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JAN 12 1990  
FEDERAL BUREAU OF INVESTIGATION  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20535

BRIEF

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

FLETCHER CASEY, JR., STEPHEN JAMES, )  
FRANK BARTHOLIC, ARMANDO MUNOZ, )  
KYLE BAPTISTO, DAVID A. MANN, )  
JEFFREY LUSTIG, TERRY DON MCFALLS, )  
RANDY SAMPSON, JOHN TOMLIN, )  
SCOTT TRAMPOSCH, PAMELA MCQUILLEN, )  
CAROLYN FERGUSON, YVONNE MARTIN, )  
DAVID TUCKER, SUSAN COLKER, )  
JOHN MYERS, MARY JO BOOKER, )  
RANDY THOMAS, RUTH JOHNSON, )  
ROMAN STONE, ROBERT BANKSTON, )  
et al., on behalf of themselves )  
and all others similarly situated, )

PLAINTIFFS,

v.

SAMUEL A. LEWIS, Director, Arizona )  
Department of Corrections; )  
Robert Goldsmith, Arizona State )  
Prison Complex, Florence; Warden )  
William Rhode, Arizona State )  
Prison Complex, Perryville; )  
Warden George Herman, Arizona )  
State Prison Complex, Douglas; )  
Warden Roger Crist, Arizona )  
State Prison Complex, Tucson; )  
Warden Hal Cardin, Arizona )  
State Prison Complex, Phoenix. )

DEFENDANTS.

00-0054 PHXEHC

CLASS ACTION COMPLAINT



PC-AZ-004-001

PRELIMINARY STATEMENT

1. This class action complaint, filed on behalf of all adult prisoners who are or will be incarcerated by the State of Arizona Department of Corrections, alleges that defendants are deliberately indifferent to prisoners' serious medical needs; that prisoners are assigned to and retained in segregation on the basis of uncorroborated, confidential information, including allegations of gang activity, thereby denying prisoners due process; and, that defendants have denied prisoners meaningful access to the courts and counsel. Plaintiffs allege that defendants' failures to provide medical care, meaningful access to the courts and counsel, and due process in segregation assignments subject prisoners to needless and serious suffering.

JURISDICTION

2. This civil action seeking declaratory and injunctive relief is brought pursuant to §504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et. seq., as amended by the Civil Rights Restoration Act of 1987; and 42 U.S.C. §1983, in that plaintiffs have been and continue to be deprived of their rights secured by the United States Constitution under the First, Sixth, Eighth and Fourteenth Amendments.

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343 (3), and 2201.

#### VENUE

4. Venue is proper under 28 U.S.C. §1391 (a), in that defendants reside in the State of Arizona, and plaintiffs' claims for relief arise in the State of Arizona.

#### PARTIES

5. Plaintiffs are prisoners currently assigned to prison facilities in the State of Arizona.

6. Fletcher Casey, Jr. is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. He was assigned to segregation within the Special Management Unit based on uncorroborated confidential information alleging gang activity. In addition, since August 1989, he has not received recommended specialized medical attention for a chronic knee ailment.

7. Frank Bartholic is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. He waited three months to see a doctor for a painful back ailment. In addition, this functionally illiterate prisoner had no one to assist him with his initial pleadings in a lawsuit he filed, which was subsequently dismissed with prejudice.

8. Armando Munoz is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. In November 1988, he was assigned to segregation within the Special Management Unit based on uncorroborated confidential information alleging gang activity. In addition, this prisoner has been waiting twelve months to see a dentist for a painful gum condition.

9. Kyle Baptisto is a prisoner currently assigned to the Special Management Unit in Florence, Arizona. He has been subjected routinely to interference with access to the courts including interference with his receipt of legal mail.

10. Roman Stone is a blind prisoner currently assigned to the Special Management Unit in Florence, Arizona. The defendants have failed to accommodate the special needs required by his blindness.

11. Stephen James is a prisoner currently assigned to Cellblock 6 in Florence, Arizona. Due to the shortages of staff, he has been required to choose between use of the law library and eating meals. He has complained to health care providers about painful lumps on his back but they have not been evaluated by a physician.

12. Terry Don McFalls is a prisoner currently assigned to Cellblock 6 in Florence, Arizona. He suffers from folliculitis. Although prison staff know of his medical condition, he has been repeatedly forcibly shaved and not provided an alternative way of removing facial hair.

13. David Mann is a prisoner currently assigned to the East Unit in Florence, Arizona. He has been denied specialized treatment for a potentially life threatening heart ailment.

14. David Tucker is a prisoner currently assigned to the East Unit in Florence, Arizona. He has been denied medically necessary follow-up for a serious health condition.

15. Jeffrey Lustig is a prisoner currently assigned to the South Unit in Florence, Arizona. While at Central Facility in

Florence, he complained to health care providers of chest pains for two months before being seen by a doctor.

