

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ANGEL COLON, ROY SCHMITT, JUBRA'EEL LEBRON,
WINIFRED GATES, MARK HARKINS, MATTHEW
CARLEY, CECILIO TOLEDANO, and ANDREW
CRAWFORD, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

PASSAIC COUNTY, PASSAIC COUNTY BOARD OF
CHOSEN FREEHOLDERS, SONIA ROSADO in her
official capacity as Passaic County Freeholder, TANESHA
WAY, in her official capacity as Passaic County Freeholder,
PAT LEPORE, in his official capacity as Passaic County
Freeholder, TERRY DUFFY, in his official capacity as
Passaic County Freeholder, JAMES GALLAGHER, in his
official capacity as Passaic County Freeholder, BRUCE
JAMES, in his official capacity as Passaic County
Freeholder, ELEASE EVANS, in her official capacity as
Passaic County Freeholder, PASSAIC COUNTY
SHERIFF'S DEPARTMENT, JERRY SPEZIALE, in his
official capacity as Sheriff of Passaic County, CHARLES
MEYERS, in his official capacity as Warden of Passaic
County Jail, STEVEN MYERS, in his official capacity as
Deputy Warden of Passaic County Jail, and GEORGE W.
HAYMAN, in his official capacity as Commissioner of the
New Jersey Department of Corrections,

Defendants.

CLASS ACTION COMPLAINT

Case No. _____

The named plaintiffs, individually and on behalf of all others similarly situated, through their undersigned attorneys, by way of complaint against the defendants, hereby allege as follows:

PRELIMINARY STATEMENT

1. Over a century and a half ago, Dostoyefsky wrote that “the standards of a nation’s civilization can be judged by opening the doors of its prisons.” Less than twenty miles from this Courthouse at the Passaic County Jail (“PCJ”), inmates – many of whom are pre-trial detainees who have not been convicted of any crime – are crammed like sardines into squalid rooms, with temperatures that often exceed 100 degrees during the summer and plummet to levels described as “freezing cold” in the winter. Deprived of sleep, they eat undercooked food contaminated with rodent droppings, within five or six feet of other inmates who are defecating. Terrorized by barking and snarling dogs, they are subjected to beatings by correction officers, are prevented from observing the tenets of their religious faiths, and are retaliated against when they dare to complain about their inhumane conditions of confinement. This occurs in a facility that has been found time and again to present a serious fire hazard.

2. Federal judges in this vicinage have referred to PCJ as “a notably deplorable institution” with conditions that are “absolutely intolerable,” “degrading,” “shameful,” “overly punitive,” “not right” and “not human.” State officials have described the conditions as “an embarrassment.” Widespread concern has been voiced by groups ranging from Amnesty International to the Association of the Federal Bar of the State of New Jersey.

3. For their part, inmates describe PCJ as “hell,” “a form of torture,” and like “a third world country” where they are treated like “animals.” Inmates who have been detained at numerous other correctional facilities report that PCJ is by far the worse place they have ever experienced, or even imagined. It has become a sad reality that inmates have begun taking plea bargains they would not ordinarily take in order to get out of the facility – believing that life at any New Jersey prison would be infinitely better than life at PCJ.

4. This affront to human decency has been going on for well over twenty years and continues unabated. In short, this facility demonstrates just how uncivilized we as a society have permitted ourselves to become. A recent opinion of this Court asked the question of “how long we continue to turn a deaf ear” to these conditions. Not one minute more is the answer.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1331. Plaintiffs assert claims under 42 U.S.C. § 1983 for deprivation of rights secured by the First, Eighth and Fourteenth Amendments to the United States Constitution.

6. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiffs’ claims occurred in this judicial district and several if not all of the defendants reside in this district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. Plaintiffs have fulfilled the requirements of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), requiring inmates to exhaust available administrative remedies prior to filing suit under 42 U.S.C. § 1983 alleging violations of their constitutional rights.

PARTIES

The Named Plaintiffs

8. Plaintiff Angel Colon is a 59 year old inmate who currently resides at PCJ in Paterson, New Jersey, and has been detained at PCJ for over four months. He is a pre-trial detainee who has accepted a plea and is awaiting sentencing. As such, Colon is protected by the Fourteenth Amendment.

9. Plaintiff Roy Schmitt is a 25 year old inmate who currently resides at PCJ in Paterson, New Jersey, and has been detained at PCJ since January 2008. Schmitt is currently

serving a sentence of less than 365 days at PCJ. As such, Schmitt is protected by the Eighth Amendment.

10. Plaintiff Jubra'eel Lebron is a 46 year old inmate who currently resides at PCJ in Paterson, New Jersey, and has been detained there since August 2007. He is a pre-trial detainee who has accepted a plea and is awaiting sentencing. As such, Lebron is protected by the Fourteenth Amendment.

11. Plaintiff Winifred Gates is a 54 year old inmate currently residing at PCJ in Paterson, New Jersey. He has been detained at PCJ since September 2007. He is a pre-trial detainee who has taken a plea and is awaiting sentencing. As such, Gates is protected by the Fourteenth Amendment.

12. Plaintiff Mark Harkins is a 27 year old inmate who currently resides at PCJ in Paterson, New Jersey. He has been detained at PCJ since May 2008. He is a pre-trial detainee who has pled guilty and is awaiting sentencing. As such, Harkins is protected by the Fourteenth Amendment.

13. Plaintiff Matthew Carley is a 37 year old inmate who currently resides at PCJ in Paterson, New Jersey. He has been detained at PCJ since August 2005. He is a pre-trial detainee who has pled guilty and is awaiting sentencing. As such, Carley is protected by the Fourteenth Amendment.

