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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Jeffrey Nielsen; Larry Hilgendorf; Terry  
Brownell; Joseph Bulen; and Brian  
Boudreaux on behalf of themselves and  
all others similarly situated; and Arizona  
State Conference of the National  
Association for the Advancement of  
Colored People, as an organization and on  
behalf of its members

Plaintiffs,

v.

DAVID SHINN, Director, Arizona  
Department of Corrections, Rehabilitation  
& Reentry, in his official capacity,

Case No.

**CLASS ACTION COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Defendant.

Plaintiffs allege as follows:

**JURISDICTION**

1. This Court has jurisdiction in accordance with 28 U.S.C. §§ 1331 and 1343(a)(3). This civil action seeks declaratory and injunctive relief in accordance with 28 U.S.C. §§ 2201(a), and 2202; 42 U.S.C. § 1983; the Eighth Amendment as incorporated to the states through the Fourteenth Amendment, the Thirteenth Amendment, and the Fourteenth Amendment of the United States Constitution.

**THE PARTIES**

2. Plaintiff Jeffrey S. Nielsen (“Nielsen”) is an Arizona resident, a citizen of the United States, and a prisoner of the Arizona Department of Corrections, Rehabilitation & Reentry (“ADCRR”). ADCRR has transferred Nielsen to various private prison facilities that are under contract with ADCRR including his current incarceration at Arizona State Prison - Phoenix West, which is owned, managed, and operated by The GEO Group.

3. Plaintiff Larry Hilgendorf (“Hilgendorf”) is an Arizona resident, a citizen of the United States, and a prisoner of ADCRR. Hilgendorf is incarcerated at Arizona State Prison - Florence West, a private prison under contract with ADCRR.

4. Plaintiff Terry Brownell (“Brownell”) is an Arizona resident, a citizen of the United States, and a prisoner of ADCRR. Brownell is incarcerated in Arizona State Prison - Florence West, a private prison under contract with ADCRR.

5. Plaintiff Joseph Bulen ("Bulen") is an Arizona resident, a citizen of the United States, and a prisoner of ADCRR. Bulen is incarcerated in Arizona State Prison - Florence West, a private prison under contract with ADCRR.

6. Plaintiff Brian Boudreaux ("Boudreaux") is an Arizona resident, a citizen of the United States, and a prisoner of ADCRR. Boudreaux is incarcerated in Arizona State Prison - Florence West, a private prison under contract with ADCRR.

7. Plaintiff Arizona State Conference of the National Association for the Advancement of Colored People ("Arizona State Conference NAACP") is a nonprofit membership association that was founded in 1915 and is headquartered in Phoenix, Arizona. It is the umbrella organization for the twelve branches and two youth councils of the Arizona State Conference NAACP. The Arizona State Conference NAACP's mission is to ensure equal protection under law for all persons, particularly African Americans, and in particular for persons in the criminal justice system, including those persons in private-for-profit prisons. The Arizona State Conference NAACP and its branches are also membership organizations that include individual members, some of whom have been or will be directly harmed by prison privatization as further described herein.

8. The Arizona State Conference NAACP advances its mission through a variety of means including engagement with the community and dedication of its resources through its activism, legal advocacy, lobbying before legislative bodies, outreach and public education efforts that seek enforcement of civil rights laws.

9. Plaintiff Arizona State Conference NAACP, in its own name and through its members dedicates its resources: to educating the public about the harms and failures of private-for-profit prisons, to advocating for persons incarcerated in private-for-profit prisons, to lobbying before legislative bodies in opposition to prison and jail privatization and legislation and contracting that are supported directly or indirectly by prison privatization interests; to participation in administrative proceedings to oppose privatization of prisons; and proposing and implementing national and Arizona-related priorities including, for example, a resolution to abolish private prisons that was adopted at the 2012 annual meeting of the national NAACP, and supporting the 2019 resolution adopted by the national NAACP that states:

