

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO**

No. _____

Ayers v. Perry



PC-NM-003-001

**JOHN AYERS, DAVID BALLEJOS, IVAN GARCIA,
DARREN LOVATO, ANTHONY SANDOVAL and
ALEX SOSAYA**, on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

ROBERT PERRY, individually, **JAMES BURLESON**, Secretary Designee
of the New Mexico Department of Corrections, in his official capacity,
JOHN SHANKS, Acting Deputy Secretary – Operations and Director of
Adult Prisons for the New Mexico Department of Corrections, in his individual and official
capacities, **TIM LeMASTER**, Warden of the Penitentiary of New Mexico, in his
official capacity, **LAWRENCE BARRERASTAFOYA**, Warden of the Southern New Mexico
Correctional Facility, in his official capacity, **RON GUILLEMETTE**, Cognitive
Restructuring Coordinator for the Special Controls Facility of the Penitentiary of
New Mexico, in his official capacity, _____, Cognitive Restructuring
Coordinator for the Special Controls Facility of the Southern New Mexico Correctional
Facility, in his individual and official capacities, and **JAMES LOPEZ**, Unit Manager of the
Special Controls Facility of the Penitentiary of New Mexico, and _____, Unit Manager
of the
Special Controls Facility of the Southern New Mexico Correctional Facility, in their
his individual and official capacities, and the **NEW MEXICO DEPARTMENT OF
CORRECTIONS**,

Defendants.

**COMPLAINT FOR
CLASS BASED DECLARATORY AND INJUNCTIVE RELIEF
AND FOR
INDIVIDUAL COMPENSATORY AND PUNITIVE DAMAGES**

Plaintiffs John Ayers, David Ballejos, Ivan Garcia, Darren Lovato, Anthony Sandoval and Alex Sosaya, on behalf of themselves and all others similarly situated, by their attorneys of record listed below, and for their complaint against Defendants, state:

PRELIMINARY STATEMENT

1. This is a class action brought pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief on behalf of prisoners confined at all of the Special Controls Facilities (“SCF”) operated by the defendants and those prisoners within the New Mexico State penal system, present and future, who face the risk of placement at an SCF. Such facilities are presently operated at the Penitentiary of New Mexico (“PNM”) in Santa Fe, New Mexico, and the Southern New Mexico Correctional Facility (“SNMCF”) in Las Cruces, New Mexico. This action alleges that by housing prisoners at an SCF, defendants are knowingly subjecting them to conditions that constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States, and are violating their rights under the First, Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States as well as their rights under the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, as set forth more fully herein.

JURISDICTION AND VENUE

2. Plaintiffs bring this action to redress the deprivation of rights secured them under the First, Fourth, Eighth and Fourteenth Amendments, all of which are enforceable under 42 U.S.C. § 1983, as well as those rights secured under the Americans with Disabilities Act and the Rehabilitation Act.

3. This Court has subject matter jurisdiction of this action pursuant to its original jurisdiction over cases in controversy arising in this judicial district and its concurrent jurisdiction over cases raising federal questions.

4. This Court has equitable jurisdiction to grant declaratory relief and the injunctive relief sought herein.

5. Venue is proper in this judicial district because some or all of the plaintiffs and some of the defendants reside in this judicial district, because this is an action against officers of the State of New Mexico, some of whom maintain offices in this judicial district, and because the allegations giving rise to plaintiffs' claims arise in whole or in part within this judicial district.

PARTIES

6. Plaintiffs John Ayers, David Ballejos, Ivan Garcia, Darren Lovato, Anthony Sandoval and Alex Sosaya, are prisoners who have been sentenced to the custody of the New Mexico Department of Corrections and are confined at an SCF.

7. Defendant Robert Perry is the former Secretary of the New Mexico Department of Corrections ("DOC"). As such, he was the legal custodian of all prisoners sentenced by the courts of New Mexico for felony offenses, and was responsible for the safe, secure and humane housing of those prisoners. At all times relevant hereto, he acted under

color of state law. Defendant Perry initiated the establishment of SCF's and the unlawful conditions therein. He is sued in his individual capacity.

8. Defendant James Burleson is the current Secretary of DOC. As such, he is the legal custodian of all prisoners sentenced by the courts of New Mexico for felony offenses, and is responsible for the safe, secure and humane housing of those prisoners. At all times relevant hereto, he has acted under color of state law. Defendant Burleson is sued in his official capacity.

9. Defendant John Shanks is Acting Deputy Secretary – Operations and Director of Adult Prisons for DOC. At all times relevant hereto, he has acted under color of state law. Defendant Shanks is sued in his individual and official capacities.

10. Defendant Tim LeMaster is Warden of PNM, and thus Warden of an SCF. At all times relevant hereto, he has acted under color of state law. Defendant LeMaster is sued in his official capacity.

11. Defendant Lawrence BarrerasTafoya is Warden of SNMCF, and thus Warden of an SCF. At all times relevant hereto, he has acted under color of state law. Defendant BarrerasTafoya is sued in his official capacity.

12. Defendant Ron Guillemette is the Cognitive Restructuring Coordinator for the Special Controls Facility of PNM. At all times relevant hereto, he has acted under color of state law. Defendant Guillemette is sued in his individual and official capacities.

13. Defendant James Lopez is the Unit Manager of the SCF at PNM. At all times relevant hereto, he has acted under color of state law. Defendant Lopez is sued in his individual and official capacities.

14. Defendant New Mexico Department of Corrections is a public entity obligated to comply with the Americans with Disabilities Act and the Rehabilitation Act. Defendant DOC is sued for equitable relief only.

CLASS ACTION FACTS

15. Plaintiffs bring this action on behalf of themselves and all others similarly situated.

16. Plaintiffs seek to represent a class consisting of all persons who are now, or who are at risk of being, confined in the SCF's.

17. The members of the class are too numerous, and the membership of the class too fluid, to permit joinder of all members. There are currently over 450 prisoners confined at an SCF. Because prisoners are sometimes transferred between other prisons and an SCF, the membership of the class changes constantly.

18. Common questions of law and fact exist as to all class members. All class members are equally subject to the unconstitutional and unlawful conditions at an SCF described in this Complaint. These common questions include, but are not limited to:

a. Whether conditions of confinement at the SCF's violate the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act and the Rehabilitation Act;

b. Whether the "Cognitive Restructuring" program utilized at the SCF's violate the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act and the Rehabilitation Act;

c. Whether the process by which plaintiffs are transferred to, or are retained in, an SCF deprive them of liberty or property without due process of law.

19. The claims of the named plaintiffs are typical of those of the class.

20. Plaintiffs will fairly and adequately represent the interests of the class. The interests of plaintiffs are consistent with those of the class, and they are represented by counsel who are experienced in class action, civil rights and prison conditions litigation.

21. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

STATEMENT OF FACTS

The Special Controls Facilities

22. The SCF's are operated at the 544-bed facility located in both the high security North and South units of PNM and at portions of SNMCF.

23. DOC receives federal funds for its programs and facilities.

24. The SCF's began operation on or about July 2000 and currently house over 450 prisoners. Although the SCF's ostensibly were designed to house disruptive and violent offenders, many non-violent prisoners have been transferred to SCF's because of unsubstantiated allegations of gang involvement, and/or due to their mental disabilities, and/or to ease overcrowding at other institutions, and/or for reasons of retaliation and/or

intimidation of prisoners by prison officials, and/or for no apparent or penologically legitimate reason at all.

25. According to DOC's mission statement regarding its operation of SCF's, they are designed to "isolate and separate disruptive, violent, uncooperative and predatory inmates." However, most of the prisoners at the SCF's have not demonstrated such serious behavioral problems and, for those who do, the SCF's offer no programs that could provide them with the skills to reintegrate into other institutions or eventually into society.

26. A prisoner may spend many years subjected to the conditions described in this Complaint and may not be released from an SCF until his mandatory release date back to society.

Conditions of Confinement

27. Conditions at the SCF's are designed to subject, and do subject, prisoners to almost total social isolation and sensory deprivation.

28. Prisoners are locked in their cells for 24 hours a day, although some prisoners leave their cells up to five hours per week, unless the "privilege" of doing so is taken away from them, often due to the arbitrary and capricious decision making of SCF officials or otherwise without good cause.

29. The SCF cells are made of concrete walls and a solid door.

30. Prisoners see the outdoors at most one hour every fifteen days.

31. Prisoners at the SCF's do not have access to outdoor exercise.

32. The only exercise space accessible to prisoners is a windowless concrete cell. This cell contains little or no exercise equipment. Before prisoners enter and after they exit the recreation cell, they are subjected to a strip search.

33. Strip searches are imposed in a punitive manner by SCF officials. Because conditions are so harsh, many prisoners choose not to use the recreation cell and simply remain locked in their cells 24 hours a day.

34. Many prisoners at the SCF's are allowed only one six minute telephone call per month.

35. Prisoners at the SCF's are permitted no family or other personal visits, except "video visits" in which the prisoner and his visitor see each other only on a video screen, which provides distorted, delayed and poor quality images and garbled sound. Due to the burdensome requirements the SCF's impose on visitors, many prisoners do not even receive these "video visits."

36. Prisoners are monitored by security staff 24 hours a day. As a result, male prisoners are sometimes watched at close range by female staff as they undress, shower, masturbate, urinate and defecate.

37. Prisoners receive no meaningful programming, jobs, entertainment or other stimulation.

38. Prisoners are limited to the following possessions at any one time:

- a. three personal letters; and,
- b. three library books.

39. Prisoners are only allowed to receive five new pieces of paper per week.
40. The limitation on receiving paper in excess of five pieces of paper per week includes legal materials, even as to prisoners with pending lawsuits.
41. Prisoners are prevented from effectively representing themselves in litigation as a result of SCF limitations on receipt and possession of paper and other barriers to legal resources and assistance.
42. Prisoners at the SCF's are frequently subjected to searches of their cells, as well as strip searches and body cavity searches of their person. Often searches are not conducted for legitimate security purposes, but to humiliate and harass.
43. Prisoners are subjected to placement in strip cells without legitimate security reasons but instead to humiliate and harass. Inmates placed in strip cells have all books and hygiene materials removed. Nothing remains in the strip cell with the prisoner except a mattress. Prisoners placed in strip cells spend at least 48 to 72 hours whenever they are alleged to be a threat to another or to themselves.
44. One SCF inmate was placed in a strip cell for not turning off the light in his cell.
45. Guards within the SCF's have been directed by the defendants to impose summary punishment upon the SCF residents, taking away their property and their already extremely limited opportunities to leave their cells without any procedures to ensure fundamental fairness. As a result of defendants' actions in these regards, the plaintiffs have been subjected to arbitrary punishment.

46. The conditions in the SCF's constitute a significant and atypical hardship upon the plaintiffs and all other residents therein.

47. The defendants know and are deliberately indifferent to the fact that their policies and practices violate the federal rights of SCF residents.

48. Before creating the SCF program, defendants Perry and Shanks had previously initiated other programs that were intended to inflict cruel and unusual punishment upon prisoners committed to the custody of DOC. First, they imposed a regimen of "rock breaking" upon prisoners, placing boulders in prison yards and ordering prisoners to use sledge hammers to break rocks. After that initiative failed, they created an "Intensive Supervision Unit" (ISU) at PNM North, where many of the features of the SCF program were imposed upon the prisoners therein. They also directed the guards in the ISU to impose summary punishment upon prisoners, requiring them to perform push ups and other strenuous activities as summary punishment. Their actions with respect to the ISU resulted in litigation within the *Duran v. Johnson* class action lawsuit, No. CIV 77-0721 (U.S.D.N.M.).

49. On or about April 19, 1999, the defendants received a pleading filed by counsel for the plaintiffs in the *Duran* case which put the defendants on actual notice that it has been clearly established in federal courts since at least the late nineteenth century that solitary confinement, like that imposed upon class members housed in the SCF's, causes serious psychological harm to inmates. Because they knew that the initiation of SCF's would cause serious psychological harm to inmates, the defendants' actions were deliberately intended to cause irreparable harm to the plaintiffs and the proposed plaintiff class.

50. Before they created the SCF's, the defendants also had received actual notice that the professional literature regarding prison mental health care had established prior to 1999 that a substantial increase in the need for mental health services would certainly result from the opening of the SCF's. In this regard, defendants were informed that in 1992, a large scale study of prisoners in New York state correctional facilities, including observations of prisoners subjected to isolation, led to the conclusion that "isolation panic" is a serious problem among prisoners in solitary confinement. Prior to creating the SCF's, defendants knew that isolation of the kind they designed into the SCF's would lead to "rage, panic, loss of control, breakdowns, psychological regression, and a build-up of physiological and psychological tension that le[a]d to incidents of self-mutilation." *Hans Toch, Mosaic of Despair: Human Breakdown in Prisons (1992) at 54.*

51. Before they created the SCF's, the defendants also were put on notice that the increase in mental dysfunction among people held in solitary confinement has been universally recognized. The opinions of Dr. Craig Haney, an expert in correctional mental health care who previously worked on behalf of the plaintiff class in *Duran*, were quoted to the defendants. The April 19, 1999 brief referred to in paragraph 49 above quoted Dr. Haney's writings:

A comprehensive assessment of the extensive clinical data collected on this issue, including the nature and extent of the psychic indices of stress employed, the unique and consistent psychopathological reactions that have been found, and the harmful secondary effects that have been documented in virtually every study on the question, point to the damaging psychological effects of punitive, isolated prison housing itself. Direct studies of the effects of prison isolation have documented a wide range of harmful psychological effects, including increases in negative attitudes and affect, insomnia, anxiety, panic, withdrawal, hypersensitivity, ruminations, cognitive dysfunction, hallucinations, loss of control, aggression, rage, paranoia, hopelessness, lethargy, depression, emotional breakdowns, self-mutilation, and suicidal impulses. *There is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects.*

Craig Haney & Mona Lynch, Regulating Prisons of the Future: A Psychological Analysis of

Supermax and Solitary Confinement, 23 *N.Y.U. Rev. of Law & Social Change* 529-31 (1997) (emphasis supplied).

