class. Defendant Hilton either participates in or has actual knowledge of the acts alleged herein and is sued in his individual and official capacities.

22. Defendant John Forker is, and at all pertinent times was, the Director of the Department of Corrections' Office of Institutional Support Services and has responsibility for the formulation and implementation of health services policies for the State prison system, including promulgation and implementation of the Department's protocol for the diagnosis and management of state prisoners with HIV infection, ARC and AIDS. As Director, Defendant Forker had, and continues to have, direct responsibility for plaintiffs' continued isolation or segregation at St. Francis Medical Center or at the S.M.U. at Trenton State Prison and at the C.I.W. Defendant Forker either participates in or has actual knowledge of the acts alleged herein and is sued in his individual and official capacities.

23. Defendant John Ficarra is, and at all pertinent times was, the Department of Corrections' Coordinator of Health services within the Office of Institutional Support Services. He has responsibility for the formulation and implementation of health services policies for the state prison system, including those governing the management of State prisoners with HIV infection, ARC and AIDS. As coordinator, defendant Ficarra had and continues to have direct responsibility for determining plaintiffs' place of confinement at St. Francis Medical Center or at the S.M.U. at Trenton State Prison or at the C.I.W. Defendant Ficarra either participates in or has actual knowledge of the acts alleged herein and is sued in his individual and official capacities.

24. Defendant Richard Reed, M.D. is, and at all pertinent times was, the Department of Corrections' Director of Medical Services and has

responsibility for formulating directives and policies governing operation of medical programs within the Department, including review and approval of the Department's protocol for the diagnosis and management of state prisoners, including plaintiffs, with HIV infection, ARC or AIDS. Defendant Reed either participates in or has actual knowledge of the acts alleged herein and is sued in his individual and official capacities.

25. Defendant John Belton, Ph.D., is, and at all pertinent times was, the Department of Corrections' Director of Psychological Services and has responsibility for formulating directives and policies governing the operation of mental health services within the Department. Defendant either participates in or has actual knowledge of the acts alleged herein and is sued in his individual and official capacities.

26. Defendant Robert Walton is, and at all pertinent times was, Superintendent of the C.I.W. and has responsibility for the formulation and implementation of policy and practices concerning the custody and confinement of prisoners sentenced to the C.I.W., including plaintiffs Jane Roe and R. P. Defendant Walton either participates in or has actual knowledge of the acts alleged herein as they apply to the C.I.W. and is sued in his individual and official capacities.

27. Defendant Rudolph Archer, M. D., is, and at all pertinent times was, the medical director of the C.I.W.. He is directly responsible for medical care provided to all prisoners at the C.I.W.. Defendant Archer either participates in or has actual knowledge of the acts alleged herein as they apply to the C.I.W. and is sued in his individual and official capacities.

28. Defendant Howard Beyer is, and at all pertinent times was, Superintendent of Trenton State Prison and has responsibility for the

formulation and implementation of policy and practices concerning the custody and confinement of prisoners sentenced to Trenton State Prison, including plaintiffs K. C., T. O., A. D., J. H., J. B., J. A., A. T., F. B., L. T., and J. C. Defendant Beyer either participates in or has actual knowledge of the acts alleged herein as they apply to Trenton State Prison and is sued in his individual and official capacities.

29. Defendant Anthony Turner is, and at all pertinent times was, Assistant Superintendent at Trenton State Prison and has responsibility for the formulation and implementation of policy and practices concerning the custody aspects of the medical department, including the transportation of prisoners for medical services, at Trenton State Prison. Defendant Turner either participates in or has actual knowledge of the acts alleged herein as they apply to Trenton State Prison and is sued in his individual and official capacities.

30. Defendant Louis Brandt, M.D., is and at all pertinent times was, the medical director of the Trenton State Prison. He is directly responsible for medical care provided to all prisoners at the Trenton State Prison. Defendant Brandt either participates in or has knowledge of the acts alleged herein as they apply to Trenton State Prison and is sued in his individual and official capacities.

31. Defendant George Hayman is the supervisor of the S.M.U. at the Trenton State Prison. He is responsible for the daily operation of the S.M.U. and for the development and implementation of policies and procedures governing the operation of the S.M.U. Defendant Hayman either participates in or has knowledge of the acts alleged herein as they apply to the S.M.U. at Trenton State Prison and is sued in his individual and official capacities.

