

Gouri Bhat (*pro hac vice* pending)
Tom-Tsvi M. Jawetz (*pro hac vice* pending)
David C. Fathi* (*pro hac vice* pending)
American Civil Liberties Union Foundation
National Prison Project
915 15th Street NW, 7th Floor
Washington, DC 20005
Tel: (202) 548-6611
*Not admitted in DC; practice limited to federal courts

Judy Rabinovitz (*pro hac vice* pending)
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2618

Anthony M. Stiegler (SBN 126414)
Mary Kathryn Kelley (SBN 170259)
Cooley Godward Kronish LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Tel: (858) 550-6035

Counsel for Plaintiffs
[Additional Counsel Appear on Signature Page]

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ISAAC KIGONDU KINITI; JOSE
MORALES-VARGAS; SYLVESTER
OWINO; HERNAN ISMAEL DELGADO;
and ANY CASTRO, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

JULIE L. MYERS, Assistant Secretary, U.S.
Immigration and Customs Enforcement
(ICE); JOHN P. TORRES, Director, Office
of Detention and Removal Operations, ICE;
RON SMITH, Director, San Diego Field
Office, ICE; ANTHONY CERONE,
Officer-in-Charge at San Diego Correctional
Facility (SDCF), ICE; CORRECTIONS
CORPORATION OF AMERICA, INC.
(CCA); JOE EASTERLING, SDCF
Warden, CCA; CHARLES HOWARD,
SDCF Assistant Warden, CCA,

Defendants.

Case No. 3:05-cv-01013-DMS-PCL

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR CLASSWIDE
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. Plaintiffs are civil immigration detainees in the custody of U.S. Immigration and Customs Enforcement (ICE), part of the U.S. Department of Homeland Security (DHS). Plaintiffs are housed at San Diego Correctional Facility (SDCF), a contract detention facility in Otay Mesa, California operated by Corrections Corporation of America, Inc. (CCA). CCA is the largest private, for-profit provider of detention and corrections services in the nation. Pursuant to a contractual agreement with ICE, CCA houses approximately 1000 male and female immigration detainees at SDCF for periods of time ranging from several weeks to several years. Both ICE and CCA staff work on-site at SDCF and cooperate fully in the assignment of detainees to housing units.

2. SDCF is chronically and dangerously overcrowded. Currently, approximately 675 male and female detainees at SDCF—more than two-thirds of the immigration detainee population—are housed in pods that are triple-celled, meaning that three detainees are assigned to sleep and spend significant blocks of time during the day in small cells that are designed for two people. Pods that are triple-celled are at least 50 percent over design capacity, often housing still more detainees on makeshift beds in the common dayroom space. While the population of ICE detainees at SDCF fluctuates constantly, triple-celling has been a consistent practice at the facility for over two years and is currently at critical levels in both male and female housing units.

3. Overcrowding at SDCF is the root cause of numerous unsafe and intolerable conditions that afflict detainees at the facility, including: increased violence, tension, discomfort, stress, mental suffering, psychiatric problems, and exposure to respiratory and other infections; diminished access to medical, mental health and dental services; diminished access to exercise and dayroom space and other facility services; poor sanitation and decreased ability to maintain personal hygiene; overburdened and unsanitary shower and toilet facilities, resulting in more frequent plumbing malfunctions and exposure to urine and feces; and the loss of personal dignity due to all of the above.

4. Defendants' actions, detailed herein, deny basic human needs, inflict unnecessary pain and suffering, and constitute punitive conditions of confinement in violation of the due process protections of the Fifth Amendment to the United States Constitution and the heightened standard

1 of protection afforded to persons detained pursuant to civil rather than criminal laws. Plaintiffs seek
2 injunctive and declaratory relief to remedy this serious and ongoing violation of their rights.

3 **JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331
5 because it arises under the Constitution and laws of the United States.

6 6. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and
7 2202, and Rule 57 of the Federal Rules of Civil Procedure.

8 7. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C.
9 § 702, and Rule 65 of the Federal Rules of Civil Procedure.

10 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because
11 a substantial part of the events and omissions giving rise to plaintiffs' claims occurred, and continues
12 to occur, in this district.

13 **PARTIES**

14 **I. Plaintiffs**

15 9. Plaintiffs Isaac Kigundu Kiniti, Jose Morales-Vargas, Sylvester Owino, Hernan
16 Ismael Delgado, and Any Castro are immigration detainees in ICE custody who have been detained
17 pursuant to civil immigration laws. They are currently being housed at SDCF.

18 10. Plaintiff Isaac Kigundu Kiniti is a 34-year-old man from Kenya who came to the
19 United States in 1997. Taken into ICE custody in May 2004, Kiniti is now seeking withholding of
20 removal based on his fear of political persecution and torture should he be deported to Kenya. He
21 is currently petitioning for Ninth Circuit review of the Board of Immigration Appeals (BIA) decision
22 denying him relief.

23 11. Kiniti was first detained at SDCF in November 2004. Between then and June 2006,
24 Kiniti was transferred back and forth between SDCF and ICE's El Centro Service Processing Center
25 ("El Centro") a number of times, spending several months at a time at each facility. Since June
26 2006, however, Kiniti has remained in detention at SDCF—with the exception of about 10 days
27 when he was briefly housed at El Centro in November-December 2006.

28 12. Kiniti has been triple-celled repeatedly at SDCF. He has filed numerous written

1 grievances related to triple-celling, and has complained directly to Ronda Richardson, a Senior
2 Auditor of the DHS Office of Inspector General (OIG) who interviewed him in early 2005, as part
3 of an OIG investigation into overcrowding and other problems at SDCF. While at El Centro in May
4 2005, Kiniti filed the original Complaint in this lawsuit, which raised individual damages claims
5 based on, *inter alia*, the severe overcrowding he had experienced at SDCF earlier that year.

6 13. Plaintiff Jose Morales-Vargas is a 36-year-old man from Guatemala who came to the
7 United States in June 2006 to seek asylum. Morales-Vargas immediately was taken into ICE custody
8 and was interviewed by a trained asylum officer, who found him to possess a credible fear of
9 persecution should he return to Guatemala. An individual hearing before an Immigration Judge on
10 the merits of Morales-Vargas's request for asylum is scheduled for March 6, 2007.

11 14. Morales-Vargas has been housed at SDCF since June 16, 2006. He has been triple-
12 celled continuously throughout that time, except for 11 days spent in segregation.

13 15. Plaintiff Sylvester Owino is a 30-year-old man from Kenya who came to the United
14 States in 1998. He was taken into ICE custody on November 8, 2005 and has been detained at SDCF
15 since that time. Owino is currently petitioning the Ninth Circuit for review of the BIA's decision
16 denying him protection under the Convention Against Torture. Owino fears that he will be subjected
17 to torture and persecution by the police if he is returned to Kenya.

18 16. Owino has been triple-celled for most of his detention at SDCF and without
19 interruption since June 11, 2006. Owino has filed numerous written grievances related to
20 overcrowding and other conditions at SDCF.

21 17. Plaintiff Hernan Ismael Delgado is a 36-year-old man from El Salvador who entered
22 the United States in 1980 when he was ten years old. Delgado's parents were tortured and killed
23 execution-style in his home country, and Delgado entered the United States as an orphan seeking
24 asylum. Delgado now has two children who are U.S. citizens.