16. John Myers is a prisoner currently assigned to the Central Unit in Florence, Arizona. He waited five months to see a dentist for a painful tooth with an exposed nerve.

17. John Tomlin is a prisoner currently assigned to the North Unit in Florence, Arizona. He was transferred to the North Unit from the Mohave Unit in Douglas, Arizona in December 1989. When assigned to the Mohave Unit he waited eight months to be seen by an orthopedist for a painful knee condition.

18. Pamela McQuillen is a prisoner currently assigned to the Women's Prison in Florence, Arizona. She waited five days before being taken to the hospital for treatment of a painful skin condition.

19. Carolyn Ferguson is a prisoner currently assigned to the Women's Prison in Florence, Arizona. She has been denied treatment for hypertension.

20. Yvonne Martin is a prisoner currently assigned to the Women's Prison in Florence, Arizona. She has been denied appropriate medication for a serious asthmatic condition.

21. Randy Sampson is a prisoner currently assigned to the Perryville - San Pedro Unit in Goodyear, Arizona. He has been denied sufficient library access to prepare his legal pleadings.

22. Mary Jo Booker is a prisoner currently assigned to the Perryville - Santa Maria Unit in Goodyear, Arizona. She waited four years to see a doctor for a herniated disc. While in

segregation for six months, she was unable to obtain legal materials and to confer with a legal assistant.

23. Randy Thomas is a prisoner currently assigned to the Perryville - Santa Cruz Unit in Goodyear, Arizona. He waited four months to see a dentist for a toothache.

24. Robert Bankston is currently assigned to Gila Unit in Douglas, Arizona. For one month he was denied any medical attention for a stomach ulcer after coughing up blood and complaining of stomach cramps. He was refused legal materials for sixty-two (62) days while housed in disciplinary segregation.

25. Scott Tramosch is a prisoner currently assigned to the Rincon Unit in Tucson, Arizona. In order to use the satellite law library while on lockdown status, he was handcuffed to a waist chain, severely restricting his use of legal materials. He was denied direct access to the main law library.

26. Susan Colker is a prisoner currently assigned to the Arizona Center for Women in Phoenix, Arizona. She represents herself in civil actions and is unable to research the law thoroughly due to inadequate books and legal assistance.

27. Ruth Johnson is a prisoner currently assigned to the Arizona Center for Women in Phoenix, Arizona. She has serious medical needs that have gone untreated, causing her pain and general discomfort.

28. Defendants are agents, officials, or employees of the State of Arizona Department of Corrections.

29. Defendant Sam Lewis is the Director of the Arizona

Department of Corrections. In the capacity of director he is responsible for the administration and application of DOC state-wide policies, and is ultimately responsible for the operation of all the prison facilities, including decisions concerning staff deployment and training that directly affect plaintiffs' abilities to obtain medical care, access to the courts and counsel, and due process.

30. Warden Robert Goldsmith is responsible for the day-to-day operation of the Arizona State Prison Complex in Florence, Arizona. In the capacity of warden he is responsible for the daily operation of this entire complex, including the Women's Prison, East Unit, Special Management Unit, Cellblock 6, and Central Unit.

31. Warden William Rhode is responsible for the day-to-day operation of the Arizona State Prison Complex - Perryville in Goodyear, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex, including the San Pedro, Santa Cruz, San Juan, and Santa Maria Units.

32. Warden George Herman is responsible for the day-to-day operation of the Arizona State Prison Complex in Douglas, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex, including the Gila Unit, Mohave Unit, Maricopa Unit, Cochise Unit, and Papago Unit.

33. Warden Roger Crist is responsible for the day-to-day operation of the Arizona State Prison Complex in Tucson, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex, including the Santa Rita, Rincon,

Cimarron, Tent, and Echo Units.

34. Warden Hal Cardin is responsible for the day-to-day operation of the Arizona State Prison Complex in Phoenix, Arizona. In the capacity of warden, he is responsible for the daily operation of this entire complex for women and men.

35. Defendants are sued individually and in their official capacities. At all relevant times, defendants have acted under color of State law.

#### CLASS ACTION ALLEGATIONS

36. This action is brought as a class action pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure.

37. Plaintiffs are representative parties of a class composed of all adult persons who are now or who in the future will be in the custody of or under the supervision of the State of Arizona Department of Corrections.

38. The class is so numerous that joinder of all members of the class is impractical. Current members of the class consist of more than 9,000 prisoners, and the prisoner population in each facility changes frequently.

39. Upon information and belief, conditions described in this complaint, are common to all prisoners within the Arizona State Prison system, the class that plaintiffs represent. The named representatives are subjected daily to the same deprivations of the class members as a whole.

