

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

JOSEPH GALLOWAY, individually,

DANA BROCKWAY, as next friend of her  
minor child, A.B., on behalf of all those similarly  
situated,

GLORIA WASHINGTON, as next friend of her  
minor child, J.W., on behalf of all those similarly  
situated,

LINDA THOMAS, as next friend of J.A., on  
behalf of all those similarly situated,

v.

TEXAS YOUTH COMMISSION, RICHARD  
NEDLEKOFF, in his official capacity as  
Conservator of the Texas Youth Commission,  
ALEXANDRA WARMKE, MARY HENRY, as  
Executor of the Estate of James Henry, JOHN  
WILLIAMS, BRADLEY SHACKLEFORD,  
CHRISTOPHER TREVINO, MANUEL  
TORRES, RICHARD BRIGGS, PHILIP  
WATSON, ROBERT McQUEEN, DON  
BRANTLEY, LINDA REYES, DWIGHT  
HARRIS, BART CALDWELL, JOYCE  
McDANIELS, TERI WILSON, GERALDO  
PENUELAS, EDUARDO MARTINEZ,  
JEROME WILLIAMS, BELYNDA BENNETT,  
ALAN WALTERS, SHIREE N. WOODEN,  
JACQUELINE LEWIS, FRANK SOTO,  
SHIRLEY BUSH, DON FREEMAN, BLU  
NICHOLSON, JEROME PARSEE, LYDIA  
BERNARD, CHESTER CLAY, KERRI  
DAVIDSON, JUAN S. MUÑOZ, DON  
BETHEL, STEVE FRYAR, PATSY REED  
GUEST, BILL MAHOMES, JR., GOGI  
DICKSON and ROSS ROBINSON,  
individually.

**FILED**

**FEB 20 2008**

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY WV DEPUTY CLERK

CIVIL ACTION NO.  
1:07-CV-276 (LY)

### **PLAINTIFFS' THIRD AMENDED COMPLAINT**

Plaintiff Joseph Galloway, individually, and Plaintiffs Dana Brockway (on behalf of her minor son, A.B.), Gloria Washington (on behalf of her minor son, J.W.) and Linda Thomas (on behalf of her minor grandson, J.A.), individually and on behalf of those similarly situated who are and will be incarcerated in the facilities of the Texas Youth Commission, file this suit against the Defendants and would show:

#### **STATEMENT OF THE CASE**

1. Plaintiffs Joseph Galloway, A.B. (through his next friend, Dana Brockway), J.W. (through his next friend, Gloria Washington), and J.A. (through his next friend, Linda Thomas), complain that the Texas Youth Commission ("TYC") and its current and former staff routinely and daily violate the federal statutory and constitutional rights of children incarcerated in TYC facilities, and, in short, relegate their youthful lives to a living hell. TYC's own former conservator, Jay Kimbrough, describing TYC's "systemic problems," stated it is "a juvenile justice system in disarray."

2. Defendants routinely denied Joseph, A.B., J.W., J.A., and other children with qualified disabilities the reasonable accommodations to which they are entitled under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 ("ADA"), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, resulting in physical injuries, denial of access to programs and services, and continued incarceration in extremely restrictive settings.

3. TYC employees and Board members, through custom, policy, and individual action, routinely physically and sexually assaulted, and/or allowed other inmates and TYC staff to assault, Joseph, A.B., J.W., J.A. and other children, denied them due process of law under the Fourteenth Amendment to the United States Constitution, denied their right to access to counsel under the First, Sixth and Fourteenth Amendments to the United States Constitution, subjected

them to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, compelled them to bear witness against themselves in violation of the Fifth and Fourteenth Amendments of the United States Constitution, and retaliated against them for speaking about the problems in TYC in violation of the First and Fourteenth Amendments to the United States Constitution. These claims are brought through 42 U.S.C. § 1983.

4. Defendants Harris, Freeman, Nicholson, Parsee, Caldwell, Bernard, Clay, Davidson, Brantley, Reyes, Munoz, Bethel, Fryar, Guest, Mahomes, Dickson, Robinson, Walters and Martinez had knowledge of the deplorable, unconstitutional conditions in TYC's facilities and failed to correct them. As a result of these Defendants' inaction and dereliction of their legal duties, Plaintiffs suffered serious physical injuries and other violations of their constitutional and statutory rights.

#### JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331, 2201.

6. Venue is proper in this Court under 28 U.S.C. § 1391(a)(1) and (2) because TYC's central office and operational, decision-making center is located in this judicial district, because some of the Defendants reside in this district, and because incidents at bar took place within this judicial district. Plaintiffs further invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367(a) to consider their state law claims.

#### PARTIES

7. At the time of the below-described incidents, Joseph Galloway was an inmate in TYC custody. Joseph has been released and now resides with his family in Houston County, Texas. During all relevant times, Joseph's family resided in Crockett, Texas in Houston County.

8. Plaintiff Dana Brockway is the natural mother and legal guardian of her minor son, A.B. A.B. is currently incarcerated in TYC custody, and resides at the McLennan County State Juvenile Correctional Facility ("Mart") in Mart, Texas. Similarly situated children are also in TYC custody. Ms. Brockway resides in Grayson County, Texas.

9. Plaintiff Gloria Washington is the natural mother and legal guardian of her minor son, J.W. J.W. is currently incarcerated in TYC custody, and resides at Mart. Similarly situated children are also in TYC custody. Ms. Washington resides in Bastrop County, Texas.

10. Plaintiff Linda Thomas is the grandmother and legal guardian of her minor grandson, J.A. J.A. is currently incarcerated in TYC custody, and resides at the Crockett State School ("Crockett") in Crockett, Texas in Houston County. Similarly situated children are also in TYC custody. Ms. Thomas currently resides in Houston, in Harris County, Texas.

11. TYC is the State's juvenile correctional system. TYC's statutory purpose is "to provide a program of constructive training aimed at rehabilitation and reestablishment in society of children adjudged delinquent." Tex. Human Resources Code § 61.002. The agency has been served through its counsel.

12. In all actions described herein, Defendants Nedlekoff, Warmke, Williams, Henry, Shackelford, Treviño, Torres, McQueen, Briggs, Watson, Brantley, Reyes, Harris, Caldwell, McDaniels, Williams, Penuelas, Bennett, Freeman, Nicholson, Parsee, Bernard, Clay, Davidson, Owens, Muñoz, Bethel, Fryar, Guest, Mahomes, Dickson, Walters, Wooden, Wilson, Martinez, Lewis, Bush, Robinson and Soto, each were acting under color of law and pursuant to legal authority. Each was an employee or contractor of TYC and, as such, were responsible for upholding the laws of the United States and the State of Texas.

13. Defendant Nedlekoff is the Conservator of TYC. He is sued for injunctive and declaratory relief only. He can be served at TYC's central offices, 4900 N. Lamar Blvd., Austin, TX 78751.

14. James Henry, a former TYC guard acting under color of law, died shortly after committing the violations of Joseph's rights alleged below. Henry's wife, Mary Henry, is the executor of his estate. *See* Tex. Probate Code § 77(b). Joseph may "enforce the payment [of a claim] by suit against the independent executor" pursuant to Texas Probate Code § 147. Mrs. Henry has been served with process and appeared in this litigation.

15. Defendant Alexandra Warmke is a TYC guard. Pursuant to the agreement with Defense counsel, she is considered served and will be represented by one of Defendants' counsel.

16. Defendant John Williams is a TYC guard. He resides in Georgetown, Texas in the Western District of Texas. Pursuant to an agreement with counsel is considered served.

