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4/26/01

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

CHARLES E. AUSTIN, #A206-996
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, OH 44505-4635

MICHAEL BENGE, #A276-821
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, OH 44505-4635

ALONZO L. BONNER, #A223-264
Ohio State Penitentiary
878 Coitsville-Hubbard Road
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AUGUST CASSANO, #A145-242
Mansfield Correctional Institution
P. O. Box 788
Mansfield, OH 44901-0788

DAVID E. CLARK, #A254-389
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, OH 44505-4635

ROY D. DONALD, #A150-710
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, OH 44505-4635

DAVID EASLEY, #306-400
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, OH 44505-4635

COMPLAINT FOR
DECLARATORY JUDGMENT
AND
INJUNCTIVE RELIEF

CASE NO.

JUDGE

Austin v. Wilkinson



PC-OH-001-006

BRIAN K. ESKRIDGE, #A219-302)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
ROGER LEE HALL, #A161-405)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
EDWARD O. HODGE, #294-925)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
STACY LANE, #A143-066)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
KUNTA KENYATTA, #R140-858)
a/k/a JEROME E. LENNON)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
JAMES D. MITCHELL, #A238-630)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
JOHN W. PEROTTI, #A167-712)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
LAMAR PRESTON, #A318-849)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
JASON H. ROBB, #A308-919)

Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
RICHARD SIGGERS, #A147-359)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
ERIC SWOFFORD, #A178-862)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
LAHRAY THOMPSON, #337-139)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
EDWARD A. TILLEY, #A257-737)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
MARK TRAWICK, #A280-783)
Ohio State Penitentiary)
878 Coitsville-Hubbard Road)
Youngstown, OH 44505-4635)
)
Plaintiffs,)
)
vs.)
)
REGINALD WILKINSON)
Department of Rehabilitation and Correction)
1050 Freeway Drive North)
Columbus, OH 43229)
)
STEPHEN J. HUFFMAN)
Department of Rehabilitation and Correction)
1050 Freeway Drive North)

Columbus, OH 43229)
)
BERNARD J. RYZNAR)
Department of Rehabilitation and Correction)
1050 Freeway Drive North)
Columbus, OH 43229)
)
TODD E. ISHEE)
Ohio State Penitentiary)
P. O. Box 1436)
Youngstown, OH 44501-1436)
)
BRUCE A. MARTIN, M.D.)
Department of Rehabilitation and Correction)
1050 Freeway Drive North)
Columbus, OH 43229)
)
DEBORAH NIXON HUGHES)
Department of Rehabilitation and Correction)
1050 Freeway Drive North)
Columbus, OH 43229)
)
CHERYL JORGENSEN-MARTINEZ)
Department of Rehabilitation and Correction)
1050 Freeway Drive North)
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)
MANISH B. JOSHI, M.D.)
Ohio State Penitentiary)
P. O. Box 1436)
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)
PATRICK F. BIGGS, PH.D.)
Ohio State Penitentiary)
P. O. Box 1436)
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)
AUDREY SANDOR NIETZEL, R.N.)
Ohio State Penitentiary)
P. O. Box 1436)
Youngstown, OH 44501-1436)

MATTHEW MEYER)
Department of Rehabilitation and Correction)
1050 Freeway Drive North)
Columbus, OH 43229)
Defendants)

COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Now come Plaintiff Class and Subclass (inmates incarcerated at the Ohio State Penitentiary) by and through their attorneys, and allege as follows and for their complaint against REGINALD WILKINSON, STEPHEN J. HUFFMAN, BERNARD J. RYZNAR, TODD E. ISHEE, BRUCE A. MARTIN, M.D., DEBORAH NIXON HUGHES, CHERYL JORGENSEN-MARTINEZ, MANISH B. JOSHI, M.D., PATRICK F. BIGGS, PH.D., AUDREY SANDOR NIETZEL, R.N., and MATTHEW MEYER, individually and in their official capacity as follows:

PRELIMINARY STATEMENT

1. This is a class action brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. ' 1983, the Eighth and Fourteenth Amendments to the United States Constitution, and customary international human rights law, which is incorporated into federal common law. The action seeks declaratory and injunctive relief, including an order enjoining the Defendants and their agents and those under their supervision from continuing to operate the Ohio State Penitentiary (OSP) as a high maximum security prison (Asupermax@) so as to deny the Plaintiffs and the class and

subclasses they represent the rights guaranteed to them under the Constitution and laws of the United States. Plaintiffs seek this relief on the ground that they are forced to undergo conditions of incarceration that, taken singly and in totality, constitute cruel and unusual punishment, in that those conditions inflict unnecessary and unreasonable punishment on the Plaintiffs. Defendants are wantonly, willfully and deliberately denying and refusing essential and needed medical care to many of the Plaintiffs, who form a subclass herein. Defendants are wantonly, willfully and deliberately denying and refusing essential and needed psychiatric and psychological care to Plaintiffs who form another subclass herein. Further, the decisions to assign and to maintain the Plaintiffs and the class represented by them at the OSP, are arbitrary and capricious, pursuant to vague and overbroad criteria, without meaningful due process, resulting in incarceration under conditions that, individually and in totality, constitute significant and atypical hardship as compared with the ordinary incidents of prison life, and in some cases extend the duration of incarceration. Defendants are aware of but are indifferent to the serious consequences of long-term solitary confinement. Conditions are so stark at this institution that a significant percentage of the prisoners have attempted or committed suicide.

2. Numerous attempts have been made to request and demand of the Defendants that the conditions set forth herein be eliminated. In the course of making these requests and demands, Plaintiffs have exhausted all available administrative remedies. Therefore, if the requested relief is not granted, the Defendants will continue to violate the rights of the Plaintiffs and the class they represent. These continued violations will adversely affect them and their families in many ways, including their physical and mental health, and potentially threaten their lives.

3. Plaintiffs and the class seek:

- (a) a declaratory judgment declaring that the conditions at the OSP violate the Constitution, and customary international human rights law;
- (b) a preliminary and permanent injunction enjoining the Defendants, their employees, agents and those acting on their behalf from continuing to operate the OSP in a manner that violates the rights of the Plaintiffs and their class and threatens their basic well being, their mental and physical health, their lives and their essential humanity.

JURISDICTION

4. This Court has jurisdiction for claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. ' 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. ' 1331 in that this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. ' 1343(a) in that Plaintiff Class seeks redress for civil rights violations under 42 U.S.C. ' 1983.

VENUE

6. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. ' 1391(b) and (c) in that a substantial part of the events or omissions giving rise to Plaintiff Class= claims have occurred in this District, and the actions and contacts of Defendants WILKINSON, HUFFMAN, RYZNAR, ISHEE, MARTIN, HUGHES, JORGENSEN-MARTINEZ, JOSHI, BIGGS, NIETZEL and MEYER subject them to jurisdiction in this District.

PARTIES

Plaintiffs

7. The following individuals are class representatives of all prisoners held at OSP, challenging due process violations in their high maximum security classification and transfer to OSP, placement on Alevels@ at OSP, and/or retention at OSP:

(a) CHARLES E. AUSTIN, #A206-996, has been incarcerated at OSP since April 2, 1999. He has exhausted available administrative remedies by appealing to the North Regional Director the issue of his reclassification from close to high maximum security and transfer from Lebanon Correctional Institution to OSP for assaulting an inmate with a pair of scissors, despite the verdict of a court that he was not guilty. The disposition of his appeal is attached as Exhibit I-A.

(b) MICHAEL BENGE, #A276-821, has been incarcerated at OSP since May 15, 1998. He has exhausted available administrative remedies by appealing to the North Regional Director his retention at OSP in violation of Administrative Rule (AR) 5120-9-12 which requires prisoners sentenced to death to be housed on Death Row, and by appealing several issues to the Chief Inspector. The dispositions of these appeals are attached as Exhibit I-B.

(c) ALONZO L. BONNER, #A223-264, has been incarcerated at OSP since November 13, 1998. On January 13, 2000 he was recommended for reduction in security and transfer from OSP to the Southern Ohio Correctional Facility (SOCF). BONNER was notified by Defendant

RYZNAR on August 8, 2000 that he has been approved for placement at SOCF, but he remains at OSP in high maximum security with the consequence that he will not be eligible for release from prison on his Projected Release Date. He has already been in prison for years beyond the Parole Board's guidelines. BONNER has exhausted available administrative remedies. Relevant documents are attached as Exhibit I-C.

(d) BRIAN K. ESKRIDGE, #A219-302, has been incarcerated at OSP since March 4, 1999. He has exhausted available administrative remedies by appealing to the North Regional Director the issue of his increase from medium or close to high maximum security and his initial transfer from Trumbull Correctional Institution to OSP; and the issue of reversal on April 12, 2000 of a March 15, 2000 recommendation that he be transferred out of OSP, with the result that his security level will not be reduced to close security in time to be considered for parole in May 2002. He also has exhausted available administrative remedies by appealing to the Chief Inspector on several issues including the issue of being placed on level I (with minimal privileges) for 53 days for no documented reason. The dispositions of these appeals are attached as Exhibit I-D.

