



PC-VI-001-005

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF THE VIRGIN ISLANDS

LAWRENCE CARTY, JEFF IMMEL, MAO )  
PENHA, DENNIS SWARTZ, WILLIAM )  
PENN, JR., and STEVEN WEEKES, )  
on behalf of themselves and all )  
others similarly situated at the )  
Criminal Justice Complex, )  
St. Thomas, United States Virgin )  
Islands, )

Plaintiffs, )

v. )

ALEXANDER A. FARRELLY, in his )  
official capacity as Governor of )  
the Territory of the United States )  
Virgin Islands; JAMES AIKEN, in his )  
official capacity as the Director )  
of the Bureau of Corrections, )  
Territory of the United States )  
Virgin Islands; KURT WALCOTT, in )  
his official capacity as Warden of )  
the Criminal Justice Complex, )  
St. Thomas, United States Virgin )  
Islands; VIOLA LA FONG, in her )  
official capacity as the Acting )  
Assistant Warden of the Criminal )  
Justice Complex, St. Thomas, )  
United States Virgin Islands; )  
ROSALIE SIMMONDS BALLANTINE, in her )  
official capacity as Attorney )  
General of the United States Virgin )  
Islands; and the VIRGIN ISLANDS )  
BUREAU OF CORRECTIONS, all sued in )  
their official capacity, )

Defendants. )

AMENDED  
CLASS ACTION COMPLAINT  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF

CIVIL ACTION NO. 94-78

AMENDED CLASS ACTION COMPLAINT

On behalf of themselves and the class alleged herein,  
plaintiffs state the following for their amended complaint against  
defendants:

Plaintiff's Exhibit

A

## I. PRELIMINARY STATEMENT

1. This is a class action brought by plaintiffs on behalf of all individuals who are now or in the future will be confined to the Criminal Justice Complex (CJC) located in St. Thomas, United States Virgin Islands and thereby subject to the policies and practices of the Virgin Islands Bureau of Corrections (BOC).

1. Plaintiffs seek declaratory and injunctive relief for deprivations under color of state law of rights, privileges, and immunities secured by the Constitution of the United States, and in particular those secured by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments thereof, 48 U.S.C. §1541 et seq., as well as rights protected by the Americans with Disabilities Act, pursuant to Title 42 U.S.C. §12101 et seq., and the Religious Freedom Restoration Act, pursuant to Title 42 U.S.C. §2000bb et seq.

2. Plaintiffs specifically seek relief from conditions at the CJC that fall below contemporary standards of human decency, deny basic human needs, inflict needless pain and suffering, and threaten plaintiffs' physical and mental well-being.

3. The BOC houses approximately 208 prisoners, including both male and female sentenced prisoners and pretrial detainees at the CJC in St. Thomas.

## II. JURISDICTION AND VENUE

4. Plaintiffs seek to vindicate rights protected by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments of

the United States Constitution; 48 U.S.C. §1541 et seq.; by 42 U.S.C. §1983; by the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq.; by the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §2000bb et seq.; and, by 5 V.I. Code § 4508.

5. This Court has jurisdiction of this civil action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4) and 1367 and 48 U.S.C. §1612(a). Pursuant to 28 U.S.C. §§ 2201 and 2202 and 48 U.S.C. §1612(a), this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper.

6. Venue is proper under 28 U.S.C. §1391 in that defendants reside in the United States Virgin Islands and a substantial part, if not all, of the events or omissions giving rise to the claim occurred in the United States Virgin Islands.

### III. PARTIES

7. Plaintiff Lawrence Carty is a citizen of the United States who is currently a pretrial detainee at the CJC in St. Thomas, United States Virgin Islands.

8. Plaintiff Jeff Immel is a citizen of the United States who is currently a pretrial detainee at the CJC in St. Thomas, United States Virgin Islands.

9. Plaintiff Mao Penha is a citizen of the United States who is currently incarcerated as a sentenced prisoner at the CJC in St. Thomas, United States Virgin Islands.

10. Plaintiff Dennis Swartz is a citizen of the United States who is currently awaiting sentencing at the CJC in St. Thomas, United States Virgin Islands.

