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

ISAAC KIGONDU KINITI; SYLVESTER
OWINO; HERNAN ISMAEL DELGADO,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Case No. 3:05-cv-1013-DMS-PCL

JULIE L. MYERS, Assistant Secretary, U.S.
Immigration and Customs Enforcement
(ICE); GARY E. MEAD, Acting Director,
Office of Detention and Removal Operations,
ICE; ROBIN BAKER, Director, San Diego
Field Office, ICE; JOHN GARZON, Officer-
in-Charge at San Diego Correctional Facility
(SDCF), ICE; CORRECTIONS
CORPORATION OF AMERICA, INC.
(CCA); FRED LAWRENCE, SDCF Warden,
CCA; CHARLES HOWARD, SDCF
Assistant Warden, CCA,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by all Plaintiffs and Defendants in this class action lawsuit (collectively, “the Parties”). Plaintiffs are immigration detainees in the custody of U.S. Immigration and Customs Enforcement (“ICE”) at the San Diego Correctional Facility (“SDCF” or “the Facility”) in Otay Mesa, California. Defendants are officials and employees of ICE and/or Corrections Corporation of America, Inc. (“CCA”), the private company that manages this Facility.

WHEREAS, Plaintiffs moved for leave to file their Second Amended Complaint on January 24, 2007 alleging that chronic overcrowding at SDCF, and in particular the practice of “triple-celling” immigration detainees, had resulted in unconstitutional conditions of confinement in violation of the Fifth Amendment to the United States Constitution and such leave was granted

1 by the Court on February 27, 2007;

2 WHEREAS, Federal Defendants filed their Answer to the Second Amended Complaint on
3 July 23, 2007, denying Plaintiffs' allegations that "triple-celling" immigration detainees in ICE
4 custody results in unconstitutional conditions of confinement in violation of the Fifth
5 Amendment, and further stating that since January 28, 2007, SDCF has been operating below its
6 "design capacity"¹ for its immigration detainee population, and no immigration detainee at the
7 facility has been "triple-celled" since that date;

9 WHEREAS, Plaintiffs do not dispute that the overcrowded conditions of immigration
10 detainees at SDCF, as alleged in the Second Amended Complaint, has been relieved since
11 January 28, 2007, and that the practice of "triple-celling" immigration detainees in ICE custody is
12 presently not occurring at the Facility;

14 WHEREAS, Defendants have represented to Plaintiffs' Counsel and the Court on several
15 occasions—in correspondence, briefing and a formal declaration—that they have "no reasonable
16 expectation" to triple-cell or otherwise overcrowd immigration detainees in ICE custody at SDCF
17 again in the future;

19 ¹ "Design Capacity" is defined herein as the occupational capacity for which
20 SDCF is designed to house, hold and/or detain, and is described as follows: SDCF
21 presently contains 6 units, each of which consists of three pods and has between
22 64-68 beds in each pod. The only exception to this is Unit A, which has 2 pods
23 with 32 beds in each (for a total of 64 beds) and two other pods with 68 beds
24 each. One of these six units (Unit B) has been designated for the U.S. Marshals
25 Service ("USMS") and another for San Diego County. Units F and L comprise
26 medical housing at SDCF, which provide additional beds for the care and service
27 of medically-unstable or unhealthy detainees. Unit F is comprised of 16 single-
28 occupancy cells. Unit L is comprised of two dormitory-style housing areas, each
containing 8 beds. As used herein, references to "design capacity" only refer to
pods and units where immigration detainees are housed. Defendants reserve the
right to move or transfer detainees to different units or exchange units with the
USMS and/or San Diego County to account for repairs, population changes, or
other priorities, on the condition that population levels will remain below design
capacity except as provided herein.

1 WHEREAS, Plaintiffs' motion for class certification was granted on August 17, 2007;

2 WHEREAS, the Parties believe it is in their mutual interests to settle this class action to
3 avoid the risks and burdens of further litigation and trial in this matter;

4 NOW, THEREFORE, in full settlement of this action and in consideration of the promises
5 and undertakings set forth herein, the sufficiency of which is hereby acknowledged, it is hereby
6 stipulated and agreed, by and between the undersigned, as follows:
7

8 **I. Definitions**

9 1. Pursuant to the Court's order granting class certification, Plaintiffs are "all
10 immigration detainees in ICE custody who are now or in the future will be confined at San Diego
11 Correctional Facility."

12 2. "Defendants" refers to all Federal Defendants and all CCA Defendants, as defined
13 below.
14

15 3. "Federal Defendants" are Julie L. Myers, Assistant Secretary, ICE; Gary E. Mead,
16 Acting Director, Office of Detention and Removal Operations, ICE; Robin Baker, Director, San
17 Diego Field Office, ICE; and John Garzon, Officer-in-Charge at SDCF, ICE.