52. Prior to their establishment of the SCF's, defendants were also aware that in 1986 a psychiatrist, Robert Slater, studied the effects of long-term lockup of prisoners at San Quentin prison. Based on that study, the symptoms suffered by prisoners in long-term segregation include:

tension, irritability, sleeplessness, nightmares, inability to think clearly or to concentrate, and fear of impending loss of impulse control. Sometimes the anxiety is severe enough to be crippling. It interferes with sleep, concentration, work, and study and predisposes prisoners to brief psychotic reactions, suicidal behavior and psychophysiological reactions. It causes misperceptions and over-reactions. It fuels the cycle of violence, leading to more violence and terror.

Robert G. Slater, Psychiatric Intervention in an Atmosphere of Terror, 7 *Am. J. Forensic Psych.* 5, 6 (1986).

53. Prior to their establishment of the SCF's, the defendants were also informed of the findings of Dr. Stuart Grassian, who had conducted the most detailed psychiatric assessment to date of prisoners in solitary confinement. Dr. Grassian had reported on 15 prisoners kept in isolation for varying amounts of time at a Massachusetts prison. He found that two-thirds of the isolated prisoners had become hypersensitive to external stimuli and about the same number experienced massive free floating anxiety. About half of the prisoners suffered from perceptual disturbances that for some included hallucinations and perceptual illusions. Half complained of cognitive dysfunction such as confused states, difficulty concentrating and memory lapse.

54. Prior to their establishment of the SCF's, the defendants were also aware that a Virginia researcher had found that 51% of the prison self-mutilation incidents she examined over the preceding year had taken place in isolation units. *Anne Jones, Self-*

Mutilation in Prison: A Comparison of Mutilators and Nonmutilators, 13 *Crim. Just. and Behav.* 290 (1986). The defendants knew before they created the SCF's that long periods in solitary confinement, like those imposed upon residents of the SCF's, would cause substantially more harm than would result from brief periods in segregation.

55. Prior to their establishment of the SCF's, the defendants also knew that the conditions and regimen which they were designing for the SCF's were illegal. They had been notified that Chief United States District Judge Henderson had held, in the 1995 federal case regarding the Pelican Bay State Prison in California, that psychological harm alone can constitute cruel and unusual punishment. *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

56. Despite all this knowledge, the defendants knowingly and malevolently chose to subject the plaintiffs to cruel and unusual punishment by their establishment of the SCF's and their exposure to residents of the SCF's the conditions established and maintained therein. Defendants were and are deliberately indifferent to the serious mental health needs of the residents of the SCF's.

Mental Health Care

57. Mental disorders are endemic at the SCF's. Although DOC initially provided by policy that no mentally ill prisoners would be transferred to an SCF, that policy has been abandoned, if it ever was in effect. Although DOC maintains no statistics on the number of prisoners who have been diagnosed with a mental illness, a substantial percentage of SCF prisoners have mental disabilities. At least forty prisoners identified by the defendants as having serious mental disorders were congregated in four adjacent housing pods at the PNM North facility, called collectively the "Alternative Placement Area" ("APA"). The defendants regard the residents of the APA to be disabled, but are not providing them with reasonable accommodations. APA residents are subjected to the

same conditions and arbitrary punishment imposed upon SCF residents who are not regarded by the defendants as mentally disabled.

58. During 1998, while under the oversight of the federal court in the *Duran* case, the defendants operated a special treatment program for mentally disabled prisoners who engaged in acting out behavior due to their mental disabilities. The program, called the “Diagnostic/Therapeutic Program (“DTP”), was administered by a licensed psychologist, provided intensive mental health treatment to its residents, was staffed by correctional staff who had received specialized training regarding working with prisoners with mental disorders and provided the patients in the program with clinical treatment plans designed to help the prisoners to learn more constructive ways to manage their mental disorders.

59. Shortly after the federal court relinquished its oversight over the mental health services provided to prisoners, defendant Perry and other defendants terminated the DTP. The same prisoners who had received the specialized treatment were then subjected to the rigors of the SCF and punished for the same behaviors which had previously been treated as symptoms of their disabilities when the DTP was in operation.

60. During 2002, counsel for the plaintiffs disclosed to counsel for the defendants that a number of persons confined in the SCF’s had contacted them seeking representation in litigation regarding the SCF’s. Shortly thereafter, the defendants relocated the APA to the SCF at SNMCF in Las Cruces, moving approximately thirty residents of the APA from PNM North, over two hundred and forty miles away from their counsel. Other APA residents were declared to no longer require special mental health services and, as a result, were left in PNM North to endure the SCF with no effort whatsoever to accommodate their known disabilities.

61. The defendants did nothing to prepare SNMCF for the sudden influx of thirty seriously disabled prisoners. No additional mental health staffing was arranged for SNMCF prior to the transfer there of more than thirty individuals already identified by the defendants as mentally disabled.

62. The conditions described in this Complaint make the SCF's incubators of psychosis. Defendant Perry knew before the SCF's were opened that mentally healthy prisoners would become mentally ill as a result of confinement under these conditions. With regard to prisoners who are already mentally disabled upon their arrival, the harsh and isolated conditions at the SCF's cause serious and sometimes catastrophic deterioration in their mental health. As a result, numerous prisoners at the SCF's hear voices and are obsessed with suicidal thoughts; others smear feces, swallow metal objects, cut their flesh, attempt to hang themselves, cut themselves and otherwise attempt to mutilate, harm or kill themselves. One prisoner who was in Level 6 at the SCF at SNMCF died recently after hanging himself and a. A former resident of the SCF at PNM is now brain dead as a result of an attempted suicide by hanging there. He had attempted to hang himself on a number of previous occasions at PNM.. The defendants then moved him to a cell more remote from the observation of staff and shortly thereafter he nearly succeeded in ending his life.

63. Despite the overwhelming and obvious need, mental health care at the SCF's is systemically inadequate. Because defendants have failed and continue to fail to provide adequate qualified staff and other mental health resources, the needs of the serious mentally ill have often been and continue to be ignored.