14. Plaintiff Cecilio Toledano is a 50 year old inmate who currently resides at PCJ in Paterson, New Jersey. He has been detained there since January 2008. He is a pre-trial detainee who is awaiting trial. As such, Toledano is protected by the Eighth Amendment.

15. Plaintiff Andrew Crawford is a 22 year old inmate who currently resides at PCJ in Paterson, New Jersey. He has been detained there since May 2007. He is a pre-trial detainee

who has not been convicted and is awaiting trial. As such, Crawford is protected by the Fourteenth Amendment.

The Named Defendants

16. Defendant Passaic County (the “County”) is a political and geographic subdivision of the State of New Jersey, organized under state law. The County oversees PCJ operations through the Passaic County Sheriff’s Department. Under applicable federal and state law, the County is responsible for the conduct of its governmental subdivisions, including PCJ and the Passaic County Sheriff’s Department.

17. Defendant Passaic County Board of Chosen Freeholders (the “Board”) is the governing body of Passaic County. Composed of seven elected members, the Board discharges both executive and legislative responsibilities, including making all funding decisions and appropriating (or failing to appropriate) money for PCJ, pursuant to N.J. Stat. § 40:20-1.

18. Defendant Passaic County Sheriff’s Department (the “Sheriff’s Department”) is the chief law enforcement body of Passaic County. Through its Corrections Division, the Passaic County Sheriff’s Department staffs PCJ with correction officers who, pursuant to policy set by the jail administration, oversee virtually every aspect of the inmates’ confinement.

19. Defendant Charles Meyers (“Warden Meyers” or “the Warden”) is the Warden of PCJ. Warden Meyers is the administrative head of PCJ and is responsible for its daily management, maintenance, and operation, as well as for training and disciplining employees. Warden Meyers is sued in his official capacity.

20. Defendant Steven Myers (“Deputy Myers”) is the Deputy Warden of PCJ. Deputy Myers is responsible for assisting Warden Meyers in the daily operations of the jail. Deputy Myers is sued in his official capacity.

21. Defendant Sonia Rosado is a member and Director of Passaic County's Board of Chosen Freeholders (the "Board"). Defendant Rosado has been a Freeholder since 2000, and currently heads the Board, presides over public meetings, and is responsible for appointing Board members to committees. In her capacity as Freeholder, Defendant Rosado is responsible for funding decisions affecting PCJ. Defendant Rosado is sued in her official capacity.

22. Defendant Tanesha Way is a member and Deputy Director of Passaic County's Board of Chosen Freeholders. Defendant Way has been a Freeholder since 2006. In her capacity as Freeholder, Defendant Way is responsible for funding decisions affecting PCJ. Defendant Way is sued in her official capacity.

23. Defendant Pat Lepore is a member of Passaic County's Board of Chosen Freeholders. Defendant Lepore has been a Freeholder since 2004. In his capacity as Freeholder, Defendant Lepore is responsible for funding decisions affecting PCJ. Defendant Lepore is sued in his official capacity.

24. Defendant Terry Duffy is a member of Passaic County's Board of Chosen Freeholders. Defendant Duffy has been a Freeholder since 2004. In his capacity as Freeholder, Defendant Duffy is responsible for funding decisions affecting PCJ. Defendant Duffy is sued in his official capacity.

25. Defendant James Gallagher is a member of Passaic County's Board of Chosen Freeholders. Defendant Gallagher has been a Freeholder since 1997. In his capacity as Freeholder, Defendant Gallagher is responsible for funding decisions affecting PCJ. Defendant Gallagher is sued in his official capacity.

26. Defendant Bruce James is a member of Passaic County's Board of Chosen Freeholders. Defendant James has been a Freeholder since 2005. In his capacity as Freeholder,

Defendant James is responsible for funding decisions affecting PCJ. Defendant James is sued in his official capacity.

27. Defendant Elise Evans is a member of Passaic County's Board of Chosen Freeholders. Defendant Evans has been a Freeholder since 2002. In her capacity as Freeholder, Defendant Evans is responsible for funding decisions affecting PCJ. Defendant Evans is sued in her official capacity.

28. Defendant Jerry Speziale is the Sheriff of Passaic County. Defendant Speziale (or "the Sheriff") has been the Sheriff since 2002. In his capacity as Sheriff, Speziale is the chief law enforcement officer of Passaic County and is responsible for establishing and enforcing the policies and procedures of the Passaic County Sheriff's Department, including the Corrections Division at PCJ. Defendant Speziale is sued in his official capacity.

29. Defendant George W. Hayman is the Commissioner of the New Jersey Department of Corrections (the "DOC"). Defendant Hayman has been Acting Commissioner of the DOC since 2006 and Commissioner since 2007. In his capacity as Commissioner, Hayman is responsible for overseeing the operation and management of all state prisons and county jails. Defendant Hayman is also responsible for the annual inspections of PCJ, and the granting of waivers of state regulations for correction facilities by the DOC. These waivers have allowed PCJ to continue to operate despite being in violation of numerous state regulations. Defendant Hayman is sued in his official capacity.

CLASS ALLEGATIONS

1. This action is brought by the Plaintiffs on behalf of a class consisting of all persons who are now, or will become incarcerated at PCJ during the pendency of this lawsuit.

2. Upon information and belief, the class consists of a population that has fluctuated in number, with as many as 1,774 inmates in late July 2008 and countless future detainees. As such, the class is so numerous that joinder of all its members is impracticable within the meaning of Rule 23(a)(1).