“Abolish Private Prisons WHEREAS, the private prison industry profits from the incarceration and labor of citizens; and WHEREAS, private prisons consider incarcerated citizens as cash-cow stock; and WHEREAS, private prisons exploit prison labor for pennies on the dollar; and WHEREAS, the private prison industry redirects jobs from the public into their prisons; and WHEREAS, statistics from the U.S. Department of Justice show that as of 2013, there were 133,000 state and federal prisoners housed in privately-owned prisons in the United States of America; and WHEREAS, the private prison industry serves to undermine and pervert the U.S. Constitution and corrupt the Legislative and Judicial branches of our government to the point that these branches could no longer protect the citizens, thus making them vulnerable to loss of their freedom and livelihood for the sake of financial gains; and WHEREAS, private prisons get up to 40% federally compensated wage tax breaks, shifting the cost/burdens to the citizens while making themselves a profit; and WHEREAS, data on private prison conditions shows an increase in overall prison violence, which includes violence affecting those incarcerated and assaults against correctional officers and correctional staff. THEREFORE, BE IT RESOLVED that the NAACP shall work toward the abolition of private prisons.”

Such national resolutions are also resolutions of plaintiff Arizona State Conference NAACP and its member organizations.

10. Defendant's continued use and proposed expansion of the use of private prisons harms plaintiff Arizona State Conference NAACP and its members in that such usage frustrates part of the core mission of plaintiff Arizona State Conference NAACP, makes it highly likely that some of its members or their family members will be incarcerated in private prisons, and will force plaintiff continually to divert resources toward working to abolish prison privatization, and advocate for those members or members' friends and relatives incarcerated in for-profit prisons.

11. Plaintiff Arizona State Conference NAACP includes as part of its core mission the reduction of mass incarceration and the disproportionate impact of the criminal justice system on marginalized parts of the community including people of color. The political presence of the private prison industry in Arizona and the profit incentive to incarcerate privately frustrates plaintiff's mission and requires plaintiff to dedicate resources to the issue. For example, but for the interruption of the COVID pandemic, the Arizona State Conference NAACP would have completed the process of helping establish an NAACP Arizona State Prison Chapter to focus on prison issues, including privatization.

12. Defendant David Shinn ("Shinn") is the Director of ADCRR, an Arizona state agency. Director Shinn is sued in his official capacity. All actions of ADCRR set forth herein are attributable to Shinn and his predecessors and occurred in Arizona. Venue is proper pursuant to 28 U.S.C. § 1391.

13. At all times relevant to this lawsuit, Defendant Shinn and his predecessors were acting in their official capacities under color of state law.

14. The actions, omissions, events and transactions of ADCRR described herein were taken by, authorized by, and/or ratified by Defendant Shinn and his predecessors in their official capacities as Directors or Acting Directors of ADCRR.

15. Shinn was appointed Director by, and serves at the pleasure of, Arizona's Governor. A.R.S. § 41-1603. Shinn assumed his responsibilities as Director in October 2019, replacing Charles Ryan ("Ryan").

16. As Director of ADCRR, defendant Shinn is responsible for the overall operations and policies of ADCRR that include the incarceration of prisoners whose custody is committed to ADCRR. A.R.S. § 41-1604.

### **BACKGROUND**

18. Following conviction of certain crimes, the Superior Court of Arizona issues orders that sentence prisoners to specific punishments including commitment to the custody of ADCRR as state prisoners.

19. Once committed to the custody of ADCRR, persons convicted of crimes become prisoners of the State of Arizona.

20. ADCRR executes these sentencing orders by incarcerating prisoners in public prisons and in private for-profit prisons and determines in each instance where each prisoner will be incarcerated.

21. Arizona law authorizes ADCRR to contract with private prison vendors to incarcerate some of ADCRR's prisoners and requires ADCRR to supervise any such vendors with which ADCRR contracts.

22. ADCRR in fact contracts with private for-profit prison corporations that operate prisons inside and outside Arizona to incarcerate ADCRR prisoners, thereby

delegating Arizona's sovereign power of incarceration and punishment to private vendors.

23. ADCRR incarcerates thousands of ADCRR prisoners in prisons owned and/or operated by private for-profit corporations.

24. ADCRR will continue to incarcerate thousands of people in private prisons into the foreseeable future.

25. At a minimum, ADCRR expects to utilize private for-profit prisons for a period of years under existing contracts.

26. Currently, ADCRR places approximately twenty percent (20%) or more of the prisoners committed to its custody, or approximately 8,000 people on any given day, in private prisons that are operated in Arizona by private prison corporations, including The Geo Group, CoreCivic and Management & Training Corporation ("MTC").