40. Defendants' deliberate indifference to prisoners' serious medical needs, failure to provide prisoners meaningful access to

the courts and counsel, and failure to provide prisoners due process in segregation assignments are questions of law common to the class members as a whole.

41. Claims made by the class representatives involve allegations of denials of constitutional rights that are generally applicable to the class as a whole.

42. Plaintiffs are members of the class and their claims are typical of all class members. Plaintiffs are represented by competent counsel who will fairly and accurately represent the interests of the class as a whole.

43. Since the class number is more than 9,000 prisoners, separate actions by individuals would in all likelihood result in inconsistent and varying decisions, which in turn would result in conflicting and incompatible standards of conduct for the defendants.

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

A. LACK OF MEDICAL CARE

45. Defendants do not provide immediate evaluations or diagnoses of prisoners' serious medical complaints. Defendants misdiagnose serious medical complaints, resulting in significant and unnecessary suffering and even death. For instance, at the women's facility in Florence, a woman prisoner, complaining of

serious chest pains, was initially diagnosed as having indigestion, and later died, purportedly from heart failure.

46. No physician regularly provides medical care at the women's facilities. On weekends and evenings security staff at some of these facilities are involved in the decision to have a woman's medical complaints evaluated by a health care provider.

47. Plaintiffs experience unreasonable delays in receiving medical care. For example, at the Special Management Unit (SMU), prisoners may wait from three to four weeks to be seen by a physician for a serious medical complaint.

48. Prisoners are frequently required to choose between sick call and other rights such as eating meals, law library access and exercise.

49. Sick call at some facilities is held two times per week or less. For example at Central Unit, sick call is frequently cancelled on one of the two days scheduled. Consequently, prisoners with serious medical needs are not evaluated. Sick call is held for prisoners in lockdown frequently less than once a week.

50. At the South Unit in Florence, prisoners must stand in line outdoors for sick call, regardless of the weather. The health care provider evaluates the prisoners by talking to them while they are standing in this line through a window, in the presence of other prisoners and security staff. The confidentiality attendant to health care delivery is not only seriously breached but the ability to perform an adequate health care assessment is severely compromised.

51. Physician's assistants often preempt medical care prescribed by a physician. For example, a hospital physician told a prisoner in CB6 that he had a hole in his ear, but the physician's assistant instead claimed that the hole did not exist, and refused to provide the recommended treatment.

52. The failure to have sufficient staff, both security and health care, has resulted in prisoners' treatment being delayed or terminated. For instance, at the CB6 facility, prisoners have been taken off psychotropic medication without first being seen by a psychiatrist.

53. Prisoners are given diets that do not conform to their minimum nutritional needs.

54. Plaintiffs' mental health needs are frequently ignored. Women with serious mental health needs who cannot function in the general population but do not meet the State's statutory requirements for commitment are placed in isolation cells, frequently for extended periods of time, at the Women's facilities in Perryville and Florence. A prisoner, placed in isolation at Perryville because she was considered a mental health case, constantly complained of cramps. She was refused attention by the CMA, and subsequently, she was discovered to have given birth. At the Douglas facility, prisoners are not provided any mental health services.

55. Pregnant intravenous drug users are routinely isolated at the Women's Perryville facility, and subsequently, all medical attention is seriously delayed.

56. Prisoners experience unreasonable delays in receiving dental care. For example, at the Douglas facility, a prisoner with a painful gum condition waited for five months to see a dentist.

57. At the Women's Perryville facility, prisoners have access to other prisoners' confidential medical information.

58. The allegations contained in paragraphs (45) through (57) constitute defendants' deliberate indifference to prisoners serious medical needs.

B. DISCRIMINATION AGAINST HANDICAPPED PRISONERS

59. A blind prisoner in the SMU is not provided the necessary legal assistance, compounding the access problems experienced by prisoners classified as I-5.

60. Prisoners with HIV disease are discriminated against in some facilities in the provision of programming.

61. The Arizona Department of Corrections receives Federal financial assistance.

62. The allegations contained in paragraphs 59 through 61 constitute defendants' discrimination against handicapped prisoners as otherwise qualified handicapped individuals.

C. LEGAL ACCESS

63. Defendants do not provide persons trained in the law or attorneys to assist prisoners, even those who are illiterate or non-English speaking, in pursuing legal actions.

64. In most facilities, prisoners are not allowed to make legal calls unless a letter is first submitted giving permission for the telephone call from the prisoner. Prisoners therefore must frequently use monitored telephones to make legal calls. Even when privileged legal calls are allowed, they are frequently unreasonably delayed.

65. In most facilities, plaintiffs must first provide a case number before being able to talk to a prisoner legal assistant about a legal problem. Prisoners may also be asked to describe the problem for which they want legal assistance. In some facilities, prisoners are not provided privacy for these meetings.

66. In some institutions prisoners are not allowed to copy their own legal materials. They must give these materials to prison staff to photocopy, compromising confidentiality.