25 18. Delgado was taken into ICE custody in February 2003 and has been housed at SDCF
26 since October 8, 2004. His petition for review to the Ninth Circuit was filed in December 2003 and
27 remains pending. Delgado is currently triple-celled, as he has been for the majority of his 27 months
28 at SDCF. Delgado spent approximately six months sleeping in a plastic "boat" when he first arrived

1 at the facility. A “boat” is a flat plastic container with a thin sleeping mat that is placed on the floor
2 of the cell.

3 19. Plaintiff Any Castro is a 28-year-old woman from Honduras who first entered the
4 United States in September 1995. Castro’s sister is a lawful permanent resident, and her two-year-
5 old son is a U.S. citizen. She attended technical college to become a nurse’s assistant, and worked
6 as a nurse’s assistant until the time of her arrest, which led to her current detention.

7 20. Castro has been detained at SDCF since September 2006. She has been triple-celled
8 throughout her time at the facility, and slept on a boat on the floor of her cell for the first two months
9 of her detention.

10 **II. Defendants**

11 21. Defendant Julie L. Myers is Assistant Secretary for U.S. Immigration and Customs
12 Enforcement (ICE), the arm of DHS charged with detaining and removing non-citizens pursuant to
13 federal immigration law. As the top official at ICE, Myers sets detention and removal priorities and
14 has ultimate responsibility for the safety and well-being of persons detained in ICE custody. The
15 Office of Detention and Removal Operations (DRO), a division of ICE, manages the daily detention
16 of approximately 27,000 immigration detainees. Myers supervises the official conduct of all DRO
17 officials and may appoint and remove subordinate defendants named herein. The DHS Secretary,
18 Michael Chertoff, is specifically authorized by Congress to allocate funds to provide necessary
19 clothing, medical care, housing, and security for immigration detainees. *See inter alia* 8 U.S.C.
20 § 1103; 6 U.S.C. §§ 112, 251 and 557. As Assistant Secretary (under Chertoff) in charge of
21 immigration detention, Myers controls the allocation of monies in the DHS-ICE budget for detention
22 and removal operations and, specifically, the care and treatment of ICE detainees. In a letter dated
23 September 11, 2006, Myers provided the official ICE response to the OIG audit report on the
24 treatment of immigration detainees at five detention facilities, including SDCF.

25 22. Defendant John P. Torres is the Director of DRO for ICE and is responsible for the
26 safe, secure and humane housing of immigration detainees in ICE custody. The primary
27 responsibility of DRO is to provide adequate and appropriate custody management of immigration
28 detainees until a decision is rendered regarding their removal. ICE-DRO headquarters staff conduct

1 annual inspections of each facility used to house immigration detainees, including SDCF, and assess
2 them for compliance with ICE Detention Standards. Torres oversees the DRO workforce, including
3 ICE field officers, deportation officials, compliance review officers, and officers assigned to
4 detention facilities. Torres is responsible for setting DRO policy with respect to the detention of
5 foreign nationals, and for the administration and operation of DRO.

6 23. Defendant Ron Smith is the Director of the ICE San Diego Field Office, which has
7 jurisdiction over SDCF and official control over detention and removal operations at the facility.
8 Smith oversees transfers of immigration detainees into and out of SDCF and formally approves all
9 placements of detainees at SDCF. Detainees and their advocates often lodge complaints about
10 detention conditions with ICE officers at the local field office responsible for their facility. Smith
11 supervises and oversees all ICE staff at the San Diego Field Office, including staff who field such
12 complaints and have regular contact with detainees.

13 24. Defendant Anthony Cerone is the ICE Officer-in-Charge at SDCF, and Assistant
14 Field Office Director of the ICE San Diego Field Office. As the Officer-in-Charge at the facility,
15 Cerone is the immediate legal custodian of the ICE detainees at SDCF and is directly responsible for
16 their care and treatment while in detention there. Cerone has authority to transfer detainees into and
17 out of the facility and supervises all ICE employees at SDCF. On information and belief, Cerone
18 also has significant oversight over the actions of CCA employees at SDCF, including the Warden,
19 pursuant to the DHS-ICE contractual agreement with CCA to house immigration detainees at the
20 facility. Cerone is responsible for ensuring SDCF's compliance with the ICE Detention Operations
21 Manual (ICE Detention Standards), as well as CCA's compliance with its contractual obligations.
22 Cerone supervises a Contracting Officer's Technical Representative (COTR) and a Compliance
23 Review Officer, both ICE employees, who work on-site at SDCF to assist in monitoring for
24 compliance with the ICE Detention Standards and other applicable standards. In addition, Cerone
25 and/or his direct subordinates establish, monitor, and oversee detainee grievance procedures and
26 serve as members of the detainee grievance committee at SDCF (along with CCA employees).
27 Under the ICE Detention Standards, Cerone conducts the final level of review for grievances filed
28 at the facility. In addition, detainees frequently file complaints directly with deportation officers

1 operating under the supervision of Cerone, using “Detainee Request Forms” issued by the DRO
2 office on-site at SDCF. Cerone also is required to meet regularly with the on-site U.S. Public Health
3 Service Health Services Administrator to review the effectiveness of the facility health care program
4 and to recommend necessary corrective actions.

5 25. Defendant Corrections Corporation of America, Inc. (CCA) is a for-profit, private
6 corporation incorporated and existing in the State of Maryland and maintaining a principal place of
7 business at 10 Burton Hills Boulevard, Nashville, Tennessee 37215. Pursuant to a contract with
8 DHS-ICE, CCA houses immigration detainees in ICE custody at SDCF, a facility managed and
9 operated primarily by CCA employees.

10 26. Defendant Joe Easterling, a CCA employee, is Warden at SDCF. As Warden,
11 Easterling has ultimate supervisory authority over all correctional officers, security personnel and
12 other CCA staff at SDCF. He is responsible for establishing and maintaining CCA’s policies and
13 practices with respect to triple-celling, use of force and segregation at SDCF. Easterling oversees
14 the daily administration and functioning of SDCF and is responsible for the safe, secure and humane
15 housing of detainees at the facility. Easterling conducts the final review of grievances filed by
16 detainees at SDCF using the “CCA Inmate/Resident Grievance Form.”

17 27. Defendant Charles Howard, a CCA employee, is Assistant Warden at SDCF.
18 Howard supervises and directs correctional officers, security personnel and other CCA staff who
19 decide and implement housing assignments at SDCF. He is responsible for implementing CCA
20 policies and practices with respect to triple-celling, use of force and segregation at SDCF.

21 28. All defendants are sued in their official capacities.

22 29. At all relevant times, all defendants were acting under color of federal law, pursuant
23 to their authority as officials, agents, contractors or employees of U.S. governmental agencies or
24 entities.

25 30. At all relevant times, defendants Easterling and Howard were acting within the scope
26 of their employment as agents and employees of CCA.

LEGAL FRAMEWORK

31. The Constitution requires government actors to ensure the safety and general well-being of all persons taken into custody, including non-citizens and persons who are not legally admitted to this country. Convicted prisoners are protected by the Eighth Amendment, which prohibits cruel and unusual punishment despite an adjudication of criminal guilt. Immigration detainees, like plaintiffs, are protected by the Fifth Amendment, which prohibits any person acting under color of federal law from subjecting any person in the custody of the United States to punitive conditions of confinement without due process of law.