27. Many people incarcerated by ADCRR in public prisons are subject to being transferred to private prisons by ADCRR.

28. From time to time, ADCRR publishes requests for proposals to contract with private prison vendors. ADCRR awards contracts under a competitive bidding process upon receipt of acceptable proposals from for-profit prison corporations. Acceptable proposals must offer cost savings to the State of Arizona. A.R.S. 41-1609.01(F).

29. Contracts between ADCRR and prison corporations set forth the terms of the parties' relationships which include, *inter alia*, the placement and/or transfer of

prisoners in private for-profit prisons. These contracts also specify the types of ADCRR prisoners who may be incarcerated in private prisons.

30. In general, the contracts between ADCRR and the private prison corporations make the corporations responsible for the daily operation and management of the prisons and for the daily custody, control, incarceration, punishment, and well-being of each prisoner.

31. In accordance with these contracts, ADCRR sets the price it will pay per prisoner and pays the private prisons on a per diem basis; *i.e.*, ADCRR pays a predetermined daily rate to each prison corporation for each day each prisoner occupies a cell or bed in a private prison. In such manner ADCRR monetizes each prisoner by making each prisoner a unit of revenue and profit to the prison corporations.

32. Through public contracts procured by ADCRR with private prison vendors, ADCRR transfers the State of Arizona's sovereign power to incarcerate and punish prisoners in at least the following respects:

- a. ADCRR grants private for-profit prison corporations contracts for multiple years with multiple options to renew;
- b. ADCRR delegates the power to incarcerate and punish, including having full custody and control of prisoners;
- c. ADCRR delegates the power to use force, including deadly force, against prisoners;
- d. ADCRR delegates the power to "write up" prisoners for incidents and activities that affects discipline, segregation, seclusion, privileges, work



- and pay, daily life and liberty within the prisons, early release time credits, the possibility of parole, and release from custody;
- e. ADCRR delegates the power to decide the daily schedule of each individual prisoner, including sleep, recreation, meals, lights-out, location assignment within the prisons, and other activities;
  - f. ADCRR delegates the power to regulate access to religious services, clergy, prisoner contact with family members and attorneys, and education and training opportunities that will enable prisoners to reenter society successfully after serving their sentences and to gain early release credits based on education and other positives activities within prisons;
  - g. ADCRR guarantees 90-100% occupancy levels to some for-profit prison vendors, which financial guarantees influence, if not dictate ADCRR decisions on prisoner placements and transfers;
  - h. Due to such occupancy guarantees, ADCRR fills private prison cells with a pre-determined number of ADCRR prisoners to avoid having to pay for empty private prison cells;
  - i. ADCRR enables private for-profit prison corporations to make profits for the corporations and their shareholders from the incarceration of prisoners; *i.e.*, incarceration of prisoners is an ADCRR-authorized means of generating corporate profits by turning prisoners into economic assets for the corporations;

j. The private for-profit prison contract model creates incentives to increase corporate profits and corporate executive compensation under the ADCRR contracts by lowering costs to operate prisons, which cost-cutting measures conflict with safety, security and the individual welfare of those within the private prisons; (copy of an ADCRR contract with The Geo Group for Arizona State Prison - Phoenix West is attached as **Exhibit A** and incorporated by this reference).

33. ADCRR does not specify what prisoner programs the private prison vendor must provide to prisoners (e.g., education, vocational, rehabilitation, religious worship, and access to clergy). For example, ASP - Florence West does not offer programs that are offered in ADCRR public prisons through which some prisoners may qualify for reductions in their sentences.

34. The profit motive of the private prison corporations embeds strong incentives in the construction and operation of facilities to reduce programs and services, including but not limited to recreation, educational and job-training opportunities, health care, and food, to save money and increase profits.

35. On information and belief, prisoners in private prisons experience greater deprivations of liberty and safety compared to prisoners in public prisons due to higher levels of incident reporting, violence, lockdowns, and serving more of their sentences, while under the supervision of less trained and experienced security staff, and are less likely to have access to beneficial educational, rehabilitative, and vocational programs.