3. There are multiple questions of law and fact common to all Class members, as required by Rule 23(a)(2). Each Class member either has or will be incarcerated at PCJ, and has been or will be subjected to substantially similar conditions of confinement. Each Class member's claim raises the same basic questions: (1) whether the challenged conditions of confinement violate the United States Constitution, and (2) what type of injunctive relief is appropriate and necessary to ameliorate the current conditions of confinement at PCJ.

4. The claims of the Plaintiffs are typical of the claims of the Class, as required by Rule 23(a)(3). Plaintiffs, like all Class members, allege that Defendants violated their rights under the United States Constitution by subjecting them to the challenged conditions of confinement. All Class members will benefit from the amelioration of the conditions at PCJ. Plaintiffs' interests in successfully resolving this action are thus consistent with the interests of all other Class members, and there is no actual or potential conflict between the Plaintiffs and members of the Class.

5. Plaintiffs have retained competent and experienced counsel. Plaintiffs, through counsel, will fairly and adequately represent and protect the interests of the all Class members, as required by Rule 23(a)(4).

6. Plaintiffs' counsel, Seton Hall Law School's Center for Social Justice (the "CSJ"), have extensive experience litigating class actions in a wide range of public interest and constitutional matters. Representative class actions handled by the CSJ include Alves v.

Ferguson, Civ. No. 01-789 (D.N.J, ongoing) (putative class action challenging unconstitutional conditions of confinement and inadequate mental health treatment afforded civilly committed sex offenders) and M.A. v. Newark Public Schools, CV No. 01-3389 (D.N.J. 2003) (class action challenging inadequate special education programs).

7. Plaintiffs' counsel, the American Civil Liberties Union of New Jersey (the "ACLU-NJ"), also have extensive experience litigating class actions in a wide range of public interest and constitutional matters. Representative class actions handled by the ACLU-NJ include Jones v. Hayman (ongoing state court action challenging discriminatory conditions of confinement afforded female prisoners) and Sojourner A. v. NJ Dep't. of Human Svcs., 177 N.J. 318, 828 A.2d 308 (N.J. 2003) (challenging New Jersey's welfare cap).

8. Plaintiffs' counsel, Dechert LLP, also have extensive experience litigating class actions in public interest and constitutional matters. Representative class actions handled by Dechert as pro bono counsel include Williams v. Morton, 343 F.3d 212 (3d Cir. 2003) (putative class action challenging prison diet provided to Muslim inmates) and Maldonado v. Houstoun, 256 F.3d 181 (3d Cir. 2001) (class action challenging constitutionality of Pennsylvania's welfare benefits regulations). Dechert has also served as counsel in literally hundreds of private class actions.

9. This is an action for declaratory and injunctive relief only. Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole, thereby satisfying the requirement of Rule 23(b)(2).

FACTUAL ALLEGATIONS

I. HISTORY OF UNCONSTITUTIONAL CONDITIONS AT PCJ

A. The Valentine Litigation

10. Over thirty years ago, PCJ inmates filed a class action against the Board, the Sheriff, the Warden, and their successors-in-office, challenging conditions of confinement at the then-existing jail which violated their constitutional rights. Valentine v. Englehardt, Civ. Action No. 78-270 (D.N.J., filed Feb. 8, 1978). The jail at that time was designed to accommodate 227 inmates, but consistently held many more.

11. The Valentine plaintiffs complained, inter alia, of overcrowding, unsanitary living conditions, inadequate heating, cooling and ventilation, insufficient opportunities for religious worship, inadequate and nutritionally deficient food, and denial of access to the courts.

12. In January of 1978, the Board, Sheriff and Warden agreed to settle the Valentine litigation. Under the settlement, the defendants agreed to, inter alia:

- (a) Provide each inmate with a clean mattress, blanket and pillow upon admission, replace or clean these as needed, and provide clean sheets weekly;
- (b) Keep all areas of the jail clean and sanitary, keep all plumbing fixtures in operable condition, and provide an adequate supply of hot water for showers and cleaning;
- (c) Survey the present ventilation at the jail and provide such improvements as may be necessary in order to bring the existing facility into compliance with the State's Uniform Construction Code and provide "healthful ventilation, heating and cooling";
- (d) Provide professional extermination services throughout the jail on a weekly basis to ensure control of insects and rodents;
- (e) Provide inmates with adequate supplies and equipment to maintain their housing areas in clean condition, including the cleaning of mops on a regular basis;

- (f) Paint and clean all areas of the jail on a regular basis;
- (g) Provide all inmates with the opportunity to attend religious services of all major faiths on a weekly basis.
- (h) Provide screening devices to ensure that inmates who were eating meals were not exposed to other inmates in the process of defecating.

13. On April 10, 1979, after the fulfillment of all class action notice and hearing requirements, this Court approved the settlement, stating that:

The settlement requires that the defendants take various actions to ensure the cleanliness and suitability of the inmates' living areas, clothing and food, and to improve medical-dental care . . . The disciplinary procedures will be improved. . . Inmates will be assured of access to toilet facilities and those facilities will be screened from the view of other inmates. In sum, the settlement agreement provides for a vast improvement in the living conditions and treatment of Passaic County Jail inmates.

14. As detailed below, despite the Valentine settlement, the conditions at PCJ did not improve. In fact, they steadily deteriorated.

B. Conditions at PCJ After the Valentine Settlement

15. In September of 1981, just eighteen months after the settlement, former New Jersey Governor Thomas Kean toured the facility and described the conditions as “an embarrassment.”

16. PCJ was constructed in the 1950s. At a recent hearing before one of the Judges in this vicinage, Warden Meyers testified that the “[a]verage life cycle of a public building is 25 years or so” and that the County “should have built a new facility” in the 1970s or 1980s.