32. Defendant John Doe is any and all other persons identified at a later date as having responsibility for the formulation or implementation of policies or practices governing the provision of medical care or the determination of confinement and security measures affecting State prisoners with AIDS, ARC or HIV infection.

IV. CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this action as a class action maintainable under Rules 23(a) and 23(b)(1) and (2) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all persons similarly situated, that is, all inmates who now are, or who in the future will be, diagnosed as having, or believed to have AIDS or HIV infection. The class represented by plaintiffs herein is both numerous and fluctuating such that joinder of all members is impractical; there are questions of law and fact common to the class of persons with AIDS or HIV disease; claims of the representatives herein are typical of the claims of the class; and the representative parties herein will fairly and adequately protect the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole. The class members are subject to change as persons are committed to and discharged from the custody of the Department of Corrections and as prisoners develop symptoms of HIV disease.

34. A class action determination will avoid the possibility of inconsistent or varying adjudications with respect to individual members of the class establishing incompatible standards of conduct for the defendants.

35. Plaintiffs' attorney is associated with the Office of Inmate Advocacy of the New Jersey Office of the Public Defender. She is familiar

with the conduct of litigation of this kind and will afford adequate representation. By statutory authority, N.J.S.A. 52:27E-11 et seq., the Office is authorized to represent the interests of the persons identified as plaintiffs herein as a class.

V. STATEMENT OF FACTS AND CLAIMS FOR RELIEF

COUNT ONE: Infliction of Cruel and Unusual Punishment and Deprivation of Liberty Interests Caused By Defendants' Use of St. Francis Medical Center as a Place Of Confinement for Prisoners With AIDS in Remission.

36. Plaintiffs and members of the class repeat and incorporate paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. Plaintiff Jane Roe is a 33 year-old woman who was admitted to the C.I.W. in August, 1983.

38. In or about April 1986, Roe asked that she be administered a test to determine the presence of AIDS antibodies. Roe decided to request the AIDS antibody test because she had a history of drug abuse preceding her incarceration and knew that this was an activity which posed a high risk of exposure to AIDS, and because she wanted to know whether in fact she was infected with the virus. Shortly after her request, she was tested for the presence of AIDS antibodies and found to be seropositive.

39. At the time that Roe was tested for AIDS antibodies she had full minimum custody status and was housed in Silzer Cottage, a minimum security building affording women prisoners considerable freedom of movement, including cooking privileges. Prisoners housed in Silzer Cottage are considered low-risk in terms of institutional security or potential for violence. Prisoners classified as full minimum custody status are eligible for work release and are typically those prisoners who are closest to a prison release date.

40. Roe experienced no change in her custody or housing status or in her treatment by other prisoners as a result of her positive AIDS antibody test.

41. Approximately several months after Roe learned of her positive AIDS antibody test results, she started to exhibit symptoms associated with AIDS infection, such as loss of appetite, weight loss, night sweats and a persistent cough. Nonetheless, plaintiff safely remained in minimum custody status at Silzer Cottage.

42. In 1986, subsequent to Roe's positive AIDS antibody test result, Department of Corrections medical staff initiated monthly trips for her to an outside medical consultant for blood work to monitor the progress of her AIDS virus infection. Roe was advised in late 1986 that she had progressed to the diagnostic stage of ARC, or AIDS-Related Complex. The diagnosis of her condition as ARC had no effect on her housing or custody status, on her ability to function in a full minimum custody setting, or on her personal security or the security of the institution at large.

43. In June, 1987 plaintiff Roe became ill with pneumonia and was hospitalized at St. Francis Medical Center on or about June 12, 1987. On June 16, 1987, Roe was advised by her treating physician, Dr. Ricketti, that her condition was then diagnosed as AIDS. She recovered from the pneumonia that had necessitated her hospitalization within approximately two weeks. Notwithstanding her recovery from pneumonia, she was confined at St. Francis Medical Center for approximately 11 months.