11. Plaintiff William Penn, Jr. is a citizen of the United States who is currently a pretrial detainee at the CJC in St. Thomas, United States Virgin Islands.

12. Plaintiff Steven Weekes is a citizen of the United States who is currently a pretrial detainee at the CJC in St. Thomas, United States Virgin Islands.

13. Defendant Alexander A. Farrelly is the Governor of the Territory of the United States Virgin Islands. As such, under Title 5 V.I.C. §4503, he is authorized to appoint the Director of the Bureau of Corrections as well as to present to the legislature the Bureau of Corrections' annual budget. Governor Farrelly is responsible for the administration and operation of all aspects of territorial government agencies including the Bureau of Corrections. He is sued in his official capacity.

14. Defendant James E. Aiken is Director of the Bureau of Corrections of the United States Virgin Islands. He is the chief administrative officer of the Bureau of Corrections and is responsible for the maintenance and operation of all correctional facilities in the U.S. Virgin Islands pursuant to Title 5 V.I.C. §4504. Defendant Aiken's responsibilities include assuring the Bureau's compliance with the Constitution and laws of the United States; and the Revised Organic Act of 1954 of the United States Virgin Islands. Defendant Aiken is sued in his official capacity.

15. Defendant Kurt Walcott is the Warden of the CJC in St. Thomas, United States Virgin Islands. On information and belief, Defendant Walcott reports to Defendant Aiken. He is responsible

for the administration of the CJC and assuring its compliance with the Constitution and the law of the United States; and the Revised Organic Act of 1954 of the United States Virgin Islands. He is responsible for the daily operations of that facility and Defendant Walcott is sued in his official capacity.

16. Defendant Viola La Fong is Acting Assistant Warden at the CJC and is employed by the Bureau of Corrections. On information and belief, Defendant La Fong reports to Defendants Walcott and Aiken. She is responsible for the administration of the CJC and assuring its compliance with the Constitution and laws of the United States; and the Revised Organic Act of 1954 of the United States Virgin Islands. Defendant La Fong is sued in her official capacity.

17. Defendant Rosalie Simmonds Ballantine is Attorney General of the United States Virgin Islands. She is directly responsible for overseeing the Bureau of Corrections pursuant to Title 5 V.I.C. §4503. Defendant Ballantine is sued in her official capacity.

18. The Virgin Islands Bureau of Corrections is the entity responsible for the maintenance and operations of the CJC.

#### IV. CLASS ACTION ALLEGATIONS

19. The named plaintiffs seek to maintain this action on behalf of themselves and all others similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure. They seek to represent a class of all individuals who are now or in the future will be confined in the CJC. Plaintiffs represent a class of persons who have been and, in the absence of relief, will

be treated in the manner set forth below. As a result of such treatment, the members of the class are and will be subjected to cruel and unusual punishment and deprived of fundamental constitutional rights. Plaintiffs therefore seek declaratory and injunctive relief to eliminate defendants' conduct, policies, and practices which deprive them of those rights.

20. There are approximately 208 sentenced prisoners and pretrial detainees at any time at the CJC. The class is so numerous that joinder of all members is impractical.

21. There are questions of law and fact common to the class, including the constitutionality of the conditions of confinement maintained by the BOC described below.

22. The claims of the plaintiffs are typical of the claims of the class. The named plaintiffs include prisoners currently incarcerated at the CJC.

23. Plaintiffs will fairly and adequately represent and protect the interests of the class. Moreover, the plaintiffs' counsel are experienced in the protection and enforcement of the constitutional rights of prisoners.

24. The defendants have acted and refused to act on grounds generally applicable to the class, therefore making appropriate final injunctive relief with respect to the class as a whole.

## V. FACTS GIVING RISE TO THE CAUSE OF ACTION

### A. The Physical Environment

25. The CJC in St. Thomas, United States Virgin Islands, is located on the third floor of a three story building that formerly

housed the central police station and holding cells for arrestees and detainees. The facility is adjacent to the territorial court. The first two floors of the facility are now vacant. Entrance to the CJC is gained through the loading dock area in the rear of the building.

26. The CJC building was opened in 1982. It was designed to house fifty-one detainees in single cells. On information and belief, the cells measure approximately 80 square feet.