17. Defendant Bradley Shackleford is a TYC guard. He has been served with process and appeared in this litigation.

18. Defendant Christopher Treviño is a TYC guard. He has been served with process and appeared in this litigation.

19. Defendant Manuel Torres is a TYC guard. He has been served with process and appeared in this litigation.

20. Defendant Robert McQueen is a TYC guard. He has been served with process and appeared in this litigation.

21. Defendant Richard Briggs is a TYC guard. He has been served with process and appeared in this litigation.

22. Defendant Philip Watson is a TYC guard. He has been served with process and appeared in this litigation.

23. Defendant Don Brantley is a former executive employee of TYC. He served as TYC's executive director for juvenile corrections during much of Joseph's incarceration. He was fired by TYC in the spring of 2007. He has been served with process and appeared in this litigation.

24. Defendant Linda Reyes is a former executive employee of TYC. She served as deputy executive director during much of Joseph's incarceration. She was forced to resign in the spring of 2007. She has been served with process and appeared in this litigation.

25. Defendant Dwight Harris was TYC's executive director during much of Joseph's incarceration. He has been served with process and appeared in this litigation.

26. Defendant Bart Caldwell was the superintendent of Evins during Joseph's incarceration there. He has been served with process and appeared in this litigation.

27. Defendant Joyce McDaniels is an employee of the University of Texas Medical Branch (UTMB), and a nurse in TYC facilities. She has been served with process and entered a special appearance in this litigation.

28. Defendant Teri Wilson is a TYC caseworker. She has been served with process and appeared in this litigation.

29. Defendant Geraldo Penueles was a TYC caseworker. He has been served with process and appeared in this litigation.

30. Defendant Belynda Bennett was a TYC caseworker at Giddings. She can be served with process at 4700 FM 2502 Rd., Burton, TX 77835.

31. Defendant Eduardo Martinez was the Superintendent at Giddings during most of J.A.'s incarceration. He resigned in the spring of 2007. Counsel are working out an agreement to serve him.

32. Defendant Alan Walters was the superintendent of TYC's McLennan County State Juvenile Correctional Facility ("Mart") in Mart, Texas, at all relevant times. He is currently the superintendent of TYC's Giddings State School ("Giddings") in Giddings, Texas in Lee County. He can be served at Giddings at 2261 James Turman Rd., Giddings, TX 78942.

33. Defendant Shiree N. Wooden is a security guard at TYC's Mart facility. She can be served at Mart at 116 Burleson Rd., Mart, TX 76664.

34. Defendant Jacqueline Lewis is a TYC guard. She was in charge of supervising the children in A.B.'s dorm when another child assaulted and injured A.B. She can be served with process at Giddings, 4700 FM 2502 Rd., Burton, TX 77835.

35. Defendant Shirley Bush is a TYC caseworker. She can be served at the Mart facility, 116 Burleson Rd., Mart, TX 76664.

36. Defendant Jerome Williams was a juvenile correctional officer at Giddings. Williams was the guard on duty when J.A. was violently raped who failed to protect J.A. from the assault. Counsel are in the process of identifying him.

37. Defendant Don Freeman was the superintendent of the Crockett State School during Joseph's incarceration there. He was fired in the spring of 2007. He has been served with process and appeared in this litigation.

38. Defendant Blu Nicholson was the assistant superintendent of the Crockett State School during Joseph's incarceration there. He was fired in the summer of 2007. He has been served with process and appeared in this litigation.

39. Defendant Jerome Parsee was the superintendent of the Marlin facility during Joseph's incarceration there. He was fired in the spring of 2007. He has been served with process and appeared in this litigation.

40. Defendant Lydia Bernard is TYC's former director of juvenile corrections. She was fired in the spring of 2007. She has been served with process and appeared in this litigation.

41. Defendant Chester Clay is TYC's former assistant deputy executive director for juvenile corrections. He served in this position for most of Joseph's incarceration, and can be served at TYC's central offices in Austin. He has been served with process and appeared in this litigation.

42. Defendant Kerri Davidson is TYC's former chief of staff. She served in that position during most of Joseph's incarceration. She was fired in the spring of 2007. She has been served with process and appeared in this litigation.

43. Defendant Juan S. Muñoz was a member of TYC's board during Joseph's incarceration. He resigned in the spring of 2007. He has been served with process and appeared in this litigation.

44. Defendant Don Bethel was a member of TYC's board during Joseph's incarceration. He resigned in the spring of 2007. He has been served with process and appeared in this litigation.

45. Defendant Steve Fryar was a member of TYC's board during Joseph's incarceration. He resigned in the spring of 2007. He has been served with process and appeared in this litigation.

46. Defendant Patsy Reed Guest was a member of TYC's board during Joseph's incarceration. She resigned in the spring of 2007. She has been served with process and appeared in this litigation.



47. Defendant Bill Mahomes, Jr. was a member of TYC's board during Joseph's incarceration. He resigned in the spring of 2007. He has been served with process and appeared in this litigation.

48. Defendant Gogi Dickson was a member of TYC's board during Joseph's incarceration. She resigned in the spring of 2007. She has been served with process and appeared in this litigation.

49. Defendant Ross Robinson was the superintendant at Giddings during Joseph's incarceration there. He can be served with process at 1016 Private Road 2262, Apt. 6, Giddings, TX 78942-6076.

50. Defendant Frank Soto was a TYC guard at the Giddings facility and may be served at Giddings, 4700 FM 2502 Road, Barton, Texas 77835.

51. Collectively, Defendants Muñoz, Bethel, Fryar, Guest, Mahomes and Dickson are hereinafter referred to as "the Board." The Board is charged with "adopt[ing] policies and mak[ing] rules necessary to the proper accomplishment of [TYC's] functions."

52. Collectively, Defendants Clay, Bernard, Harris, Brantley, Reyes, and Davidson are hereinafter referred to as "the Executives."

53. Collectively, Defendants Wilson, Bennett, Penuelas and Bush are hereinafter referred to as "the Caseworkers."

54. Collectively, Defendants Caldwell, Nicholson, Freeman, Robinson, Martinez and Parsee, are hereinafter referred to as "the Superintendants."

#### CLASS ACTION

55. A.B., J.W., J.A. and the similarly-situated class members comprise a class of approximately 4,700 individuals who are currently, or will in the future be, in TYC custody.

56. A.B., J.W., J.A., and the class members meet all the prerequisites for a class action as provided under Federal Rule of Civil Procedure 23 for injunctive and declaratory relief.

57. The class which A.B., J.W., J.A., and the class members comprise is so numerous that joinder of class members is impracticable.

58. Questions of law and fact are common to this class, namely:

- a. TYC fails to provide reasonable accommodations to qualified individuals with disabilities to enable these individuals to have meaningful access to the programs, services and activities of TYC;
- b. TYC fails to provide reasonable accommodations to qualified individuals with disabilities to enable these individuals to be free from restraint and remain in the least restrictive setting;
- c. TYC fails to provide the care and treatment to qualified individuals with disabilities requested by TYC's own treating professionals;
- d. TYC denies individuals due process of law through its indeterminate sentencing scheme;
- e. TYC denies individuals access to counsel through its policies, practices and procedures;
- f. TYC violates individual protections against self incrimination by requiring confessions as part of their "therapy;"
- g. TYC fails to provide treatment and rehabilitation services to individuals as required by the U.S. Constitution and Texas statutes; and,
- h. TYC fails to protect individuals from harm, in violation of their Eighth and Fourteenth Amendment rights.

59. A.B., J.W., J.A., and the class members' claims as described herein are typical of the claims of the class. Together, A.B., J.W., J.A., and the class members support their theories for injunctive and declaratory relief on the same legal theories alleged in this case.