44. By virtue of her confinement in a hospital room at St. Francis Medical Center, Roe was denied the opportunity for any outdoor or even indoor exercise or any movement beyond her room. Her participation in any educational or vocational programs, work programs, drug or alcohol

counseling, or other activities which would assist her in her readiness and eligibility for parole were precluded by her place of confinement. For approximately eleven months, Roe's activities were limited essentially to watching television and reading.

45. While confined at St. Francis Medical Center, Roe experienced either no response or extremely delayed or incomplete responses to legal research requests and requests for information on matters related to her sentence and parole. Responses to requests for information on her parole eligibility were delayed for months, and the social worker acting as an intermediary on her requests was unable to explain the information eventually provided to Roe. In the social worker's absence, a nurse was temporarily assigned to handle Jane Roe's requests for assistance. Roe's requests in April and May, 1988 for legal materials were never answered.

46. The only Department of Corrections staff person available to prisoners at St. Francis Medical Center is assigned to perform limited social services such as commissary requests, and is incapable of providing competent, adequate and effective legal research assistance due to lack of training and the constraints of his primary job responsibilities.

47. Roe's only visitors, other than security and medical staff, were her mother, her sister and a chaplain. Her visits with her two family members were limited to one one-hour visit per week. Although she was permitted two visits per week, her family members' employment and the length of their commute to St. Francis precluded a second visit. Unlike general population prisoners, and even those in the S.M.U. or in close custody, inmates at St. Francis are permitted visits only from immediate family members. Security staff refused a request to extend the length of plaintiff's weekly family visit beyond one hour.

48. Because of her confinement at St. Francis Medical Center, plaintiff experienced extreme delays and restrictions in the provision of needed dental care.

49. Despite the fact that plaintiff had full-minimum custody status prior to her hospitalization in 1987, she was treated as a maximum security prisoner at St. Francis Medical Center. She was denied access to basic items and personal property to which she had regular access prior to her pneumonia. She was denied the opportunity to have her hair cut for more than nine months even though the civilian hairdresser for prisoners at the C.I.W. had volunteered to attend to her. Eventually, a nurse employed at St. Francis Medical Center volunteered to cut Roe's hair for her.

50. The only occasion on which Jane Roe was outside her room during her eleven-month confinement at St. Francis Medical Center occurred on March 8, 1988 when she was taken to a dentist, approximately six months after her request for dental care. Prior to her transport to the dentist, Jane Roe was handcuffed and shackled with leg irons and a waist chain. She was kept in these restraints for the duration of the trip to and from the dentist and during the actual treatment, a period of about 2-1/2 hours.

51. Prior to her diagnosis of AIDS and her confinement at St. Francis Medical Center, Jane Roe travelled outside the correctional facility to medical appointments in the company of a single unarmed corrections officer without either handcuffs or shackles, as is consistent with her minimum custody status.

52. Roe's treating physician at St. Francis Medical Center had repeatedly stated that plaintiff does not require hospitalization and that he would authorize her return to C.I.W. if defendants would permit it. Roe

has not suffered from opportunistic infections or illnesses since June, 1987.

53. Defendant Walton and assistant supervisory staff at C.I.W. have stated that security concerns would not preclude Roe's return to C.I.W.

54. Prisoners currently housed in Silzer Cottage at C.I.W., where plaintiff resided prior to her hospitalization, were and are aware of Roe's condition and do not believe that their health or security would be threatened by plaintiff's return to Silzer Cottage.

55. Roe suffered, and continues to suffer, from stress and depression as a result of her isolated, extended, restrictive confinement at St. Francis Medical Center.

56. Subsequent to the opening of the S.M.U. at Trenton State Prison in April 1986 and until approximately May 1988, male prisoners with AIDS were confined at St. Francis Medical Center only when they were acutely symptomatic and in need of hospitalization.

57. Currently, and by virtue of defendants' policy of automatically segregating all prisoners with an official diagnosis of AIDS, the S.M.U. at Trenton State Prison is filled to capacity. As a result, defendants now utilize St. Francis Medical Center as a place of confinement for male prisoners with an official diagnosis of AIDS, but who are in remission and who are not in need of hospitalization.