27. CJC is divided into seven clusters that are configured as follows:

<u>Cluster Number</u>	<u>Number of Cells</u>
1	11
2	10
3	5
4	6
5	6
6	6
7	7
Total Number of Cells =	51

28. Each cell is equipped with one double-bunkbed which accommodates two prisoners.

29. Each cell has one toilet and one non-functioning sink. The sinks have not been operable for at least the past six months.

30. Each cluster has one showerhead for use by all prisoners housed therein.

#### B. Overcrowding

31. The CJC is seriously overcrowded. It is designed to hold a maximum of fifty-one pretrial detainees. The current population

in May, 1994 was approximately 208 prisoners, 92 of whom were sentenced prisoners.

32. Four to five prisoners are typically confined in cells built for one.

33. Prisoners are routinely forced to sleep on mattresses on the floor because each cell is equipped with only one bunkbed to accommodate two prisoners.

34. This severe overcrowding increases the risk of transmission of infectious disease among prisoners and staff, overtaxes the already defective plumbing system, and contributes to a fundamental deterioration in institutional conditions to the point where basic human needs are denied. Sanitation, programming, exercise, food service, medical care, prisoners' personal safety, and other important aspects of the prison operation have been seriously and adversely affected by the population density.

35. Noise levels in the cell blocks are extremely high, exacerbated by the overcrowded conditions which adversely affect plaintiffs' physical and mental well-being.

36. The cumulative impact of these serious deficiencies has resulted in intolerably high levels of prisoner tension, stress, and hostility. Moreover, the results of the overcrowding contribute to the risk and actual outbreaks of violence and produce health hazards such as the spread of air-borne and food-borne diseases.

37. The consequences of overcrowded conditions at CJC are exacerbated by the lockdown of sentenced prisoners who are kept in



their cells for 23 hours daily except for hourly recreation periods twice a week and family visitation.

38. On information and belief, this lockdown has been in effect since 1992. The lockdown has also intensified the consequences of the lack of a prisoner classification system, particularly with respect to prisoners suffering from serious mental illnesses. Mentally-ill prisoners are typically housed in the general population where they receive inadequate mental health treatment and are locked in cells with three to four other prisoners, causing serious tension and violence among prisoners.

39. The conditions described in ¶¶ 23 through 37 above, among others, subject plaintiffs to confinement under harmful conditions that are detrimental to their health and well-being.

#### C. Environmental Safety and Health

40. The structural decay, and overall poor physical environment of the CJC render it unfit for human habitation, and the building's continued use to house prisoners is entirely contrary to basic principles of environmental health and safety.

41. The entire facility, including the food preparation areas and the cell blocks, is severely infested with roaches. Roaches are considered filth-breeders, and are responsible for the transmission of infectious disease.

42. Food preparation areas are particularly unsanitary in that, among other things, the areas are infested with flies, roaches, rats and mice, and food contact surfaces are encrusted with food debris.

43. Plumbing throughout CJC is defective, broken, and deteriorating. There are leaks in both potable water lines and sewage lines. Overflowing toilets cause flooding in the prisoners' cells, soaking mattresses, bedding and personal belongings that are kept on the floors of the cells due to overcrowding.

44. The sinks in the cells do not work, and the water has been turned off. Plaintiffs thus have no running water supply in their cells except for the toilets. No cells are supplied with hot water. Prisoners must rely on the showers as their only source of running water which is most problematic in view of the ratio of prisoners per shower of as many as 1:50 in clusters #1 and #2 and 1:30 in cluster #6.

45. The drinking water is contaminated. Moreover, on information and belief, there is cross-contamination of potable water with waste water. This contributes to the risk of water-borne disease.

46. Shower areas are encrusted with filth and mold growth, and shower drains are frequently not functional.

47. The cell areas are infested with flies, mosquitoes, rats, mice and cockroaches.

48. The cooling and ventilation systems at the CJC frequently do not work properly, creating excessive heat and lack of air circulation that is dangerous to the health and well-being of inmates.

49. Windows at the CJC are made of plexiglass, are sealed shut and are not or cannot be opened to provide sufficient

ventilation when the cooling and ventilation systems are not working properly.