60. A.B., J.W., J.A., and their counsel will fairly and adequately protect the interests of the other class members. Class counsel, Geoffrey N. Courtney, has been class counsel in numerous other class actions involving the rights of minors and persons with disabilities. His

representation has been noted with approval by courts in this district. See *Neff v. VIA Metropolitan Transit Authority and the City of San Antonio*, 179 F.R.D. 185, 194 (W.D. Tex. 1998). Where an attorney has been found to be adequate in the past, it is persuasive evidence that they will be adequate again. *Beckless v. Heckler*, 622 F. Supp. 715, 721 (N.D. Ill. 1985). Moreover, Plaintiffs' counsel believe that their resources are more than adequate to represent the class competently and that they have no other professional commitments which are antagonistic to, or which would detract from, their efforts to secure a favorable decision for the class in this case. A.B., J.W., J.A., and their counsel will adequately assert and support the legal claims that form the basis of this action. A.B., J.W., J.A., and the children will benefit equally by virtue of this action if the Court recognizes and vindicates their federal statutory and constitutional rights.

61. This class action may be properly maintained under the Federal Rules of Civil Procedure 23(b)(2) because Defendants' conduct pursuant to their procedures, policies, and/or practices denied A.B., J.W., J.A., and the class members their constitutional rights and final declaratory relief will settle the legality of the Defendants' challenged procedures, policies, and actions for the class as a whole.

62. Joseph brings his own claim for damages as an individual for the physical and sexual abuse he individually suffered while in TYC custody, separate from A.B., J.W. and J.A.'s claims on behalf of the class for injunctive and declaratory relief. A.B., J.W. and J.A. seek no damages for the class, but do seek damages incidental to class relief.

## FACTS

### A. TYC Operations

63. When children enter TYC, beginning in the fall of 2007, they will be initially processed through the McLennan County State Juvenile Correctional Facility in Mart, TX (hereinafter "Mart"). Prior to the fall of 2007, children were initially processed through TYC's

Marlin Orientation and Assessment Unit in Marlin, TX (hereinafter "Marlin"). Most children spend about two months being initially processed before they are sent to other facilities. Joseph, A.B., J.W. and J.A. each spent between forty-five and sixty days at Marlin.

64. Children in TYC custody are subject to transfer between TYC units at any time. After arriving at TYC's Giddings State School ("Giddings"), A.B. was later transferred to Mart, then briefly to the Gainesville State School, then back to Mart. J.W. was initially transferred to Mart, and then spent several months in TYC's Corsicana Residential Treatment Center facility ("Corsicana"), and was recently told he would be transferred to TYC's Al Price Juvenile Correctional facility in Beaumont, TX. J.A. was initially placed at Giddings, then transferred to Corsicana, then to Crockett. Following Marlin, Joseph was placed at Giddings, then moved to the Evins State School ("Evins"), then was finally released from Crockett.

65. During their time at Mart (and previously at Marlin), children are supposed to be tested and evaluated to determine how they will be rehabilitated. Children are provided with an "individualized case plan," or ICP.

66. TYC assembles children's ICPs without input from them or their parents. In order to formulate their ICPs, TYC limits all its testing and assessment to children's responses to a computer program. Plaintiffs never spoke with a TYC counselor or caseworker about the ICP, and TYC only tested them to see if they had a learning disability or were mentally retarded. The ICP does not make accommodations for mental disabilities, or even consider such known disabilities as Attention Deficit/Hyperactivity Disorder ("ADHD"). In fact, former TYC Conservator Kimbrough writes "all but two [TYC] facilities lack academic counselors to develop appropriate schedules for students."

67. Most children in TYC are incarcerated for an indeterminate sentence. A child has a minimum sentence set by the family court that committed them to TYC custody. The child

serves that minimum, plus only the additional time until they are rehabilitated and released to a less restrictive setting, such as a halfway house or their parents' home. When children are released to this setting, they have certain conditions they must abide by, or they can be returned to TYC custody.

68. To be released to this less restrictive setting, a child has to complete their "phases" in TYC's "Resocialization©" program. There are five phases (0-4), and each phase has three components (Academic, Behavior, and Correctional, or A, B, C). *See* 37 Tex. Admin. Code § 87.3. A child can complete one of their phases, and not advance in the others. A child could succeed academically but remain in TYC, for example, if TYC officials arbitrarily determine the child has a "behavior problem."

69. The "Resocialization©" program is a total failure. TYC Conservator Kimbrough notes it has a "50 percent recidivism rate." Though TYC has promised for months it will abandon "Resocialization©", it has yet to do so.

70. As part of the "Resocialization©" program, children are required to "check and confront" their peers. "Checking and confronting" requires children to correct other children's misbehavior—essentially delegating TYC's security responsibilities to the children. As part of "checking and confronting," children are required to break up fights and police the actions of other children. Part of this process involves calling "huddle ups," where children assemble their peer group and confront misbehaving children. "Checking and confronting" and "huddle ups" create a dangerous atmosphere, because children are expected to "snitch" on their peers. Refusal to "check and confront" other children prevents children from advancing in the "Resocialization©" program and can delay their release from TYC custody.

71. A disciplinary action against a youth is a "225," named for the number of the form completed. A 225 can be either a "category 1" or "category 2." Category 1 is "major," and

would include assaulting a fellow student or a guard. A "category 2" is "minor," and would include using foul language or violating TYC's dress code.

72. TYC intentionally discriminates against children with disabilities, including but not limited to Plaintiffs, by assigning them 225s for manifestations of their disabilities.

73. Children are frequently given 225s without any notice or opportunity to respond. Children, including Plaintiffs, may not even know TYC gave them a 225 until weeks later.

74. Former TYC Conservator Kimbrough noted "correctional officers used disciplinary reports [225s] against [children] as a way to retaliate against youths who attempted to report problems. The disciplinary reports can and do cause [a child's] confinement to be extended. That makes them a powerful tool for correctional officers and one that can be subject to abuse."

75. To complete the "Behavioral" or "B" phase, children must pass through four levels. To achieve the "B-1" phase, a child cannot have more than seven "category 2"s and no "category 1"s in a month. To achieve the "B-2" phase, a child cannot have more than five "category 2"s in a month and no "category 1"s. To achieve the "B-3" phase, a child cannot have more than three "category 2"s, and no more than one "category 2"s to achieve the "B-4" phase. The "B" phase is reviewed every 30 days, and each month's number of 225s automatically determines "graduation" to the next phase. A child can only be promoted through one "phase" each month, so it will take a child a minimum of four months to be promoted through the "B" component.

76. To complete the "Correctional Therapy", or "C" phase, a child must identify the "errors in [their] thinking". Completion of the "C" phase does not constitute actual mental health therapy because TYC "therapists" only require students to memorize and recite a "script". TYC "therapists" are not credentialed to provide mental health therapy or trained to recognize children's mental disabilities. Though TYC's statutory purpose is to rehabilitate students, TYC routinely denies children the opportunities to participate in its "rehabilitative" programs.

77. "C-1" requires memorizing "nine thinking errors." "C-2" requires a child to write and memorize their "life story." "C-3" requires a child to talk about their "offense." This involves other children ridiculing the student during group therapy. The "therapist" reads the group the police investigation statements and victim impact statements from the student's offense, although these documents are confidential under Texas Government Code § 508.313. The other members of the group then "make fun" of the student, and a child advances to the next phase only when they show sufficient "empathy," as arbitrarily determined by TYC. "C-4" requires developing a "success plan," which outlines what the child will do when they leave TYC custody. Lengthy delays in completing "success plans" result in extended incarceration for these children, through no fault of their own. Despite requiring children to formulate "success plans" before they can leave TYC custody, TYC provides children with no support once they leave.