(e) ROGER LEE HALL, #A161-405, has been incarcerated at OSP since February 10, 1999. He was recommended for release to maximum security, but that recommendation was denied by the North Regional Director. HALL has exhausted available administrative remedies by appealing his initial transfer to OSP and his retention at OSP, and by attempting to use the grievance procedure to challenge his high maximum security classification. Relevant documents are attached as Exhibit I-E.

(f) EDWARD O. HODGE, #294-925, has been incarcerated at OSP since November 2, 2000. He has exhausted available administrative remedies by appealing to the North Regional Director the issue of his reclassification from close to high maximum security and his transfer to OSP allegedly for leadership status affiliated with a gang. The disposition of this appeal is attached as Exhibit I-F.

(g) KUNTA KENYATTA, a/k/a JEROME E. LENNON, #R140-858, has been incarcerated at OSP since January 19, 1999. He has exhausted available administrative remedies by appealing to the North Regional Director the issue of his retention at OSP, and by appealing to the Chief Inspector the issue of his reclassification hearing. He was recommended for release to maximum security, but that recommendation was denied by the North Regional Director. Further delay in reducing his security level will result in his failing to be reduced to close security in time for consideration for parole in January 2002. Documents showing exhaustion are attached as Exhibit I-G.

(h) LAMAR PRESTON, #A318-849, has been incarcerated at OSP since November 13, 1998. He has exhausted available administrative remedies by appealing to the North Regional Director the issue of high maximum classification and transfer to OSP for reasons that include charges alleged in a conduct report for which he was found not guilty by the Rules Infraction Board, and denial of his appeal after a security review in which, upon information and belief, he scored two stability factors and no unfavorable behavior. Relevant documents are attached as Exhibit I-H.

(i) LAHRA Y THOMPSON, #337-139, has been incarcerated at OSP since January 21,

1999. THOMPSON has exhausted available administrative remedies by appealing to the North Regional Director both his initial transfer to OSP and his retention at OSP, allegedly for the reason that he was captain of a gang, although he has not had any conduct reports for gang-related activity, fights or assaults, and he appears to have been confused with another inmate. Copies of relevant documents are attached as Exhibit I-I.

8. The following individuals are class representatives of all prisoners held at OSP, challenging conditions of confinement at OSP:

(a) DAVID E. CLARK, #A254-389, has been incarcerated at OSP since on or about November 27, 1998. He has exhausted available administrative remedies by appealing to the Chief Inspector the issue of unnecessary and degrading strip searches and excessive use of restraints during visits. The disposition of this appeal is attached as Exhibit II-A.

(b) ROY D. DONALD, #A150-710, has been incarcerated at OSP since May 6, 1998. He has exhausted available administrative remedies by appealing to the Chief Inspector the issues of no outside recreation and the refusal of Defendants to provide a meaningful Behavioral Management Program to prepare him for release from prison. He is due to be released on July 26, 2001. The dispositions of these appeals are attached as Exhibit II-B.

(c) ERIC SWOFFORD, #A178-862, has been incarcerated at OSP since May 26, 1998. He has exhausted available administrative remedies by appealing to the Chief Inspector the issue of inappropriate supervision. Relevant documents are attached as Exhibit II-C.

(d) EDWARD A. TILLEY, #A257-737, has been incarcerated at OSP since May 19, 1998. He has exhausted available administrative remedies by appealing to the Chief Inspector the

issues of restraints during visitation, behavioral management reviews, and the high level of tension due to nothing to do, lack of outdoor recreation and sunlight, and the creation of a stressful environment. Documents relevant to these appeals are attached as Exhibit II-D.

(e) MARK TRAWICK, #A280-783, has been incarcerated at OSP since October 23, 1998. He has exhausted available administrative remedies by appealing to the Chief Inspector issues of inappropriate supervision and harassment, and indigency for purposes of receiving a free legal kit, free postage to the courts, and free hygiene items. The dispositions of these appeals are attached as Exhibit II-E.

9. The following individuals are class representatives of a subclass of prisoners held at OSP, challenging denial of timely medical care at OSP:

(a) STACY LANE, #A143-066, has been incarcerated at OSP since May 19, 1998. He has Hepatitis C. He has exhausted available administrative remedies by appealing to the Chief Inspector the issue of lack of treatment for rectal bleeding and denial of referral to an HCV [Hepatitis C Virus] specialist. The disposition of this appeal is attached as Exhibit III-A.

(b) JOHN W. PEROTTI, #A167-712, was incarcerated at OSP for approximately one year between April 1999 and March 2000, and returned to OSP on October 5, 2000. He has exhausted available administrative remedies by appealing numerous issues to the Chief Inspector including his initial transfer to OSP and two appeals on the issue of inadequate medical care (no timely decision on the second appeal). He has also exhausted available administrative remedies by appealing to the North Regional Director his reassignment to OSP. Relevant documents are attached as Exhibit III-B.

(c) JASON H. ROBB, #A308-919, has been incarcerated at OSP since on or about May 7, 1998. He has exhausted available remedies by appealing to the Chief Inspector numerous issues including the housing of Death Row inmates at OSP, and lack of information and treatment for Hepatitis C. He has also exhausted available administrative remedies by appealing to the North Regional Director the issue of retention at OSP in spite of recommended release from high-maximum security and in violation of AR 5120-9-12 which requires prisoners sentenced to death to be housed on Death Row. The disposition of these appeals is attached as Exhibit III-C.

(d) RICHARD SIGGERS, #A147-359, has been incarcerated at OSP since May 1998. He has exhausted available administrative remedies by appealing to the Chief Inspector several issues relating to the non-treatment of inmates with Hepatitis C. The disposition of this appeal is attached at Exhibit III-D.

10. The following individuals are class representatives of a subclass of prisoners held at OSP, challenging transfer to and/or retention at OSP of prisoners who are seriously mentally ill and Defendants= failure and/or refusal to provide adequate mental health care at OSP:

(a) AUGUST CASSANO, #A145-242, was incarcerated at OSP from December 15, 1998 until October 5, 2000. He has a long history of serious mental illness including numerous suicide attempts but he was not on the mental health caseload. Plaintiff CASSANO attempted suicide on or about September 29, 2000 by smashing his TV and cutting the artery in his arm with broken glass from the TV. He was returned to Death Row on October 5, 2000. To avoid being returned to OSP, he bit the artery and vein in his arm and bled profusely before being found on October 23, 2000. CASSANO has exhausted his administrative remedies by appealing two

grievances to the Chief Inspector to which there have been no responses in violation of AR 5120-9-31(H)(8). Plaintiff CASSANO seeks as relief, on behalf of himself and other prisoners who are transferred out of OSP for reasons of mental health, that no such prisoners be returned to OSP. Relevant documents are attached as Exhibit IV-A.

(b) DAVID EASLEY, #A306-400, is seriously mentally ill. He has been incarcerated at OSP since November 13, 1998. He has exhausted available administrative remedies by appealing his transfer to OSP to the North Regional Director, and by attempting to utilize the grievance procedure. EASLEY was briefly moved from OSP to a Residential Treatment Center at the Southern Ohio Correctional Facility but was returned to OSP, and in the months since his return he has made at least two suicide attempts, once by hanging and once by fire for which he is being charged with arson. EASLEY also exhausted available administrative remedies by appealing the issue of outside recreation. Relevant documents are attached as Exhibit IV-B.

(c) JAMES D. MITCHELL, #A238-630, has been incarcerated at OSP since April 21, 1999. He is seriously mentally ill. Upon information and belief, Plaintiff MITCHELL made at least three suicide attempts before he was transferred to OSP, and at least three suicide attempts since he has been at OSP, once by electrocution, once by fire and, on October 10, 2000, by cutting his wrist with a razor. He was charged with Aggravated Arson in connection with suicide attempts after attempted hanging failed. MITCHELL has exhausted available administrative remedies by appealing to the Chief Inspector the issue of lack of response to his complaints that his life and safety were at risk. The disposition of this appeal is attached as Exhibit IV-C.

11. In addition to representing the subclass where presented above, some Plaintiffs also

represent another subclass or the class as a whole. For example, Plaintiff ROBB represents the class affected by due process violations as well as the medical subclass.