17. Instead of building a new facility, however, the defendants adopted a policy of cramming as many inmates as possible into the existing structure.

18. Warden Meyers – who has worked at the facility for over two decades – testified at the recent hearing that PCJ “has been overcrowded for at least 20 years.”

19. At the time of the Valentine settlement in 1979, PCJ held an average of 300 inmates.

20. At the end of April 1982, the inmate population had risen to over 500.

21. The following year, the Philadelphia Inquirer published an article in which PCJ officials were interviewed. The article reported that PCJ held 587 inmates, more than double its then-design capacity of 227, that “[a]s many as six men slept in a cell that measured 8 feet by 10 feet,” and that “[t]hirty-eight men were jammed in a cellblock designed for a maximum of 16.”

22. The article went on to describe conditions within the prison:

Men lay everywhere in a labyrinth of bodies in the second-floor cellblock of the Passaic County Jail.

Some sat on steel benches, writing letters or trying to watch television through the bars. They were surrounded by dozens of men on mattresses on the floor. Wrapped in gray blankets or sheets, they tried to sleep despite the constant noise.

Some inmates had created makeshift hammocks by tying their sheets to the bars. This allowed them the luxury of resting several feet above the crowded floor. Clotheslines hung with drying laundry crisscrossed the cellblock. With no place to put personal possessions, inmates had crammed their books and shoes between the bars.

This cellblock was designed for a maximum of 16; on Feb. 8, it held 36. The three other cellblocks on this wing each held more than 30 men. . . .

In the jail’s psychiatric wing on the second floor, 25 men were housed in a dormitory designed to hold a maximum of 12. Guards sit outside the dormitory 24 hours a day on “suicide watch.”

23. In May of 1985, the New York Times reported that PCJ was housing 778 inmates, over three times its then-design capacity of 227.

24. In April of 1989, the New York Times quoted then-Sheriff Edwin Englehardt as stating that “as many as 102 women [were] crowded into a day room designed for no more than 40,” that “[m]attresses covered almost every bit of floor space.”

25. Even after the jail was expanded in 1991 to accommodate a design capacity of 896 inmates, the jail continued to be severely overcrowded.

26. In 2003, Warden Meyers gave an interview in which he stated that the PCJ was “almost over 200 percent over capacity.”

27. In 2005, Sheriff’s Department spokesman Bill Maer was quoted in the Bergen County Record as stating that “the jail is designed to have a capacity of 800, but holds more than 2,000 inmates, including immigration detainees, U.S. Marshal prisoners, and county and state inmates.”

28. Overcrowding is not the only problem that has long plagued PCJ. PCJ has for many years been considered one of the country’s most notorious jails due to the inhumane conditions in which inmates are forced to exist.

29. As long ago as 1983, the then-Sheriff Edwin Englehardt was quoted in the Philadelphia Inquirer:

Englehardt is proud of running what he calls “the most dreaded jail in New Jersey.” “It’s a rough life for them. But that’s tough. They did it to themselves. I don’t want them to be comfortable.” “Let them suffer ... Give them what they’re entitled to and nothing more.”

30. In 2005, the Department of Homeland Security’s Office of the Inspector General (“OIG”) began an investigation into conditions at the facility.

31. In July of that year, the Sheriff ejected the federal investigators from the jail, accusing them of arrogance and incompetence. Sheriff’s Department spokesman Bill Maer was quoted in the Bergen Record as stating that “[t]hey’re arrogant, they don’t know what they are talking about, and they are a disgrace to the federal government.” According to Maer, “[i]nvestigators ordered jail personnel around, made unfounded accusations and asked the department’s Internal Affairs Division to review allegations.”

32. After the federal investigators were authorized to reenter PCJ, they finished their investigation and issued a Report (the "OIG Report"). The OIG Report found numerous deficiencies in the treatment of federal detainees at PCJ, including but not limited to inadequate health care, evidence of rats, mice and cockroaches in the units, inadequate ventilation, and inadequate clothing for inmates.

B. Revenue Generation – "Corrections for Profit"

33. Many of the problems at PCJ stem from the deliberate and long-standing policy on the part of the defendants to cram as many prisoners as possible into PCJ. This policy of overcrowding is designed to generate as much revenue as possible for the County, which uses this revenue for non-jail related projects and to balance its general budget.

34. For over 20 years, the PCJ has housed inmates on behalf of the State of New Jersey and the federal government in exchange for a daily fee per inmate.

35. According to the 2007 County budget, the County realized \$10,085,615.88 in revenue from the housing of federal inmates in 2006, plus a further \$3,900,000 in receivables for the prior year. According to the same budget, the County also realized \$4,403,019 in revenue from the housing of state inmates

36. According to the 2008 County budget, the County realized \$12,324,290 in revenue from the housing of federal inmates in 2007. According to the same budget, the County also realized \$5,238.731 in revenue from the housing of state inmates.

37. However, after the OIG investigation into conditions at the facility, and subsequent reductions in sentences for criminal defendants exposed to those conditions made by Judges sitting on this Court, all federal inmates were removed from the facility by the end of March 2008.

38. The decision to remove federal inmates meant a projected loss of revenue to the County of over \$10 million this year alone.

39. Warden Meyers testified before this Court that the revenue received from PCJ's housing of inmates on behalf of other government entities "goes into the general funds" of the County. As Meyers also testified, the "Freeholders have gotten accustomed to the revenue that comes in, if it were to evaporate very quickly, it would leave a vacuum that would be difficult to fill ..."

40. Despite reaping over a hundred million dollars over the years from the housing of inmates at PCJ, a Sheriff's Department spokesman stated in 2004 that "most years the Jail requests less than \$150,000 for maintenance."