78. TYC requires children to "confess" to elements of their offenses that were not the subject of findings by the family court as part of the "C" phase. In some cases, these "confessions" are later used against the child or the child's parents in Child Protective Services investigations or future criminal proceedings. In other cases, TYC's demands that children confess to something that is not true substantially extends their incarceration. Though the children are in TYC's custody, TYC does not advise the children that statements they make to "therapists" could be used against them in future legal proceedings. If a child's confession does not satisfy TYC, the sentence will be extended because the child cannot complete the "C" phase without making a full "confession." A child will only be released when TYC is satisfied the child has fully "confessed," even if this means admitting things that are not true, were not found by the family court that sentenced the child, and could subject the child or parents to future legal consequences. Children are not given a *Miranda* warning or the opportunity to consult with



counsel before these “confessions.” A.B. and Joseph were threatened with continued incarceration if they did not confess to things they did not do. Thus, Joseph confessed to things that were not true, although these confessions prejudiced his legal rights. A.B. continues to refuse to confess to things that are not true, and his sentence has been extended as a result.

79. TYC forces students to confess to violations of TYC rules during their “correctional therapy” as well. Although these children are in TYC’s custody, they are not provided with a *Miranda* warning or the opportunity to consult with counsel before making these “confessions.” These confessions are used to assign disciplinary 225s to students, which result in extended sentences.

80. TYC has taken Joseph, A.B., J.W., J.A., and other children’s “phases” away without due process. Demoting them was arbitrary and capricious. Joseph once went from B-4 to B-1 without due process, even though it originally had taken him fourteen months to achieve B-1. A.B. was demoted from B-4 to B-3 despite his counsel requesting a hearing before A.B. was demoted. When a “phase” is taken away, there is usually no due process hearing where the child can be represented by counsel, present evidence, cross examine witnesses, and present arguments to a neutral decision maker. Joseph, A.B., J.W. and J.A. were never provided with counsel for a hearing, and their parents were never informed of the hearings.

81. TYC only provides a due process hearing when a student is given a “category 1” 225, even though accumulated “category 2” 225s are frequently used to extend a child’s sentence. When a “level 2” hearing is held for a “category 1” 225, the decision-makers are the superintendent, program associates, and caseworker at the facility. These individuals are not impartial, and frequently are the same TYC officials whose allegations form the basis of the disciplinary action. Likewise, they are the same officials who knowingly permitted children in TYC to be endangered through inadequate staffing, permitting and even hiding allegations of



sexual assaults, inadequate supervision and condoning violence and abuse of the children to whom they were entrusted. When hearings are held, TYC staff frequently refuse to allow witnesses to be called who would support a child's position, and do not allow children to cross-examine their accusers. Children sentenced to placement in TYC, including Joseph, A.B., J.W., and J.A., are not provided a meaningful opportunity to be heard when they are assigned 225s. Accumulation of 225s results in automatic extensions of children's sentences without due process.

82. TYC does not arrange for juveniles to have access to counsel to assist them when they are given a 225, and does not even inform the children's parents they have been given a 225. Children in TYC custody frequently do not understand the disciplinary processes TYC utilizes to extend their sentences. Most children sentenced to TYC custody are indigent, including J.A. and J.W., and cannot afford private counsel.

83. No objective guidelines or criteria exist governing when a child will be given a 225. Children are frequently given 225s for arbitrary and capricious reasons, similar to instances when Joseph, A.B., J.W., and J.A. were assigned the 225s discussed below.

84. Children in TYC rarely get in trouble for fighting. Joseph recalls the kitchen at Giddings was "like a boxing ring." Joseph estimates he was in 60 fights during his time in TYC's custody, and was frequently physically injured. A.B., J.W. and J.A. have all been injured on multiple occasions when other students assaulted them. Students are frequently physically injured because of fights in TYC facilities.

85. TYC does not employ a custodial classification system to separate children according to offense, propensity for violence or known danger and/or to protect the children in this case. In fact, TYC houses physically small and vulnerable children as young as ten years old in the same "dorms" as much older, larger children, some of whom are eighteen years old. Many

children in TYC custody sleep in "open bay" style dorms, where as many as 25 students sleep in a single room with little or no adult supervision. TYC houses children accused of non-violent offenses, like graffiti or theft, with others who have been involved in murder or violent crime. The Executive, Board and Superintendent Defendants each knew TYC did not employ a custodial classification system, such as the systems that are employed in virtually every adult correctional facility, knew TYC housed children in "open bay" dorms, knew this made the facilities dangerous, and knew children were left unprotected.

86. TYC does not employ sufficient security staff to ensure children are not assaulted by other inmates. The Texas State Auditor's Office found officer to child ratios as high as 1 to 25. TYC has extremely high staff turnover, and is forced to operate with few, poorly trained, correctional staff. The Executive, Board and Superintendent Defendants knew about these staffing problems, knew that it was placing individuals at TYC facilities, including but not limited to Plaintiffs, at great risk of abuse and/or assault, but took no action to remedy the conditions to protect the children in their custody.

87. The fact that TYC staff take workers compensation at much higher rates than other state employees, including employees in the adult prison system, further evidences the dangerous conditions in TYC facilities. The Executive, Board and Superintendent Defendants knew about these conditions as well.

88. Joseph, A.B., J.A., J.W., and similarly-situated children have gone to the infirmary many times for black eyes or broken noses from these fights. Joseph would tell the nurses he "fell in the shower" or "ran into my bunk" because he did not want to be a "snitch." When both sides of J.W.'s jaw were fractured, nurses in the TYC infirmary appear to have accepted the unlikely explanation that he "fell off the bunk." Upon information and belief, nurses and TYC officials are not trained to and routinely fail to question these stories typical of abuse victims,

and/or investigate or report them, even though nurses had a legal obligation to report the incidents under Texas Family Code § 261.101.

89. TYC staff also regularly verbally abuse children with disabilities. A.B., J.W., J.A., and Joseph were all called “stupid” and various obscenities because of their disabilities and suffered harm.

90. The Executive, Board and Superintendent Defendants knew of these policies and conditions discussed in this complaint, but did nothing to remedy them. They knew TYC was not only operating its facilities dangerously below accepted professional standards – they were deliberately indifferent to these conditions. They knew these conditions violated the clearly established constitutional rights of Joseph, A.B., J.W., J.A. and many other children yet chose not to remedy them and leave TYC children, including but not limited to Plaintiffs, in danger. Among other things, they knew but failed to act to remedy:

- a. The failures of TYC’s “Resocialization©” program, which they knew resulted in children being denied rehabilitation and being incarcerated in extremely restrictive settings for periods much longer than the sentencing juvenile courts intended;
- b. The dangerous conditions in TYC’s facilities, which resulted in physical injuries to Plaintiffs, as well as dangers caused by, among other things,:
  - i. TYC’s failure to hire appropriate levels of security staff;
  - ii. TYC’s failure to train and supervise the limited staff they chose to hire;
  - iii. TYC’s use of facilities with “open bay” dorms;
  - iv. TYC’s condoning and/or permitting assaults; and
  - v. TYC’s failure to utilize a custodial classification system to separate vulnerable children from older, larger, more violent inmates.

91. The Caseworker Defendants also knew of these policies but continued to enforce them. The Caseworker Defendants knew the “Resocialization©” program resulted in children being incarcerated for additional periods of time in more restrictive settings, but were deliberately indifferent to these policies. They knew they were delaying children’s release to less restrictive settings and denying children rehabilitative treatment, in violation of appropriate professional standards, but were deliberately indifferent to the effects of these policies on Plaintiffs.