50. Asbestos particles and other foreign matter falls from the overhang of the recreational facility, creating a danger of inhalation by the plaintiffs and subjecting them to physical harm.

51. With the exception of recreation offered twice a week and a short period for daily access to showers, sentenced prisoners are locked in their overcrowded, small cells twenty-four hours a day, seven days a week.

52. Lighting in the cells is completely inadequate for reading, writing, or other basic activities such as housekeeping.

53. The entire building is in a state of deterioration. The only elevator that services the building for all purposes is in a state of disrepair, as is the sallyport adjacent to the elevator on the third floor.

54. The environmental conditions of the CJC described in ¶¶ 23 through 53 above, particularly the overcrowding, defective plumbing, lack of ventilation, poor sanitation, and insect and vermin infestations, present a serious risk of infectious disease, including tuberculosis.

#### D. Fire Safety

55. Defendants fail to ensure fire safety at the CJC, resulting in conditions that present a serious danger of multiple deaths and severe injury in the event of a fire.

56. Defendants fail to comply with basic fire code regulations and the National Life Safety Code.

57. The mechanisms for locking and unlocking cell doors are frequently not functional. Prisoners are incarcerated on the third floor. The means of egress in the event of fire is a locked stairway. Under these circumstances, safe and timely evacuation is impossible.

58. On information and belief, hazardous areas, including but not limited to, storage areas for plastics, paper goods and linens, as well as housing areas, are not properly enclosed to prevent the spread of fire and smoke in the event of a fire emergency.

59. No safe accommodation exists for physically handicapped prisoners, including prisoners confined to wheelchairs.

60. Fire exits are inadequately marked, and some are completely blocked.

61. The electrical system is dangerously defective, including non-conforming and exposed electrical wiring throughout the CJC. The non-conforming and exposed electrical wiring, in combination with regular flooding in some areas, presents a risk of electrical fire.

62. Severe overcrowding increases the potential for serious injury or loss of life in the event of a fire.

63. On information and belief, fire extinguishers are outdated and non-functional.

64. Smoke detectors are inadequate. There is no operable automatic sprinkler system in the building.

65. No fire safety programs and procedures, fire drills, safety training of correctional staff, or plans for emergency evacuation exist.

66. The conditions described in ¶¶ 54 through 64 above, among others, subject plaintiffs to life-threatening conditions of confinement.

#### E. Inadequate Food Services

67. The menu served to plaintiffs in the CJC is particularly high in starches, low in protein, unappetizing, and generally nutritionally inadequate.

68. Defendants fail to ensure that there are adequate supplies of food. As a result, they frequently run out of various food items and plaintiffs frequently receive inadequate portions of food.

69. Plaintiffs are served food that is frequently stale.

70. Plaintiffs are required to eat in their cells, either on the floor or in their beds.

71. Meals are often served in a sloppy and unsanitary fashion.

72. The drinking water provided to plaintiffs is inadequately filtered shower water.

73. Defendants fail to supervise food preparation and service adequately resulting in an increased risk of food-borne diseases.

#### F. Medical Care

74. Access to physicians by prisoners at CJC is severely limited. The Bureau of Corrections systematically fails to provide

necessary routine and emergency medical treatment to prisoners. Defendants fail to employ sufficient qualified medical personnel to properly treat the prisoner population at CJC.

75. Overcrowding, filthy conditions, and lack of adequate air circulation increase the risk of exposure of staff and prisoners to airborne communicable diseases, such as tuberculosis. Overcrowding causes and aggravates a variety of physical and mental illnesses, which are further aggravated by environmental health and safety hazards, grossly inadequate medical and mental health care, and by the defendants' failure to adequately protect prisoners from assault.

1. Inadequate Screening for Infectious Diseases

76. Prisoners are not properly tested for tuberculosis upon their admission to the CJC. Qualified medical personnel fail to administer the PPD test to all newly-admitted prisoners and to read and record the test results on each prisoner to determine the presence of the tuberculosis infection.

77. There is no systematic, periodic retesting of prisoners or prison staff for tuberculosis; even plaintiffs infected with the Human Immunodeficiency Virus (hereinafter HIV), who may not react to a PPD test but are at substantially higher risk of contracting tuberculosis, are not systematically retested.