32. It has long been established that immigration detainees, like pre-trial detainees, are protected from conditions that amount to punishment. *See Wong Wing v. United States*, 163 U.S. 228, 237 (1896). More recently, the U.S. Court of Appeals for the Ninth Circuit has held that conditions of confinement for civil detainees must be *superior* to those of pre-trial detainees, who, though not adjudged guilty of a crime, are held pursuant to criminal processes. *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004), *cert. denied*, 126 S.Ct. 351 (2005). If a civil detainee is confined in conditions that are identical to, similar to, or more restrictive than those under which pre-trial detainees or convicted prisoners are held, then those conditions are presumptively punitive and unconstitutional. *Id.* at 934. By definition, immigration detainees in the custody of ICE are *civil* detainees held pursuant to *civil* immigration laws, and thus are entitled to the higher standard of protection articulated in *Jones*.

33. The Constitution prohibits housing detainees in severely overcrowded conditions that deny basic human needs. In addition to the amount of liveable space provided to each detainee, the effect of overcrowding on other living conditions—for example, sanitation, the level of tension and violence, the provision of health care—is relevant to whether crowding at a particular facility is unlawful. Moreover, the practice of denying detainees a bed and a mattress and forcing them to sleep on the floor violates constitutional protections. *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1448 (9th Cir. 1989).

34. The Second Amended Complaint does not seek damages. Plaintiffs seek only classwide declaratory and prospective injunctive relief against defendants sued in their official

capacities for ongoing constitutional violations committed under color of federal law.

FACTUAL ALLEGATIONS

I. The ICE-CCA Partnership

35. The DHS-ICE contract with CCA regarding SDCF is one of many such contractual agreements that provide for the temporary housing of immigration detainees in privately owned or operated facilities. Under pressure to find space, if not beds, for increasing numbers of detainees swept up in heightened border and immigration enforcement efforts, ICE is relying more heavily than ever on the private prison industry to supply detention capacity. Currently, more than 20 percent of the 27,000 persons in ICE custody are housed in for-profit, private facilities, including contract detention centers like SDCF and smaller local or county jails owned or operated by private companies. That percentage is growing quickly, and CCA and its shareholders are some of the largest economic beneficiaries of ICE's burgeoning business in immigration detention.

36. CCA was on the verge of bankruptcy in 2000. The company owned thousands of empty beds, and its stock was languishing after losing 93 percent of its value. After the attacks of September 11, 2001, CCA began to receive lucrative contracts to house federal immigration detainees at SDCF and other facilities. By 2005, CCA's annual revenue from holding immigrants pursuant to these contracts had risen to approximately \$100 million. Today CCA operates the majority of the contract detention facilities housing persons in ICE custody.

37. CCA has discovered that housing immigration detainees is more profitable than housing state and local prisoners. Immigration detention centers produce profit margins of more than 20 percent, whereas traditional prison management produces returns in the mid-teens. On average, private companies like CCA receive \$95 per "manday"—the rate charged for each individual detainee per day. This figure is substantially higher than the rate paid by state and local jurisdictions for housing prisoners, and is generally higher than the rate paid by the Bureau of Prisons for housing federal prisoners. Yet despite the high rate paid by the federal government to house immigration detainees, these detainees receive fewer services during their detention than most prisoners. SDCF, like most facilities that house only immigration detainees, does not provide high school degree programs, vocational training, or organized recreational activities for detainees.

1 38. On information and belief, the ICE-CCA contract regarding the housing of
2 immigration detainees at SDCF provides that ICE pays CCA per “manday.” CCA thus receives
3 more money under the contract the more detainees it houses at the facility.

4 39. On information and belief, the ICE-CCA contract regarding the housing of
5 immigration detainees at SDCF provides for an on-site Contracting Officer’s Technical
6 Representative (COTR), an ICE employee whose responsibility is to monitor, assess, record and
7 report on the technical performance of CCA on a day-to-day basis.

8 40. Notwithstanding any contractual arrangement between ICE and CCA regarding
9 SDCF, defendants Myers, Torres, Smith and Cerone remain the legal custodians of all persons
10 detained at the facility pursuant to federal immigration laws and are ultimately responsible for
11 ensuring that those detainees are held in conditions that satisfy constitutional requirements for civil
12 detainees. *See West v. Atkins*, 487 U.S. 42 (1988).

13 **II. Chronic Overcrowding at SDCF**

14 41. Chronic and recurrent overcrowding has been a persistent feature of detention
15 conditions at SDCF over the past several years. The practice of triple-celling—housing three
16 detainees in a cell designed for two—has been imposed in virtually every unit at one time or another
17 and currently affects about 675 detainees, or more than two-thirds of the ICE detainee population
18 at the facility. Still more detainees are forced to sleep in makeshift beds placed in the common
19 dayroom space.

20 42. Numerous problems result from, and are exacerbated by, overcrowding, which is the
21 root cause of many complaints made by detainees about living conditions at SDCF. Overcrowding
22 engenders violence, tension and psychiatric problems, and dilutes the availability and quality of
23 constitutionally required services. Detainee safety, personal security, health care, peace of mind, and
24 human dignity are all adversely affected by persistent overcrowding. The cumulative effect of all
25 these problems at SDCF is to deny plaintiffs adequate shelter, and to impose punitive conditions of
26 confinement on immigration detainees housed at SDCF.

1 ***A. The Detainees***

2 43. According to data released by ICE, more than half of the detainees in ICE custody at
3 any given time have never been convicted of any crime. The others are individuals, often longtime
4 lawful permanent residents of the United States, who were placed in removal proceedings because
5 of past criminal convictions for which they have already finished serving any criminal sentence that
6 they may have received, and have thus paid their debt to society. The population of detainees at
7 SDCF includes individuals who fled torture and persecution in their home countries in order to
8 obtain asylum and refuge in the United States; some of these individuals, like plaintiff Morales-
9 Vargas, were detained immediately upon entering the United States and have already been found by
10 a trained asylum officer to possess a credible fear of persecution. SDCF also houses individuals who
11 lawfully entered the United States with a visa, but are charged with overstaying the terms of that
12 visa, as well as individuals with bona fide claims of U.S. citizenship that must be proven in
13 immigration proceedings. Many detainees at SDCF have been law-abiding, productive residents for
14 many years, and have spouses, children and siblings who are U.S. citizens. Other detainees were
15 recently apprehended while crossing the United States-Mexico border. Finally, SDCF houses
16 stateless detainees and detainees from countries that will not accept deportees, many of whom may
17 languish for years in ICE custody before securing their release.

18 44. Unlike pre-trial detainees, whose length of time in detention before trial is limited by
19 speedy trial statutes, there is often no ascertainable limit to the amount of time immigration detainees
20 can expect to spend in detention. Detainees who choose to fight their removal and pursue all
21 available appeals can reasonably expect to spend three or more years in ICE custody. Lengthy stays
22 in detention are particularly common for detainees petitioning for review before the Ninth Circuit,
23 due to that circuit's enormous backlog of immigration cases; the Ninth Circuit receives more
24 petitions for review than any other circuit and approximately 40 percent of the cases on the court's
25 docket are immigration-related. Plaintiff Delgado, whose petition for review was filed with the
26 Ninth Circuit more than three years ago, has been in ICE custody for nearly four years. Even
27 detainees who appeal only to the BIA and then choose not to seek Ninth Circuit review can expect
28 to be detained for up to a year or more before the BIA renders its decision. On information and

1 belief, a significant percentage of ICE detainees at SDCF—approximately twenty to thirty
2 percent—are resisting their removal through at least the level of BIA proceedings.