64. Inmates who request mental health assistance because they fear they will harm themselves are told by SCF employees to "go ahead and hurt yourself." When the overwhelmed mental health staff at the PNM SCF attempt to provide private therapy

sessions to disabled prisoners, correctional staff often will not bring the prisoner to the mental health workers' office for the needed treatment. Even when the prisoner is brought for needed treatment, correctional staff stand outside the office watching the prisoner, overhearing the therapy and frequently terminating the session prematurely so the correctional officer can perform other activities.

65. Inmates who suffer from mental disabilities are placed in an SCF as punishment by DOC officials and are discriminated against based on their mental disabilities.

66. Inmates with mental disabilities are not permitted to progress beyond the most restricted levels of the SCF program and lose hope that they can ever "progress" to a more humane environment.

67. SCF officials do not perform the periodic and timely checks on inmates with mental health conditions in the SCF's which are required by DOC policies, subjecting such inmates to a pervasive risk of harm from themselves and others in proximity to them.

68. Defendant Perry and other defendants deliberately chose to establish the SCF's without first requesting or obtaining sufficient resources to meet the serious psychiatric needs of the prisoners assigned to them. Defendants were and are deliberately indifferent to the serious medical needs of the plaintiffs and proposed plaintiff class.

The Plaintiffs

69. Plaintiff John Ayers is an inmate with mental disabilities. He is diagnosed with manic depressiveon and bipolar conditionsdisorder. He has been on medications his entire adult life. He is in the APA and has been in the SCF at the PNM North facility since March 2002. Defendants placed him in the SCF due to his mental condition, rather than to

hold a due process hearing to determine whether he fit the criteria for placement in an SCF. While housed in the SCF, plaintiff Ayers has received wholly inadequate mental health treatment and has suffered retaliation and punishment from c. Corrections officers assigned to the SCF do not accommodate prisoners' disabilities due to their lack of training regarding the treatment and handling of prisoners with mental illness and/or mental disabilities. Plaintiff Ayers has not been told why he is assigned to the SCF, has filed grievances and appeals of his placement to Level 6 and has received no response to them from the defendants. He is a qualified individual with a disability. Plaintiff Ayers was one of the inmates recently transferred to the SCF at SNMCF.

70. Plaintiff David Ballejos is also an APA resident recently transferred to the SCF at SNMCF. He has been diagnosed by the defendants as having a severe personality disorder and an anxiety disorder. He was profoundly traumatized during the 1980 prison riot at the Santa Fe Penitentiary. He is in the APA and has suffered retaliation in the form of the loss of privileges, including the limited time for daily recreation allowed SCF inmates, attorney visits and telephone privileges, as a result of the arbitrary and capricious decision making of corrections officers assigned to the SCF when they do not like an inmate's behavior, whether or not that behavior is improper or a violation of any prison rule or regulation. Since plaintiff Ballejos' transfer to the APA, the defendants have deprived him of the eye glasses he needs to correct his vision so he can see words on a page. Plaintiff Ballejos has limited ability to read and write, but has suffered loss of his possessions and his opportunities for activities, referred to as " regression" in the SCF program, for declining to pursue educational courses in the SCF. His limited academic abilities make it impossible for him to succeed in the quizzes and writing assignments that are integral to the SCF program. He has been waiting for eight months for the return of his eye glasses and cannot see words on a page without them. He is stuck in the level to which he was originally assigned as a result of mental health issues, despite that, according

to the defendants' own criteria for advancement through the SCF system, mental health is not a factor in such determinations.

71. Plaintiff Ballejos has been punished for engaging in self-injurious behavior which is caused by his disabilities. He has further suffered from arbitrary and capricious decision making in the SCF insofar as the warden who makes determinations of guilt regarding misconduct reports is the same person to whom an appeal from such determination must be made. Plaintiff Ballejos is a qualified individual with a disability. His last classification before placement in the APA was Level 2, but he was arbitrarily sent from the Mental Health Treatment Center to Level 6 at the APA. He wrote an appeal of his placement to defendant Shanks, but has received no answer.

72. Plaintiff Ivan Garcia is assigned to the SCF at PNM North. He has been on level 6 of the SCF program since June 2002, when he was transferred to PNM from the Torrance County Detention Facility (TCDF), where he was in level 3 general population. The defendants also previously placed Mr. Garcia in an SCF. On the first occasion, in late 2000, Plaintiff Garcia was sent to the SCF at the PNM South Facility and placed on Level 5, even though the classification committee at the Guadalupe County Correctional Facility where he was housed had previously determined that he should remain in general population at that Level 3 facility. His initial placement into the SCF was arbitrary and capricious.

73. Plaintiff Garcia was subjected to the unlawful conditions at PNM South for eight months, at which time he was transferred to the TCDF in Estancia. During his incarceration there, Plaintiff Garcia had a record of clear conduct, having received no misconduct reports since December 2000. Nevertheless, in June 2002, the defendants again arbitrarily and capriciously placed Plaintiff Garcia into the SCF facility in Santa Fe, this time in Level 6 at PNM North. The only justification offered for the placement in Level 6

was that it was “appropriate due to summary of evidence.” However, Mr. Garcia never received any real summary of any “evidence” against him, only being told that he was a “suspect in disruptive behavior, specifically participating in a hunger strike at TCDF.” This “evidence” was based exclusively on uncorroborated “confidential information,” apparently from another resident of TCDF. Plaintiff Garcia and eight other inmates were accused of starting a hunger strike to protest deplorable food at the facility. During the investigation of the one-meal-long hunger strike, Plaintiff Garcia was threatened by defendants with additional punishments if he did not provide information alleging that other inmates were involved in the hunger strike and conversely, he was offered inducements by them if he would inform on other inmates. When he refused to do so, he was transferred to the SCF in retaliation. Plaintiff Garcia was never the subject of a misconduct report for the alleged hunger strike. At no time has Mr. Garcia received sufficient information to rebut the rumor that he participated in a hunger strike.

74. The alleged behavior for which he was punished was that Mr. Garcia did not eat one meal while at TCDF, and that he encouraged other inmates to not eat that meal in protest of the conditions at the facility. That behavior, if it occurred, was protected First Amendment speech and punishment for it violated Mr. Garcia’s federal rights.

75. Mr. Garcia attempted to appeal his placement into Level 6 via the only mechanism provided by the defendants. He wrote to the Director of Adult Institutions, John Shanks, and requested a reversal of his placement in Level 6. Two months later, after having received no response, Mr. Garcia again wrote to Shanks. At the time of the filing of this complaint, there has never been any response to his appeal.