78. When prisoners develop tuberculosis during their incarceration, defendants fail to determine the origin, or "source" cases, or the extent of tuberculosis infection among the plaintiff

class. This raises the likelihood of an epidemic affecting correctional staff and prisoners alike.

## 2. Lack of Intake Physical Examinations

79. Defendants routinely provide only cursory intake health evaluations for newly-admitted prisoners. Prisoners do not routinely receive physical examinations and basic diagnostic testing upon admission to CJC.

80. Defendants fail to provide adequate treatment for newly-admitted plaintiffs who are undergoing detoxification from drugs or alcohol.

81. Defendants fail to take adequate precautions to prevent the spread of body lice among prisoners at CJC.

## 3. Sick Call

82. The defendants' sick call procedures are defective. Sick call slips are not reviewed by competent staff. Untrained prison guards determine whether prisoners are eligible to see a nurse or physician. As a result, plaintiffs' serious medical problems are not diagnosed or treated.

83. Plaintiffs routinely experience long delays before being seen by a nurse or physician. Sick plaintiffs thus become sicker and suffer unnecessary pain and medical complications.

84. The defendants' nurses and physicians routinely ignore and refuse to treat serious and urgent medical conditions that require consultation, testing or treatment at outside hospitals or specialty clinics.

85. As a matter of practice, defendants fail to treat plaintiffs' ongoing medical conditions that began prior to their incarceration.

86. Nurses in the facility are arbitrary, hostile and abusive toward prisoners. As a result, ill prisoners do not seek medical attention even when they are seriously ill.

87. The effectiveness of outside medical treatment for plaintiffs is further compromised by the defendants' failure to ensure continuity of care and follow-up coordination between the BOC and outside medical providers. Test results and consultation reports from outside physicians often do not reach plaintiffs' treating physicians or nurses for weeks or months. And even if such results and reports are timely received by medical personnel, they are inconsistently followed or ignored. Prisoners cannot obtain special diets even when ordered by a doctor or a specialist.

88. Defendants fail to monitor or treat adequately plaintiffs who suffer from serious chronic illnesses such as diabetes, coronary artery disease, hypertension, renal conditions, asthma and other respiratory ailments. Defendants' failure to attend to plaintiffs' chronic illnesses results in needless pain and suffering, the overall deterioration of plaintiffs' health, and avoidable fatalities.

89. Prisoners' opthamological needs are not met. Glasses are not provided by the defendants.



#### 4. Prescriptions and Medication Distribution

90. Plaintiffs suffering from chronic illnesses routinely experience long delays in receiving their medications.

91. Defendants fail to examine prisoners or monitor their levels of medication prior to prescription renewal.

92. Treating physicians fail to prescribe proper diet and medication to prisoners who have, or develop, chronic illnesses and diseases requiring special attention, such as ulcers, diabetes, hypertension, or chronic heart disease. Even when such diet or medication is ordered, defendants often fail to provide it. As a result of defendants' failure to provide medication in a timely and consistent manner, plaintiffs experience pain and suffering and frequently, a deterioration of serious illnesses.

#### 5. Emergency Services

93. Prisoners who are gravely ill and those in need of immediate attention are routinely ignored. Prison guards and other untrained staff determine if prisoners with apparently urgent medical problems are eligible to see a nurse, or a doctor, or to be taken to a hospital.

94. On information and belief, the BOC fails to maintain adequate emergency equipment, personnel and transportation services.

#### G. Dental Care

95. Plaintiffs experience extremely long delays in receiving necessary dental care, resulting in prolonged pain and suffering, permanent tooth loss, and disfigurement.

#### H. Mental Health Care

96. Defendants' facilities, staff, procedures and practices with respect to providing mental health care to prisoners are dangerously deficient.

97. Defendants fail to employ an adequate number of licensed, qualified mental health treatment staff, including psychiatrists and psychologists.

98. Defendants fail to assign qualified mental health practitioners to perform intake evaluations of newly-admitted prisoners for diagnosis, and to determine appropriate treatment and placement for prisoners with acute mental illnesses and mental retardation.