3 45. Indeed, many detainees at SDCF have spent more time in ICE detention fighting
4 removal than they spent in prison serving the criminal sentence for which they are now being
5 deported. For instance, one detainee who entered SDCF in December 2005 has been detained for
6 more than one year, despite the fact that he was only required to serve four months in county jail.
7 Another current detainee is a 61-year-old lawful permanent resident who previously served only six
8 months in a county jail, but who has already been detained at SDCF for over eight months and has
9 not yet had her individual merits hearing before an Immigration Judge.

10 46. Thus, while some portion of the immigration detainees at SDCF are quickly deported
11 and cycle out of the facility within several weeks or months, there is a large core of long-time
12 detainees who remain at the facility and endure the overcrowded conditions for many months or
13 years. For all SDCF detainees, but particularly the long-timers, defendants' practice of triple-celling
14 inflicts ongoing physical, mental and emotional harm, and imposes punitive and unconstitutional
15 conditions of confinement.

16 ***B. Extent of Triple-Celling at SDCF***

17 47. SDCF has six primary housing units (Units A, B, C, D, J and K), each with a design
18 capacity of approximately 200 persons. Unit B is currently used to house men in the custody of the
19 U.S. Marshals Service (USMS). Units A, C, D and K house ICE detainees. Before June 2006, Unit
20 J also housed ICE detainees and was the women's housing unit at SDCF. In June 2006, however,
21 management of Unit J reverted to the County of San Diego, which owns the facility, pursuant to the
22 terms of its lease agreement with CCA; Unit J thus currently houses persons in the custody of the
23 County.

24 48. At the time of the transfer, Unit J was housing significantly more than 200 detainees,
25 including all the female immigration detainees at SDCF, who already had been fully triple-celled for
26 at least six months. The women were transferred to Unit K, which was housing male ICE detainees;
27 the men who had been in Unit K were folded into the other housing units, further exacerbating
28 overcrowding. Since that time, triple-celling has been nearly constant for most detainees at SDCF.

1 49. Defendants Smith, Cerone, Easterling and Howard were aware of the loss of Unit J
2 and the fact that over 200 detainees in that unit would have to be accommodated in the other, already
3 crowded housing units at SDCF. Despite this knowledge, defendants did not assign fewer
4 immigration detainees to the facility. Rather, the immigration detainee population at SDCF has
5 remained relatively constant at approximately 1000 detainees since June 2006. In fact, the average
6 daily population at SDCF for the first nine months of 2006 was *higher* than it was over the same
7 nine-month period in 2005, despite the loss of Unit J.

8 50. At all relevant times, defendants Easterling and Howard have acted and continue to
9 act pursuant to CCA policies and practices with respect to overcrowding and the use of triple-celling
10 at detention facilities. CCA's September 2006 Form 10-Q Quarterly Report—the first after the
11 reversion of Unit J to the County—notes that the loss of the 200-bed unit did not result in the loss
12 of any detainees because “we had the ability to consolidate inmates” into the other units at SDCF.

13 51. On information and belief, the DHS-ICE contract with CCA regarding SDCF
14 provides that 1000 beds should be available for use specifically by ICE (and not USMS). With only
15 four 200-bed housing units at the facility currently available to house immigration detainees (A, C,
16 D and K), the facility must house detainees over and above its capacity to meet the 1000-bed
17 requirement. The severity of this crowding is made still worse by the fact that two pods in Unit A
18 are allotted for segregation and protective custody cells, and one pod in Unit K houses female USMS
19 detainees in addition to ICE detainees. In light of the available housing at SDCF, the ongoing
20 assignment of immigration detainees to the facility at current population levels by defendants Smith
21 and Cerone effectively *requires* the practice of triple-celling.

22 52. Units C, D, and K each contain three pods, two of which are designed to house 68
23 detainees in 34 two-person cells, and the third of which is designed to house 64 detainees in 32 two-
24 person cells. Unit A contains four pods, two of which are used to house detainees in disciplinary or
25 administrative segregation and protective custody, and two of which are general population pods
26 designed to house 64 detainees. Currently, all three pods in Unit C, the two general population pods
27 in Unit A, and two of the three women's pods in Unit K are entirely triple-celled. In these pods, in
28 addition to housing three detainees per cell, up to 16 detainees may be forced to sleep on bunk beds

1 in the dayroom. Thus, 100 to 120 detainees are routinely housed in pods designed to hold only 64
2 or 68 detainees. The total number of detainees in pods that are crowded at or close to these levels
3 is approximately 675.

4 53. On information and belief, the USMS detainees at SDCF are not triple-celled, or are
5 not triple-celled to the same extent or for the same length of time as immigration detainees at the
6 facility. Unlike civil immigration detainees, USMS detainees are detained pursuant to criminal
7 charges.

8 ***C. Cell Dimensions***

9 54. Cells at SDCF are designed for two persons and are approximately 72 square feet in
10 size (12' x 6'). Each cell includes a single set of bunk beds, a toilet-sink unit, a stool, a desk, and
11 a small property box for each detainee to store personal items. When a third detainee is housed in
12 the cell, security officers place a plastic "boat" containing a thin sleeping mat on the floor parallel
13 to the bunk beds, immediately next to the toilet. There is less than a foot of space between the bunk
14 bed and the boat, leaving virtually no space to walk or stand inside the cell. The third detainee is
15 also given a property box.

16 55. One end of the boat is within a foot of the toilet, meaning that the detainee sleeping
17 on the floor is often sprayed with urine or water from the toilet or sink if one of his or her cellmates
18 uses the bathroom at night. It is difficult to sit comfortably on the toilet or stand in front of it without
19 stepping on the boat or the detainee sleeping therein. It is common for the plumbing of four cells
20 to be linked together, so that problems in one cell result in overflowing toilets and flooding in three
21 other cells. When this happens, the boat and sleeping mat often become soaked with water and
22 human waste.

23 56. Cell doors are made of solid metal and contain a small glass window that is sealed
24 and provides no ventilation. Doors have a small food slot that is used when the unit is on lockdown
25 and detainees are forced to remain in their cells throughout the day, including during meals.

26 57. Even when the unit is not on lockdown, plaintiffs spend significant amounts of time
27 in their cells. Detainees are normally confined to their cells for about 12 hours a day—7 hours at
28 night, and during four daily counts lasting an hour or more each.

1 58. ICE Detention Standards consistently refer to the American Correctional Association
2 (ACA) Standards for Adult Local Detention Facilities. On information and belief, CCA's contract
3 with ICE to house detainees at SDCF requires compliance with these or other ACA standards.

4 59. The ACA Standards for Adult Local Detention Facilities state that cells housing more
5 than one person must provide 25 square feet of unencumbered space per occupant. *ACA 2006*
6 *Standards Supplement* at 71 (April 2006) (Standard 3-ALDF 2C-03). Unencumbered space is
7 defined as "usable space that is not encumbered by furnishings or fixtures." *Id.* Defendants' practice
8 of housing three detainees in 72-square foot cells—in which unencumbered space is no more than
9 15 square feet for *all three* occupants when the boat is on the floor—does not come remotely close
10 to meeting this standard. These ACA standards also state that when confinement exceeds ten hours
11 per day, as it does at SDCF, there should be at least 70 square feet of total floor space *per occupant*.
12 *Id.* (The ACA Standards for Adult Correctional Institutions, which arguably should apply to SDCF
13 given the length of time that many detainees spend at the facility, require at least 80 square feet of
14 total floor space per occupant when in-cell confinement exceeds ten hours per day.). Thus,
15 defendants routinely provide *less* space for three civil immigration detainees than ACA standards
16 require for a single pre-trial criminal detainee or convicted prisoner.