92. In addition, the Superintendent Defendants also were aware of these conditions and policies described herein but were deliberately indifferent to them. The Superintendent Defendants knew of the extremely high rates of violence in TYC facilities, generally and dangers at the facilities they supervised, but took no action to remedy these obvious problems. They too knew of TYC’s staffing, training and supervision problems, use of “open bay” dorms, failure to utilize a custodial classification system, and condoned dangerous behavior. They also knew the “Resocialization©” program resulted in children being incarcerated for additional periods of time in more restrictive settings, but were deliberately indifferent to these policies. And as a result, Plaintiffs were harmed.

*B. Joseph Galloway*

93. Joseph is twenty years old and was released from TYC custody in April 2007, after being incarcerated for four years. When he was eight years old, he spent time in a state mental hospital, where he was treated for bipolar disorder. Joseph is a thin teenager and also has Tourette’s Syndrome and Attention Deficit/Hyperactivity Disorder (ADHD).

94. Tourette’s Syndrome is characterized by a collection of symptoms, including involuntary movements and sounds and involuntary compulsive rituals and behaviors. People with Tourette’s Syndrome experience obsessions, compulsions, inattention, impulsivity and

mood variability. The disability can cause people to involuntarily move, make loud noises, blink, nod, shake, and curse, and may manifest itself more acutely during adolescence. Tourette's Syndrome is a mental impairment that substantially limits one or more major life activities.

95. Bipolar disorder is characterized by extreme mood swings, from mania to depression. Bipolar disorder can result in risky behavior, including inappropriate sexual behavior and even suicidal tendencies. Symptoms of bipolar disorder can include excessive talking, unusual energy, reckless pursuit of gratification (including promiscuous sex), hallucinations or delusions, depressed mood, low self-esteem, poor concentration, and suicidal thoughts and feelings. Bipolar disorder is a mental impairment that substantially limits one or more major life activities.

96. ADHD prevents sufferers from paying attention and causes difficulty focusing. The most common symptoms of ADHD are difficulty paying attention, acting impulsively, and hyperactivity. ADHD is a mental impairment that substantially limits one or more major life activities.

97. Joseph has been taking some form of medication for his disabilities since he was five years old. He currently takes Clonidine to control his Tourette's Syndrome. Clonidine is a powerful drug that can cause drowsiness and dizziness.

98. Joseph was incarcerated in four different TYC facilities: Marlin, Giddings, Evins and Crockett. He was most recently incarcerated in Crockett.

99. TYC officials gave Joseph disciplinary actions for:

- a. Falling asleep after taking his medication which makes him drowsy;
- b. Playing with a banana;
- c. Sitting in the wrong seat during church;

- d. Wearing his socks pulled down;
- e. Wearing pants that were too large, although TYC provided the pants to him;
- f. Wearing an extra shirt when he was cold;
- g. Wearing a long sleeve shirt when he was cold;
- h. "Acting out" because of his disability;
- i. Having cornflakes in his bowl of milk when he was on a "soft food" diet;
- j. Looking out the window during class;
- k. Shaking hands with another child; and,
- l. Being "playful and immature."

100. Due to the discrimination against Joseph because of his disability and violations of his due process rights, Joseph should have been released years earlier. Instead, TYC illegally held him captive in its hellish system, thereby depriving him of his youth and subjecting him to abuse by its employees and detainees.

101. Beginning in March 2005, Joseph had completed the minimum length of sentence assigned by him by TYC. In March 2005, Defendant Bennett extended Joseph's sentence because he had only reached phase A-4, B-4, C-2. Bennett checked a box on his March ICP report indicating "the results of this Phase assessment have extended the earliest projected release date." Joseph was not provided any due process before Bennett made this decision to extend his incarceration. Joseph would spend more than two additional years in TYC custody as Bennett and his subsequent caseworkers (including Defendants Penuelas and Wilson) extended his incarceration.

102. Joseph completed his "phases" in 2006 but his caseworker, Defendant Penuelas, admitted that he "never put it in the computer system." TYC does not have centralized record keeping or data collection indicating what phases have been completed. Kimbrough describes

TYC's "20 different databases that collect information, but none [that] talk to each other. ... There is no one central data warehouse or integrated system that allows the agency to get a complete picture of any given youth's record." TYC only keeps centralized records of the number of 225s a student has accumulated. When children are transferred between TYC facilities, their records do not always transfer with them. TYC keeps the records in a physical file that guards are required to move with the child during transport. Records are frequently lost because of this system. This basic record keeping failure requires children to complete their "phases" multiple times and delays their release from TYC. The Executive, Board, Superintendent and Caseworker Defendants were all aware of this and the effects it had on children like Joseph but failed to remedy the problems. TYC should have released Joseph long ago. But even by its own discriminatory practices, the latest release date would have been October 26, 2006. TYC failed to release him until April 5, 2007.

103. Transfer between facilities can dramatically extend a child's incarceration. When Joseph arrived at Crockett, Wilson sent his parents a letter telling them that even though Joseph had a "tentative release date" he could not be released until he "demonstrate[ed] his knowledge and ability to follow the Resocialization Program" even though she knew Joseph had already done this at the previous facilities.

104. When Joseph arrived at Crockett, he told Defendants Wilson, Freeman and Nicholson he had completed his "phases" and should be released. The final steps of Joseph's "reintegration" had already been completed. Wilson told Joseph he was making excuses for why he had not been released, that he "had no proof" and that it was his fault he was still in TYC. Defendants Penuelas, Wilson, Nicholson and Freeman knew Joseph should have been released sooner to a less restrictive setting because he had completed TYC's rehabilitation program, but



were deliberately indifferent to his extended incarceration. In fact, under the provisions of the applicable code, these Defendants had no discretion not to release him.

105. While Joseph was in TYC custody, the Caseworker Defendants also coerced him to confess to crimes he did not admit. The Caseworker Defendants told Joseph he needed to admit to committing sexual acts with his younger brother that did not take place. Joseph refused to make these admissions for six months. Joseph could not progress through the "C" phase during these six months. Finally, Joseph confessed to showing his brother pornography, although this also did not take place, in order to satisfy his caseworkers.

106. While he was at Marlin, Joseph was sent to security for "disrespecting staff" in Spring 2003. Disturbed by the combination of his incarceration, difficult past, disabilities, and changed circumstances, he was reduced to beating on the wall in his cell. The security director at the facility taunted Joseph, cajoling him to "keep standing up" and "keep beating on that."

107. Defendants Shackleford and Williams were called to take Joseph out of his cell. They came in the cell and hit Joseph in the face with their riot shield, breaking his nose and causing serious physical injury. Defendants knocked Joseph unconscious. He woke up in a pool of his own blood, with more blood running down his face and all over his shirt. Defendants carried him out of the cell in leather restraints to the infirmary.

108. In the infirmary, TYC nurses told Joseph his nose was broken, but only gave him toilet paper to stop the bleeding. When he was taken back to his cell, he saw in the mirror his nose was crooked and continuing to bleed. The care Joseph purportedly received was so derelict that Joseph had to pop his nose back into place himself.

109. Because of this incident, Joseph was placed on "BMP," the "Behavior Management Program." BMP is "isolation"—students are taken out of the "dorm" and placed in segregation cells. According to TYC policies/practices students are only supposed to spend two weeks in



BMP, however, Joseph was in BMP for almost three weeks. Children have to “earn their way out” of BMP, as arbitrarily determined by TYC. Only a “level 2” hearing takes place before children are put in BMP. TYC fails to provide parents notice of their children’s hearings, and students are not provided counsel before entering BMP. BMP is a highly restrictive setting and fails to provide rehabilitative treatment. Shackelford told Joseph he was kept on BMP so long because “paperwork was lost.”