Defendants (Acting Individually and in Their Official Capacity)

12. Defendant REGINALD WILKINSON is Director of the Ohio Department of Rehabilitation and Correction (ODRC). As such he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, as described below. He has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

13. Defendant STEPHEN J. HUFFMAN was formerly the Warden of the Southern Ohio Correctional Facility, and was appointed North Regional Director on or about June 5, 2000. As such he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, including but not limited to initiating the high maximum classification and transfer to OSP of many prisoners, denying their appeals, and disapproving releases from OSP recommended by a Reclassification Committee and by the Warden. He has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

14. Defendant BERNARD J. RYZNAR is the Chief of the Bureau of Classification of the ODRC. As such he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies,

customs and practices that prevail at OSP, including but not limited to issues of classification and transfer. He has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

15. Defendant TODD E. ISHEE became the Warden at OSP on or about July 24, 2000. As such he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP. He has, therefore, directly and proximately caused, and will continue to cause in the future, many of the damages, injuries and violations of rights set forth below.

16. Defendant BRUCE A. MARTIN, M.D. is Medical Director of the Ohio Department of Rehabilitation and Correction. As such he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, as described below with regard to refusal to provide or implement timely diagnosis and treatment of serious physical disease and medical conditions. He has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

17. Defendant MANISH B. JOSHI, M.D. is the Medical Director of the OSP. As such he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, as described below with regard to failure or refusal to diagnose and treat serious physical disease and medical conditions of which he was fully aware and in a position to provide,

or to provide access to or implement the recommendations of specialists. He has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

18. Defendant DEBORAH NIXON HUGHES is the Chief of ODRC=s Bureau of Mental Health Services. As such she has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, as described below with regard to Defendants= failure adequately to assess, diagnose, classify and treat, serious psychological and emotional disorders. She has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

19. Defendant PATRICK F. BIGGS, Ph.D. is the Mental Health Supervisor at OSP. As such he and persons working under his supervision have caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, as described below with regard to Defendants= failure adequately to assess, diagnose, classify and treat serious psychological and emotional disorders. He has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

20. Defendant AUDREY SANDOR NIETZEL, R.N. is the Health Care Administrator of the OSP. As such she and persons working under her supervision have caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, as

described below with regard to refusal to provide access to doctors, as well as failure to diagnose and treat serious physical disease and medical conditions. She has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

21. Defendant CHERYL JORGENSEN-MARTINEZ, Esq. is Chief Inspector of the ODRC. She and Assistant Inspectors under her supervision make the final decisions on grievance appeals. As such she has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at the OSP, as described below. She has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

22. Defendant MATTHEW MEYER is Security Threat Group Investigation Coordinator for the Ohio Department of Rehabilitation and Correction. As such he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in some of the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at OSP, as described below with regard to issues of security classification and transfer based on alleged security threat group activity. He has, therefore, directly and proximately caused, and will continue to cause in the future, the damages, injuries and violations of rights set forth below.

CLASS ACTION ALLEGATIONS

23. The above named Plaintiffs bring this action in their own behalf and, pursuant to

Federal Rules of Civil Procedure (FRCP) Rules 23 (a) and (b) (1) and (2), on behalf of a class similarly situated.

24. The class consists of all persons who are presently imprisoned at the OSP and who as a result of that imprisonment are subjected to the conditions set forth below which constitute cruel and unusual punishment within the meaning of the Eighth Amendment and customary international law. The class further consists of prisoners the conditions of whose confinement constitute a significant and atypical hardship as compared with the ordinary incidents of prison life, and in some cases extend the duration of incarceration; and who have been transferred to and retained at OSP without due process within the meaning of the Fourteenth Amendment.

25. The class further consists of subclasses:

(a) those in serious need of medical care, who are deliberately and unreasonably denied timely access to care, said denial causing undue pain and anxiety and to whom, when care is given, it is below the minimal standards of care;

(b) those in serious need of psychiatric and psychological care, who are transferred to and/or retained at OSP, who have a history of mental illness and/or, as a result of placement at OSP, suffer irreparable, unreasonable and unnecessary psychological, psychiatric and mental injury and damage, and/or who are deliberately denied adequate mental health care after placement at OSP.

26. The members of the class and subclasses are too numerous to be joined in one action. OSP has the capacity to house 502 high maximum security prisoners and, as of November 1999, was housing approximately 460 prisoners. Joinder of all class members is therefore

impracticable.

27. Common questions of law and fact exist as to all class members and dominate those questions that affect only the individual members. Those common questions include, but are not limited to:

(a) Whether Defendants= creation, supervision, and maintenance of a high maximum security prison subjecting Plaintiffs and class members to an extremely harsh system of confinement in long-term isolation at OSP amounts to cruel and unusual punishment.

(b) Whether Defendants= maintenance of a high maximum security prison as described herein without providing Plaintiffs and class members outdoor recreation constitutes cruel and unusual punishment and violates customary international law.

(c) Whether Defendants= routine use of unnecessary, degrading and humiliating restraints during visiting and confidential interviews constitutes cruel and unusual punishment.

(d) Whether Defendants= deliberate indifference to the serious medical risks and conditions of the Plaintiffs and their class, constitutes cruel and unusual punishment.

(e) Whether the placement and retention at OSP of prisoners who are in serious need of psychiatric and psychological care, who have a history of serious mental illness and/or, as a result of placement at OSP, suffer irreparable, unreasonable and unnecessary psychological, psychiatric and mental injury and damage, constitutes cruel and unusual punishment.

(f) Whether the conditions which prevail at OSP, individually and in totality, constitute a significant and atypical hardship as compared with the ordinary incidents of prison life.

(g) Whether Defendants deprived Plaintiffs and class members of their liberty interests

without due process of law, inasmuch as Defendants arbitrarily and capriciously reclassified, transferred, and retained Plaintiffs in high maximum security at OSP based on vague and overbroad Assignment and Behavior Criteria, without adequate procedural safeguards, and often in derogation of existing Administrative Rules.

(h) Whether Defendants= creation, supervision and maintenance of a high maximum security prison subjecting Plaintiffs and class members to an extremely harsh form of prolonged solitary confinement violates international standards that constitute customary international law.

28. The claims of the Plaintiffs are typical of the claims of the class.

29. Plaintiffs will fairly and adequately protect the interests of the class. The interests of the class representatives are consistent with those of the class members. In addition, Plaintiffs= counsel are experienced in class actions, civil rights and prison litigation.

30. Plaintiffs= counsel know of no conflicts of interest among class members that would affect this litigation or between the attorneys and class members.

31. Use of the class action mechanism here is superior to other available methods for the fair and efficient adjudication of claims and will prevent the imposition of undue financial, administrative and procedural burdens on the parties and Court that individual litigation of these claims would impose.

32. The Plaintiff class should be certified pursuant to Rule 23 (b)(2) for determination of liability because Defendants have acted on grounds generally applicable to the respective classes, thereby making class-wide declaratory, injunctive and other equitable relief appropriate.

33. Common questions of law and fact clearly predominate within the meaning of Rule

23 (b)(3). Class action treatment provides a fair and efficient method for the adjudication of the controversy herein described, affecting a large number of persons, joinder of whom is impracticable. This class action provides an effective method whereby the enforcement of the rights of Plaintiffs and the class members can be fairly managed without unnecessary expense or duplication.

STATEMENT OF FACTS

Conditions of Confinement at OSP - Common Factual Claims

34. OSP is a high maximum security prison, commonly referred to as a Asupermax.@ The basic characteristics of supermax confinement are extreme social isolation, restricted movement, minimal property, reduced environmental stimuli, extremely limited recreational and cultural opportunities, no vocational opportunities, and extraordinary levels of surveillance and control for a duration of years.

35. Prisoners at OSP are confined to their cells except for an hour a day in another cell for recreation and a five-minute shower. OSP prisoners never go outside the building except under rare circumstances for medical purposes or a court appearance. Visiting is done under conditions that are so uncomfortable and humiliating that prisoners and families are deterred from visiting. The prison is designed and operated so as to exercise complete control over its residents, including the individual class representatives and class members, in every respect including the basic necessities of life, thereby making it easy for those in control to deprive prisoners of their dignity by negligent, or hostile or indifferent treatment.

36. Incarceration at OSP is generally distinguishable from other forms of segregation in a number of ways, the two most important of which are the duration of stay at OSP and the effect on the prisoner=s eligibility for parole. There is no time limitation, other than the prisoner=s maximum sentence, up to and including life, pursuant to which each prisoner may be confined at OSP. Moreover, a prisoner in high maximum security is not eligible for parole until he has first been reclassified to maximum security for a year and then reclassified to close security.

37. At OSP, each inmate is confined alone for at least 23 hours a day in a sparsely furnished cell, the floor area of which is 89.7 feet (7 feet wide by 14 feet from front to back, minus utility area). There is a window 4 inches wide and 36 inches high that allows for a small amount of natural light, and in cells where there is a wall outside the window, very little light and no view of the natural world. Heating and cooling and the amount and temperature of air blowing through the vent cannot be controlled by the inmate, nor can he open the window.