18 4. "CCA Defendants" are Corrections Corporation of America, Inc.; Fred Lawrence,
19 Warden at SDCF; and Charles Howard, Assistant Warden at SDCF.

20 5. The "Effective Date" is the date upon which the Parties sign the Agreement.

21 6. "Triple-celling" refers to the practice of detaining, holding, or housing three
22 immigration detainees in ICE custody in a cell designed to house two immigration detainees in
23 ICE custody.
24

25 **II. Term of Agreement**

26 7. This Agreement, and all responsibilities and obligations contained herein, shall
27 terminate on January 28, 2009.
28

1 **III. SDCF Population and Confirmatory Discovery**

2 8. Defendants agree that for the term of this Agreement the population of
3 immigration detainees in ICE custody in each unit and pod at SDCF that is designated to detain,
4 hold, or house immigration detainees in ICE custody shall not exceed the design capacity for that
5 unit or pod, as described in Footnote 1 of this Agreement.
6

7 9. The Parties agree that previously scheduled discovery and pretrial proceedings as
8 set forth in the October 11, 2007 Case Management Conference Order, will be stayed to provide a
9 reasonable opportunity for Defendants to produce confirmatory discovery as set forth below, and
10 for Plaintiffs to review that discovery. This stay of proceedings shall not affect proceedings
11 necessary to implement the Agreement. Such confirmatory discovery shall be limited to
12 documents that relate to SDCF's detention of immigration detainees on or after June 1, 2008.
13

14 10. CCA Defendants agree to produce and make available to Plaintiffs the following
15 confirmatory discovery by June 3, 2008:

- 16 a. Documents confirming the dimensions of cells, hold rooms and living areas
17 that are used to house immigration detainees in ICE custody at SDCF;
- 18 b. Daily Pod Rosters showing the current housing and bed assignments of
19 immigration detainees in ICE custody at two-week intervals throughout the
20 confirmatory discovery period; and Holding Cell Receiving Log showing
21 the assignment of immigration detainees to hold rooms at SDCF for a 48-
22 hour period during each two-week interval during the confirmatory
23 discovery period.
24
- 25 c. Documents demonstrating that population levels of immigration detainees
26 in ICE custody at SDCF are at or below design capacity for the areas where
27 such immigration detainees in ICE custody are housed.
28

1 11. Plaintiffs agree to review the above confirmatory discovery and make a conclusion
2 regarding compliance by July 1, 2008.

3 12. If confirmatory discovery produced as set forth above confirms that Defendants
4 are complying with Paragraph 8 of the Agreement and that the population levels of immigration
5 detainees at SDCF do not exceed SDCF's design capacity, the Parties will stipulate to
6 administratively close this action for six (6) months, during which time the stay of discovery and
7 pretrial proceedings shall remain in effect. Nevertheless, in the event that changed circumstances
8 or emergency situations necessitate detaining, holding, or housing immigration detainees in ICE
9 custody at the Facility in excess of its design capacity for those areas where such immigration
10 detainees in ICE custody are housed, Defendants shall, within fifteen (15) days of such
11 unexpected situations, notify Plaintiffs' counsel to account for either: (i) unforeseeable changed
12 circumstances, or (ii) emergency situations. "Unforeseeable changed circumstances" include, but
13 are not limited to, unforeseeable increases in population levels due to accelerated immigration
14 enforcement efforts, or unanticipated strikes, lockouts, or other labor conditions or security
15 threats arising within the Facility. "Emergency situations" include, but are not limited to, Acts of
16 God, war, invasion, hostilities, natural disasters including local fires or other unforeseeable events
17 creating an immediate need to increase immigration population levels due to its impact on nearby
18 detention facilities. The Parties agree that Defendants shall (i) not be liable for exceeding design
19 capacity at any time that changed circumstances or emergency situations exist and (ii) make every
20 effort to reduce population levels to design capacity within 30 days after changed circumstances
21 or emergency situations have abated.
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25 13. During the period of administrative closure, CCA Defendants agree to produce
26 updated confirmatory discovery, as described in Paragraph 10 of the Agreement, on October 1,
27 2008 and on January 9, 2009.
28

1 14. If confirmatory discovery produced while the case is administratively closed
2 confirms that Defendants are complying with Paragraph 8 of the Agreement and that the
3 population levels of immigration detainees in ICE custody at SDCF do not exceed design
4 capacity for those areas where such immigration detainees in ICE custody are housed, the Parties
5 will stipulate to dismiss this action, with prejudice, on January 28, 2009.

6
7 15. It is the Parties' understanding, intention and agreement that a dismissal with
8 prejudice pursuant to this Agreement would have no preclusive effect on any claim or issue raised
9 by any class member arising from conditions existing at SDCF subsequent to the date this lawsuit
10 is dismissed.