41. Instead, the County has used this revenue for other projects. For example:

- (a) In October of 2007, the County opened a new 41,000 square foot Investigative Headquarters for the Passaic County Prosecutor's Office. The County spent \$4.9 million to build the facility and a further \$4.7 million on "state of the art" equipment;
- (b) The County recently constructed a three story, 196,000 square foot addition to the Preakness Healthcare Center in Wayne. According to the County, this facility "provides residents' rooms & sitting areas overlooking courtyards with lush gardens & walking paths, covered walkways, and a 'Main Street' with shops & amenities for residents and visitors";
- (c) The County has also spent tens of millions of dollars over the last decade on acquiring tracts of land as "open space" and on park restorations, including the creation of skateboard parks and Botanical Gardens.

42. Joseph Hartmann, the Coordinator of the New Jersey Department of Corrections' Office of County Services, has characterized Passaic County's policy regarding revenue derived from PCJ as "corrections for profit."

43. In response to the recent loss in revenue from the housing of federal inmates, the defendant Board responded in two ways. First, it cut the Sheriff's Department budget. Second, it authorized defendant Speziale to replace the lost revenue by identifying other government entities willing to enter into contracts to house out-of-state inmates at PCJ.

44. To that end, Sheriff's Department spokesman Bill Maer was quoted as stating that: "[Speziale] has been in contact with various public entities in our region including Philadelphia ... The Sheriff has continued to work toward identifying as many revenue sources as possible." In March of 2008, Maer was quoted as stating that "Now that the jail has been hovering around 1,500, we certainly feel that there is capacity for additional inmates without having issues of overcrowding ..."

45. Defendant Speziale's contacts eventually led to an agreement with the City of Philadelphia in June of 2008 to house 300 Philadelphia inmates. On June 1, 2008, 98 Philadelphia inmates were transferred to PCJ. Passaic County Auditor Steven Wielkott was quoted as stating that "another 200 inmates are expected to arrive by July 1," and that the agreement would "restore more than \$5 million in revenue to the County's budget."

46. Ironically, the City of Philadelphia entered into this agreement as part of its effort to comply with a federal court injunction requiring it to take "affirmative steps to redress the unconstitutional conditions" stemming from overcrowding in its own correctional system. See Bowers v. City of Philadelphia, No. 06-CV-3229 (Memorandum and Order) (E.D. Pa. Jan. 25, 2007).

II. UNCONSTITUTIONAL CONDITIONS AT PCJ TODAY

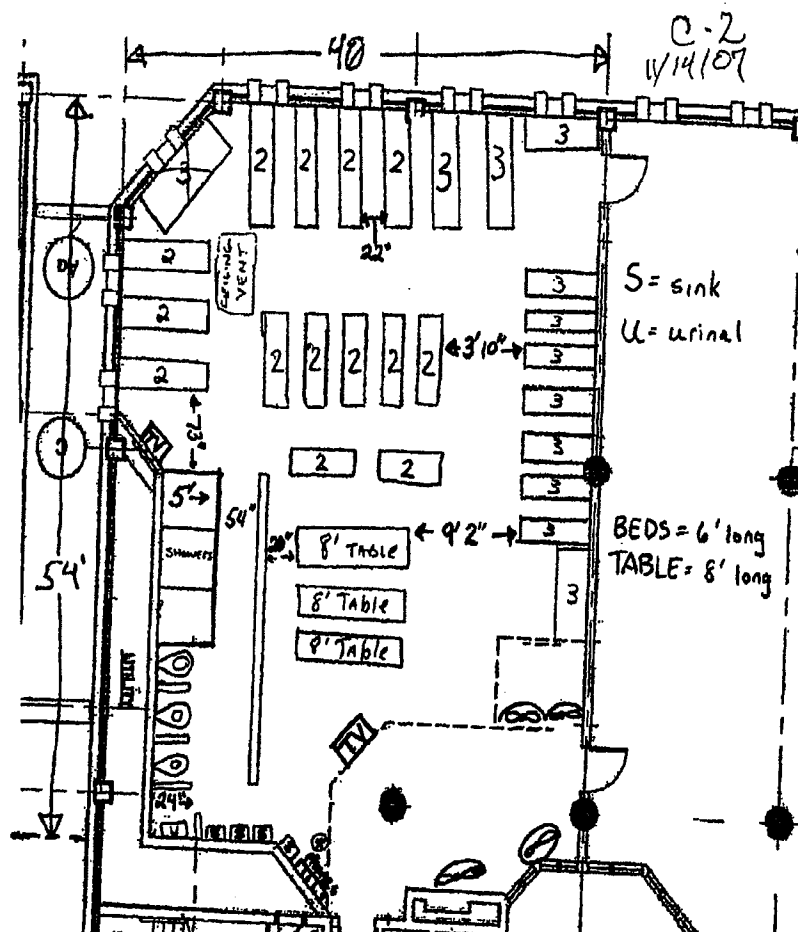
A. Persistent Overcrowding

47. In September and October of 2007, the Honorable Katharine S. Hayden, U.S.D.J., held a hearing in connection with the application of a criminal defendant for a downward departure under the federal sentencing guidelines on the basis that the conditions of confinement at PCJ constituted punishment in themselves (“the Sutton hearing”). Warden Meyers, Joseph Hartman from the DOC, and Inspector Samuel Gaita of the City of Paterson Fire Department all testified at the hearing.

48. Warden Meyers testified that PCJ has a design capacity of 896 inmates, yet the facility then housed an average of “1900 [inmates], give or take 10 or 15 percent.”