38. There is a small thick glass window in the steel door at the front of the cell. In the door there is a Afood slot@ or Acuff port@ which an officer may unlock to insert food or mail, and which is also used to put handcuffs on the prisoner before the door is opened. The cell has a sink and toilet, a small desk and a concrete immovable stool. Loud noise reverberates as the doors to the pods clang when opened and closed, and the doors and food slot doors are slammed by correctional officers.

39. There is a narrow concrete slab that stretches across the width of the cell. On that narrow slab lie a thin mattress, pillow, pillow case, blanket and two sheets unless bedding is confiscated for disciplinary reasons. A light remains on at all times inside the cell which makes it

difficult for some inmates to sleep. Prisoners are punished if they attempt to use a piece of paper or any other object to shield themselves from the light or to protect themselves from the air blower.

40. The degree of isolation of prisoners at OSP is unique as compared with prisoners in any other Ohio prison. At the end of the year 2000, metal strips were being attached to the bottom and sides of cell doors, upon information and belief, effectively cutting off or severely reducing any kind of communication among prisoners, and so much reducing air circulation as to make it difficult for some prisoners to breathe.

41. Prisoners are allowed only a sparse amount of personal property. Prisoners are disciplined if any property is found in excess of the possession limits. Cells are routinely searched when an inmate is out of his cell for recreation. Because staples, binders, and fasteners of any kind are prohibited, legal and personal papers are often scattered during cell searches.

42. Prisoners have no privacy. Correctional officers can listen to what is going on in any cell at any time through an intercom. Fixed videocameras can record movement outside the cells. When medical and mental health personnel make rounds, they are accompanied by correctional officers; officers and other inmates can hear as conversations are held through the cuffport.

43. Prisoners are punished if they save a piece of bread or a packet of sugar or any other item from a food tray for a snack at a later time, or place any photographs or any other items on the cell wall, or for many other minor infractions.

44. It is difficult for prisoners to summon help. There is an emergency intercom button which the inmate can press, but the inmates are warned that they will be disciplined if they

utilize it for other than emergency situations. If inmates kick or pound on the door to catch an officer's attention, they may be disciplined.

45. Discipline even for minor offenses may result in an inmate being demoted to a lower level for an indefinite period of time, which entails not only loss of privileges and programs, but may have the effect of extending the duration of his time at OSP by several years as he must once again work his way up to higher levels. Inmates are seldom exonerated through the very limited appeals available. Discipline may be imposed arbitrarily or in retaliation for the filing of a complaint or grievance.

46. Inmates never leave their cells for any reason, including showers and recreation, without their hands cuffed behind the back and a correctional officer holding each arm. Movement outside the cell block is in full restraints, with an escort of at least two or three correctional officers, one holding each arm, and sometimes one walking behind with a baton. Prisoners may remain for hours with their legs shackled, a belly chain tightly fastened around the waist, and their hands cuffed with a black box that rigidly holds their hands separated from each other. See Exhibit II-D (TILLEY).

47. During confidential interviews with psychological and religious counselors as well as during Rules Infraction Board hearings and Reclassification Committee interviews, prisoners are placed inside a locked room with their legs shackled, hands cuffed behind the back, chained to a pole on the wall or attached to the floor behind the prisoner. See Exhibit II-C (SWOFFORD).

48. A thorough strip search is conducted every time an inmate leaves the block and every time he re-enters the block. The conditions in which prisoners are strip searched are often

unreasonably and unnecessarily humiliating and demeaning. See Exhibit II-A (CLARK).

49. Each pod of cells has Arecreation@ components. One component is denoted the Aoutside@ recreation area, the other Ainside.@ Both the Aoutside@ and Ainside@ components are cells within the building. The area of each component is 90 square feet (less than a parking space for a car in a parking lot), with a ceiling height of 7 feet 10 inches. There are no toilet facilities in the recreation cells. Some recreation cells have a chin-up bar mounted to the wall and a sit-up bench with no cushions. There is nothing movable: not even a ball. See Exhibits II-B (DONALD), II-E (TILLEY), and IV-B (EASLEY).

50. The Aoutside@ recreation facility is an indoor cell which has small grates or slots on one wall which allow fresh air in from the outside. This recreation facility is often unusable in the winter because it is unheated and prisoners are not provided with coats, hats, gloves or other protective clothing. The Aindoor@ recreation area is often unavailable. Recreation for high maximum security prisoners is always solitary.

51. Access to the outside world is very limited. Phone calls can be made only to approved persons; an unsuccessful attempt counts as one of two ten-minute phone calls per month for Level II or one call per week for Level III inmates. Visiting hours are during the morning and early afternoon on Wednesdays and Thursdays, thereby making it difficult for working adults or school children to visit. Prisoners have no opportunity for normal social interaction with other human beings.

52. Access to the courts is limited by difficulty in obtaining grievance forms, and long delays before Dispositions of Grievance are issued by the Inspector of Institutional Services and

before Decisions of the Chief Inspector on a Grievance Appeal are rendered. For example, see Exhibits II-A (CLARK, March 1999 to August 2000), and II-E (TRAWICK, September 1999 to December 2000 before remand for further investigation).

53. Prisoners who are clearly indigent are being denied necessary items such as free soap, toothbrush or toothpaste, or free postage to courts. See Exhibit II-E (TRAWICK).

54. Virtually no programmed recreational activities are offered, and no work assignments are offered other than one porter in each pod. There are no educational programs beyond the GED level, and there are no vocational or job-readiness programs. There are no language courses, no arts or crafts activities or even any art supplies other than a few crayons. Instructional programs are provided on the institutional television channel with self-study workbooks. Mental health programs are likewise offered by television. There are long waiting lists for programs; waiting for programs may extend the duration of an inmate=s incarceration at OSP. Much of a prisoner=s time is spent in idleness.

55. After four weeks of orientation and assessment, all OSP prisoners at all levels are in AGeneral Population@ (not administrative control or any disciplinary status). Inmates are expected to progress from orientation and assessment, through Level II for one or two years, and Level III for an indefinite period of time with the possibility of demotion to Level II or level I.

56. Level I is for prisoners who are demoted for rule violations. Level I is the most restricted and may last for an indefinite period of time. Prisoners on level I are not permitted to have a television set, hence they cannot participate in educational, mental health, or recovery services programs. They may not have any visits except with their attorney of record. They are

permitted no phone calls other than to attorney of record, or if there is a death or serious illness in the family. When first placed on Level I, inmates are sometimes deprived of all property, including clothing, bedding, legal materials, and hygiene items.

57. Inmates on Levels II and III are permitted a small black and white television set, primarily for institutional programming. Inmates may have to wait for months to receive a television set or to have a non-functioning television replaced. The consequence is that they cannot complete programs that are required for promotion to a higher level, thereby extending the duration of their incarceration at high maximum security.

Placement, Transfer and Location at OSP

(A) Initial Transfers

58. The first high maximum security prisoners arrived at the Ohio State Penitentiary during the first week of May 1998. There was no high maximum security policy in effect until August 31, 1998 when ODRC Policy 111-07, High Maximum Security, was first issued. See Exhibit V. Upon information and belief, over one hundred inmates, including numerous Plaintiffs and members of their class, were transferred to OSP prior to the promulgation of this policy. Most or all of the prisoners transferred to OSP during 1998 were accorded no procedural protections: they were not informed of the reasons for their transfers, nor were they told they had a right to appeal nor to whom to appeal, nor were they accorded a conference with prison officials, an opportunity to make an oral or written statement, or twenty-four hour notice prior to transfer, in derogation of AR 5120-9-21, -52, and -53.

(B) Arbitrary Criteria for Transfer

59. The Assignment and Behavior Criteria adopted by the Ohio Department of Rehabilitation and Correction in ODRC Policy 111-07 are vague and overbroad, and are applied subjectively, arbitrarily and capriciously.

60. The Ohio Legislature's Correctional Institution Inspection Committee (CIIC) inspected OSP in November 1999 and concluded that A Serious questions remain as to how adequate, proper, fair and objective are the decisions to identify, justify and assign selected inmates to supermax. @ The CIIC reported that less than half the inmates at OSP were clearly OSP material, that many inmates who remained in lesser security institutions had committed acts as deplorable as those of inmates who were sent to OSP, and that the temptation was strong to A justify @ the reclassification of some inmates to high maximum security in order to keep OSP full. It noted that between 1993 and 1998, the twenty A supermax @ cells at the Southern Ohio Correctional Facility did not remain full, and that what Ohio needs is another maximum security prison, not a supermax.