17 60. On information and belief, the facility COTR is charged with monitoring and
18 assessing CCA's compliance or non-compliance at SDCF with applicable ACA standards and
19 reporting that information to the Contracting Officer (at the Office of Federal Detention Trustee) and
20 ICE-DRO headquarters staff.

21 ***D. Effects of Overcrowding on Conditions Inside the Cells***

22 61. Triple-celling is hard on all detainees, but it is especially hard on the floor-sleeper,
23 who must endure the indignity of being stepped on and sprayed with urine. The sides of the boats
24 are curved, increasing the pain and discomfort for detainees sleeping in them. Defendants' failure
25 to provide all detainees with a mattress and a bed on which to sleep falls short of constitutional
26 requirements.

27 62. Plaintiff Castro was forced to sleep in a boat for the first two months of her detention
28 at SDCF. While in the boat, Castro was often extremely cold because the air vent blew directly on

1 her. During this period Castro began to receive antidepressants, which made her very tired
2 throughout the day. During daytime hours, Castro would often sleep in the boat, causing great
3 discomfort to her cellmates who could not comfortably use the toilet, sink or desk. On two
4 occasions, in order to get the rest she needed and to relieve her cellmates' discomfort, Castro moved
5 the boat underneath the bottom bunk and slid her body into it. With the underside of the bottom
6 bunk mere inches from her face, this strategy was clearly a safety hazard and she found it difficult
7 to breathe. Nonetheless, Castro found that sleeping underneath the bottom bunk was both warmer
8 and more restful than sleeping in the boat in the middle of the cell. After Castro had done this on
9 two occasions, a security officer informed her that she was not permitted to sleep underneath the bed,
10 and she was again forced to sleep in the middle of the cell.

11 63. The placement of the boat makes gaining access to the top bunk difficult and
12 treacherous, as detainees are forced to climb up and down from the desk to avoid stepping on the
13 floor-sleeper. Detainees have fallen and injured themselves as a result of these cell conditions. One
14 female detainee recently fell from the top bunk while trying not to step on the boat; she injured her
15 back and was confined to a wheelchair for a week.

16 64. Practicing Muslims who are triple-celled at SDCF do not have sufficient physical
17 space to kneel and pray five times per day. The boat takes up virtually all the usable floor space in
18 the cell. As a result, when prayer time falls during count or when the pod is on lockdown, Muslim
19 detainees are unable to exercise their religion freely.

20 65. Triple-celling exacerbates tensions among detainees confined in such close quarters
21 for long periods. Fights break out among cellmates. Detainees argue about the use of the toilet,
22 particularly at nighttime when the person on the floor must be awakened to allow his or her cellmates
23 to use the toilet. With three individuals in the cell, it becomes more difficult to keep the cell clean
24 and sanitary, and there is greater likelihood that the toilet will overflow. These problems are made
25 more unbearable when an entire pod is placed on lockdown for extended periods and detainees are
26 forced to eat all their meals in the cell together. Lockdowns have lasted as long as five consecutive
27 days while detainees were triple-celled.

28

66. Defendants Smith, Cerone, Easterling and Howard are aware of the effects of overcrowding on conditions inside the cells at SDCF but have failed to take reasonable steps to reduce population levels or otherwise remedy these problems.

E. Effects of Overcrowding on Conditions Inside the Housing Units

67. In addition to increased tensions inside the cells, overcrowding increases the likelihood of violence throughout the housing unit and places a strain on essential facilities and services provided to detainees.

68. A single triple-celled pod that includes beds in the dayroom may house up to 118 detainees. Most pods contain 34 cells, yet have only two showers; pods containing 32 cells have four showers. Shower conditions inevitably become unsanitary due to the number of detainees using the facilities. Telephones, which are placed in the dayrooms, are frequently broken, making it extremely difficult for detainees to obtain legal counsel, or to maintain contact with such counsel or with loved ones. Overcrowding also raises the noise level inside the housing units, causing extreme discomfort for detainees and further exacerbating the difficulties associated with using the phones.

69. With individual pods at fifty to sixty percent over capacity, conflicts erupt over the use of the showers, control of television channels, and limited dayroom space. During meals, there are insufficient chairs and tables in the dayroom for all detainees, forcing many to sit on the floor or stand while eating. Other detainees bring food back to their cells, which worsens the sanitation problem in the cells. Plaintiff Delgado was recently housed in Unit C, where several detainees began to argue over the control of the two television sets. As a result, the entire pod was placed on lockdown for several hours.

70. In the most overcrowded pods, ten to fifteen detainees are housed in the dayroom on bunk beds. When this happens, one cell on the lower tier of the pod is typically kept unoccupied and unlocked for use as a bathroom. Thus, the detainees assigned to sleep in the dayroom must share a single toilet and sink with as many as 118 other detainees. These detainees also must store their property in the dayroom, where it is accessible to every other detainee in the pod.

71. Each housing unit has a small, concrete yard containing a basketball hoop and two sets of metal bars for exercise. Each pod is permitted approximately one hour of recreation in the

1 morning and one hour in the afternoon. When pods are triple-celled and house close to 100
2 detainees or more, the yard does not provide enough recreational space for all detainees to exercise
3 properly.

4 72. Security staff at SDCF are insufficient to monitor the severely overcrowded units.
5 Over 100 detainees in a single pod, or 300 detainees in a single unit, frequently remain under
6 observation by only one or two security officers in the control room, who are unable to ensure the
7 safety of all detainees without additional staff. Plaintiff Morales-Vargas has had to defend himself
8 in at least five incidents of detainee-on-detainee violence that went unnoticed or were ignored by
9 security staff. Plaintiff Owino has witnessed numerous fights among detainees that transpired
10 without the intervention of security staff. When staff does intervene, entire pods are often placed
11 on lockdown for three to four days in response to fights among individual detainees.

12 73. The direct connection between overcrowding and increased violence among detained
13 populations is well-established. The Governor of California recently issued a proclamation declaring
14 a state of emergency in California state prisons that repeatedly links the incidence of assaults and
15 riots by inmates to prison overcrowding levels. Unlike the incarcerated population at issue in the
16 Governor's proclamation, immigration detainees at SDCF are detained pursuant to civil processes
17 for non-punitive purposes and are entitled to a higher standard of protection with respect to their
18 likely exposure to violence while in detention.

19 74. Defendants Smith, Cerone, Easterling and Howard are aware of the effects of
20 overcrowding on conditions inside the housing units at SDCF but have failed to take reasonable steps
21 to reduce population levels or otherwise remedy these problems.

22 ***F. Spillover into Holding Cells and Segregation***

23 75. Upon entering SDCF and prior to placement in a housing unit, immigration detainees
24 are initially kept in a holding cell. Detainees are placed in similar holding cells when awaiting
25 imminent deportation, release from the facility, or transport to an off-site location such as
26 immigration court in downtown San Diego.