49. He also testified that there are two types of inmate housing at PCJ – large dormitory-style units that house an average of 64 inmates, and units made up entirely of cells. According to the Warden, most inmates are housed in the dormitory-style units, where they spend an average of 23 hours per day, and eat, sleep, bathe, urinate and defecate.

50. A diagram provided to the Court in connection with a recent hearing illustrates the configuration of a typical dormitory-style unit:



51. As the diagram illustrates, these units measure approximately 54 feet by 40 feet. To accommodate the overcrowded conditions, many of these units contain double and triple bunk beds that are 22 inches apart. Inmates currently detained at PCJ report that some beds are now as little as 12 to 18 inches apart.

52. These conditions violate state regulations governing correctional facilities, which are set forth in the New Jersey Administrative Code (the "Code").

53. The Code requires that multiple occupancy sleeping units "contain a minimum of 25 square feet of unencumbered floor space per inmate," N.J.A.C. 10A:31-3.6 (b), (g) (2008). The Code also provides that "all adult correctional facilities shall have dayrooms, and that these dayrooms contain "35 feet of floor space per inmate, exclusive of lavatories, showers and toilets

... separate and distinct from the sleeping area, but immediately adjacent and accessible therefrom.” N.J.A.C. 10A:31-3.6 (j). As the diagram illustrates, the dormitory units at PCJ do not contain a separate dayroom, far less the required amount of space. In fact, the DOC’s annual inspection report in 2007 noted that due to the overpopulation at PCJ, inmates had begun sleeping in the portion of the unit where the tables are located.

54. The Code also requires that dayrooms “provide sufficient seating, writing, and eating surfaces for every inmate using the dayroom at one time.” N.J.A.C. 10A:31-3.6(k). As the diagram again illustrates, the most dormitory units at PCJ contain three tables, which Warden Meyers testified can seat five or six people. Thus there is no possible way that 64 inmates can sit down to eat at the same time. Instead, inmates eat standing next to or sitting on their bunks. Many inmates assigned to triple bunks are unable to eat sitting on their bunks, since there is not enough space between the beds to allow an adult to sit up straight. Those inmates must share someone else’s bunk during mealtime.

55. As discussed in detail below, the overcrowding at PCJ has resulted in conditions which pose a substantial and ongoing risk to inmates’ physical and mental health.

B. Threat of Inmate Violence

56. This persistent overcrowding at PCJ creates a dangerously tense atmosphere, leading to a disproportionately high level of tension and violence.

57. As long ago as 1989, then-Sheriff Edwin Englehart described conditions of overcrowding in PCJ, reporting that “the atmosphere was very tense,” with inmates fighting among themselves.

58. More recently, Joseph Hartmann testified at the Sutton hearing that overcrowding “raises the level of assaults of violence among the inmate population ... everybody is just on top of each other and that certainly raises the tension level ...”

59. As one former PCJ inmate testified:

[Y]ou had more assaults in my dorm because of the overcrowding. People who were agitated at the slightest little thing, they would fight. The slightest, you know, like cut in front of somebody in the line to use the urinal. I seen fights generated because of that ... There's been fights in every month since I have been there.

60. The ensuing violence has caused inmates to suffer physical harm, and poses an ongoing substantial risk that many inmates will be similarly harmed in the future.

C. Unsanitary Living Conditions

61. Inmates are also forced to exist in squalid and unhygienic living conditions.

62. In the dormitory-style units, the toilet and shower facilities are located within the same room in which the inmates eat and sleep.

63. As the diagram above illustrates, a typical dormitory-style unit has only three toilets, one urinal, three showers, and four sinks for what the Warden testified at the time of the hearing was an average of 64 inmates. As the diagram further illustrates, the toilets are located in close proximity to the tables at which the inmates are expected to eat.

64. During the Sutton hearing, the following colloquy took place between counsel for the defendant and Warden Meyers:

Q. [I]n fact, the toilets are within a few feet of the dining tables, is that correct?

A. The nearest is about six or seven feet.

Q. Okay. And there's just a perforated divider between the toilets and the dining tables, is that right?

A. Yeah, a half wall with steal perforations in it, yes.

Q. So if an inmate was dining on – at the table they could be within six feet of a person that was using the commode?

A. That's likely.

Q. And is there any kind of a vapor barrier to try to use the best word?

A. No, no.

65. Almost thirty years ago, almost precisely the same colloquy took place between the then-Warden and the Court in the Valentine litigation.

THE COURT: Does somebody go to the bathroom while somebody is eating there? Is that right?

THE WARDEN: They could.

THE COURT: If somebody has to go to the bathroom.

THE WARDEN: They would.

THE COURT: They'd do that, wouldn't they?

THE WARDEN: That's right.

THE COURT: I see ...

THE WARDEN: It is not a dining room.

THE COURT: Do the prisoners have any place else to eat?

THE WARDEN: No.

66. As one inmate has testified, inmates would pull their t-shirts over their faces in order to avoid the smell of feces while they are eating.

67. The Code provides that "living units shall be located and designed to safeguard the privacy of inmates." N.J.A.C. 10A:31-3.4(j). It also provides that "[d]ining areas shall not contain exposed toilets in the same room or in the view of inmates dining." N.J.A.C. 10A:31-3.13(c).

68. The Code further provides that “[t]he minimum ratio of toilets, wash basins and mirrors in multiple occupancy sleeping units shall be:

1. One toilet for every 12 inmates in male sleeping units (one half of these toilets may be urinals);
2. One toilet for every eight inmates in female sleeping units;
3. One operable wash basin with hot and cold running water for every 12 inmates; and
4. One unbreakable mirror per wash basin.”

N.J.A.C. 10A:31-3.6(i).