11 **IV. Court Approval and Notice to the Class**

12 16. The Parties acknowledge that Rule 23(e) of the Federal Rules of Civil Procedure
13 requires that the Court must direct notice to the class and approve this Agreement before the
14 claims of the certified class may be dismissed with prejudice pursuant to this Agreement.
15

16 17. Within 14 days of the Effective Date of this Agreement, the Parties will jointly
17 move the Court to approve and direct notice to the class, schedule a fairness hearing, and approve
18 the Agreement. The Parties agree to commence the process of confirmatory discovery and
19 review, as set forth in Paragraphs 9-11, while simultaneously seeking the Court's approval of the
20 manner of notice and this Agreement. In the event that the Court does not approve this
21 Agreement, the Parties agree to jointly move the Court for a new scheduling order for this Action.
22

23 18. Notice to the class will be accomplished by posting a written Notice at SDCF, in
24 English and in Spanish, as follows²: Notices will be posted in each ICE housing unit/pod on the
25 existing detainee notice boards. Additionally, notice will be provided to immigration detainees in
26 ICE custody who are housed in segregation/protective custody at the time of initial Notice
27

28 ² A proposed Notice is attached as Exhibit 1 to the Settlement Agreement.

1 distribution by distributing a Notice to each segregation/protective custody detainee. Notice will
2 also be distributed to immigration detainees in ICE custody who are housed in the medical unit at
3 the time of initial Notice distribution by distributing a Notice to each ICE medical unit detainee.
4 Following the initial segregation/protective custody Notice distribution, and thereafter during the
5 time period set forth in Paragraph 19, below, new incoming segregation/protective custody
6 immigration detainees in ICE custody will be provided a copy of the Notice upon entry to the
7 segregation/protective custody unit.
8

9 19. The Notice shall be posted and/or provided to immigration detainees in ICE
10 custody, as stated above, no later than ten (10) days following the Court's approval of the form
11 and manner of the Notice. The Notice shall remain posted until the date that objections to the
12 Agreement are due by order of the Court.
13

14 **V. Protection of Discovery Material**

15 20. Defendants agree to preserve documents responsive to Plaintiffs' First Set of
16 Requests for Production of Documents during the term of this Agreement.

17 21. The Parties agree that confirmatory discovery produced pursuant to Paragraphs 9-
18 13 above shall be subject to the Stipulated Protective Order executed by the Parties and submitted
19 for the Court's approval.³
20

21 **VI. Attorneys' Fees and Costs**

22 22. The Parties agree to bear their own attorneys' fees and costs in this action.
23 Plaintiffs agree that they shall not seek, solicit, or request attorneys' fees and/or litigation costs
24 provided under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other provision.
25

26 **VII. Admission of Liability**

27 23. This Agreement does not constitute and shall not be construed or viewed as an
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³ A proposed Stipulated Protective Order is attached as Exhibit 2 to the Settlement Agreement.

1 admission of any wrongdoing or liability by any party.

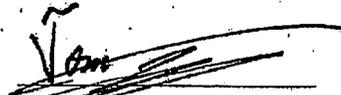
2 **VIII. Modification of Agreement**

3 24. This Agreement constitutes the entire agreement among the Parties as to all claims
4 raised by Plaintiffs in this action, and supersedes all prior agreements, representations, warranties,
5 statements, promises, covenants, and understandings, whether oral or written, express or implied,
6 with respect to the subject matter hereof.
7

8 25. This is an integrated agreement and may not be altered or modified, except by a
9 writing signed by all parties in interest at the time of authorization and modification.

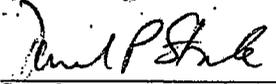
10 **IX. Successors**

11 26. This Agreement shall be binding on all successors, assignees, employees, and all
12 those working for or on behalf of Defendants and Plaintiffs.
13

14
15 By: 
16 Gauri Bhat
17 Tom-Tsvi M. Jawetz
18 American Civil Liberties Union Foundation
19 National Prison Project
915 15th Street NW, 7th Floor
Washington, DC 20005
Tel: (202) 548-6611

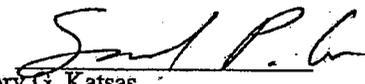
Date: JUNE 4, 2008

20 *Counsel for Plaintiffs*

21 By: 
22 Daniel Struck
23 Rachel Love
24 Jones, Skelton & Hochuli, P.L.C.
2901 North Central Ave., Suite 800
Phoenix, AZ 85012
Tel: (602) 263-1700

Date: June 4, 2008

25 *Counsel for CCA Defendants*

26
27 By: 
28 Gregory G. Katsas
Acting Assistant Attorney General

Date: June 4, 2008

1 Civil Division
Victor M. Lawrence
2 Principal Assistant Director, District Court Section
Samuel P. Go
3 Trial Attorney, District Court Section
Office of Immigration Litigation
4 Civil Division, U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
5 Washington, DC 20044
Tel: (202) 353-9923

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7 *Counsel for Federal Defendants*

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