76. Plaintiff Darren Lovato has a seizure disorder among other disabilities. He was sentenced to the custody of the DOC and in May 2000 was sent to Central New Mexico Correctional Facility (CNMCF) for classification. While there he was mistreated by

corrections officers in retaliation for an escape in 1992. He was then classified as an “escape risk” because of the 1992 escape and transferred to involuntary administrative segregation at PNM North. In July 2000 he was reclassified to SNMCF, but he was never transferred, remaining at PNM North. In August 2000, he left that facility to attend a court hearing. Upon his return to PNM after his court proceedings, the facility had been converted to an SCF and Plaintiff Lovato was required to remain therein because there was no place else to house him, despite the fact that no determination was ever made that he fit the criteria for placement in an SCF. Mr. Lovato was later given a notice informing him that because he was housed in an SCF, he would continue to be placed in an SCF. In June 2001, his custody level was lowered to medium custody because, by DOC’s own regulations, the 1992 escape could no longer be used against him. Mr. Lovato was told he was being sent to the Long Term Care Unit (LTCU) at CNMCF for treatment for his seizure disorder, but he refused to consent to placement in the LTCU because of his prior mis-treatment at CNMCF by officials there. Mr. Lovato continues to suffer high levels of anxiety, depression and suicidal ideation following his mistreatment at CNMCF. After being told he could not refuse that placement, Mr. Lovato attempted to dissuade the DOC medical director involved in the decision from sending him to CNMCF, saying, “If you send me there, I’ll hurt somebody.” Since that time, that statement has been used by defendants as the justification for Mr. Lovato being placed in Level 5 at PNM South. He has not received proper mental health treatment since his placement at the SCF, in part because of frequent vacancies in those positions in the SCF. Despite policies that an inmate’s request for mental health treatment is supposed to be confidential, Mr. Lovato is questioned by SCF guards as to why he wants to see a mental health care provider. Darren Lovato is a qualified individual with a disability.

77. Plaintiff Anthony Sandoval is a prisoner currently housed at PNM South. He is 30 years old. In 1998, he was sentenced to prison for burglary and resisting an officer. His projected release date is 2007.

78. Like all other prisoners at the SCF's, plaintiff Anthony Sandoval has been subjected to all of the conditions of confinement set forth herein, and has suffered physical and psychological pain and physical injury as a result.

79. Prior to his recent transfer to PNM South he was housed at the APA unit at PNM North. He is not receiving minimally adequate mental health care.

80. Representative entries in the diagnostic sections of DOC documents relating to Plaintiff Sandoval state: "Inmate has a history of receiving psychiatric and mental health services while incarcerated. Inmate reports several suicide attempts Inmate has a long history of psychotropic medications, psychiatric hospitalizations and mental health services Inmate has been placed on 15 minute suicide watch ... paranoid schizophrenic: delusions, hallucinations, disorganized thoughts; paranoia and negative symptoms ... seizure disorder ... some difficulty in functioning in a correctional environment ... depression ... polysubstance dependent Inmate is experiencing auditory command hallucinations and is unwilling/unable to contract for safety Inmate is depressed and scared refusing to go back to his cell, badly bruised Organic disorder ... schizophrenia and other psychotic disorders (schizophreniform disorder, schizoaffective disorder, delusional disorder, brief psychotic disorder, shared psychotic disorder)." The defendants are deliberately indifferent to Plaintiff Sandoval's serious medical needs and have not reasonably accommodated his disabilities.

81. Plaintiff Sandoval has been a victim of several excessive uses of force. As recently as September 11, 2002, Mr. Sandoval was beaten by correctional officers and

suffered injuries as they “placed him on ground” according to corrections department medical documents. Mr. Sandoval suffered a “large hematoma over his right eye brow.” Other use of force forms in his file indicate he was also abused on October 16, 2001 and March 14, 2001.

82. Plaintiff Sandoval has frequently been placed on suicide watch and “placed in his cell with a mattress, blanket, pillow, a set of yellows and socks.”

83. Despite his well-documented mental health disorders, Mr. Sandoval has received numerous disciplinary citations for manifestations of his disability, resulting in the forfeiture of all of his good-time and the extension of his sentence as a result. In classification procedures, Mr. Sandoval has scored only 8 points based on his past institutional adjustment and prior convictions. Yet he has scored 139 points for 33 separate “disciplinary convictions” over the past 24 months.

84. In a recent institutional grievance, Plaintiff Sandoval requested his medication be given later in the day or that he be allowed to control the light switch in his cell. He complained that the early medication schedule resulted in waking up in the dark, early morning hours in his cell. He reported that waking up in the dark reminded him of when he was tortured as a child and locked in a closet for long periods of time. In his grievance, Mr. Sandoval requested relief from the darkened conditions in his cell because he frequently felt snakes crawling over his body in the dark. His grievance was denied because the investigator found that no individual light switch existed in the cell and that he had inspected Mr. Sandoval’s cell and found no snakes inside it.

85. As a result of behavior the defendants arbitrarily deemed inappropriate, Plaintiff Sandoval has suffered the loss of visiting, telephone, recreation and other privileges without due process.

86. Plaintiff Alex Sosaya was committed to the custody of the defendants in 1999 after spending much of his minority in treatment facilities. Shortly thereafter, the defendants selected him to be among the New Mexico prisoners sent to the Wallens Ridge prison in Virginia, one of the most brutal prisons in America. After many months at the Wallens Ridge facility, Plaintiff Sosaya was returned to New Mexico. The defendants' transfer of Mr. Sosaya to Virginia impeded his ability to appear in court in New Mexico regarding a motion to reconsider his sentence which had been filed by his court appointed attorney. The defendants' placement of Plaintiff Sosaya in Virginia prevented him from obtaining a hearing before a state court judge in New Mexico on his lawyer's motion to vacate Plaintiff Sosaya's prison sentence and place him, instead, into a treatment program in California.

87. Eventually, Plaintiff Sosaya was returned to New Mexico, where his motion to reconsider his original sentence was heard in June 2001. After that hearing, the state court amended Mr. Sosaya's sentence, suspending the balance of it on the condition that he participate in the out-of-state treatment program.

88. Immediately after that decision, defendant Perry appeared before the news media to criticize the state court judge for amending Plaintiff Sosaya's sentence. Perry described Mr. Sosaya in inflammatory terms, and publicly called upon the judge to reverse his decision placing Mr. Sosaya on probation for the balance of his prison term. After defendant Perry's actions, the state court reversed itself, vacating its order suspending the balance of Mr. Sosaya's sentence. Perry's actions led to Plaintiff Sosaya's continued incarceration.

89. Shortly after his June 2001 court appearance, Plaintiff Sosaya was placed by defendants in the SCF in Santa Fe. On July 27, 2001, Plaintiff Sosaya was transferred by the defendants to the SCF at the SNMCF in Las Cruces. In the Las Cruces SCF, Mr.