69. The Code further provides that “[t]here shall be at least one operable shower with temperature controlled hot and cold water available for every 16 inmates.” N.J.A.C. 10A:31-3.7(a).

70. The conditions at PCJ violate all of these regulations.

71. In addition, the floor drains in the units frequently become clogged, which results in sewage backup flooding into the cells.

72. The few toilets and showers available to the inmates often do not function. For example, an inmate recently testified that one of the showers in the units was not working for seven months and that no attempt was made to repair it.

73. When inmates are able to actually access a functioning shower, the water is often either scalding hot or unbearably cold.

74. In 2006, the OIG Report noted that “female detainees interviewed at PCJ complained that when toilets, showers, and sinks were in use at the same time, water temperature in the shower became excessively hot.” The Report went on to state that “[w]e confirmed this unsafe condition in the female housing units during our review.”

75. The filthy conditions that have long been a daily reality at PCJ are unsanitary, and pose a serious risk to the inmates' physical health.

D. Rodent and Insect Infestation

76. Warden Meyers testified at the Sutton hearing that there are mice, insects and rodents in the facility, and that inmates sometimes find that food in the unit has been eaten by mice.

77. The OIG Report likewise indicated that of nine pest control service reports made available for the inspectors' review, eight of the nine reports indicated evidence of rats/mice and cockroaches at PCJ.

78. PCJ is also infested with insects. Inmates have to swat away bugs when they are using the toilet. Food trays, which often remain in the units for more than an hour after meals, attract fruit flies. Inmates have observed insects crawling from the ceilings and out of their mattresses, and have begun stuffing toilet paper in their ears and nostrils in order to keep the bugs from crawling into their ears and noses.

79. Inmates have attempted to keep their units clean to deter mice and insects, but the defendants do not provide the inmates with adequate cleaning materials. PCJ provides inmates with a mop, a brush and one bucket of water which quickly becomes dirty. PCJ provides no disinfectant and PCJ correction officers have denied inmates' requests for additional clean water, disinfectant, and other cleaning materials.

80. These unsanitary living conditions pose a serious, ongoing risk to the inmates' physical health.

E. The Spread of Contagious Disease

81. Overcrowding prevents PCJ from segregating inmates with communicable diseases that could pose a serious risk to other inmates. For example, an inmate with shingles

was placed in one of the units. Although shingles is a highly contagious and serious illness, correction officers simply told the inmates in the unit to “be careful.”

82. It has also been reported that at least one inmate and one correction officer have contracted methicillin-resistant staphylococcus aureus (“MRSA”), which can be fatal. Upon information and belief, the correction officer was hospitalized with the disease.

83. The failure to screen and segregate inmates with communicable diseases has exposed innumerable inmates to a serious, ongoing risk to their physical health.

F. Unsafe and Inadequate Food

84. The food provided to inmates at PCJ is unsafe and inadequate.

85. As a result of the infestation, inmates have observed rodent feces in their cereal, and rodent bite marks on loaves of bread, bags of pretzels, and jelly packets.

86. In addition, inmates report that the food they are given has gone bad, recalling meals of brown turkey, juice with “stuff floating in it,” and other food that is has been described as “off color and stinky.” Inmates also report that they suffer gastronomic distress after eating the food at PCJ.

87. The OIG Report examined two instances where undercooked poultry was served to PCJ detainees. It reported:

In the first instance, on October 14, 2005, a detainee gave us a piece of undercooked poultry served on the previous day. When presented with the undercooked piece of poultry, both PCJ officials and PCJ food service contractor agreed it was undercooked. ...

In the second instance, on October 28, 2005, a PCJ detainee gave us a grievance form, signed by 57 male detainees, stating that 10 people got sick from eating chicken. We reviewed the completed checklist for that day, which indicated that the oven temperature used to cook the poultry was not according to the new checklist procedures.

88. Inmates also report that they receive an inadequate amount of food, and the paltry amount of food they do get lacks the nutrition necessary for the basic human needs of adult inmates; several inmates relate that the amount of food is enough to sustain only a small child. As a result, those inmates with enough money purchase the expensive commissary food, or barter for additional food, in order to obtain enough nutrition to maintain their physical health. One inmate reported that he has spent over \$1,000 on commissary food in seven months at PCJ because he cannot survive on the food he is given; he is grateful to have the means to afford this supplemental nutrition, whereas many inmates do not. Those that are unable to access those alternative food sources are being subjected to a substantial risk of serious harm to their physical health due to this lack of adequate nutrition.

G. Inadequate Ventilation

89. During the Sutton hearing, Warden Meyers testified that the ventilation system at PCJ is “inadequate” because it was “designed for a certain population and we have exceeded that population.” As a result, the Warden testified that “[i]f it was 90 degrees ambient outside, it is probably closer to 100 inside, maybe a little bit more.”

90. Inmates describe their living conditions during the summer months as “oppressive,” “brutal,” “unbearable,” “hellish,” “maddening,” and “a form of torture.” Those who have been detained in other jails in New Jersey are genuinely perplexed at why those facilities provide air conditioning during the hot summer months, but PCJ does not.

91. This inadequate ventilation also contributes to high levels of humidity, which further increases the inmates’ discomfort. Inmates report seeing the floor of their units “sweating,” and covered with puddles of water due to the incredibly high levels of heat and humidity; some report slipping on floors that become slick in the heat.

92. The Warden acknowledged during the Sutton hearing that it is “typical for inmates to walk around in their jockey shorts” to escape the heat in the summer months.

93. In August of 2006, a PCJ inmate in his mid-30s died during a heat wave. The autopsy was inconclusive but, the coroner was unable to rule out the extreme heat at PCJ as the cause of death.