36. Arizona law and ADCRR rules do not require that private prison security officers meet the training and certification standards required of ADCRR corrections officers. As a result private prison security officers have less training and experience than ADCRR corrections officers, which affects safety and security within the private prisons. Furthermore, on information and belief, private prison guards lack civil service protection and grievance processes, which makes them more vulnerable to pressure to violate or ignore rules in order to increase corporate profits.

37. ADCRR currently contracts with at least the following private for-profit prisons for incarceration of Arizona state prisoners within the State of Arizona:

- a. The Marana Community Correctional Treatment Facility, a minimum-custody private prison in Marana, Arizona that is privately operated and managed by Management and Training Corporation;
- b. Arizona State Prison-Phoenix West, a minimum-custody private prison in Phoenix, Arizona that is privately operated and managed by The Geo Group, Inc. or its subsidiary;
- c. Arizona State Prison-Florence West, a minimum-custody private prison in Florence, Arizona that is privately operated and managed by The Geo Group, Inc. or its subsidiary;
- d. Red Rock Correctional Facility, a medium-security private prison in Eloy, Arizona that is privately operated and managed by CoreCivic, Inc.;

- e. Arizona State Prison – Kingman, a minimum/medium-security prison located in unincorporated Mohave County, Arizona that is privately operated and managed by The Geo Group, Inc. or its subsidiary; and,
- f. Central Arizona Correctional Facility, a medium-security private prison located in Florence, Arizona that is privately operated and managed by The Geo Group, Inc. or its subsidiary.

38. CoreCivic, Inc., formerly known as Corrections Corporation of America, is a for-profit Maryland corporation with principal executive offices in Tennessee.

39. The Geo Group, Inc., is a for-profit Florida corporation formerly known as Wackenhut Corrections with its principal executive offices in Florida.

40. Management and Training Corporation is a for-profit Utah corporation with its principal executive offices in Utah.

41. The Geo Group and CoreCivic are public corporations whose stocks are traded on the New York Stock Exchange.

42. ADCRR's contracts to incarcerate people privately enhance the value of the prison corporations and enhance the ability of the corporations to encourage investment and to borrow and expand.

43. ADCRR's contracts to incarcerate prisoners are assets of the prison corporations that the corporations use to entice investments and use as collateral to borrow and grow their businesses. In this sense, ADCRR enables private prison corporations to commodify human beings just as private jails in the nineteenth-century South commodified slaves. The value of those jails, and the

economic reputation of the jails' owners, was tied to how many slaves they incarcerated. For example, R.G. Dun and Company (the predecessor firm to Dun and Bradstreet) evaluated the credit worthiness of owners of slave jails and traders in slaves just as they evaluate private prison corporations today.

44. The value of The Geo Group and CoreCivic stock is materially affected by the number of prisoners they incarcerate, by projections of how many prisoners will be incarcerated and detained in their facilities, and by projections on further opportunities for growth.

45. The relationship between stock value (as well as profits and salaries) and the number of human beings who have been commodified as assets creates a substantial conflict of interest between the for-profit prisons on the one hand, and the constitutional obligations of ADCRR and constitutional rights of plaintiffs and the plaintiff class on the other.

46. The highest priority of private prison corporation management is to maximize profit and market share. This is accomplished by obtaining more assets in the form of commodified human beings, holding them in prison as long as possible, taking actions which may reduce their opportunity of parole or early release, and reducing expenditures for such things as medical care, dental care, education and training, access to clergy, chaplains, and non-religious counselors, and recreation. It is also accomplished by reducing the cost of workers in the prison by providing as little training, education, and certification as possible for staff, hiring the least expensive staff available, and operating the prisons with the smallest

number of employees possible, which in turn can create dangerous and unhealthy conditions for prisoners.

47. Private prison corporations have higher revenues, profits, and executive compensation when they incarcerate higher numbers of prisoners each day.

48. On information and belief, the executive management of prison corporations receive greater compensation when they enhance prison corporation profits and stock values.

49. These financial incentives create serious risks of erroneous deprivations of liberty for each prisoner in private prisons. The prison corporation's operational control gives it an almost unlimited ability to manipulate, *inter alia*, freedom within the prison, release dates, access to clemency and parole, and likelihood of recidivism.