110. Joseph was transferred to Giddings after he left Marlin. He spent approximately three years and three months at Giddings, from mid-2003 until April 2006.

111. When Joseph was first at Giddings, he was living in Dorm 8. Female staff worked in the dorm. Joseph had a job as a “kitchen boy,” and would clean up the kitchen, buff the floors and launder clothes from the kitchen.

112. Joseph was putting clothes in the washer when Defendant Warmke approached him. She told him, “It’s my turn to touch you.” She grabbed his crotch and felt his penis. She started squeezing his penis through his clothes. Defendant Warmke deliberately and intentionally performed oral sex on Joseph, even though he was underage and in custody. Warmke intentionally violated Texas Penal Code §§ 21.11 (indecentcy with a child), 22.011(a)(2)(C) (sexual assault with a child) and 39.04(a)(2) (improper sexual activity with a person in custody).

113. Warmke told Joseph not to tell anyone about what happened. Though she did not work with Joseph following the incident, she did have sexual relations with other minors at Giddings.

114. Around December 2003, TYC caused another inmate to rape Joseph at Giddings. In particular, James Henry, a correctional officer entrusted to supervise and protect children at TYC, escorted Joseph back to the single cells. When Henry took Joseph to the cells, they were

all filled with other detainees. Some inmates were yelling to Henry, "Put him in with me!" and "I want a piece of ass!" Henry chose to put Joseph in a cell with a large, older inmate named Steven, in spite of the fact that Steven had yelled to Henry that he planned to rape Joseph.

115. Then, not only did Henry put Joseph in the cell, he made Joseph take off his clothes for a strip search in front of the threatening rapist. He forced Joseph to strip and bend over in full view of Steven, and then Henry deserted Joseph while he was putting his clothes back on in the cell.

116. Steven told Joseph to take his clothes back off. Joseph refused. Steven punched Joseph twice in the head. Joseph fell down. Joseph tried to fight back, but Steven was much larger and stronger. Steven turned Joseph around and took off his pants. Joseph told him, "Stop, don't do it." Steven continued punching Joseph. Joseph told him to stop, but Steven sodomized him multiple times, causing Joseph serious physical injury.

117. Steven told Joseph, "Don't worry, I won't tell anyone." Joseph was afraid to report what Steven did to him because he would be considered a "snitch," and because TYC guards would not protect him from further assault. Joseph spent the next twenty-four hours terrified in the same cell with his rapist.

118. Although TYC guards, including Henry, are supposed to check the cells every fifteen minutes, upon information and belief, many guards only perform checks every hour. While Joseph was being raped, no TYC guard was there to protect him, and Henry was in another hall between two solid doors. Despite knowing Steven planned to rape Joseph, Henry placed Joseph in the cell and left the area. Accordingly, Henry was deliberately indifferent to Joseph's right to be protected from rape. The Executive, Board, and Superintendent Defendants knew TYC did not have sufficient staff to monitor the cells, knew the existing staff was poorly

trained and inadequately supervised, and knew that these deficiencies would lead to constitutional violations like those alleged herein.

119. The same night, a few hours later, Henry took Joseph out of the cell to shower. He saw Joseph's underwear was covered in blood, and sarcastically asked him, "What's wrong with your ass?" Henry did not report that Joseph may have been sexually assaulted to anyone, although Henry knew Joseph had been raped and exhibited obvious symptoms of being raped, and even though Henry had an obligation to report the sexual assault pursuant to Texas Family Code § 261.101. After Joseph showered, Henry returned him to the cell with Steven for another fear-filled fifteen hours.

120. Steven took Joseph's food that night, so Joseph did not get to eat. Larger, stronger inmates frequently steal food from smaller, weaker students. TYC guards know this takes place, but are deliberately indifferent to it.

121. A few weeks later, Joseph went to the infirmary after complaining of blood in his stool. The nurses also failed to report Joseph may have been sexually assaulted, even though they had cause to believe he was a victim of sexual assault and were required to report suspected child abuse pursuant to Texas Family Code § 261.101. No forensic rape examination was done, and Joseph was only given Metamucil for "constipation."

122. Joseph continues to suffer a serious ongoing physical injury because of Henry's deliberate indifference. And a few weeks after Joseph was raped, Henry was presumably unable to live with his actions and committed suicide.

123. By February 2006, Joseph was so distraught that he attempted suicide twice at Giddings. Depressed, dwelling on what had happened to him at the hands of Defendants, TYC officials had caused Joseph to lose his phase and once again did not allow him to go home. He

had to call his parents and tell them he would not be coming home again. As a consequence, Joseph felt that he would never get out of TYC.

124. During the first suicide attempt, Joseph cut his wrists several times, causing a physical injury. A guard, Mr. Rangel, found him. Rangel refused to take him to the infirmary. Rangel told Joseph the wounds were "not bad." That night, when the pill call nurse came by, Joseph showed her the wounds were "green," and he was belatedly taken to the infirmary. Joseph still has scars on his wrists from this suicide attempt. Of equal significance, neither Rangel, his supervisors or the nursing staff placed Joseph on suicide watch or sent him for specific counseling related to the attempt.

125. During the second attempt, Joseph tried to hang himself. He had taken threads from his mattress and braided them together into a two-foot rope. He tied the rope around his neck, and passed out, causing physical injury. Dwain Harris, the security director at Giddings, responded to the cell. Rather than helping him, Dwain Harris told the guards and nurses Joseph was "faking" and "there's nothing wrong." While he was taken to the infirmary, Joseph's suicidal tendencies remained unaddressed.

126. At Giddings, it was also well known (by the Superintendent and Executive Defendants) that TYC officials routinely and regularly encouraged children to participate in an event dubbed "Gladiator Night." Likewise, similarly dangerous and improper fights routinely went on at Mart. TYC guards encourage children to tie a sock around their ankles, fight and physically injure other children who try to take the sock off. And TYC officials allowed inmates to assault and physically injure students who refuse to participate in Gladiator Night. Allowing Gladiator Night or similarly dangerous fighting events to take place is not only a gross departure from acceptable professional standards, it evidences deliberate indifference to children's rights to be protected from harm and these Defendants failure to remedy and/or eliminate the event caused

children at Giddings and Mart to be needlessly harmed, viewed as having no rights, and unprotected.

127. In the spring of 2006, TYC transferred Joseph to Evins in Edinburg, Texas, a notoriously dangerous facility hundreds of miles from Joseph's family. TYC moved Joseph to Evins, far away from his family after Joseph's mother was complaining about the conditions in TYC facilities.

128. In late 2005, Joseph's mother wrote a letter to Texas Governor Rick Perry complaining about the conditions in TYC facilities. The letter was referred to Defendants Harris and Robinson, and Harris wrote a lengthy response to Joseph's mother saying "Joseph could be considered for release by this coming spring." Defendants Clay and Bernard were also aware of these complaints and others made by Joseph's mother.

129. Despite the assurance from Harris, shortly after receiving the response, Joseph was transferred to Evins where he remained until February 2007. The Executives, Robinson, and Caldwell were aware of the complaints in this letter, and fearful of being further exposed, approved and/or authorized the transfer to a location far from Joseph's mother. In fact, a guard at Giddings specifically told Joseph they were "glad to get rid of him" because he filed so many grievances. When Harris later saw Joseph at Evins, he sarcastically asked him "what are you still doing here?"