61. Many prisoners are placed at OSP or retained at OSP inappropriately. For example, Plaintiff AUSTIN and other members of the class were transferred to OSP based on a guilty finding by a Rules Infraction Board, notwithstanding a not guilty verdict by an outside court of law. Plaintiff DONALD and other members of the class were placed at OSP even though they had received no conduct reports for years prior to their transfer to OSP, in derogation of instructions contained in Supervision Review Forms which call for inmates to be placed in the least restrictive suitable environment. Plaintiff ESKRIDGE and other members of the class, were jumped from medium or close security to high maximum security for offenses involving no

serious injuries, rather than moving them up one security classification at a time. Plaintiff THOMPSON was retained at OSP for gang-related activity even though his record indicates that he was confused with another inmate.

(C) Inadequate Procedural Protections

62. Even since the adoption of ODRC Policy 111-07 on August 31, 1998, a substantial number of prisoners transferred to OSP receive virtually no procedural protection to ensure that the criteria for assignment to high maximum security are not applied arbitrarily and capriciously. Numerous prisoners do not receive prior notice of their transfer, written reasons, a formal hearing or conference, or an opportunity to make a statement challenging their transfer before they are transferred to OSP. Prior to August 31, 1998, no prisoners transferred to OSP were accorded these protections.

(a) Plaintiffs BENGÉ, BONNER, DONALD, HALL, LANE, PEROTTI, PRESTON, ROBB, and numerous other class members, were not given any notice prior to transfer to OSP, even though there was no emergency and they posed no immediate and probable danger to security, in violation of AR 5120-9-21(D)(2).

(b) Plaintiffs BENGÉ, BONNER, CLARK, DONALD, EASLEY, HALL, HODGE, KENYATTA, LANE, PEROTTI, PRESTON, ROBB, TILLEY, and numerous other class members did not have a conference and an opportunity to submit a statement before they were transferred to OSP, in violation of AR 5120-9-53(G) and (H).

(c) Plaintiffs BENGÉ, BONNER, CLARK, DONALD, EASLEY, HALL, KENYATTA, LANE, PRESTON, ROBB, TILLEY, and numerous other class members did not receive written

reasons for their transfer to OSP indicating what behavior was deemed to meet the criteria for classification in high maximum security.

(d) Plaintiffs BENGGE and ROBB are among more than a dozen death row inmates who are housed at OSP in violation of AR 5120-9-12.

(D) Classification Within and Transfer Out of OSP

63. OSP=s Inmate Program and Behavior policy sets forth criteria and procedures for progressing through the different levels of control at OSP and eventually out of OSP that are vague and overbroad and subject to arbitrary and capricious application. Furthermore, what may be required for promotion from level to level has been repeatedly changed and applied retroactively.

64. Behavioral Management plans and contracts are perfunctory and do not specify what a prisoner can do to move from one level to the next or eventually out of OSP. For example, Plaintiff DONALD=s plan called for him to reduce the number of conduct reports from his previous institution, but he had no conduct reports at his previous institution. See Exhibit II-B. Upon information and belief, some prisoners have been told they will never get out of OSP, regardless of whether or not they complete programs, remain free of rule violations, or otherwise comply with their behavioral management plans.

65. Level reviews are often perfunctory and fail to reward inmates for good behavior. Level reviews are often late and thereby prolong the duration of the inmate=s incarceration at OSP. Inmates have no opportunity to appear or be heard in connection with level reviews. See Exhibit II-D (TILLEY). Plaintiff ESKRIDGE was placed on Level I for 53 days without review

by either a Rules Infraction Board or a 30-day review by unit staff for continuation on Level I status. In response to his grievance appeal, the Chief Inspector eventually acknowledged that there was no justification as to why you were placed on level one status and no documentation was found to suggest a level change or a thirty-day placement review. See Exhibit I-D.

66. High maximum security inmates remain in that status for an indefinite period of time. The criterion for release from OSP is totally subjective: An inmate no longer represents the department's highest level of threat to security or order in the professional judgment and discretion of the evaluating official. ODRC Policy 111-07(VI)(5).

67. Plaintiffs DONALD, HALL, LANE, KENYATTA, ROBB, TILLEY, and numerous other class members, were seen by a Reclassification Review Committee that considered their behavior while at OSP as well as the reasons for placement at OSP, and recommended them for release from high maximum security and transfer out of OSP, but the Committee's recommendation was denied by Defendants at Central Office, with the result that these prisoners are retained at OSP. In numerous instances, denials by the North Regional Director erroneously state that the Reclassification Committee recommended retention, when institutional records show that the Reclassification Committee recommended reduction in security level. See Exhibits I-E (HALL) and I-G (KENYATTA). Upon information and belief, even though security review scores merited a reduction in security level, some prisoners are still determined to pose the highest level of threat. For example, see Exhibit I-H (PRESTON).

68. Numerous prisoners who have been approved for transfer out of OSP are nonetheless

confined to the harsh and isolated conditions at OSP for months simply because there is no room to house them at a maximum security prison in Ohio. See Exhibit I-C (BONNER).

(E) Transfer of Mentally Ill Prisoners

69. Mentally disturbed, disruptive or retarded inmates, suffering from behavioral and psychological disorders, were and are placed at or transferred to OSP because they have the most difficulty in adjusting to prison routines, rules, and stress. Defendants frequently place disruptive, mentally ill inmates, including Plaintiffs EASLEY and MITCHELL and numerous other class members in supermax confinement because they lack other housing options, such as secure mental health treatment units or segregation units specifically designed for mentally ill offenders. The illness of these inmates is cruelly and significantly worsened, as evidenced by numerous rule violations which serve to harshen the conditions of their confinement, extend the time they are incarcerated in this anti-therapeutic environment, and increase the risk of suicide.

70. ODRC Policy 111-07(VI)(C) provides for the exclusion of inmates who are seriously mentally ill, and for expeditious transfer to another institution of any inmate who is seriously mentally ill. Nevertheless, Plaintiffs EASLEY and MITCHELL, and other members of the class who have attempted suicide at OSP, are either retained at OSP or, if transferred out, are returned to OSP after a brief stay in another institution, thereby further jeopardizing their mental health.

71. Defendants continue to maintain inadequate screening for mentally ill inmates so as to prevent these inmates from being transferred to or retained at OSP. Upon information and belief, Plaintiff EASLEY and other members of the class were transferred to OSP with no psychological

evaluation prior to transfer; Plaintiff MITCHELL and other members of the class, were taken off psychotropic medications and removed from the mental health caseload just before or shortly after they were transferred to OSP.

Common Subclass Factual Claims

Failure to Provide Timely Medical Care

72. Numerous inmates and class members, similarly situated to Plaintiff class representatives LANE, PEROTTI, ROBB, and SIGGERS, are at significant risk for serious physical injury and/or debilitation as a result of the Defendants' deliberate indifference to, failure and/or refusal to provide medical care.

73. Plaintiffs LANE, ROBB, and SIGGERS and an unknown number of additional members of the class, have Hepatitis C and have sought tests, treatment, and referral to a specialist, but have been denied information as to the criteria for treatment, have been given some blood tests but have not had a work-up or consultation with a specialist, nor have they been provided any early intervention in this potentially lethal and epidemic disease. Plaintiff LANE, who has suffered from an ulcerated colon and internal bleeding, was denied referral to a Hepatitis C specialist by Defendant JOSHI. Plaintiff ROBB was tested for Hepatitis C and found to have the disease but he was not informed by Defendants JOSHI or NIETZEL until ROBB inquired more than a year later.

74. Defendants JOSHI and NIETZEL have denied prisoner requests set forth in paragraph 73. Plaintiffs have no effective mechanism for appealing such denial of treatment inasmuch as Defendant JORGENSEN-MARTINEZ asserts that the final decision about any

treatment protocol or subsequent management rests entirely with the Institutional Medical Director.@ See Exhibits III-A, III-C, and III-D (LANE, ROBB and SIGGERS).

75. Tight leg irons and handcuffs sometimes cut the skin. Use of leg irons and handcuffs without disinfecting them after each use increases the risk that blood-borne viruses such as Hepatitis and HIV will be communicated from prisoner to prisoner, as does the use of the same clippers for multiple haircuts without disinfecting them. See Exhibit III-D (SIGGERS).

76. Numerous members of the class have experienced denial or delay in seriously needed medical care, causing them severe and unnecessary pain and anxiety. Some examples of Defendants= pervasive pattern and practice of denying or significantly delaying needed medical care are:

(a) On November 4, 1999, Plaintiff PEROTTI began to experience chest pains. He attempted to use the emergency button in his cell to call for medical assistance; later that day he was evaluated by a nurse. He was not seen by Defendant JOSHI until November 8, and did not have an EKG until November 9, 1999 which revealed that he was in cardiac distress. He was sent to a local hospital where a metal stent was placed in a collapsed artery; from there he was transferred to Columbus for surgery on his heart, using a vein from his leg. He was returned to OSP early in December 1999 but the incision in his leg did not heal, resulting in continued bleeding, bruising, pain and difficulty walking. Defendant JOSHI did not prescribe medications as specified by the cardio vascular surgeon. In February 2000 a vascular surgeon found an arterial fistula and recommended repair surgery. Once again, treatment was delayed causing prolonged and intense pain. It was not until March 21, 2000, after inquiries from a staff person at the

Correctional Institution Inspection Committee, that he had the second surgery. See Exhibit III-B.