27 76. Each holding cell is a small, secure room with a concrete floor, a long metal bench
28 against the wall, and a toilet-sink unit. On information and belief, detainees are sometimes housed

1 in such holding cells for more than 12 hours, while they are being processed or while waiting for bed
2 space to open up in crowded housing units. If detainees, who are often transferred in and out of the
3 facility in the early morning hours, need to sleep they must lie directly on the concrete floor or the
4 metal bench. There is just enough room in a typical holding cell for approximately 12 detainees to
5 sleep in a row on the floor, side-by-side, touching one another, like sardines. Detainees who must
6 be transported to downtown San Diego in order to appear before the Immigration Judge are often
7 awakened in the middle of the night and transferred out of their cell and into such a holding cell; on
8 information and belief, such detainees often fail to receive a morning meal and appear in
9 immigration court hungry, disheveled, and sleep-deprived.

10 77. One detainee, an Iranian asylum seeker whose wife, sister and father are all U.S.
11 citizens, spent two consecutive days in a holding cell with 18 people when he first came to SDCF
12 in September 2006.

13 78. Defendants also use administrative segregation to house overflow detainees who
14 cannot be accommodated in overcrowded pods. Indeed, placement in segregation is a routine
15 punishment for detainees who refuse to be triple-celled.

16 79. Detainees confined in segregation remain in their cells for 23 to 24 hours a day and
17 are required to eat all meals in their cells. Segregated detainees are offered one hour of out-of-cell
18 exercise, five days per week, in a small cement yard (approximately 8' x 16') surrounded by a chain-
19 link fence; detainees refer to this yard as a "cage." On most days, detainees in segregation are
20 provided with their exercise hour early in the morning before the sun rises, or late in the evening
21 after the sun sets; when it is cold outside, many detainees—who are not issued winter clothing and
22 must resort to purchasing sweatshirts from the commissary if they have funds—decline to go outside.

23 ***G. Effect of Overcrowding on Health Conditions and Medical Services***

24 80. Overcrowding diminishes the availability of adequate medical, mental health and
25 dental care at the facility. Health services staff respond more slowly to sick call requests for medical
26 and dental care as a result of the over-capacity detainee population at SDCF and the medical intake
27 screening process is overburdened.
28

1 81. In addition, triple-celling creates serious health problems for detainees. Respiratory
2 infections and other illnesses are rampant because of the close quarters and the amount of time that
3 detainees must spend confined in their cells. With three detainees in a cell and the cell door closed,
4 the air inside the cell becomes warm and humid, making it difficult to breathe. This has a
5 particularly deleterious effect on asthmatics, such as plaintiff Owino, who are at greater risk of
6 suffering asthma attacks because of these conditions.

7 82. Detainees living in severely overcrowded conditions are at greater risk for both
8 methicillin resistant staphylococcus aureus (MRSA) and multidrug resistant tuberculosis (MDRTB).
9 MRSA is a highly contagious bacteria known to spread rapidly in institutional settings where poor
10 sanitation and close confinement create a greater likelihood of transmission. MRSA causes skin
11 infections and boils and can lead to serious complications such as deep abscesses, pneumonia,
12 endocarditis (infection of the heart), meningitis, bone infection, blood infection and death. MDRTB
13 is a potentially fatal air-borne disease whose spread is facilitated by poor air circulation and crowded
14 conditions.

15 83. On information and belief, numerous mentally ill detainees are triple-celled in general
16 population as a result, at least in part, of overcrowding and the strain that it places on mental health
17 services. For approximately one month, plaintiff Kiniti shared a cell with a mentally ill detainee who
18 had previously served part of his criminal sentence in a state mental institution. Kiniti's cellmate,
19 who talked loudly to himself during the night keeping his cellmates awake, said he preferred SDCF
20 to state prison because at SDCF he could refuse to take his medication and no one would bother
21 about it. The mentally ill detainee subsequently assaulted another cellmate and was moved to
22 administrative segregation. Another detainee who has been in ICE custody for more than six years
23 was frequently triple-celled in general population despite being diagnosed with schizophrenia and
24 bipolar disorder; as a result of various medical problems, he was unable to control his bowel
25 movements and needed adult diapers, which were provided inconsistently.

26 84. Triple-celling also creates problems for detainees with limited mobility or medical
27 problems that are aggravated by crowded conditions. The medical clinic at SDCF issues
28 "chronos"—special needs forms—to such detainees that direct CCA staff not to triple-cell a detainee

1 for medical reasons. Such chronos are routinely ignored by CCA staff. For example, in June 2006
2 one detainee received a medical chrono stating that he needed to be housed in a lower bunk in a two-
3 man cell because of numerous medical problems including his need to urinate frequently during the
4 night. CCA staff agreed to house the man in a lower bunk, but denied the remainder of the chrono
5 and instead triple-celled him. The detainee immediately filed a CCA Inmate/Resident Grievance
6 Form, which was denied with the standard response: "This is a non-grievable issue. We have already
7 addressed this issue in the past and will not entertain the (2) men to a cell issue. . . ."

8 85. Defendants Smith, Cerone, Easterling and Howard are aware of the effects of
9 overcrowding on health conditions and the provision of medical services at SDCF but have failed
10 to take reasonable steps to reduce population levels or otherwise remedy these problems.

11 ***H. Detainee Complaints and the OIG Audit***

12 86. Large numbers of detainees have lodged informal complaints and filed formal
13 grievances with both ICE and CCA officials complaining about the practice of triple-celling at
14 SDCF. The grievances are systematically dismissed with language similar or identical to the
15 following: "Due to variables in housing restrictions, *i.e.* classification levels, gender, it can or will
16 be necessary to have (3) three individuals housed in (1) cell. This does not violate policy or
17 procedures. . . . Staff actions are appropriate. Grievance denied."

18 87. Defendants Smith, Cerone, Easterling and Howard are aware of the volume of
19 grievances filed by immigration detainees about the effects of triple-celling and have directed or
20 approved all official responses to such complaints. These responses either state that the issue cannot
21 be grieved or summarily deny the grievance. Beverly Soria, a CCA employee, is the Grievance
22 Officer at SDCF. Soria provides the initial response to most grievances filed by detainees, including
23 all grievances related to overcrowding and triple-celling, using the CCA Inmate/Resident Grievance
24 Form. On information and belief, Soria is also the Secretary of Warden Easterling.

25 88. In October 2004, 90 detainees sent a petition to the SDCF Warden and the DHS OIG.
26 The detainees specifically complained about overcrowding (including the practice of placing three
27 detainees in two-person cells) and about a five-day lockdown in Unit A. According to the petition,
28 when detainees were released from lockdown, defendant Howard informed them that the lockdown

1 was imposed to teach them a lesson. On November 23, 2004, an advocate for detainees' rights at
2 the National Immigration Project wrote to the SDCF Warden and the ICE Officer-in-Charge about
3 overcrowding and inadequate medical care at SDCF.

4 89. Beginning in or about May 2004, based on numerous allegations of abuse and poor
5 treatment by ICE detainees in facilities across the country, the DHS OIG initiated an audit of the
6 treatment of immigration detainees. Out of more than 300 jails, prisons and other facilities around
7 the country holding immigration detainees, the OIG initially decided to focus its review on ten
8 facilities. That list of ten facilities was ultimately reduced to only five facilities due, at least in part,
9 to the volume of complaints received from those facilities, particularly SDCF. Auditors toured the
10 facilities, reviewed written complaints by detainees, and conducted numerous in-person interviews
11 of detainees.