50. Private prison corporations submit recommendations to ADCRR concerning prisoner classification, discipline and sanctions.

51. Upon information and belief ADCRR and the Arizona Board of Executive Clemency make decisions affecting prisoners' lives and liberty that are dependent on information reported to ADCRR by private prison corporations.

52. ADCRR tolerates sub-standard contract performance from private prison corporations. Such performance adversely affects prisoners, depriving them of equal protection and due process, and further reducing them to commodities who are used for the profit of the prison.

53. ADCRR's reliance on private prison corporations to incarcerate 20% or more of the State's prisoners, and the potential burden of replacing a prison

contractor create disincentives for the ADCRR to closely monitor its private prison contractors and to sanction them for noncompliance with the contracts.

54. Such disincentives conflict with the safety, security and welfare of those incarcerated in private prisons and those who work in private prisons.

55. Defendant Shinn's responsibilities include protecting and respecting the rights of persons committed to ADCRR's custody, which rights include but are not limited to:

- a. the right not to be treated as a slave or subjected to the conditions of slavery;
- b. the right to be free from cruel and unusual punishment;
- c. the right to be free from impermissible financial incentives that endanger life, liberty and welfare; and
- d. the right to equal protection under the law.

56. Defendant's actions have monetized each prisoner that ADCRR commits to private prisons for incarceration in at least the following respects:

- a. ADCRR pays private prisons to punish prisoners through incarceration;
- b. ADCRR sets the price that it pays private prison corporations for each day each prisoner is incarcerated in a private prison cell;
- c. ADCRR guarantees specific volumes of prisoners for placement in private prisons through contracts for periods of years;
- d. Private prison corporations derive revenues and profits from each day each prisoner is incarcerated in their cells;

- e. The value of private prison corporations increases when they incarcerate more prisoners and decreases when they incarcerate fewer;
- f. A prisoner's presence in a private prison generates more revenue and profit to a private prison corporation the longer the prisoner remains in the private prison;
- g. ADCRR's contracts with private prison corporations are publicly procured through competitive bidding. In such circumstances the volume of prisoners' physical presence, custody, and control in prison cells is awarded through public auction;
- h. The Department's contracts for private prisons are valuable assets of the for-profit prison corporations that:
  - i. increase the value of the corporations;
  - ii. increase the value of their publicly-traded stocks;
  - iii. are used as collateral for loans for operations and growth to incarcerate more prisoners;
  - iv. are used to encourage investment in the prison corporations;
- i. Private prison publicly-traded stock values are affected materially by projections of profitability, which in turn are affected by projections on the numbers of private prison cells (or beds) that will be used to incarcerate prisoners such as the plaintiffs. In such manner each prisoner and each projected future prisoner represent units of profit that impact prison corporation stock value.



57. All individual plaintiffs complained to ADCRR that their incarceration in private for-profit prisons violates the Constitution of the United States and demanded that they either be transferred to public prisons or be released.

58. Defendant Shinn or his predecessor Ryan denied each plaintiff's demand, stating that such placements in private prisons are lawful and appropriate.

59. Such denials by Shinn or his predecessor Ryan set forth uniform ADCRR policy and are in accord with state laws that authorize incarceration of ADCRR prisoners in private prisons.

60. Thus, defendant Shinn and his predecessor Ryan have acted and will continue to act in a consistent manner in denying similar demands from other prisoners, now and in the foreseeable future.

61. Defendant Shinn's placement of prisoners in privately-operated prisons for profit violates the U.S. Constitution in at least the following respects:

- a. By substituting a prisoner-corporation relationship for a state-prisoner relationship, by relegating prisoners to the status of human inventory, and by making prisoners slaves to the prison corporation, the State violates fundamental rights guaranteed to plaintiffs by the Constitution, including the Eighth Amendment prohibition on cruel and unusual punishment, as incorporated to the State of Arizona through the Fourteenth Amendment, the Thirteenth Amendment prohibition against slavery, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

- b. Incarceration in private prisons attenuates government protection, oversight, safety and well-being within the prisons and does not provide prisoners with equal protection and accountability of law enforcement as those who are incarcerated in public prisons.
- c. Such private incarceration creates financial incentives to design and operate facilities that incarcerate more people for longer periods of time, provide fewer rehabilitative programs for successful re-entry to society, and discourage release of prisoners, resulting in never-ending cycles of incarceration, parole, and re-incarceration that profit the private jailer and are contrary to the public interests in healthy people, families and communities, lower taxes, and less crime.