(b) Antonio Carstaphen, #A221-782, was seen by Medical for a lump on his right shoulder and was placed on a waiting list for surgery in September 1998. A Decision of the Chief Inspector on a Grievance Appeal dated June 3, 1999 said his medical needs would be addressed. Upon information and belief, by September 1999 the lump was the size of a pool ball and getting bigger; Carstaphen could not work out or sleep on his right side, and was scared that he had cancer. He wrote to the Bureau of Medical Services and received a letter dated November 16, 1999 saying he would be seen in a surgical clinic at OSP for removal of the lump and, if not done in a timely manner, to notify Defendant NIETZEL. By November 1999, Carstaphen was having pains and stiffness in his neck, was having dizzy spells, and feared he might be dying. Finally, on December 6, 1999 the lump was removed--sixteen months after he was put on a waiting list for surgery, and a half year after exhausting available administrative remedies. See Exhibit III-E (Carstaphen).

(c) Robert VanHook, #A186-347, did not receive timely dental treatment and pulled an infected tooth after the pain became unbearable. VanHook had a history of gum disease and shortly after his arrival at OSP in the spring of 1998 he complained that he needed mouth wash and dental floss, both of which were not and are not available to prisoners at OSP. On May 27, 1999, VanHook sent a message to the Medical Department saying he had a very loose tooth that was hurting and causing pain. On May 31, he sent another notice saying his lower gum was swollen around the loose tooth and he squeezed pus out of the gum at the base of the tooth, still swollen and causing pain. He received a reply saying he would be scheduled to see the dentist on

June 7. VanHook sent messages again to Medical on June 1 and June 2 and signed up for sick call. Tylenol provided by the nurse ran out on June 2. On June 3, he again spoke to the first shift nurse about his dental emergency. He was in so much pain that on June 3, he pulled the tooth himself under unsanitary conditions. He was finally seen by the dentist on June 13, 1999; the dentist gave him nothing for his gum disease. See Exhibit III-F (VanHook).

(d) Howard Hudson, #A143-510, had a collapsed lung and waited from January until July 1999 before part of one lobe was surgically removed. Hudson saw the dentist in March 2000 because he needed some teeth. The dentist told him he would be sent to Columbus for an oral surgeon to remove his remaining fourteen teeth. On June 5, 2000, Hudson was taken to the OSP infirmary where two dentists took turns pulling his teeth. They lacked a sink or suction equipment. When Hudson began to choke on the blood, a guard ran out in the hall and brought a waste paper basket for Hudson to spit into. The only medication he was given to relieve pain was Motrin.

(e) Plaintiff TILLEY has been trying for more than a year to get a medical evaluation of solid knots in the lymph nodes in his neck and groin, pressure in his neck/throat, problems in his urogenital area.

77. These incidents represent a pattern and practice in which Defendants departed from or failed to conform to minimal standards of care of similar practitioners under the same or similar circumstances.

Failure and/or Refusal to Provide Psychiatric and/or Psychological Care

(A) Suicide

78. Plaintiffs CASSANO, EASLEY, and MITCHELL are representative of dozens of members of the class who have attempted suicide and continue to be at risk for suicide.

Attempted suicides have been dismissed as manipulation.

79. During the first two years of operation, there were three suicides at OSP.

(a) Mark DiMarco was transferred to OSP on January 20, 1999 and committed suicide by hanging on February 4, 1999.

(b) On July 2, 1999, Anthony Williams cut both of his arms with broken glass. Later that same day he removed a part of the smoke detector and began to cut both arms. He was then placed in the medical unit under suicide watch. When he began to ram his head into the wall of the cell, he was sprayed with chemical agent and secured in four-way restraints. Williams was released from suicide watch on July 7, 1999. He hung himself in his cell on July 9, 1999, and died of his injuries at a local hospital on July 11, 1999.

(c) Richard J. Pitts was transferred from Belmont Correctional Institution (medium security) to OSP on January 21, 2000. On April 13, 2000, he left a suicide note in the cuffport of his door and hung himself.

80. Those three suicides constituted over fifteen percent (15%) of all suicides in ODRC prisons from May 1998 through April 2000, although OSP houses only one percent (1%) of Ohio's prison population.

81. As of November 5, 1999, Mental Health Supervisor Defendant BIGGS reported, forty-one (41) inmates had been placed on suicide watch. Upon information and belief, less than one year later, seventy-six (76) inmates, over fifteen percent (15%) of the population at OSP,

had been placed on suicide watch.

(B) Failure to Treat Suicidal Prisoners

82. When placed on suicide watch, the inmate is strip searched, and placed in a bare cell with nothing but a suicide gown and suicide blanket. It is cold; air blows on the bed. Plaintiff CASSANO reported that while on suicide watch from September 29 to October 10, 2000, he was strapped down in five-way restraints where all he could move was his head for eight and a half hours, during which time he was wheezing and gasping for breath and his request that his head be elevated was denied. He also reports that he was being injected with drugs that made it harder for him to breathe. He was told if he cut himself again, he would be strapped down for eight (8) to sixteen (16) hours. Such measures do not encourage an inmate to want to live.

83. Michael McWilliams, #327-464, who appeared in a program entitled A Lock Up, Lock Down@ on the Discovery Channel, was filmed with a mark on his neck shortly after a suicide attempt. McWilliams has a history of mental health hospitalizations and suicide attempts, had previously been incarcerated in Residential Treatment Units, had 31 conduct reports in two years at OSP, but is not on the mental health caseload at OSP. He did not appeal his high maximum security classification and transfer to OSP because he did not know that he could file an appeal or how to do the paperwork without inmates around him to tell him what to do.

84. Plaintiffs CASSANO and EASLEY repeatedly requested mental health assistance but, despite their suicide attempts or Asuicide gestures,@ were not placed on the mental health caseload.

85. Mental health care at OSP is limited to medication management through anti-psychotic or psychotropic drugs and televised programs; psychiatric treatment through psychotherapy is not an option. Psychiatrists are rarely provided, and are therefore deliberately withheld from mentally ill patients who desperately need their help.

86. Mental health rounds for prisoners who are not on the mental health caseload are conducted in the presence of correctional officers and within hearing of other prisoners, depriving prisoners in need of psychological/psychiatric treatment of all privacy and dignity. It also constitutes a powerful disincentive for the inmate to seek treatment.

87. Defendants chain Plaintiffs and class members to a pole on the wall or to the floor during confidential psychological/psychiatric interviews. That practice constitutes further interference with the professional/patient relationship and is a powerful disincentive for the patient/inmate to seek treatment.

88. The totality of conditions at OSP is anti-therapeutic, stressful and debilitating, thus heightening the need for mental health services. For Plaintiffs and members of the class who arrive at OSP with serious mental illness or who become seriously mentally ill while incarcerated there, the situation is worsened by:

(a) Lack of effective care and treatment; and

(b) Humiliating and degrading conditions under which prisoners communicate with care providers.

COUNT I
VIOLATION OF EIGHTH AND FOURTEENTH AMENDMENT
TOTALITY OF CONDITIONS AFFECTING PHYSICAL AND MENTAL HEALTH

89. Plaintiffs and class members reallege paragraphs 1 through 88 as if fully set forth herein.

90. Plaintiffs allege a totality of circumstances at the Ohio State Penitentiary which puts at serious risk a single, identifiable human need, namely, mental health, in violation of the Eighth Amendment to the Constitution of the United States. Defendants have knowledge of and are deliberately indifferent to the effects of long term confinement of indefinite duration, in almost total social isolation, under harsh conditions that exceed what is penologically justified.

91. The harsh conditions of confinement at OSP are designed to deprive, and do indeed deprive, the Plaintiffs and their class of the minimum civilized measures of life=s necessities such as physical and mental activity, and impose harsh psychological pain and permanent injury.

92. Defendants prevent Plaintiffs and class members from receiving outdoor recreation in the open air and sun, thus jeopardizing their physical and mental health. Defendants= conduct violates the minimum constitutional standards for long term incarceration.