Sosaya was improperly placed on Level 6 and was denied due process of law in the placement decision. While at the Las Cruces SCF, Plaintiff Sosaya successfully completed all of the requirements to progress from Level 6 to Level 5 by January 2002. Despite his successful completion of the Level 6 program, the defendants have kept Plaintiff Sosaya in Level 6, where he remains at this time.

90. In July 2002, Mr. Sosaya was returned to the SCF at PNM North, where he remains in Level 6. It has been over nine months since Plaintiff Sosaya successfully completed the requirements of the Level 6 program, yet the defendants arbitrarily and capriciously are keeping him on Level 6 and subjecting him to the restrictions on his liberty attendant to a Level 6 placement.

Excessive Force

91. Excessive force is a common occurrence at the SCF's. This excessive force is directed disproportionately, although not exclusively, at prisoners who are mentally ill and/or who have mental disabilities. Due to the oppressive conditions of confinement and inadequate mental health services at the SCF's, prisoners become mentally ill, or their mental illness worsens. Custodial staff are not properly trained in the identification and management of mentally ill prisoners. Thus, when prisoners manifest their illness by self-harm or other behaviors, SCF staff often respond with force rather than with appropriate mental health interventions.

Deprivation of Liberty and Property Without Due Process of Law

92. As a result of the foregoing conditions at the SCF's, prisoners are subjected to a regime of deprivation and enforced idleness. Plaintiffs are subjected to denial of privileges, restrictions on protected and discretionary activities, and limitations on educational and employment opportunities that are more onerous than those at any other

New Mexico facilities. Access to legal materials and legal counsel is more restricted at the SCF's than at other New Mexico prison facilities.

93. SCF prisoners are also subject to a unique behavior modification program, known as the "cognitive restructuring." Under that system, Plaintiffs are imprisoned under the most restricted and austere possible settings for a potentially unlimited amount of time. The only way for an inmate to transfer into a less restrictive "level" of incarceration is through his participation in an "Individualized Compliance Plan," which is based upon the program of "Cognitive Restructuring." The earliest possible completion period for an Individualized Compliance Plan is 367 days. The Cognitive Restructuring curriculum is quackery, not treatment, and substantially departs from prevailing professional standards in the field of psychology.

94. Cognitive Restructuring is a program by which inmates' progress through their Individualized Compliance Plans is conditioned upon the memorization, adoption and regurgitation of specific political and pseudo-psychological statements and positions that may or may not have any relevance to the inmates or to the crime for which they were sentenced. Inmates are "quizzed" to determine their adherence to the statements and concepts demanded by the Cognitive Restructuring program. The stated goal of the Cognitive Restructuring program is to "alter [inmates'] thinking and behavior patterns." In turn, the inmates' release from the SCF to a general prison population is conditioned upon the successful appearance of an "alteration" of their thinking and behavior. Education staff, not mental health professionals, decide whether inmates' "thinking patterns" have changed sufficiently.

95. Inmates routinely "fail" a Cognitive Restructuring quiz by answering honestly and candidly. One inmate was presented with a Cognitive Restructuring quiz that asked, in part, what role his drug abuse had played in leading to his incarceration. The

inmate – who had never done drugs – honestly answered that drug abuse had not played any role in his crime. The corrections personnel administering the quiz deemed this answer unacceptable, and the inmate was informed that he could not continue to advance through his Individualized Compliance Plan (as a pre-requisite to moving into a less restrictive setting) with such an answer. In order to gain access to a less austere setting, the inmate revised his answer to include a fictitious account of a non-existent drug abuse history. This answer was deemed acceptable by SCF staff and he was permitted to "progress."

96. Inmates are routinely forced to makes up stories in order to provide answers deemed acceptable by SCF staff – one inmate said he was in Viet Nam and made up a war story, after which he was complimented by SCF staff for his “honesty” – that inmate was never in Viet Nam.

97. Under the rules of the Cognitive Restructuring program, corrections officers assigned to the SCF make arbitrary and capricious decisions when they do not like an inmate’s behavior. Corrections officers are authorized by the defendants to take away the plaintiffs’ liberty and/or property whenever the correctional officer does not like the behavior of the prisoner. The plaintiffs routinely have their belongings taken away, their time out of their cells eliminated, their family visits prohibited and their already limited activities curtailed, all without due process of law.

98. The Cognitive Restructuring program uses aversive interventions to attempt to modify the behavior of individuals with disabilities, directly contravening the community standards embodied in § 43-1-15(A), NMSA 1978.

99. Correctional officers often write “behavior reports,” alleging misbehavior by an inmate. Behavior reports circumvent due process requirements with respect to

disciplinary reports and classification decisions. Inmates' belongings and liberty are summarily taken from them by correctional officers. Behavior reports are taken into account when the defendants decide whether to "progress" or "regress" an inmate through the steps and levels of the program. Those decisions control the living conditions, the amount of liberty and the length of time that plaintiffs must spend in segregation, but the defendants deny them due process of law when making those decisions. The defendants afford the plaintiffs no appellate review of those decisions.

100. The defendants arbitrarily and capriciously deny the plaintiffs the good time credits available to them under state law. Those decisions effectively lengthen the plaintiffs' terms of incarceration and deny them liberty without due process of law. The defendants permit no appeal of the decisions that deny the plaintiffs their good time credits.

101. Inmates who have completed the Level System are often retained in the system and not told why. They also have no opportunity to appeal the decision to keep them in higher levels of custody.

102. Inmates have been "regressed" to prior steps within the Level System for retaliatory purposes or for harassment or for no reason at all other than SCF officials' dislike of or discriminatory animus toward them.

103. At least one inmate was threatened by defendant Lopez with the retaliatory return to the first step of the Level Program if he corresponded with the American Civil Liberties Union of New Mexico ("ACLU") after Lopez learned that the ACLU had sent correspondence to inmates inquiring as to conditions within the SCF's.

104. Other inmates who have completed the Level Program have been told they cannot leave it merely because of alleged affiliation with a gang.

105. Another inmate was threatened with a transfer to an out of state prison facility far from his family if he did not repeat the Level Program. This inmate has been locked down within an SCF for over two months without any documentation to support such punitive action.

106. Other inmates have been placed in the Level Program as a result of unsubstantiated reports of alleged gang affiliation or misconduct by confidential informants and without a hearing or any due process. Nine such inmates, including plaintiff Ivan Garcia, were transferred to the Level Program without any disciplinary report but instead on the unsubstantiated accusation of an informant that they had been involved in a hunger strike. The alleged hunger strike consisted of the inmates choosing not to eat for one meal in response to their disgust at the food provided to them. These inmates were placed in the Level Program as a method of intimidation and retaliation – intimidation of other inmates who might choose to forego a meal and retaliation against these nine for having allegedly done so.

107. Other inmates are relocated between the North and the South facilities at PNM and/or between the SCF at PNM and the SCF at SNMCF, and when they are moved they are required to return to the beginning of the Level Program.