130. Moreover, the Executive and Superintendent Defendants knew not only that Evins would make it more difficult for Joseph to see his family, they knew, as did the Board defendants, that Evins would be dangerous for Joseph. In 2004, a major riot occurred at the facility. Officers from other facilities were called to Evins to help quell the rioting. In early summer 2006, Texas Governor Rick Perry (who appoints the Board), TYC, Harris, and Caldwell were informed in writing that the U.S. Department of Justice was investigating conditions at the

facility. Defendant Bernard was at the facility during the rioting, and also knew about the investigation as did Defendant Clay. TYC investigators found many constitutional violations occurring at Evins after the riots, yet no Defendants acted to correct the problems. As a result, TYC children remained in significant danger.

131. Because TYC retaliated against Joseph by sending him hundreds of miles away to a dangerous facility, his family was not able to see him as frequently as when TYC housed Joseph at Giddings. Moreover, Joseph was placed in danger at Evins. And with limited family involvement, which is critical for any rehabilitative program to be successful, Joseph's move to Evins, also lacked a legitimate penological purpose. Rather, TYC, the Executives, Robinson, and Caldwell retaliated against Joseph because he and his family exercised their free speech and expression rights by complaining about conditions in TYC.

132. Most of the students at Evins are members of racial minority groups. Joseph is Caucasian. However, Joseph was subsequently removed from protective custody.

133. Moreover, at Evins, TYC staff encouraged students to fight and told Joseph to "prove you are not a bitch." The United States Department of Justice issued a finding letter in 2007 concluding, "Conditions at Evins violate the constitutional rights of the youth residents .... Children at Evins are not adequately protected from harm." The Department of Justice wrote:

"Our investigation revealed an unacceptably high rate of youth violence at Evins. The atmosphere at Evins is chaotic and dangerous. Youths frequently fight with each other without detection or intervention by staff. Staff members and youths we interviewed consistently reported that staff members are unable to manage youths' behavior due to inadequate staffing. According to information provided by TYC, there were 1,025 reported youth-on-youth assaults at Evins in 2005, an average of 2.8 per day. For the first six months of 2006, there were 568 reported youth-on-youth assaults, an average of 3.1 per day. This frequency of assaults is a substantial departure from generally acceptable professional standards. Nationally, facilities comparable to Evins typically report an average of .241 youth on youth assaults per 100 days of confinement which, for Evins, correlates to 1.235 assaults per 100 days of confinement. Thus, the average rate of assaults at Evins is approximately five times the national average."

Defendant Caldwell was the superintendent at Evins during Joseph's incarceration there, and was aware of and deliberately indifferent to these conditions. The Executive and Board Defendants were aware of these conditions and also were deliberately indifferent to them.

134. In fact, the Department of Justice concluded following their investigation that there was a pattern or practice of failing to ensure that the youth at Evins are adequately protected from harm and that such children were at undue risk of harm from staff assault and youth-on-youth assault. Moreover, the Department of Justice further concluded that there was a pattern or practice of failing to provide youth at Evins adequate due process and adequate rehabilitative treatment.

135. Nor did TYC contest these conclusions when the government sued TYC. Rather, TYC agreed that policies needed to be instituted to correct these deficiencies, including but not limited to establishing mandatory post coverage, mandatory staffing requirements, additional training and the implementation of a custodial classification system.

136. In addition to Evins, eleven other TYC facilities also had dangerously high numbers of reported safety complaints – all of which was known by the Board and Executive Defendants, and never remedied.

137. While at Evins, TYC staff searched the bunks of Joseph and another child. Defendant Treviño found a poem with racially charged words in the other child's bunk. Shockingly, Treviño read the poem aloud to the minority students, intending to incite them to attack Joseph. Then, Treviño threatened Joseph, telling him "you're public enemy number one" and "this is campus wide." Defendant Torres was also aware that Joseph and the other child were in grave danger.



138. Despite the obvious danger facing Joseph and his friend, Defendants Treviño and Torres failed to place Joseph in protective custody. Thus, Defendants were deliberately indifferent to Joseph's right to be protected from harm.

139. As Defendants expected, and as the Department of Justice found to be all too common and TYC acknowledged, early the next morning, six unknown assailants attacked Joseph and the other child. One of the assailants, an inmate who was much larger than Joseph, smashed Joseph's head on the concrete and Joseph blacked out. He woke up soon thereafter, and saw the other student being assaulted. When he tried to help him, Joseph was beaten. He was kicked in the head and mouth, suffering serious physical injuries. When the beating was over, a guard, Defendant Torres, told Joseph, "That's what you get for writing racist shit." Treviño and Torres encouraged the other students to assault Joseph, and were deliberately indifferent to Joseph's right to be protected from physical injury.

140. Joseph suffered a broken jaw, a concussion and bruised orbiter bone. Despite the obvious injuries, TYC guards failed to immediately take Joseph or the other child, who also suffered physical injuries, to the infirmary.

141. Joseph tried to eat breakfast after the attack, but could not do so because of terrible pain in his jaw. His friend had to call security for him, and forty-five minutes later the nurses responded and took him to the infirmary. Forty-five minutes after that, he was taken to the emergency room in an ambulance, where his jaw was wired shut.

142. Joseph's mother was terrified for her son and reported the incident to TYC officials and several law enforcement agencies.

143. A few days after this incident, Joseph was transferred from Evins to Crockett, which is nearer his parent's home. Defendant Caldwell asked his mother "are you happy now?" after informing her Joseph was leaving his facility.



144. Because Joseph's jaw had been wired shut, wire cutters had been provided to the security staff in Joseph's part of the Crockett facility. As nausea is a common side effect of the pain medication, Joseph and staff had been instructed that they may have to cut the wires if he needed to vomit. Unfortunately, Joseph became nauseous. When Joseph told the guard he needed to vomit and asked a guard to cut the wires, the guard called Defendant McDaniels in the infirmary. Defendant McDaniels refused the request and told the guard that when Joseph needed to vomit, Joseph did not need to have the wires cut. McDaniels said that Joseph could just "hang his head upside down over the toilet, and let the vomit drip out."

145. Nauseous and terrified that he would suffocate on his own vomit, Joseph ripped the wires out himself. All in all, Joseph pulled more than twenty wires out of his gums, and each pull was excruciating. TYC nurses also refused to give him his prescribed painkillers on the prescribed schedule even though they knew he needed them and he was in pain. Rather than discipline the nursing staff, TYC gave Joseph three disciplinary actions and extended his incarceration without due process because of this incident.

146. When Joseph was transported to UTMB in Galveston, Defendants Briggs and Watson tightly shackled his legs. The shackles cut deeply into Joseph's legs, and his socks became very bloody. Joseph told Briggs and Watson the shackles were hurting him and cutting into his skin, and asked them to loosen the leg-irons. Briggs and Watson refused, despite knowing Joseph was in pain. Joseph still has scars on his ankles from these physical injuries.

147. Moreover, the abuse Joseph faced continued until his final days in TYC custody. Days before Joseph was released, Defendant McQueen, a correctional officer, struck Joseph in the jaw for no reason. Joseph had impulsively picked up a tray to eat out of turn and McQueen, without any justifications, struck Joseph in the face. As a result, Joseph suffered further physical injury to his jaw, and was taken to the hospital for testing. Incredibly, but in keeping with

TYC's practice of no accountability, lack of supervision and outright condoning of abuse and assault of the children entrusted to its care, Joseph, and not Defendant McQueen, was disciplined.

148. After the assault, Joseph asked to speak with his mother and his attorneys. Defendant Wilson told Joseph he would not be allowed to contact his mother or attorney. In fact, Wilson threatened Joseph that he would not be released from TYC if he reported this incident.