58. Male prisoners with an official diagnosis of AIDS who remain at St. Francis Medical Center as a place of confinement are restricted to a single room with as many as three other patients, some or all of whom may not have AIDS. These prisoners are subject to the same restrictions as were imposed on Jane Roe. On information and belief, movement within the

hospital room to which male prisoners are confined is either extremely limited or prohibited.

59. Defendants' use of St. Francis Medical Center as a place of confinement for prisoners with an official diagnosis of AIDS who are in remission is neither medically warranted nor rationally related to legitimate penological concerns and contributes to the delay of hospital care to prisoners with HIV disease who are in need of acute medical care.

60. Defendants' use of St. Francis Medical Center as a place of confinement for prisoners with an official diagnosis of AIDS in remission has caused and continues to cause plaintiffs and members of the class to suffer severe and unnecessary emotional suffering and distress.

61. Defendants' policies and practices governing the confinement of prisoners with an official diagnosis of AIDS resulted in plaintiff Roe's solitary confinement at St. Francis Medical Center and forced idleness without exercise, recreation, adequate legal access and access to other basic needs for a period of approximately eleven months, and have resulted in the imposition of similar restrictions on others of the plaintiff class. By these policies and practices, defendants have violated and continue to violate the rights of plaintiffs and members of the class to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution.

62. By their policy and practice of confining prisoners with a diagnosis of AIDS to St. Francis Medical Center in forced idleness without the minimum opportunities for exercise and recreation mandated by Department of Corrections Standard 430, defendants have violated and continue to violate the right of plaintiffs and members of the class to due process of

law as guaranteed by the Fourteenth Amendment to the United States Constitution.

63. By their policy and practice of refusing to provide plaintiffs confined indefinitely to St. Francis Medical Center with reasonable access to persons trained in the law, or to reasonable access to other means of obtaining legal research, defendants have violated and continue to violate the right of plaintiffs and members of the class to access to the courts, as guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT TWO: Discrimination Against Prisoners Handicapped With AIDS, Denial of Equal Protection, Deprivation of Liberty Interests and Cruel and Unusual Punishment Caused By Defendants' Policies and Practices Regarding the Special Medical Units and the Management of Prisoners with AIDS, ARC, or HIV Infection

64. Plaintiffs and members of the class repeat and incorporate paragraphs 1 through 63 of this Complaint as if fully set forth herein.

65. Defendants have determined that the presence of prisoners with ARC or prisoners who are infected with the HIV virus in the general prison population poses no threat to the health of inmates or staff or to the security of the institution.

66. By policy and practice, inmates who are not confirmed to have AIDS but who are HIV antibody positive, or who have ARC, are returned to the institution to which they were previously assigned and appropriate prior housing status after medical evaluation and treatment.

67. At present, there are male and female prisoners with ARC or who are HIV antibody positive, some of whom exhibit symptoms of illness and HIV disease, who are residing in general population units without causing damage to their health, to the health of other prisoners, or to the security of the prison.

68. The routine segregation of persons with AIDS is neither medically necessary nor medically indicated.

69. There is no reasonable basis to distinguish between persons with AIDS and persons who have ARC or who are HIV positive for purposes of infection-control precautions.

70. Unless there is a specific identified threat to the health or welfare of a person who has AIDS, ARC, or who is HIV antibody positive, there is no reasonable medical or security justification for routine segregated housing or disparate treatment of such persons.

71. By policy and practice, defendants subject plaintiffs with an official diagnosis of AIDS to segregation and to restrictions that are different and more severe than those placed on other prisoners with HIV infection.

72. By policy and practice, defendants subject plaintiffs with an official diagnosis of AIDS to segregation and restrictions that are different and more severe than those placed on other prisoners with chronic or terminal illnesses or other serious illnesses or infections.

73. By policy and practice, defendants subject plaintiffs with an official diagnosis of AIDS to restrictions and segregated housing purely on the basis of their diagnostic category. Defendants make no individual determination of whether case-specific security or medical reasons exist to segregate prisoners with AIDS. By policy and practice, such case-specific determinations are made prior to the segregation of other state prisoners, including those with other serious medical conditions.

74. In February, 1988, defendants adopted a policy governing prisoners with AIDS in remission which resulted in their continual locked confinement to their cells for up to 22 hours each day. The actual confinement of these

prisoners to their cells at times extended to over 30 hours due to the scheduling of recreation time. The lock-in policy applies to all prisoners with AIDS in remission regardless of their individual health status or symptoms.