108. The Cognitive Restructuring program purportedly constitutes an effort to engage in the psychological and psychiatric project of addressing the mental and emotional roots of criminal behavior. It lacks, however, any colorable basis in existing psychological or psychiatric theory or practice, and is being administered by corrections personnel

lacking any mental health credentials or training. Defendant Perry's decision to initiate the program was deliberately indifferent to the serious mental health needs of prisoners.

109. The near impossibility of successfully completing an Individualized Compliance Plan is reflected in the fact that during the two years the program has been in place, very few of approximately 500 SCF inmates have ever “graduated” from the level system and thereby transferred into a less restrictive setting.

110. The very nature of the Cognitive Restructuring program discriminates against those inmates with mental and emotional disabilities, in that such inmates often do not have the emotional stability, mental capacity, cognitive ability or patience to jump through the various and often meaningless hoops provided by that program. Poor reading and writing skills prevent disabled prisoners from "progressing" through the program. Accordingly, inmates with emotional and mental disabilities will inherently spend a longer amount of time “locked in” at the most restrictive level of the level system.

111. The solitary confinement, denial of privileges, additional regulations and restrictions on protected and discretionary activities, the limitation on educational and employment opportunities, the lack of access to legal materials and legal counsel, the Level System, the Cognitive Restructuring program and other programs and conditions at the SCF’s create conditions that corrode the mental health of those exposed to them, leading to the development of severe mental and emotional problems in inmates previously undiagnosed with such disorders. Likewise, those with mental and/or emotional problems before incarceration at the SCF’s encounter rapid and severe exacerbation of those disorders due to conditions at the SCF’s.

112. The solitary confinement, denial of privileges, additional regulations and restrictions on protected and discretionary activities, the limitation on educational and

employment opportunities, the lack of access to legal materials and legal counsel, the Level System, the Cognitive Restructuring program, and other programs and conditions at the SCF's impose an atypical and significant hardship on plaintiffs in relation to the ordinary incidents of prison life in the New Mexico prison system.

113. The actual and anticipated duration of the confinement at the SCF's under such conditions also result in an atypical and significant hardship on plaintiffs in relation to the ordinary incidents of prison life in the New Mexico prison system.

114. Placement at an SCF, for those inmates who are or will be eligible for discretionary release, will inevitably result in such inmates spending more time in confinement than had they not been placed in an SCF. This is because of the length of time required to complete the program at the SCF's, the stigma that attaches to any prisoner who has been confined at an SCF for any reason, and the resulting reluctance of defendants and other DOC officials to grant discretionary release to persons who have been confined at the SCF's.

115. The State of New Mexico intended that the SCF's be utilized to house only the most disruptive, violent, uncooperative and predatory inmates in the New Mexico prison system, who could not be safely housed in traditional maximum-security prisons in the State. However, the majority of plaintiffs do not meet these mandatory criteria for placement at an SCF and their placement at an SCF is arbitrary and capricious.

116. Other SCF officials have repeatedly engaged in similar behavior, entering inmate living pods and provoking inmates until those inmates act out, after which they are charged with misconduct and lose good time as a result. Such actions by SCF officials occurs in retaliation or to humiliate and harass inmates or for no reason at all.

117. The SCF's are unique in American prisons because they combine the features of "Supermax" prisons, which subject inmate to significant and atypical hardships which are not attendant to ordinary prison life, with the intended mind-altering Cognitive Restructuring program. This combination makes the SCF's distinct from other prison programs.

118. Plaintiffs have a liberty and property interest, protected by the Eighth and Fourteenth Amendments to the United States Constitution, in remaining out of an SCF.

119. Before being placed at an SCF, plaintiffs were denied hearings which complied with due process of law as required by *Wolff v. McDonnell*, 418 U.S. 539 (1974) and *Bono v. Saxbe*, 620 F.2d 609, 618 (7th Cir.1980), to determine that they met the criteria for placement at an SCF and that such decision was based on credible and reliable evidence. Moreover, the defendants make no administrative remedies available to inmates placed into an SCF. The defendants' grievance system will not address SCF placements. Classification appeals of SCF placements are not permitted. DOC policy only permits writing a letter to defendant Shanks as the sole mechanism for appealing an SCF placement. The Plaintiffs have sent such letters to defendant Shanks; he has never responded to any of them.

General Factual Allegations

120. The conditions described in this Complaint result in gratuitous pain and suffering, and pose an imminent danger of serious illness, injury, or death to plaintiffs.

121. In imposing the conditions described in this Complaint, defendants have acted with deliberate indifference to plaintiffs' serious medical, health, and safety needs, and to the risk that plaintiffs will suffer serious mental illness, injury, or death. The conditions described herein are not reasonably related to legitimate penological objectives.

122. The conditions described in this Complaint are substantially likely to persist unless enjoined by this Court.

123. Each named plaintiff has suffered irreparable harm, including violations of his constitutional rights, emotional distress, psychological abuse, and other harms that entitle him to damages.

124. The plaintiffs' ability to develop adequate parole plans is impeded by their placement into an SCF, effectively lengthening their terms of incarceration.

125. The hardships inflicted upon the plaintiffs in the SCF's impede their ability to reintegrate into society upon the completion of their sentence of incarceration. At least one resident of an SCF engaged in behavior shortly after his discharge from the SCF to the free world which resulted in him being shot to death.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

126. Plaintiffs have exhausted such administrative remedies as are available to them, appealing classification decisions, writing letters to the Director of Adult Institutions and/or filing administrative grievances seeking such remedies as are available to them, which grievances have not been resolved within 90 days of their filing.

127. Under DOC policy #CD 150150 G, an administrative grievance that is filed and not resolved within 90 days of its filing is deemed complete for purposes of the requirement of exhaustion of administrative remedies.

CLASS CAUSES OF ACTION

COUNT I – VIOLATIONS OF FIRST AMENDMENT RIGHTS

128. By subjecting plaintiffs to the Cognitive Restructuring program as a precondition for transferring out of the cruel and unusual isolation and restriction of the SCF facilities, defendants have violated and continue to violate Plaintiffs' rights under the First Amendment to the United States Constitution. This violation is threefold:

a. By only allowing inmates to advance through the Level Program upon their providing specific pre-approved answers to Cognitive Restructuring programming quizzes and assignments, Defendants are coercing Plaintiffs into engaging in political and personal speech against their will.

b. By only allowing inmates to advance through the Level Program upon their providing specific pre-approved answers to Cognitive Restructuring programming quizzes and assignments, Defendants are forcing Plaintiffs to abandon their First Amendment speech rights in return for a chance at freeing themselves from Defendants' violations of the inmates' Eighth Amendment rights against cruel and unusual treatment. The choice between constitutional violations is a Hobson's choice no individual should have to face.

c. By its terms the Cognitive Restructuring program seeks to coercively alter inmates "thinking patterns" and replace them with those patterns deemed acceptable by DOC. Defendants' effort to engage in amateur psychiatry substantially departs from prevailing professional

standards in the field of psychiatry is a state-sponsored regimen of mind control which strikes at the heart of Plaintiffs' First Amendment rights.