99. Plaintiffs with psychiatric illnesses are not properly classified, housed, or treated. Defendants maintain no special mental health treatment units. Rather, plaintiffs suffering from mental illness are housed in the clusters along with general population prisoners. Defendants' policy and practice utilizes the disciplinary system to control, classify and punish mentally-ill plaintiffs. In effect, defendants punish mentally-ill plaintiffs because they are mentally-ill.

100. If a mentally-ill prisoner acts out, he may be subjected to physical abuse by staff. In some cases, mentally-ill prisoners are beaten while handcuffed or shackled to chairs, tables and other fixed structures.

101. Other prisoners in general population take advantage of and abuse seriously mentally-ill plaintiffs. At other times, the

housing of mentally-ill prisoners is a threat to the personal safety of other general population prisoners.

102. There is an institution-wide lack of access to psychologists and psychiatrists for routine counseling, evaluation and ongoing treatment of acute psychiatric disorders. Seriously mentally-ill prisoners are inadequately monitored or maintained on psychotropic medication.

103. Defendants' failure to provide adequate mental health treatment causes severe and needless pain to mentally-ill plaintiffs, and causes their mental conditions to deteriorate.

#### I. Treatment of Disabled Prisoners

104. On information and belief, defendants discriminate against members of the plaintiff class with physical or mental disabilities by excluding them on the basis of these disabilities, from participation in, or denying them the benefits of, services for which these plaintiffs are otherwise qualified, or for which they would be qualified with reasonable accommodation to their disabilities.

105. Defendants exclude plaintiffs who suffer from mental disabilities from participation in services offered to the general population, for which these plaintiffs, with or without reasonable accommodation, are qualified.

106. On information and belief, defendants fail to take reasonable measures to make prison facilities accessible to and useable by plaintiffs with impaired mobility and manual dexterity,

or whose major life activities are otherwise limited by physical impairments.

J. Excessive Force

107. Throughout the CJC, there is a pattern and practice of excessive, malicious, and unjustified use of force by correctional officers against prisoners.

108. Defendants have failed to properly train, discipline or otherwise control the abusive actions of correctional officers.

K. Classification/Failure to Protect Prisoners

109. Defendants fail to classify plaintiffs in a rational manner so as to protect them from assault and victimization. The consequences of this failure are exacerbated by the overcrowding in the CJC.

110. As a matter of policy and practice, defendants house pretrial detainees together with sentenced prisoners, and adolescent detainees and sentenced prisoners together with adult prisoners. Plaintiffs with no prior criminal record are typically housed together with plaintiffs who have extensive criminal histories including prior incarceration for violent offenses. Furthermore, as a matter of policy and practice, defendants house seriously mentally-ill prisoners with other pretrial detainees and sentenced prisoners.

111. Defendants' failure to institute a rational classification scheme results in frequent victimization among plaintiffs ranging from harassment to repeated physical and sexual assaults, particularly of plaintiffs who are younger, weaker, and of slight

physical stature. The seriously mentally-ill are often the victims of abuse and physical attack. The failure of defendants to adequately search for and seize weapons from the prison population increases the risk of serious injury resulting from such attacks.

112. Prison staff assigned to cellblock areas fail to maintain vigilance over the activities of prisoners. On information and belief, prison staff sleep at their posts in the control modules when they are supposed to supervise prisoners in their clusters. Prisoners' assaultive behavior thus goes unnoticed by guards.

113. There is also a racial element to this dangerous situation. As a matter of practice, defendants house newly-admitted white prisoners in Cluster #2, knowing full well that such prisoners will be assaulted by other prisoners because of their skin color. There have been two such assaults within the last year resulting in serious injuries to the victims.

#### L. Exercise and Air

114. Defendants fail to provide plaintiffs with adequate opportunity for exercise or fresh air. The defendants frequently deny plaintiffs access to fresh air or outdoor exercise for days or even weeks at a time. Opportunity for indoor or outdoor exercise is unduly limited. Severe overcrowding and poor ventilation heightens plaintiffs' needs for fresh air and exercise. The deprivation of adequate fresh air and exercise results in plaintiffs' physical and mental deterioration, and heightens tensions within the facilities and the risk of provocations and assaults.