62. Defendant's actions are under color of state law and deprive plaintiffs of rights secured by the U.S. Constitution. Plaintiffs are entitled to declaratory and injunctive relief to remedy such violations under 42 U.S.C. 1983.

63. Plaintiffs' incarceration in private for-profit prisons is a continuing violation of plaintiffs' rights under the Constitution of the United States.

### **CLASS ALLEGATIONS**

64. The constitutionality of incarcerating people in private for-profit prisons is a question of law in this litigation that is of common interest to all parties.

### **Class Definitions**

65. Individual Plaintiffs bring this lawsuit as a class action under Federal Rules of Civil Procedure, Rule 23(a) and (b)(2) for the requests for declaratory and

injunctive relief on behalf of themselves individually and all others similarly situated.

66. Individual Plaintiffs seek to certify the following class:

All prisoners of the Arizona Department of Corrections, Rehabilitation & Reentry who are or may be placed by the Department in a private prison for incarceration.

67. Individual Plaintiffs reserve the right to revise the class definition based upon information learned subsequent to the filing of this action.

**Class Certification Requirements under Rule 23(a) and (b)(2)**

68. **Rule 23(a)(1) - Numerosity.** The class is so numerous that joinder of all members is impracticable. Plaintiffs do not know the exact size of the class because that information is within the control of Defendant and is continually changing. However, upon information and belief, the class members number in the thousands and the proposed class is open-ended; *i.e.*, many future prisoners are included whose numbers are unknown.

69. Membership in the class is readily ascertainable from ADCRR records. A report on the ADCRR website dated May 11, 2020 indicates that ADCRR incarcerates 7,922 people in private prisons. In a single year, this means that prisoners will spend approximately 2,891,530 days and nights in private prisons.

70. **Rule 23(a)(2) - Commonality.** There are questions of law or fact common to the Class that relate to the constitutionality of prison privatization.

71. **Rule 23(a)(3) - Typicality.** The claims asserted by Plaintiffs are typical of the claims of the Class, in that the representative Plaintiffs, like all Class Members, are subject to and impacted by Defendant's actions, specifically incarceration and

punishment in private for-profit prisons. Each member of the proposed Class is or will be subject to continuing violations of constitutional rights by Defendant's actions.

72. **Rule 23(a)(4) - Adequacy.** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained attorneys experienced in class and complex litigation, including litigation under the United States Constitution and 42 USC § 1983. Plaintiffs and their counsel intend to vigorously prosecute this litigation. Neither Plaintiffs nor their counsel have interests that conflict with the interests of the other class members.

73. **Rule 23(b)(2)** - The action satisfies the requirements of Rule 23(b)(2) because Defendant has acted and refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and final injunctive relief with respect to each Class Member.

## CAUSES OF ACTION

### COUNT 1

#### Slavery

74. Defendant Shinn, his predecessors, and ADCRR transfer and assign prisoners such as plaintiffs to private prison corporations to enable prison corporations to generate revenues and profits for the monetary benefit of corporate owners, shareholders and executive management, and to enable the State to relieve itself of daily corrections responsibility for such prisoners while granting private interests dominion over the prisoners and the fruits of prisoners' economic value and labor, thus rendering such prisoners, including plaintiffs, as slaves to the prison

corporations in violation of the Thirteenth Amendment to the Constitution of the United States.

75. Arizona laws that authorize and/or require prison privatization and ADCRR's contracts with private prison vendors abuse the criminal justice system to create a form of slavery by which the incarceration of the many, including plaintiffs, enriches the few private interests in violation of the Thirteenth Amendment.

76. Defendant Shinn is treating prisoners as property and degrades the human dignity of each prisoner by monetizing them and turning each incarcerated person into an economic asset as a means by which private prison corporations generate revenues and profits. Under this privatized system, prisoners become fungible assets. To the private prison corporation, any prisoner can be substituted for another prisoner and generate the same revenues and profits for the corporation. In this respect, they are treated as assets and commodities.