12 90. SDCF was one of the five facilities visited by field auditors from the OIG. Those
13 visits occurred over a period of approximately ten weeks in early 2005. In addition, the OIG
14 conducted seven weeks of document review related to the San Diego facility.

15 91. A report detailing the results of the OIG audit was originally expected to be released
16 in May 2005. Then the OIG stated that due to complications with the audit of a Passaic, New Jersey
17 facility the report would not be completed and released until early February 2006. In August 2006,
18 the OIG's spokesperson stated that the report was due to be released in late summer 2006. The long-
19 awaited results of the OIG audit were finally released on January 16, 2007. *See Treatment of*
20 *Immigration Detainees Housed at Immigration and Customs Enforcement Facilities, available at*
21 http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_07-01_Dec06.pdf (OIG Audit Report).

22 92. The OIG Audit Report indicates that 210 detainees at SDCF responded to the OIG's
23 request for information about conditions of confinement and allegations of mistreatment at the
24 facility—more than twice as many as at any of the other four facilities that were audited. *Id.* at 39.
25 The report also shows that three of the four most egregious instances of physical and sexual abuse
26 reported at the five facilities took place at SDCF. *Id.* at 28. In addition, the report identifies
27 significant failures in the provision of adequate health care and monitoring of suicidal detainees.
28 More than half the detainees whose files were reviewed were not given a physical exam within two

1 weeks of entering SDCF, and were not seen by a physician or qualified medical officer within three
2 days of submitting a request for medical attention. *Id.* at 4. Out of five detainees on suicide watch
3 whose files were reviewed, only one was monitored at least every 15 minutes. *Id.* at 6.

4 93. Despite identifying many serious problems at SDCF, the OIG Audit Report is notable
5 for what it fails to include. The report fails to even mention the problem of overcrowding at SDCF.
6 Triple-celling was widespread throughout the facility at the time of the audit in early 2005. Over 50
7 detainees spoke with the field auditors during their visit and many, including plaintiffs Kiniti and
8 Delgado, specifically complained about triple-celling, or the direct effects of triple-celling. On
9 information and belief, still more detainees complained about overcrowding, or the direct effects of
10 overcrowding, in written communications with the field auditors. Further, local immigrant advocates
11 highlighted the problem of triple-celling at multiple meetings they attended with the auditors to
12 discuss problems at SDCF.

13 94. Based on these facts, it is simply impossible to believe that the auditors were not
14 made aware of the problems associated with overcrowding at SDCF. Indeed, both the SDCF
15 Warden and the ICE Officer-in-Charge at the time of the audit were replaced shortly thereafter, and
16 the level of triple-celling declined somewhat for a period of months following the OIG visit,
17 ostensibly in response to concerns raised during the audit. Notwithstanding these changes,
18 overcrowding at SDCF gradually returned to pre-audit levels. And on July 1, 2005, soon after the
19 OIG audit at SDCF was completed, ICE awarded CCA with a contract for the continued
20 management of the facility.

21 95. On information and belief, all defendants were made aware of the OIG's concerns
22 with respect to overcrowding at SDCF at the time of the audit, and of the auditors' findings regarding
23 the facility—including findings that may not have been published in the official OIG Audit Report.
24 Despite this knowledge, defendants failed to take or sustain meaningful corrective action in response
25 to these findings.

26 96. Finally, the OIG Audit Report did conclude that ICE DRO's annual detention review
27 of SDCF in 2004 failed to identify problems regarding health care and general conditions of
28 confinement observed by the OIG during its audit, and that a final rating of "Acceptable" was

1 granted to SDCF despite these problems and additional problems with environmental health and
2 safety and reports of detainee abuse. *Id.* at 36. On information and belief, as Director of DRO
3 defendant Torres was made aware of the results of ICE DRO's annual detention reviews and
4 approved both the inspection methods and the final rating given to facilities such as SDCF.

5 97. Defendant Myers, who provided the official ICE response to the OIG draft report in
6 September 2006, specifically rejected the OIG's recommendation that ICE "[a]scertain the reasons
7 that areas of non-compliance identified by ICE inspections of detention facilities were significantly
8 less than the non-compliance deficiencies identified by [the OIG]." Myers asked that the
9 recommendation be considered resolved and closed. *Id.* at 51.

10 ***I. The September 2, 2006 "Riot"***

11 98. The most dramatic instance of violence triggered by overcrowding at SDCF occurred
12 on September 2, 2006, when a so-called "riot" broke out in Unit D. Although triple-celling was
13 present in Unit D in the months preceding the "riot," the use of triple-celling was not as prevalent
14 there as in the other housing units at that time. The September 2 disturbance began when CCA staff
15 attempted to initiate broader triple-celling within Unit D by placing a third detainee into a number
16 of cells. Many Unit D detainees, frustrated by the prospect of still further crowding, sat down in the
17 dayroom and asked to speak to ICE officials about the plan to expand triple-celling in their unit. As
18 the detainees waited peacefully to speak with ICE officials, CCA brought out S.O.R.T. (Special
19 Operations Response Team) officers in full anti-riot gear.

20 99. The S.O.R.T. officers released pepper spray throughout the three pods in Unit D and
21 waited approximately 15 minutes for the gas to take effect. Some detainees began to act out,
22 throwing items around the dayroom and breaking a window in one of the pods. Other detainees were
23 running around, mostly trying to return to their cells. Correctional officers armed with pepper ball
24 guns began to shoot at detainees. At least one detainee was shot in the head with a rubber bullet and
25 injured, and other detainees were pepper sprayed and later beaten while sitting peacefully inside of
26 their cells.

27 100. Following the riot, dozens of detainees were placed in disciplinary segregation and
28 accused of participating in the riot. Some were placed in segregation cells wearing only a t-shirt and

1 their underwear, and were not provided blankets. The temperature in segregation was extremely
2 cold, and detainees ripped open their mattresses so they could try to stay warm while sleeping.
3 Correctional officers removed the torn mattresses from the cells, forcing detainees to sleep on metal
4 bunks without mattresses. Some detainees were eventually released from segregation after
5 disciplinary charges against them were dropped. Several others continue to be held in segregation
6 nearly five months after the incident, despite having long ago completed any disciplinary sentence
7 that they received in connection with the disturbance.

8 101. Those detainees who were not brought up on disciplinary charges after the riot
9 remained in Unit D. All three pods of Unit D were placed on Behavior Management Status which
10 entailed a round-the-clock lockdown for over a week and peanut butter sandwiches for all three
11 meals during this period. Detainees did not receive showers, personal or legal mail, exercise, access
12 to the law library or law library materials, or telephone calls, including legal calls, throughout the
13 lockdown. The lockdown was phased out over a period of weeks, during which time detainees were
14 slowly permitted to shower, their meals were returned to normal, and they were gradually allowed
15 limited access to the dayroom.

16 102. The aftermath of the September 2, 2006 disturbance is just one example of the use
17 of punitive segregation and lockdown to suppress complaints about overcrowding and other
18 conditions at SDCF; the pattern is consistent and predictable. Detainees who refuse to be
19 triple-celled are routinely placed in segregation, where they are confined to their cells for 23 hours
20 a day and have limited access to showers, legal materials, exercise time and nearly all social
21 interaction.

22 103. CCA's extreme response to the detainees' peaceful refusal to be triple-celled last
23 September is similar to the response tactics of CCA employees at many of the company's other
24 facilities, and reflects a CCA policy favoring disproportionate violence and punitive measures in
25 response to non-threatening complaints by prisoners and detainees. On information and belief, the
26 ICE defendants were aware of the September riot and took no action to curb CCA's response or alter
27 the future practices of CCA employees at the facility.