M. Legal Access

115. Neither pretrial detainees nor sentenced prisoners have access to a law library at the CJC.

116. Defendants do not provide persons trained in the law to assist prisoners with their legal work.

117. Prisoners must use monitored telephones to make calls to their attorneys. Moreover, legal telephone calls are restricted to two per week on designated days, at which time prisoners may call two persons, including friends, family or attorneys.

118. Prisoners must present to correctional officers their outgoing mail addressed to their attorneys in unsealed envelopes. On information and belief, this legal mail is frequently not stamped or processed for mailing by correctional staff. Defendants thus obstruct plaintiffs' access to the courts by their unduly restrictive practices regarding prisoners' communication with their attorneys.

119. Defendants prevent plaintiffs from copying their legal materials in that plaintiffs have no direct access to copiers. In order for plaintiffs to copy their legal documents, they must present the material to prison staff, which compromises confidentiality. On information and belief, defendants frequently fail to copy or return plaintiffs' legal documents.

120. Plaintiffs' counsel notified Defendant Ballantine of the restrictions placed on plaintiffs' access to counsel and to the courts in a letter dated May 17, 1994. Defendants failed to respond.

121. Because of the practices and procedures outlined in ¶¶ 115 to 120 supra, plaintiffs are denied meaningful access to court and effective assistance of counsel.

N. Interference with Religious Practice

122. Plaintiffs are denied the opportunity to attend communal religious services as neither religious services nor religious counseling are provided at the CJC.

123. Plaintiffs who request religious diets are often denied them.

124. Defendants place substantial burdens on plaintiffs' exercise of their religion by confiscating plaintiffs' clothing and prayer necessities such as skullcaps.

125. Because of these restrictions, plaintiffs at the CJC are deprived of the right to practice their religions.

126. Section 4508(a) of Title 5 of the Virgin Islands Code provides in pertinent part as follows:

"Persons committed to the institutional care of the Bureau [of Corrections] shall be dealt with humanely, with efforts directed to their rehabilitation and return to the community as safely and promptly as practicable. For these purposes, the Attorney General shall establish programs of classification and diagnosis, education, casework, counseling and psychotherapy, vocational training and guidance, work, library and other rehabilitative services . . ."

127. Defendants have failed to establish effective, long-term programs for educational and vocational training, programs for substance abuse and mental health treatment and/or rehabilitation, and for prison industries.

128. Defendants' failure to establish effective, long-term programs for educational and vocational training, programs for substance abuse and mental health treatment and/or rehabilitation, and for prison industries denies plaintiffs of their rights to educational, vocational and rehabilitative programs as required by 5 V.I. Code § 4508.

## VI. CAUSES OF ACTION

### A. Conditions Claims

129. As alleged above in ¶¶ 23 to 114, the defendants fail to provide plaintiffs with the basic necessities of life, including adequate food, shelter, sanitation, exercise, personal safety and health care. On October 28, 1993, plaintiffs' counsel notified Defendants Aiken and Ballantine of the unconstitutional conditions at the CJC. Defendants have not taken action to remedy those conditions. Defendants' conduct and failure to provide prisoners with these basic necessities despite their knowledge of a substantial risk of serious harm constitutes deliberate indifference. The ill-effects of each deprivation are exacerbated or caused by related conditions, including overcrowding. The resulting conditions at the CJC, taken individually, in combination, or as a whole, are incompatible with contemporary standards of decency, cause unnecessary pain, and are not reasonably related to any legitimate correctional or governmental objective. Defendants' deliberate indifference to plaintiffs' serious medical needs unnecessarily exposes members of the



plaintiff class to infectious disease, causes avoidable deterioration of their physical and mental health, and inflicts on them needless pain, suffering, and premature death. Defendants' policies, practices, acts and omissions evidence and constitute deliberate indifference to the rights of sentenced prisoners and violate the Cruel and Unusual Punishment Clause of the Eighth Amendment, made applicable to the states and United States territories through the Fourteenth Amendment to the United States Constitution, Title 42 U.S.C. §1983, and 48 U.S.C. §1541 et seq. Pretrial detainees confined in the CJC are subjected to impermissible punitive conditions and deprivation of the basic necessities of life including those listed above, in violation of the Due Process Clause of the Fourteenth Amendment, 42 U.S.C. §1983, and 48 U.S.C. §1541 et seq.