149. When Joseph began to discuss what happened to him in TYC with his attorneys, Defendant Wilson refused to allow him to have a confidential attorney/client phone call with his lawyer. Despite requests from his counsel to Defendants Freeman and Wilson for TYC's policies and procedures related to attorney/client visits and phone calls, these policies were not provided. The first time Joseph's attorney attempted to speak with him on the telephone, Wilson refused to leave the room and would not allow Joseph to confer with his attorney in private.

150. Joseph's attorneys mailed him confidential legal documents. Unknown TYC staff opened this mail outside Joseph's presence, and read the confidential and privileged documents inside. The envelope containing the documents was clearly marked "legal mail" on the front and back, but TYC staff deliberately disregarded these labels. Upon information and belief, the Executive Defendants, and Defendants Freeman and Nicholson were aware of this practice.

151. When Joseph told Defendant Wilson he wanted to report this abuse to the TYC abuse hotline, she told him he could not call the hotline. Again, Wilson told Joseph if he reported his abuse, TYC would extend his incarceration.

C. A.B.

152. A.B. is sixteen years old and has been incarcerated in TYC facilities since he was fifteen. A.B. has a six year determinate sentence, with a one year minimum sentence to TYC

custody. He has served over one year in TYC custody. He is now eligible to be released from TYC custody to a less restrictive setting. If he were to violate the conditions of his parole, he could return to TYC. He is slight and thin, and has Obsessive Compulsive Disorder (OCD).

153. Obsessive Compulsive Disorder is an anxiety disorder characterized by recurrent, unwanted thoughts and/or repetitive behaviors. People with OCD suffer persistent, unwanted thoughts or images, and need to repeat behaviors over and over. OCD is a mental impairment that substantially limits one or more major life activities.

154. A.B. has been incarcerated in four different TYC facilities: Marlin, Giddings, Gainesville, and Mart.

155. TYC has given A.B. disciplinary actions for:

- a. Breaking up a confrontation between other students;
- b. Uncontrollable laughing;
- c. Having newspaper articles about abuses at TYC in his possession;
- d. "Failure to be observant";
- e. "Failure to correct peers";
- f. "Failure to call 'huddle-ups'";
- g. Talking to his mother on the phone;
- h. Not marching properly;
- i. Refusing to leave protective custody; and
- j. Another child ripping out the tongues of his shoes.

156. Some of the above behaviors TYC has disciplined A.B. for are caused by his disability. For example, because of his OCD, he feels compelled to call his mother at the same time every evening. TYC has disciplined A.B. when he is unable to call his mother.

157. TYC staff intentionally discriminate against A.B. because of his disability, calling him "stupid" and "slow."

158. A.B. contends he was wrongfully convicted and did not commit the offense that resulted in his incarceration in TYC's facilities. A.B.'s criminal case is currently on appeal before the Texas Fifth Court of Appeals. Despite this, TYC will not allow him to progress through the "C" phase because he will not confess to a crime he did not commit and is therefore "not accepting responsibility for his offense." TYC staff tell A.B. he needs to "give up the appeal," that he "can't win" the appeal and "can't beat the courts." Though A.B. has achieved Phases A-4 and B-4, he cannot progress any farther through the "Resocialization©" program because he, at the advise of counsel, refuses to confess to a crime he did not commit. TYC staff continues to coerce A.B. to confess, even though they know he is represented by counsel. If A.B. were to confess, it would prejudice his appeal.

159. Defendant Bush was A.B.'s caseworker during this period. She administered the Resocialization© program with him, and refused to allow him to progress through the program because he would not confess to the crime he did not commit. Bush's actions extended A.B.'s incarceration because she refused to approve him for release to a less restrictive setting when he would not give up his Fifth Amendment rights.

160. On November 1, 2007, TYC convened a panel of its staff, including Defendant Bush, to consider releasing A.B. on parole. On November 5, 2007, TYC and Defendant Bush told A.B. he would be released to parole on November 14, 2007. TYC and Defendant Bush had A.B. sign documents related to his sex offender registration, which indicated he would be released on November 14, 2007. While on parole, A.B. would be required to attend out-patient sex offender treatment therapy, see his parole officer regularly, obey various parole conditions, and register as a sex offender.

161. TYC, however, denied A.B. release to a less restrictive setting. TYC and Bush would not allow A.B. to participate further in its rehabilitation programs because he is asserting his Fifth Amendment rights. The fact that A.B. is unable to complete the "C" phase due to his appeal of his conviction is explicitly noted on Monthly Individual Case Plans completed by Bush.

162. In failing to allow A.B. to progress in the "Resocialization©" program due to his refusal to admit to a crime that he did not commit and in so doing prejudice his appeal, TYC has extended the length of A.B.'s confinement. A.B. would otherwise have been eligible for parole on November 6, 2007.

163. A.B. has been physically abused by other inmates on multiple occasions while in TYC custody, causing physical injuries.

164. A.B. "checks and confronts" children or refers them to "huddle ups" to attempt to advance in TYC's "Resocialization©" program. Children A.B. has "checked and confronted" or referred to a "huddle up" later assault him because participation in "checking and confronting" and "huddle ups" transform A.B. into a "snitch." Children assaulting A.B. frequently tell him "snitches get stitches." As one would expect, A.B. is fearful of additional harm. A.B. now refuses to "check and confront" other children, which could result in disciplinary action against him and delay his release from TYC custody to a less restrictive setting.

165. On one occasion at Giddings, A.B.'s front teeth were chipped when other inmates, including S.L., savagely beat him in the head, permanently damaging and disfiguring his teeth/mouth. S.L. had previously stolen A.B.'s pants, so A.B. called a "huddle up" to "check and confront" S.L. Defendant Lewis supervised the "huddle up," and knew A.B. had "confronted" S.L. about S.L.'s misbehavior. Afterwards, Lewis knew S.L. told A.B. "snitches get stitches."

166. Though Lewis knew S.L. considered A.B. a "snitch," and knew about the specific threat made against him, she did nothing to protect A.B. from S.L. Soon after the "huddle up," A.B. was sitting down, tying his shoes. S.L. came up to A.B. and kicked him in the face, breaking A.B.'s front teeth.

167. Other inmates frequently punch A.B. at night when he is asleep, and on one occasion several inmates urinated on his bed. Because of these almost daily assaults, A.B. has referred himself to "security," and refused to leave on multiple occasions. Other students have also refused to leave security because they fear for their safety. In fact, A.B.'s plight is so well known that Giddings' TYC staff refer to this phenomenon as "pulling an [A.B.]"

168. A.B. has been forced to participate in fights with other children in TYC, causing physical injuries. Because TYC staff does not properly supervise the children, employs inadequate staff, and does not employ a custodial classification system, A.B. is frequently forced to defend himself when he is alone with other children. TYC is deliberately indifferent to these fights. For example, one child punched A.B. in the groin, told him "I'll beat your bitch ass," and boast he would rape A.B.'s mother. Other children attack A.B. in the hallways and on the dorms to "punk" him. This is the environment the Executive, Board, and Superintendent Defendants created, fostered, and condoned.

169. Defendant Eduardo Martinez was the Superintendent of Giddings State School during this time. He was aware that dangerous inmates were being housed with smaller children and was deliberately indifferent to these conditions. Martinez knew A.B. and other children were housed in dangerous "open bay" dorms. Martinez knew there was inadequate security staff to protect inmates like A.B., and was specifically informed of dangers to A.B. by the principal of the education programs at Giddings on the day of the assault described above yet took no steps to