75. Plaintiff Roe is permitted out of the S.M.U. at Clinton for recreation for approximately an hour or slightly more each day.

76. Both male and female plaintiffs with an official diagnosis of AIDS are prohibited from participating in any of the vocational, educational, rehabilitative or recreational programs available to general population prisoners, including other prisoners with HIV infection or disease or prisoners with other serious chronic or terminal diseases.

77. Plaintiffs with an official diagnosis of AIDS who are confined at St. Francis Medical Center are permitted and are exposed to close personal contact with non-HIV infected prisoners.

78. Plaintiffs with an official diagnosis of AIDS who are confined in the S.M.U. at Trenton State Prison or C.I.W. are not permitted, due to the policy and practice of defendants, close personal contact with non-HIV infected prisoners.

79. Defendants have failed or refused to provide plaintiffs in the S.M.U. at Trenton State Prison, and the S.M.U. at the C.I.W., with educational, vocational, rehabilitative or recreational programmatic opportunities which approximate those available to other prisoners with HIV infection or disease or other prisoners in general population, including those with serious illnesses.

80. The only program, other than religious services, available to plaintiffs confined in the S.M.U. at Trenton State Prison is a 10-session

behavior modification course offered by the prison social worker assigned to the unit.

81. There are no educational, vocational or rehabilitative programs of any kind available to Jane Roe, who currently is the sole prisoner confined in the S.M.U. at the C.I.W. in Clinton.

82. Prisoners at Trenton State Prison who do not have AIDS but are seriously and chronically ill (e.g., suffering from serious physical symptoms of ARC or HIV disease; blindness; cancer in need of chemotherapy; on dialysis) and who are unable, due to particular physical symptoms or disabilities, to remain in other general population areas may be housed in the medical wing, Unit 2EE. Prisoners housed in 2EE, including those with symptoms of HIV disease such as ARC, are permitted to work outside the medical wing, to go to the law library, and to attend school and other rehabilitative and vocational programs. They are permitted daily visits of up to two hours each day, have access to the indoor gymnasium, as well as several hours daily of outdoor recreation, and are locked into their cells only at the time of prisoner count and at night.

83. Many of the prisoners with an official diagnosis of AIDS who are confined in the S.M.U. have no serious physical manifestations of HIV disease; a number of them are not on AZT. As is stipulated in the defendants' protocol for management of AIDS cases, confinement in the S.M.U. is limited to AIDS patients who have recovered from an opportunistic infection and who become asymptomatic and feel well. Notwithstanding their medical condition, these patients are limited to biweekly visits, work available within the S.M.U., and reduced, segregated recreational and rehabilitative opportunities.

84. The maximum security prisoners in C Cottage at the C.I.W., including those with ARC and HIV infection, are permitted to attend educational, vocational and rehabilitative classes in C.I.W.'s Edna Mahan Hall on a daily basis. Some programmatic opportunities are made available even for women confined in "super-maximum" custody in South Hall at the C.I.W.

85. Prisoners classified at different levels (e.g., minimum and maximum security risks) but with an official diagnosis of AIDS are all housed together in the S.M.U. at Trenton State Prison.

86. At the moment that a prisoner receives an official diagnosis of AIDS, he or she automatically and permanently is excluded from consideration for any reduction in custody status, regardless of the individual's actual health or discipline record.

87. Prisoners with an official diagnosis of AIDS who are otherwise qualified to participate in furlough and work release programs are excluded from such participation solely on the basis of their official diagnosis and without consideration of their individual medical status or their physical ability to participate.

88. Prisoners who have been successful work release participants and who successfully have completed furloughs from the prison facility are prohibited from continued participation in such programs once an official diagnosis of AIDS has been made, regardless of the prisoner's performance record or physical ability to work or to complete a furlough.

89. Defendants annually receive federal funds for institutional program support which are allocated to most of the State prison facilities, including Trenton State Prison and the C.I.W., for funding of educational programs.