129. Defendants have violated plaintiffs' First Amendment rights by retaliating and/or threatening to retaliate against them for filing grievances within the State penal system, and by retaliating and/or threatening to retaliate against them for seeking to communicate with outside organizations such as the ACLU regarding prison conditions.

130. Inmates who file grievances within the SCF's are falsely identified by the defendants as "rats," or "snitches," which endangers the physical well being of those inmates, in retaliation for having filed grievances and as a method of intimidation to prevent or discourage other inmates from exercising their First Amendment rights to petition for redress of grievances.

COUNT II – VIOLATIONS OF EIGHTH AMENDMENT RIGHTS

131. By subjecting plaintiffs to the conditions of confinement set forth herein, with full knowledge of those conditions, defendants have acted, and continue to act, with deliberate indifference to plaintiffs' serious health and safety needs, and have violated the Eighth Amendment to the United States Constitution.

132. By subjecting plaintiffs to the systemically inadequate mental health care described herein, defendants have acted, and continue to act, with deliberate indifference to plaintiffs' serious medical needs, and have violated the Eighth Amendment to the United States Constitution.

133. By subjecting plaintiffs to the regime of excessive force described herein, defendants have acted, and continue to act, with deliberate indifference to plaintiffs' serious health and safety needs, and have violated the Eighth Amendment to the United States Constitution.

134. By subjecting plaintiffs to searches that are unrelated to prison security and are calculated to harass, defendants have violated the Fourth, Eighth and Fourteenth Amendments to the United States Constitution.

135. By subjecting plaintiffs to constant surveillance, including surveillance by female officers while undressing, showering, and using the toilet, defendants have violated the First, Fourth, Eighth and Fourteenth Amendments to the United States Constitution.

**COUNT III – VIOLATIONS OF EIGHTH AND FOURTEENTH
AMENDMENT RIGHTS**

136. By transferring plaintiffs to SCF's without an appropriate hearing at which credible and reliable evidence is presented showing that each prisoner, on the basis of his prior documented conduct, meets the criteria – including mental health criteria – for placement at an SCF, and having done so in knowing violation of plaintiffs' protected due

process rights, defendants have violated the Eighth and Fourteenth Amendment to the United States Constitution.

COUNT IV – VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT

137. The solitary confinement, denial of privileges, additional regulations and restrictions on protected and discretionary activities, the limitation on educational and employment opportunities, the lack of access to legal materials and legal counsel, the Level System, the Cognitive Restructuring program, and other programs and conditions at the SCF's impose undue and disproportionate hardships on those inmates with mental and emotional disabilities. The programs and conditions at the SCF's violate plaintiffs' rights under the ADA by:

- a. failing to reasonably accommodate the needs of inmates with mental and emotional disabilities, thereby denying them the opportunity to participate in or to benefit from the programs or services of state government, and discriminating against them on the basis of disability;
- b. denying them aid, benefits or services that are as effective as those provided to non-disabled persons;
- c. denying them an equal opportunity to obtain the same result, gain the same benefit or reach the same level of achievement as that provided to non-disabled persons;
- d. failing to make reasonable modifications in policies and procedures when necessary to avoid discrimination against the plaintiffs and the plaintiff class on the basis of disability.

COUNT V – VIOLATIONS OF THE REHABILITATION ACT

138. Plaintiffs reallege the allegations set forth above as if set forth fully herein.

139. Because the State of New Mexico, through the DOC, receives federal financial assistance, it is subject to the requirements of § 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the regulations promulgated thereunder, 45 C.F.R. Part 84.

140. Section 504 prohibits recipients of federal financial assistance from discriminating against qualified individuals with handicaps. The defendants' violations of the ADA, set forth above, also constitute violations of Section 504 of the Rehabilitation Act.

141. The solitary confinement, denial of privileges, additional regulations and restrictions on protected and discretionary activities, the limitation on educational and employment opportunities, the lack of access to legal materials and legal counsel, the Level System, the Cognitive Restructuring program, and other programs and conditions at the SCF's impose undue and disproportionate hardships on those inmates with mental and emotional disabilities. The programs and conditions at the SCF's violate plaintiffs' rights under the Rehabilitation Act by:

- a.. failing to reasonably accommodate the needs of inmates with mental and emotional disabilities, thereby denying them the opportunity to participate in or to benefit from the programs or services of state government, and discriminating against them on the basis of disability;**
- b. denying them aid, benefits or services that are as effective as those provided to non-disabled persons;**
- c. denying them an equal opportunity to obtain the same result, gain the same benefit or reach the same level of achievement as that provided to non-disabled persons;**

d. failing to make reasonable modifications in policies and procedures when necessary to avoid discrimination against the plaintiffs and the plaintiff class on the basis of disability.

DAMAGES CLAIMS BY NAMED PLAINTIFFS

142. As a result of the statutory and constitutional violations set forth above, the plaintiffs have suffered extreme physical and mental pain and suffering. The plaintiffs also are having their terms of incarceration wrongfully increased by the actions of the defendants set forth above, denying them their liberty. Defendants have acted knowingly and with malice toward the plaintiffs, and/or with reckless disregard and/or deliberate indifference to the plaintiffs' rights, and further with both subjective and objective intent to violate the plaintiffs' protected federal constitutional and statutory rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

1. Issue a judgment declaring that the actions of defendants described herein are unlawful and violate plaintiffs' rights under the Constitution and laws of the United States;
2. Certify a class of plaintiffs as described herein above;
3. Permanently enjoin defendants, their subordinates, agents, employees and all others acting in concert with them, from subjecting plaintiffs and the plaintiff class to the illegal conditions set forth in this Complaint;
4. Permanently enjoin defendants, their subordinates, agents, employees and all others acting in concert with them, from placing in an SCF any inmate who has previously manifested any history of mental or emotional disability;

5. Require defendants to implement an effective periodic mental and emotional health screening program for all inmates placed in an SCF, so as to ensure that prisoners who develop mental and/or emotional disorders do not remain in SCF's;
6. Grant compensatory and punitive damages to each of the individual plaintiffs against the individual defendants who are sued in their individual capacities in sums to be determined at trial;
7. Grant plaintiffs their reasonable attorneys' fees, costs and expenses pursuant to 42 U.S.C. § 1988, the Americans with Disabilities Act and other applicable law; and,
8. Grant such other relief as the Court considers just and proper.

Respectfully submitted,

NEW MEXICO CIVIL
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