93. Defendants= routine use of restraints is excessive and goes beyond what is penologically justified. Prolonged use of restraints in routine non-emergency situations is unreasonably and unnecessarily degrading, humiliating and injurious, and runs afoul of minimum constitutional standards. Defendants= chaining of Plaintiffs to a pole on the wall or attaching their handcuffs to the floor during hearings, therapy sessions and other confidential interviews is unreasonably and unnecessarily degrading and humiliating. Defendants= restraining prisoners for hours with their legs shackled, a belly chain tightly fastened around their waists, handcuffs and a black box@ holding their hands and arms in a fixed position, sitting on a stool, while they are

securely locked within a visiting booth is unnecessary, painful and degrading.

94. Defendants have been and continue to be deliberately indifferent to the serious medical and psychological needs of the Plaintiffs and to those of the class they represent.

95. The aforementioned conditions, when combined, constitute an intolerable and overwhelming burden which causes significant psychological injury to those who are otherwise emotionally healthy and significantly exacerbates pre-existing mental disorders.

96. The serious detrimental psychological effects of long term solitary confinement are well recognized. Plaintiffs and class members at OSP experience intense anger, bitterness, hostility, desire for revenge, depression, and hopelessness as the cumulative result of numerous deprivations deliberately inflicted by the Defendants.

97. The aforementioned violations of constitutional rights have been directly and proximately created, caused, authorized, condoned, ratified, approved or knowingly acquiesced in by the actions, policies and practices devised, promulgated, implemented and maintained by Defendants.

98. At all times herein, by those same acts and omissions, Defendants have acted under color of State law to deprive Plaintiffs and class members of their constitutional rights in violation of 42 U.S.C. ' 1983.

99. As a direct, proximate result of Defendants= acts and omissions, Defendants have violated the basic human dignity of Plaintiffs and their class, and have abridged their right to be free from cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

100. Further, a real and immediate threat exists that Defendants will continue to violate the constitutional rights of the Plaintiffs and their class members in the future unless enjoined.

COUNT II
VIOLATION OF EIGHTH AND FOURTEENTH AMENDMENT
RECREATION

101. Plaintiffs and class members reallege paragraphs 1 through 100 as if fully set forth herein.

102. The recreational facilities at OSP do not meet the minimum standard for prisoners in segregation set forth by the American Correctional Association (ACA). An ACA committee recommended that OSP provide Aat least a >bull pen= type of recreation area with a ceiling height of at least 15 feet or more.@

103. The Defendants= long term denial to Plaintiffs and class members of any recreational opportunities to run or walk (except in place), to engage in group sports, to exercise with other prisoners, to exercise in the open air and sunlight, constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

COUNT III
VIOLATION OF EIGHTH AND FOURTEENTH AMENDMENTS
DENIAL OF TIMELY ACCESS TO MEDICAL CARE

104. Plaintiffs and class members reallege paragraphs 1 through 103 as if fully set forth herein.

105. Plaintiff subclass members are denied timely access to medical care, dental care, and

evaluation by specialists. Access to primary care is controlled by the Health Care Administrator and/or staff working under her supervision. Symptoms requiring emergency or urgent care are not promptly recognized and treated.

106. Defendants= deliberate indifference to the Plaintiff subclass of prisoners in serious need of medical or dental care, by denying medicines and other care by a doctor, or by providing care in such a way as to cause acute pain, anxiety, and potentially serious physical and medical injury, constitutes cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments to the United States Constitution. Defendants= actions cause members of this subclass serious and unreasonable harm to their health.

COUNT IV
VIOLATION OF EIGHTH AND FOURTEENTH AMENDMENTS
MENTAL ILLNESS

107. Plaintiffs and class members reallege paragraphs 1 through 106 as if fully set forth herein.

108. Defendants= failure to develop an adequate screening process violates the prisoners= rights under the Eighth and Fourteenth Amendments of the United States Constitution inasmuch as prisoners who already suffer from serious psychiatric and psychological illness are placed at OSP, and OSP prisoners who develop mental disorders are retained at OSP.

109. Prisoners who are already mentally ill, or who develop mental or psychological disorders after transfer, suffer irreparable, unreasonable and unnecessary psychological,

psychiatric and mental injury and damage as a result of their placement and retention at OSP.

110. Defendants= retention at OSP of prisoners who were assigned to OSP despite their suffering from serious mental disorders or serious psychological illness constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

111. Defendants= deliberate indifference to Plaintiff subclass of persons in serious need of psychiatric and psychological care, who are denied care, or who receive care in a manner that causes further psychological and mental injury, constitutes cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments to the United States Constitution.

COUNT V
DELIBERATE INDIFFERENCE TO SUICIDE AS
CRUEL AND UNUSUAL PUNISHMENT AND
VIOLATION OF THE RIGHT TO LIFE PROTECTED BY
THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS

112. Plaintiffs and class members reallege paragraphs 1 through 111 as if fully set forth herein.

113. Plaintiffs CASSANO, EASLEY and MITCHELL are representative of numerous members of the class who have attempted suicide and continue to be at serious risk for suicide.

114. Defendants created and maintain an environment designed to promote suicides and suicide attempts by Plaintiffs and their class. Despite tight controls on prisoners and high maximum security at OSP which make it difficult for prisoners to attempt suicide, there has been an inordinately high rate of suicides at OSP compared to the general Ohio prison population. See

above, paragraph 80. Defendants were and are aware of the severe conditions at OSP and the unreasonably and unnecessarily devastating impact the conditions have had and continue to have on Plaintiffs and their class. Defendants have acted and continue to act with deliberate indifference to the harsh treatment they inflict upon the Plaintiffs and their class, all in violation of the Eighth and Fourteenth Amendments.

115. Defendants have been deliberately indifferent to the needs of prisoners who demonstrate suicidal tendencies. Defendants have refused to provide necessary mental health services to treat suicidal prisoners, have not permanently transferred such prisoners out of OSP, have treated such prisoners in a degrading and unnecessarily humiliating manner that encourages instead of discouraging suicides. Defendants' actions seriously threaten suicidal prisoners' right to life under the Fifth and Fourteenth Amendments and their right to be free from cruel and inhuman treatment under the Eighth Amendment.

COUNT VI VIOLATIONS OF CUSTOMARY INTERNATIONAL LAW STANDARDS

116. Plaintiffs and class members reallege paragraphs 1 through 115 as if fully set forth herein.

117. Defendants' practices and policies of maintaining prisoners in prolonged, indefinite solitary confinement under the harsh conditions described herein, including but not limited to denial of virtually all meaningful recreational opportunities, the harsh use of restraints and shackles, the denial of vocational opportunities, little or nothing by way of cultural and entertainment opportunities, highly restricted and humiliating conditions for visitation with

family and loved ones, and denial of necessary medical and psychological services, violate customary international law.

118. The aforesaid harsh system of prolonged, indefinite solitary confinement violates Article 7 of the International Covenant on Civil and Political Rights which provides that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, and Article 10 of that Covenant which requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Covenant has been ratified by the United States, and both provisions of the Covenant reflect customary international law standards.

119. The United Nations Human Rights Committee has determined that prolonged solitary confinement in harsh conditions such as described herein violates the International Covenant on Civil and Political Rights. The United States Department of State has repeatedly defined, in its human rights reports on other countries, torture and other cruel, inhuman and degrading treatment to include confinement of prisoners in prolonged periods of solitary confinement.

120. Defendants= denial of any outdoor recreation to prisoners violates customary international law. That customary international law is reflected in Article 21 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which requires that each prisoner shall have at least one hour of exercise in the open air daily, and, for young prisoners and others of suitable physique, physical and recreational training, ample space and equipment. The Geneva Convention for the treatment of prisoners of war requires that the detaining power

ensure that all prisoners have adequate outdoor physical exercise. The United Nations Security Council requires that suspected war criminals held under UN authority shall receive at least one hour of outdoor exercise daily.

121. The unnecessarily harsh methods of restraint employed by Defendants such as chaining prisoners= hands to a pole or to the floor during confidential interviews, or use of the Ablack box@ during family visits violates Articles 33 and 34 of the United Nations Standard Minimum Rules for the Treatment of Prisoners which say that chains or irons shall not be used as restraints, and that other instruments of restraint must not be applied for any longer time than is strictly necessary.

122. Defendants= aforesaid violations of customary international law are actionable in this court pursuant to 42 U.S.C. ' 1983 in that customary international law has been held, since the Constitution=s adoption, to be a part of the laws of the United States.

COUNT VII
VIOLATION OF FIFTH AND FOURTEENTH AMENDMENTS
ATYPICAL AND SIGNIFICANT HARDSHIP
DURATION/DUE PROCESS

123. Plaintiffs and class members reallege paragraphs 1 through 122 as if fully set forth herein.

124. Plaintiffs and class members have been deprived of a liberty interest without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

125. The conditions of confinement at the hands of Defendants impose atypical and

significant hardship as compared with the ordinary incidents of prison life. Incarceration at OSP constitutes a major disruption in the life of the prisoner.