90. Pursuant to N.J.A.C. 10A:15-3, 10A:5-5, 10A:16-11, 10A:9-3 and 10A:9-4, defendants provide mandatory procedures, detailed and specific criteria, and individual review for all prisoners placed in administrative segregation and protective custody, for placement in the S.M.U., and for consideration for reduced custody status.

91. Defendants' blanket policy of permanently segregating prisoners with an official diagnosis of AIDS without regard to each prisoner's individual medical or physical condition willfully stigmatizes plaintiffs, and reinforces the irrational fears of prisoners and correctional staff concerning AIDS. This policy has exposed plaintiffs to great risk, and has caused and continues to cause plaintiffs and members of the class to suffer psychological harm, severe and unnecessary emotional distress, and depression which exacerbates their medical condition.

92. Defendants' policy and practice of permanently segregating prisoners with an official diagnosis of AIDS results in their complete exclusion, on the basis of their diagnosis, from virtually all of the educational, vocational, rehabilitative, work and other programs available to other State prisoners who otherwise meet program requirements.

93. Defendants' policies and practices applicable to the housing and activities of plaintiffs and other members of the class are overly harsh and restrictive, result in forced idleness, and are not reasonably related to legitimate penological goals.

94. By policy and practice, defendants make no individual determination of medical or security risks to evaluate whether any of the plaintiffs or members of the class could reside or participate in programs in general population. All other prisoners in the New Jersey State Prison system, with the exception of prisoners with a death sentence, are

individually evaluated and classified to determine the custody status and concomitant restrictions appropriate for each individual.

95. As recipients of federal funds utilized in whole or in part for educational programs at the various prison facilities, defendants' disparate treatment of plaintiffs and members of the class through their policy and practice of segregating prisoners with an official diagnosis of AIDS in isolation from general population and the programs and benefits available to that population, and alternatively, defendants' failure to provide plaintiffs and members of the class who are otherwise qualified with access to educational, vocational, rehabilitative, work release and other programs or to allow prisoners who otherwise qualify to continue their participation in such programs, violates the right of plaintiffs and members of the class to be free from discrimination on the basis of their disability, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 (1982).

96. By the policies and practices described above, defendants have subjected and continue to subject plaintiffs to conditions that are arbitrarily different and irrationally more severe than those imposed on other, similarly situated inmates, including those with ARC, HIV infection, and other serious, chronic or terminal diseases. By these policies and practices, defendants have violated and continue to violate the rights of plaintiffs to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

97. By their policies and practices, defendants have permanently confined plaintiffs and members of the class under circumstances which, because of plaintiffs' medical status and terminal diagnosis, cause them physical and psychological harm and deterioration unrelated to the fact of

their incarceration and without legitimate penological purpose. Defendants thereby have violated and continue to violate the right of plaintiffs and members of the class to be free of cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

98. By their policies and practices, defendants have permanently confined plaintiffs and members of the class to a considerably more restrictive environment than that in general population without the individual and periodic review afforded by State regulation to all other prisoners placed in administrative and medical segregation and thereby have violated and continue to violate the right of plaintiffs and members of the class to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT THREE: Infliction of Cruel and Unusual Punishment Caused By Defendants' Policies and Practices Governing the Provision of Medical Care for Prisoners With AIDS, ARC or Other Stages of HIV Disease

99. Plaintiffs repeat and incorporate paragraphs 1 through 98 of this Complaint as if set forth fully herein.

100. Plaintiffs with an official diagnosis of AIDS frequently experience delays or denials in response to both routine and emergency medical needs, including conditions previously diagnosed as requiring a physician's care as well as new conditions for which treatment is repeatedly requested or is obviously necessary.

101. A physician visits the S.M.U. at the Trenton State Prison approximately twice each week. The physician's total visiting time in the S.M.U. is approximately one hour or slightly more each week.

102. Prisoners in the S.M.U. at Trenton State Prison see a physician less frequently than prisoners in other parts of Trenton State Prison. For example, pursuant to N.J.A.C. 10A:5-2.5(a), a physician visits the Management Control Unit every weekday.

103. Prisoners on AZT frequently experience delays in receiving their medication or receive an incorrect dosage.

104. Defendants create serious medical risks to prisoners in the S.M.U. at Trenton State Prison by failing to keep and utilize adequate medical records, which results in incomplete medical analysis and inconsistent medication treatment.