28

1 **III. Class Action Allegations**

2 104. Plaintiffs Kiniti, Morales-Vargas, Owino, Delgado and Castro bring claims based on
3 the Fifth Amendment to the United States Constitution on behalf of themselves and all others
4 similarly situated, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

5 105. Plaintiffs seek to represent a class consisting of “all immigration detainees in ICE
6 custody who are now or in the future will be confined at San Diego Correctional Facility”
7 (hereinafter the “SDCF Class”). As a result of their confinement at SDCF, members of the SDCF
8 Class including plaintiffs have been, are, and will be subjected to violations of their constitutional
9 rights as described in this Second Amended Complaint. Plaintiffs represent a class of persons
10 seeking declaratory and injunctive relief to eliminate or remedy defendants’ policies, practices, acts
11 and omissions depriving them of those rights.

12 106. There are currently approximately 1000 male and female immigration detainees
13 confined at SDCF. The proposed SDCF Class is so numerous, and membership in the class so fluid,
14 that joinder of all members is impracticable. Because ICE detainees are frequently removed from
15 the country, released from detention, and transferred between SDCF and other facilities that house
16 immigration detainees, the membership of the class changes constantly.

17 107. All SDCF Class members are equally subject to the conditions described in the
18 Second Amended Complaint, and common questions of law and fact exist as to all SDCF Class
19 members. These common questions include, but are not limited to: whether defendants have failed
20 to provide adequate shelter, reasonable safety, and basic human needs to plaintiffs as a result of
21 overcrowding at SDCF; whether plaintiffs’ conditions of confinement subject them to unreasonable
22 risk of violence, injury, illness and mental suffering; whether plaintiffs’ conditions of confinement
23 are effectively punitive; whether defendants’ conduct violates the Fifth Amendment; and whether
24 defendants’ conduct shows a pattern of officially sanctioned behavior that violates plaintiffs’ rights
25 and establishes a credible threat of future injury.

26 108. Plaintiffs’ claims are typical of the claims of the SDCF Class as a whole. Plaintiffs
27 have all been subjected to overcrowding at SDCF, including the practice of triple-celling, as is
28 typical of the SDCF Class as a whole. Plaintiffs and the class they represent have been directly

1 injured by defendants' unconstitutional policies, practices, acts and omissions with respect to
2 overcrowding, and are all at risk of future harm from continuation of these policies, practices, acts
3 and omissions.

4 109. Plaintiffs will fairly and adequately represent the interests of the SDCF Class. The
5 interests of plaintiffs are consistent with those of the class, and they are represented by counsel who
6 are experienced in class action, civil rights, immigrants' rights, and conditions of confinement
7 litigation.

8 110. Defendants have acted and refused to act on grounds generally applicable to the
9 SDCF Class, thereby making appropriate final injunctive relief and declaratory relief with respect
10 to the class as a whole.

11 CLAIM FOR RELIEF

12 Denial of Adequate Shelter, Reasonable Safety, and Basic Human Needs 13 Based on Chronic and Severe Overcrowding (Fifth Amendment Due Process Clause)

14 111. Defendants' policies, practices, acts, and omissions with respect to chronic and severe
15 overcrowding at SDCF—including but not limited to the triple-celling of immigration detainees and
16 the housing of additional detainees in common dayroom spaces—deprive plaintiffs of adequate
17 shelter, reasonable safety, and basic human needs, and place them at unreasonable, continuing and
18 foreseeable risk of, *inter alia*, increased violence, illness, mental suffering, and deteriorating health.

19 112. Defendants' policies, practices, acts, and omissions with respect to chronic and severe
20 overcrowding at SDCF are not justified by a legitimate governmental purpose and constitute de facto
21 punishment without due process of law. Defendants' conduct has created and maintained, and
22 continues to maintain, punitive conditions of confinement for civil immigration detainees housed
23 at SDCF.

24 113. Defendants' policies, practices, acts, and omissions with respect to chronic and severe
25 overcrowding at SDCF create and maintain conditions of confinement for civil immigration
26 detainees that are qualitatively similar to, or worse than, the conditions under which prisoners and
27 pre-trial criminal detainees are held at SDCF and other comparable facilities.

28

114. Although plaintiffs, as civil immigration detainees rather than convicted prisoners, need not prove deliberate indifference to establish a violation of their substantive due process rights, defendants' policies, practices, acts, and omissions with respect to chronic and severe overcrowding at SDCF nevertheless constitute deliberate indifference to the basic human needs of plaintiffs.

115. Defendants' policies, practices, acts, and omissions with respect to chronic and severe overcrowding at SDCF violate the Due Process Clause of the Fifth Amendment to the United States Constitution.

116. Defendants' policies, practices, acts, and omissions with respect to chronic and severe overcrowding at SDCF show a pattern of officially sanctioned behavior that violates plaintiffs' rights, and establish a credible threat of future injury to plaintiffs.

117. As a proximate result of defendants' unconstitutional policies, practices, acts and omissions, plaintiffs have suffered 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 address the wrongs described herein. The injunctive relief sought by plaintiffs is necessary to prevent continued and further injury.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

- a. Issue an order certifying this action to proceed as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- b. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;
- c. Issue a judgment declaring that defendants' policies, practices, acts and omissions described herein violate plaintiffs' rights under the Constitution of the United States;
- d. Permanently enjoin defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting plaintiffs to the unconstitutional conditions described herein, and issue injunctive relief sufficient to rectify those conditions;

- 1 e. Grant plaintiffs their reasonable attorney fees and costs pursuant to 28 U.S.C. § 2412,
2 and other applicable law;
3 f. Grant such other and further relief as this Court deems just and proper.

4 Dated: January 24, 2007

Respectfully submitted,

5 By: s/ David Blair-Loy

6 David Blair-Loy (SBN 229235)
7 American Civil Liberties Union Foundation
8 of San Diego & Imperial Counties
9 P.O. Box 87131
10 San Diego, CA 92138-7131
11 Tel: (619) 232-2121
12 Fax: (619) 232-0036
13 Email: dblairloy@aclusandiego.org

14 Gouri Bhat (*pro hac vice* pending)
15 Tom-Tsvi M. Jawetz (*pro hac vice* pending)
16 David C. Fathi* (*pro hac vice* pending)
17 American Civil Liberties Union Foundation
18 National Prison Project
19 915 15th Street NW, 7th Floor
20 Washington, DC 20005
21 Tel: (202) 548-6611
22 Fax: (202) 393-4931
23 Email: gbhat@npp-aclu.org
24 *Not admitted in DC; practice limited to federal courts

25 Judy Rabinovitz (*pro hac vice* pending)
26 American Civil Liberties Union Foundation
27 Immigrants' Rights Project
28 125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2618
Fax: (212) 549-2654
Email: jrabinovitz@aclu.org

Mónica M. Ramírez (SBN 234893)
American Civil Liberties Union Foundation
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
Tel: (415) 343-0778
Fax: (415) 395-0950
Email: mramirez@aclu.org

Anthony M. Stiegler (SBN 126414)
Mary Kathryn Kelley (SBN 170259)
Cooley Godward Kronish LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Tel: (858) 550-6035

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Fax: (858) 550-6420
Email: astiegler@cooley.com
Counsel for Plaintiffs