67. At the South and East Units, prisoners have direct access to the law library, but are not allowed to browse the shelves. They have no starter volumes to aid them in their research, and no legal assistance. They must request a book from an untrained prisoner or staff person.

68. At CB6 defendants frequently require prisoners to choose either law library, sick call, or outdoor exercise; prisoners' legal mail is frequently opened outside the presence of prisoners; and, their confidential legal memos from prisoner legal assistants are routinely read by defendants' staff.

69. At the SMU prisoners classified as I-5 are denied physical access to the law library by being put into cages. These

prisoners are required to have untrained officers or other prisoners classified as I-3 obtain their legal materials.

70. Prisoners in the SMU are denied contact attorney visits, unnecessarily infringing on their rights of access to the courts and counsel and confidentiality of legal materials. These prisoners are unable to review documents simultaneously with their attorneys and documents that consist of more than a few pages must be given to officers to pass between attorney and prisoner. The officers are out of view of the attorney and prisoner when delivering documents from one to the other.

71. Prisoners are harmed by the denial of meaningful access to the courts. For example, at the SMU an illiterate prisoner had his pro se case dismissed because defendants did not provide him with any legal assistance beyond indirect access to law books.

72. Defendants provide some facilities with only a satellite law library. The satellite law library provides insufficient legal materials. Prisoners must request basic legal materials from other law libraries. They frequently experience delays, and occasionally are unable to receive needed legal materials.

73. At the Douglas facility, prisoners who are in administrative segregation or disciplinary segregation have no direct law library access. Prisoners must know the exact full citation of a case in order to receive the law book. A prisoner may be in administrative or disciplinary segregation for as long as three months.

74. At the Tucson facility, administrative segregation prisoners are hand-cuffed to a waist chain while using the law library.

75. The allegations contained in paragraphs (63) through (74) constitute a denial of meaningful access to the courts and counsel.

D. FAILURE TO PROVIDE DUE PROCESS

76. Defendants regularly assign prisoners to and retain prisoners in segregation on the basis of uncorroborated, confidential information, including unsubstantiated claims of prisoner gang activity from other prisoners and staff. Prisoners are unable to question or confront any persons making these claims and, therefore, cannot contest a decision assigning them to segregation once it has been made.

CAUSE(S) OF ACTION

77. With respect to each and every following cause of action, plaintiffs re-allege and re-incorporate by reference all of the allegations contained in paragraphs (1) through (76).

78. Defendants' acts and omissions at each of their facilities constitute deliberate indifference to plaintiffs' serious medical needs, violating the Eighth Amendment's prohibition against cruel and unusual punishment.

79. Defendants, by their acts and omissions, are depriving plaintiffs of their rights of access to the courts and counsel protected by the First, Sixth, and Fourteenth Amendments.

80. Defendants' arbitrary procedures for assigning prisoners to segregation violate their Due Process rights under the Fourteenth Amendment.

81. The failure of defendants to accommodate handicapped prisoners' special needs discriminates against these prisoners in violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §701 et. seq., as amended by the Civil Rights Restoration Act of 1987.

VIII. PRAYER FOR RELIEF

82. Plaintiffs and the class they represent have no adequate remedy at law to redress the wrongs suffered as set forth in this complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of the defendants as alleged herein, unless plaintiffs are granted the relief they request. The need for relief is critical because the rights at issue are paramount under the Constitution of the United States.

83. WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

(a) certify the class of all adult prisoners who are now or who will be in the future under the custody of or under the supervision of the State of Arizona Department of Corrections;

(b) adjudge and declare that the acts, omissions, policies, and practices of the defendants violate the First, Sixth,

Eighth, and Fourteenth Amendments, which grant constitutional protection to plaintiffs and the class that plaintiffs represent;

(c) order defendants, their agents, officials, employees, and all persons acting in concert with them under color of State law or otherwise, to provide needed health care for plaintiffs; to provide meaningful access to the courts; and, to cease assigning prisoners to segregation based on uncorroborated, confidential information;

(d) enjoin defendants, their agents, officials, employees, and all persons acting in concert with them under color of State law or otherwise, from continuing the unconstitutional acts, conditions, and practices described in this Complaint, and from failing to provide in the future constitutionally adequate medical care, access to the courts and counsel, and due process in segregation assignments;

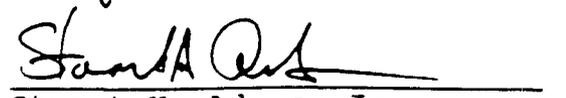
(e) retain jurisdiction in this case until the unlawful and unconstitutional conditions and practices as alleged herein no longer exist and the Court is satisfied that they will no longer occur;

(f) grant plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and,

(g) grant any other relief that the Court deems just and proper.

Respectfully submitted,

  
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