105. Prisoners in the S.M.U. at Trenton State Prison have experienced extended delays in receiving prescribed medication, have been given the wrong medications, or have learned that medical staff have distributed their prescribed medications to other prisoners in the unit.

106. Defendants create serious medical risks to prisoners in the S.M.U. by ignoring prisoners' complaints of pain or by refusing to administer appropriate medications or treatment despite the clear and obvious need.

107. Prisoners in the S.M.U. at Trenton State Prison who experience symptoms prior to the onset of an opportunistic infection have complained of such symptoms for weeks prior to receiving responsive medical attention.

108. Prisoners in the S.M.U. at Trenton State Prison have been unable to receive special diets on a consistent basis even when prescribed by the treating physician.

109. Defendants have created serious medical risks to prisoners with AIDS, ARC and HIV infection, by failing or refusing to inform them of their diagnosis, treatment plan, the side effects of medication, or the individual's expected course of illness.

110. Plaintiffs' inability to confirm the status of their diagnosis and current health has caused them severe anxiety, mental anguish and emotional suffering.

111. Plaintiffs have been, and continue to be, subjected repeatedly to cruel and sadistic comments concerning their medical status and prognosis by medical staff. Defendants' failure or refusal to remedy this situation has caused, and continues to cause, severe emotional and mental distress and harm to plaintiffs.

112. Corrections officers assigned to the S.M.U. at Trenton State Prison are unable or unwilling to provide emergency assistance to prisoners in the S.M.U. who experience a medical trauma or crisis. In the case of one prisoner, a dialysis patient, another prisoner was forced to provide emergency assistance in the form of a tourniquet when the dialysis patient began to bleed uncontrollably and when the officers on duty failed to provide assistance while awaiting the arrival of medical staff.

113. When prisoners are seriously ill and require hospitalization, they are transported to St. Francis Medical Center in shackles, handcuffs and a waist chain or belt, and on occasion with the addition of a cuff box that fits between the handcuffs and keeps the prisoner's hands immobile. On information and belief, defendants employ these restraints regardless of the particular inmate's medical condition or security status and despite the presence of armed corrections staff. Prisoners can remain restrained in this manner for many hours while awaiting medical care or assignment to a bed.

114. Prisoners restrained in the manner described above for extended hours have experienced extreme pain and discomfort, as well as emotional distress and humiliation.

115. Through policies and procedures leading to the painful and degrading conditions described in paragraphs 113 and 114 above, the defendants have caused prisoners in the S.M.U. at Trenton State Prison to forego needed medical treatment.

116. Defendants do not provide AZT to prisoners with ARC or HIV infection. It is defendants' policy and practice to restrict the administration of AZT to prisoners confined to the S.M.U. at Trenton State Prison and C.I.W., or those confined at St. Francis Medical Center.

117. The only approved drug that has been proven effective to date in the treatment of patients with HIV disease, including AIDS and ARC, is AZT.

118. The administration of AZT reduces the infectiousness of persons with HIV disease.

119. Defendants fail to provide plaintiffs with adequate and meaningful access to psychological and psychiatric services despite the serious medical need of prisoners with terminal illnesses for such services.

120. Regular psychological services are provided to plaintiffs in the S.M.U. at Trenton State Prison only in the form of group counseling meetings. Plaintiffs requesting individual psychiatric care have, for the most part, been denied such services.

121. The lack of adequate psychiatric services have caused plaintiffs to suffer needless mental anguish, depression, and psychological harm.

122. As a result of defendants' repeated and continuing denial or delay of necessary medical and psychiatric care; defendant's failure to adequately inform plaintiffs of their current medical status; defendants' failure to train, supervise and protect prisoners regarding exposure to body fluids; and defendants' use, consent to, or authorization of excessive physical restraints and emotionally abusive practices, plaintiffs and members of the

class have suffered and continue to suffer unnecessary physical pain, mental anguish, and unnecessary physical deterioration.

123. By their policies and practices governing medical care for prisoners with AIDS and other HIV disease, defendants have violated and continue to violate the rights of plaintiffs and members of the class to be free from cruel and unusual punishment, as guaranteed by the Eighth Amendment to the United States Constitution.