126. Confinement at OSP imposes an atypical and significant hardship as compared with the ordinary incidents of prison life for three basic reasons involving (a) conditions at OSP, (b) duration of confinement at OSP, and (c) effect on parole eligibility and overall length of imprisonment.

(A) Conditions at OSP

127. The conditions at OSP are so harsh as to be atypical not merely in relation to general population in the typical prison or maximum security prison in Ohio, but even when compared to Ohio prisoners in administrative or disciplinary segregation. Those atypical conditions include but are not limited to: complete isolation in cells that are sealed off from communication with other prisoners; lack of outdoor recreation or any recreation that allows a prisoner to run, walk more than a few steps, or play with a ball; atypically harsh and unnecessary use of restraints including having the hands chained to a pole or to the floor during confidential interviews; having a black box@ restraining the hands during family visits; and total deprivation at level I of any outside visitors except legal counsel. Such conditions are not typically imposed on prisoners in disciplinary or administrative segregation.

(B) Duration of Confinement at OSP

128. The long-term and indefinite duration of confinement at OSP for most prisoners is atypical even in comparison with prisoners in other kinds of segregation in Ohio.

129. A prisoner can be released from Administrative Control into general population

without a reclassification review, merely upon a 90-day review. Release from OSP requires reclassification, subject to approval by the North Regional Director, and reclassification reviews only take place annually.

130. Numerous Plaintiffs and class members have been confined at OSP for more than two and a half years. The minimum time a prisoner would normally spend at OSP is over two years. Plaintiffs and other class members face the reasonable expectation that they will be imprisoned at OSP for years to come, or for the rest of their lives.

(C) Overall Length of Imprisonment

131. Plaintiffs and class members have no possibility of being released on parole while they are at OSP and for more than a year after they are released from high maximum security. Projected Release Dates given by the Adult Parole Board are contingent on the prisoner being reduced to a security status below maximum. Thus, after release from high maximum to maximum security, a prisoner is expected to spend a year or more in maximum security before he is reclassified to A-close security and eligibility for parole.

132. Plaintiff BONNER and a significant number of other class members have missed one or more Projected Release Dates by being retained at OSP, despite the Parole Board finding time served well over the guideline range and that the inmate appears ready for release. See Exhibit I-C. Classification in high maximum security and retention at OSP is an absolute barrier to parole, for prisoners whose sentences permit parole, extending the period of ineligibility for parole by at least the number of years spent at OSP.

(D) Due Process

133. Criteria employed by Defendants to reclassify Plaintiffs and class members to high maximum security, and to transfer them to OSP, violate their due process rights. The criteria are vague and overbroad, and are applied arbitrarily and capriciously. For example, Plaintiffs have been transferred to OSP despite:

(a) having not had any rules infractions or conduct reports for months or years prior to their high maximum reclassification and transfer; or,

(b) having been acquitted in a court of law for the offense for which they were reclassified to high maximum security and transferred to OSP; or,

(c) being transferred in violation of existing rules such as AR 5120-9-12 which prohibits housing of Death Row inmates with non-Death Row inmates, or ODRC Policy 111-07 which prohibits seriously mentally ill inmates from being imprisoned at OSP.

134. Defendants violated the procedural rights of Plaintiffs and class members, set forth in AR 5120-9-52, -53, and -21, in that many prisoners were not provided with notice of the reasons for their transfer, did not have a hearing or conference or an opportunity to make an oral or written statement challenging their transfer before they were transferred to OSP, were not given 24 hours notice prior to their transfer, nor provided with notification of their right to appeal their high maximum security classification and transfer to OSP.

135. The criteria and procedures for progressing within the levels at OSP are vague and overbroad, have been repeatedly changed and applied retroactively, and are applied arbitrarily and capriciously in violation of Plaintiffs= and class members= due process rights under the Fourteenth Amendment to the United States Constitution. Prisoners can comply with their

Behavior Management plan or contract, have no incident reports, and still not be promoted from one level to another. They may be arbitrarily demoted without being given written reasons or an opportunity to defend themselves. Time periods for level review are not routinely met.

136. The criteria and procedures for being transferred out of OSP and being reclassified from high maximum security are vague and applied arbitrarily and capriciously in violation of the Fourteenth Amendment to the United States Constitution.

137. Numerous Plaintiffs and class members are recommended for release from OSP by the Reclassification Review Committee, yet that recommendation is denied by Defendants at Central Office for reasons that are arbitrary and capricious.

138. Appeal is to the same person(s) who disapproved the recommendation of the Reclassification Review Committee. Plaintiffs and the class they represent have no adequate procedures to challenge Defendants' decision not to transfer them out of high maximum security.

139. Numerous Plaintiffs and class members who have been approved for release from OSP continue to be held at OSP for months because of lack of bed space in a maximum security prison.

140. The atypical and significant hardship that a prisoner faces when placed in high maximum security at OSP requires that he be afforded a high level of procedural protection. Procedures now in place are inadequate given the indefinite and lengthy duration of incarceration under these extraordinary conditions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and class members respectfully request that the Court:

1. Certify this case as a class action;
2. Issue a declaratory judgment that the Defendants' actions, practices, customs and policies, and those of all persons acting on their behalf and/or their agents and/or employees, alleged herein are illegal and violate the constitutional rights of the class members under 42 U.S.C. § 1983 as to each count;

3. Permanently enjoin the Defendants from operating the OSP as a high maximum security prison, or in the alternative, convert OSP from a high maximum security prison to a maximum security prison;

4. To remedy existing Eighth and Fourteenth Amendment and customary international law violations:

- (a) Permanently and preliminarily enjoin Defendants from operating OSP without providing for outdoor recreation with enough area to walk, run, and play at least some recreational sports with a ball;

- (b) Permanently and preliminarily enjoin Defendants from transferring prisoners with serious mental illness to OSP and/or keeping prisoners with serious mental illness at OSP and/or returning prisoners to OSP after they have been removed for reasons of mental health; and preliminarily ordering the appointment of an independent psychiatric expert to determine which prisoners currently housed at OSP are seriously mentally ill, whose continued confinement at OSP therefore violates the Eighth and Fourteenth Amendments to the United States Constitution and poses a serious risk of harm to themselves.

(c) Permanently and preliminarily enjoin Defendants from using the unnecessarily harsh restraints used at OSP including chaining inmates to a pole, wall or floor, and restraining their hands with a black box while locked inside the visiting booth.

(d) Permanently enjoin Defendants from refusing to provide or significantly delaying necessary medical care to prisoners who have serious and/or urgent and/or prolonged and painful medical conditions.

5. To remedy Fourteenth Amendment due process violations:

(a) Permanently enjoin Defendants from transferring prisoners to OSP or retaining prisoners at OSP on the basis of vague and overbroad criteria.

(b) Permanently enjoin Defendants from transferring to OSP prisoners who have had no rule infractions or conduct reports within one year prior to their transfer, or who are on Death Row, or from retaining at OSP any prisoner based upon an alleged infraction for which he has been found not guilty by a court of law, or for gang leadership or membership, absent actual dangerous or predatory behavior by that prisoner within one year of their transfer to OSP.

(c) Permanently enjoin Defendants from transferring prisoners to OSP without first providing them with

(i) detailed, individualized, written reasons for their confinement at OSP;

(ii) an opportunity to make an oral or written statement challenging their transfer;

(iii) a formal hearing at which the prisoner can challenge his transfer and present reasons why he should not be transferred; and

(iv) notice of the right to appeal and the procedures to be followed to appeal the

reclassification to high maximum security and transfer to OSP.

(d) Permanently enjoin Defendants from keeping prisoners indefinitely at OSP. Any prisoner kept in high maximum security confinement for more than one year should be able to obtain review of the placement from an impartial, independent authority.

(e) Permanently enjoin Defendants from keeping prisoners in high maximum security at OSP without clear standards, timetable, and plan for their release from high maximum security to general population at a lower security level.

(f) Permanently enjoin Defendants from operating OSP without meaningful review every 90 days.

(g) Permanently enjoin Defendants from refusing to release a prisoner from OSP who has been recommended for transfer by the Reclassification Review Committee without first providing the prisoner with:

(i) detailed, individualized, written reasons for denying his transfer along with the Committee's recommendation, and

(ii) a formal hearing before an impartial, independent authority to determine whether or not he should be released from high maximum security.

(h) Permanently enjoin Defendants from retaining at OSP for any significant period of time, under high maximum security conditions, prisoners who have been approved for transfer out of OSP.

6. Appoint a Special Master to assist in fashioning remedies and to monitor the implementation of those remedies.

7. Order such further relief as necessary to ensure that Defendants operate OSP in compliance with the Eighth and Fourteenth Amendments to the United States Constitution and customary international law.

8. Order such further relief as the Court considers just and proper.

Respectfully submitted,

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