77. The Thirteenth Amendment to the United States Constitution says: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

78. This prohibition of slavery is absolute and limits the actions of all governments and private persons or corporations.

79. ADCRR's use of private for-profit prisons violates the Thirteenth Amendment's prohibition of slavery.

80. Alternatively, ADCRR's use of private prisons violates the Thirteenth Amendment's "punishment clause" that only permits punishment by government.

81. Alternatively, ADCRR causes prisoners in private prisons to be treated like slaves and subjected to slave-like conditions in violation of the Thirteenth Amendment to the U.S. Constitution.

## **COUNT 2**

### **Cruel and Unusual Punishment**

82. The Eighth Amendment as incorporated to the states through the Fourteenth Amendment guarantees to all citizens, including plaintiffs and members of the class that no cruel and unusual punishments will be inflicted upon them.

83. The Eighth Amendment is intended to preserve the basic concepts of dignity, civilized standards, humanity, and decency. It serves as a barometer of these evolving standards in our society and prohibits punishments that are incompatible with these standards.

84. Modern understandings of human rights recognize that treating plaintiffs as property, and subjecting plaintiffs to jailers that profit from incarceration and that have disincentives to see plaintiffs released is analogous to slave jails before the Thirteenth Amendment, is both cruel and unusual, and violates each plaintiff's human dignity.

85. Plaintiffs' incarceration in private for-profit prisons constitutes cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution as incorporated to the states through the Due Process Clause of the Fourteenth Amendment.

## **COUNT 3**

### **Due Process**

86. Defendant's actions have deprived and will continue to deprive plaintiffs and class members of rights secured by the Constitution of the United States.

87. The Fourteenth Amendment to the United States Constitution is enforceable pursuant to 42 U.S.C. § 1983 and provides that no state shall deprive any person within its jurisdiction of life, liberty and property without due process of law or the equal protection of the law. U.S. Const. amend. XIV, § 1.

88. Privatization of prisons creates biased jailers and prison administrators who have financial incentives that are in conflict with the release of prisoners, in violation of protected liberty interests of persons incarcerated, including plaintiffs, all in violation of the Due Process Clauses of the United States Constitution.

89. The Arizona laws that authorize and/or require that ADCRR contract with private vendors create a biased adjudication system that deprives plaintiffs of Due Process.

90. The Arizona laws that authorize and/or require that ADCRR contract with private vendors implicate important liberty interests, introduce significant risk of improper infringement on those interests, and do not provide attendant efficiency to the government, all in violation of plaintiffs' procedural due process rights.

91. The Arizona laws that authorize and/or require that ADCRR contract with private vendors infringe on the fundamental right not to be treated as a commodity, as property, or as a slave and thus deny plaintiffs substantive due process.

#### **COUNT 4**

#### **Equal Protection of Law**

92. The Fourteenth Amendment to the United States Constitution is enforceable pursuant to 42 U.S.C. § 1983 and provides that no state shall deny any person within its jurisdiction equal protection of law. U.S. Const. amend. XIV, § 1.

93. Under the Equal Protection Clause of the Fourteenth Amendment, violation of prisoners' fundamental rights and the disparate treatment of prisoners held by private prisons is presumptively unconstitutional and subject to heightened scrutiny.

94. Prisoners in private prisons are not provided equal protection of law, including law enforcement, in violation of the Equal Protection Clause of the Fourteenth Amendment.

#### **PRAYER FOR RELIEF**

Plaintiffs request judgment on their Complaint as follows:

- A. An Order certifying the Plaintiff Class in accordance with Rule 23(a) and (b)(2), F.R.C.P.;
- B. A declaratory judgment that Arizona statutes that authorize prison privatization are unconstitutional;
- C. A declaratory judgment that prison privatization and the resulting contracts violate the Constitution of the United States;
- D. An injunction that forbids Defendant Shinn and his successors from placing prisoners in private prisons and that requires Shinn to begin the process of discontinuing ADCRR's use of private prisons;
- E. An award to plaintiffs for their reasonable attorneys' fees and costs;



F. An award to plaintiffs for such other and further relief that is just and appropriate under the circumstances.

Dated this 15th day of June, 2020

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\* *Pro hac vice* application pending