B. Americans with Disabilities Act Claim

130. As alleged above in ¶¶ 104 to 106, defendants have discriminated against members of the plaintiff class with physical or mental disabilities, by excluding them from participation in, or denying them the benefits of services for which these plaintiffs are qualified, or for which they would be qualified with reasonable accommodation to their disabilities; and by failing to take reasonable measures to make prison facilities readily accessible to and useable by plaintiffs with impaired mobility and other physical disabilities. These acts and omissions violate the rights of disabled plaintiffs under the Americans with Disabilities Act, 42 U.S.C. §12101, et. seq.

C. Legal Access Claim

131. As alleged in ¶¶ 115 to 121, the denial of plaintiffs' reasonable access to a law library, restrictions on plaintiffs' access to unmonitored telephones to call their attorneys, and interference with plaintiffs' outgoing correspondence to their attorneys deprive plaintiffs of their right to meaningful access to the courts as guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

D. Classification/Failure to Protect Claim

132. As alleged in ¶¶ 108 to 112 above, defendants know of the substantial risk of serious harm to prisoners and fail to classify prisoners in a rational manner or otherwise take steps to protect prisoners, which constitutes deliberate indifference in violation of the Eighth Amendment of the United States Constitution, and 42 U.S.C. §1983. For pretrial detainees, the failure to protect constitute punishment in violation of the Fourteenth Amendment of the United States Constitution.

E. Excessive Force Claim

133. As alleged above in ¶¶ 107 to 108, the defendants have subjected plaintiffs to a pattern and practice of excessive, malicious, and unjustified use of force by correctional officers, in violation of the Eighth Amendment prohibition against cruel and unusual punishment. For pretrial detainees, the use of force constitutes punishment in violation of the Fourteenth Amendment of the United States Constitution.

F. Religious Freedom Restoration Act Claim

134. As alleged in ¶¶ 122 to 124, the defendants substantially burden plaintiffs' exercise of their religious beliefs, in violation of plaintiffs' rights under the Religious Freedom Restoration Act, Title 42 U.S.C. §2000bb et seq.

G. Rehabilitative Programs

135. As alleged above in ¶¶ 127 to 129, the defendants have failed to establish effective, long-term programs for educational and vocational training, programs for substance abuse and mental health treatment and/or rehabilitation, and for prison industries in violation of plaintiffs' rights under 5 V.I. Code § 4508.

VII. NO ADEQUATE REMEDY AT LAW

136. As a proximate result of defendants' policies, practices, acts and omissions, plaintiffs have suffered, do suffer and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs

described herein. Injunctive relief sought by plaintiffs is necessary to prevent continued and further injury.

VIII. PRAYER FOR RELIEF

137. WHEREFORE, plaintiffs, individually and on behalf of all others similarly situated, request that this Court:

- a. Assume jurisdiction of this action;
- b. Issue an order certifying this action to proceed as a class pursuant to Rule 23 (a) and (b) (2) of the Federal Rules of Civil Procedure;
- c. Issue a declaratory judgment pursuant to 28 U.S.C. §2201 and Rule 57 of the Federal Rules of Civil Procedure, that the policies, practices, acts and omissions complained of herein violate plaintiffs' rights as set forth above in ¶¶ 23 to 125;
- d. Issue preliminary and permanent injunctive relief sufficient to rectify the unconstitutional and unlawful acts, policies, practices and conditions complained of herein;
- e. Retain jurisdiction over defendants until such time as the Court is satisfied that their unlawful policies, practices, acts and omissions complained of herein no longer exist and will not recur;
- f. Issue an order directing the defendants to remove sentenced prisoners from the CJC until effective, long-term educational, vocational and rehabilitative programs required under 5 V.I. Code § 4508 are available at the CJC;

g. Award plaintiffs reasonable attorneys' fees pursuant to 42 U.S.C. §1988 and 5 V.I.C. §541, and costs of this action; and,

h. Award such other further relief as to this court seems just and proper.

Respectfully submitted,



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Dated: September 1, 1994