VII. GROUNDS FOR INJUNCTIVE RELIEF

124. The aforesaid conditions resulting from defendants' policies and practices are known to the defendants, their agents and their employees, but these conditions have been allowed to continue, without appropriate and effective efforts being made to bring about their elimination or correction, in a manner that would provide timely relief for the plaintiffs and others similarly situated.

125. The aforesaid official practices and resultant conditions are allowed to continue and are imposed by defendants acting under color of law of the State of New Jersey.

126. There is an actual controversy between plaintiffs and defendants, in that the defendants impose or allow to exist the policies and conditions above described, and these policies and conditions continue uncorrected.

127. Plaintiffs and the class they represent have no adequate remedy at law, thus making injunctive and declaratory relief appropriate.

128. Plaintiffs and members of the class are suffering and will continue to suffer immediate, substantial and irreparable injury unless injunctive relief is issued.

129. The actions and inactions of the defendants as alleged, and the claims of the plaintiffs and the class they represent, require that the

court declare the rights and legal relationships of the parties in respect to the treatment of prisoners diagnosed or believed to have acquired immune deficiency syndrome (AIDS) or other stages of HIV disease.

PRAYER FOR RELIEF

Wherefore, plaintiffs pray that this Court enter judgment on their behalf and provide the following relief:

1. Order, pursuant to Rule 23 of the Federal Rules of Civil Procedure, that this action be maintained as a class action;

2. Declare that the isolation and restrictions place on plaintiffs and other members of the class with AIDS or HIV disease deprive them of their rights under the Eighth and Fourteenth Amendments to the Constitution of the United States and under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 (1982);

3. Enter an order prohibiting defendants from engaging in policies and practices governing the housing and treatment of prisoners with HIV disease which constitute discrimination on the basis of prisoners' diagnoses;

4. Enter an order requiring that defendants cease the use of St. Francis Hospital as a place of confinement for prisoners with AIDS who do not require acute hospital care, and permit the release of plaintiffs and other members of the class from St. Francis Medical Center when it is the treating physician's determination that hospitalization is not medically necessary;

5. Enter an order requiring that defendants' housing, classification, and program access decisions governing prisoners with AIDS be based on individual health and security need determinations and not solely on the basis of the prisoners' official diagnosis of AIDS, including but not limited to:

- a. that defendants cease the automatic and permanent segregation of prisoners with AIDS and allow said prisoners to continue, as their physical health permits, in the custody status they enjoyed prior to their diagnosis of AIDS, with opportunities for periodic review and reduction of custody, and access to programs consistent with that custody status;
- b. in the alternative, that defendants provide prisoners confined to S.M.U. with access to visitation, recreation, educational, vocational, rehabilitative work, and other programs, as well as work release and similar programs for those prisoners otherwise eligible, which is equivalent to that available to prisoners in general population including those with other serious, chronic or terminal illnesses;

6. Enter an order requiring that defendants develop procedures and staffing to provide plaintiffs and members of the class with prompt access to adequate, professional medical, dental, psychiatric and psychological services for routine and emergent health needs, which recognize prisoners' rights to be apprised of their medical status and to be treated with dignity and respect;

7. Enter an order requiring that defendants develop procedures to train and supervise prisoners on proper protective procedures regarding their possible exposure to body fluids implicated in the spread of disease, and to ensure that prisoners who reasonably may be expected to have such exposure be provided access to protective clothing or equipment;

8. Enter an order requiring that defendants cease the use of full restraints on ill prisoners when their security or medical status are such that full restraints are unnecessary;

9. Retain jurisdiction of this action until the Court is satisfied that the policies and practices complained of herein have been eliminated and that adequate safeguards have been taken to prevent their reappearance in the future;

10. Award nominal, compensatory and punitive damages to plaintiffs and class members for the physical and emotional harms, as well as for the loss of personal liberty and property, suffered by plaintiffs as a result of having been confined under the unlawful and unconstitutional conditions described herein due to defendants' deliberate and callous indifference;

11. Award costs and attorneys fees;

12. Order such other relief as this Court deems just, proper and equitable.

JURY DEMAND

Plaintiffs respectfully request a trial by jury on all issues.

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