94. The excessive heat contributes to a further increase in inmate violence. During a heat wave in late July 2008, one inmate reported there were five serious fights in one unit within a span of three days.

95. Many inmates also report that they are unable to sleep on particularly hot days, or are unable to sleep for more than a half an hour at a time because they become so hot that they wake up drenched in a “pool of sweat.”

96. Those inmates who are assigned to the top of a triple bunks suffer the most, since the hot air rises toward the ceiling. As a result, some inmates assigned to the top of triple bunks sleep on the floor, seeking relief from the intense heat.

97. The extreme heat is particularly difficult for inmates with certain medical conditions. For example, Plaintiff Angel Colon is 59 years old and has a severe asthma condition. In the four months that Colon has been detained at PCJ, he has had multiple asthma attacks due to the extreme heat, including one attack so severe that he was hospitalized in July 2008. As a result of the heat, Colon has experienced trouble breathing, audible wheezing, pain in his chest, and difficulty sleeping. Colon reports that the fumes coming into his housing unit through the ventilation system made his condition worse and that, for much of the summer of 2008, he feared that he would suffer an asthma attack so severe that he would die. Inmates in

Colon's unit, who observed the deterioration in his physical health during the hot summer months, harbored the same fears about his well-being.

98. The extreme heat at PCJ has caused Plaintiff Roy Schmitt to suffer serious psychological harm. Schmitt is a young man who suffers from severe depression and, has been treated with prescription anti-depressants for approximately ten years. Because of the heat, Schmitt – like so many other inmates – has experienced trouble sleeping throughout the summer months. This lack of sleep has aggravated Schmitt's depression, and he reports feeling suicidal.

99. During June and July 2008, the heat at PCJ was so unbearable that several lawyers from Passaic County Public Defender's Office had to leave the jail, cutting short planned visits with their clients. One attorney had to leave the jail because she was feeling faint due to the extreme heat in the visiting areas – which are estimated to be well over 100 degrees and lacking any ventilation whatsoever. Another Public Defender had to discontinue a client meeting and left the jail because his sweat was dripping all over his legal papers. This attorney was promised a fan during his next legal visit; on his next visit, no fan was provided. A woman who works as an investigator for the Public Defender's Office had to end a meeting with a client because she was feeling ill.

100. The inadequate ventilation at PCJ has caused inmates to suffer physical and psychological harm, and represents a serious, ongoing threat to their physical and mental health.

H. Inadequate Heating Systems

101. PCJ's heating system is also insufficient to provide inmates with reasonable warmth during the winter months.

102. One inmate has testified that the walls of the unit frequently had condensation running down them and that inmates could see their breath in the cells. Warden Meyers himself

testified that inmates are not provided any additional clothes – beyond their thin, short-sleeved uniforms – to keep them warm during the winter months. Upon information and belief, the cold temperatures have contributed to an alarmingly high rate of inmate illness during the winter months. For example, Plaintiff Carley has experienced several serious and extremely painful sinus infections during his stay at PCJ, despite never having suffered from that illness before being detained at the jail.

103. The failure to provide inmates at PCJ with adequate heating during the winter months has caused inmates to suffer physical harm, and poses an ongoing, serious threat to their physical health.

I. Unsafe Air Quality

104. In addition to these conditions, the ventilation system at PCJ results in extremely poor air quality that poses serious risks to inmate health.

105. PCJ's primitive ventilation system is operated by a "red light/green light" blower system. When activated, the "red light" is supposed to bring in air from outside, while the "green light" is supposed to pull out the internal air. But, the system functions so poorly that when the "red light" is activated, the system blows dust, dirt, fiber, and fumes into the units, often leaving a coating of dust, dirt, and fiber particles on the bunks and other surfaces.

106. The OIG Report also noted that "[w]e observed obstructed air vents in the male units at PCJ, and several large industrial fans in front of male detainee units that were unplugged and had a substantial amount of dust build-up.

107. The inadequate ventilation system also causes condensation to accumulate and mold to grow on the ceilings and walls of the units.

108. This dangerously poor air quality exposes inmates to a substantial risk of serious physical harm, and inmates report that they suffer disproportionately frequent respiratory illnesses as a result of the unhealthy air conditions at PCJ.

109. For example, Plaintiff Mark Harkins had three head colds during the months of June and July 2008 alone which he attributes to the poor air quality in his unit.

110. Inmates with serious medical conditions, such as Plaintiff Angel Colon – who has a serious asthma condition – are particularly vulnerable to physical harm as a result of the poor air quality to which they are subjected every single day.

J. Inadequate Clothing

111. The Code requires PCJ to issue its inmates “climatically suitable” clothing, N.J.A.C. 10A:31-12.1(a). PCJ, however, provides its inmates with only one uniform consisting of a short-sleeved shirt and draw string pants. As discussed above, PCJ does not provide inmates with any additional clothing articles during the winter.

112. The Code also requires PCJ to provide laundry services that “permit the exchange of inmate clothing.” N.J.A.C. 10A:32-12.3(a). However, PCJ does not provide its inmates with spare clothing articles while their uniforms are being laundered. As a result, inmates must wait in their underwear for hours (often more than six hours, and sometimes up to twelve hours) until their uniforms are returned to them.

113. The OIG Report confirmed this fact, stating that “[a]t PCJ, we observed that when it is time for laundry to be done, detainees are not given clean clothes in exchange for dirty clothes. Instead, the detainees remain in their undergarments, or shorts, until their clean laundry is returned, which can take from 2 to 6 hours. Interviews with detainees confirmed that this was standard practice.”

114. At the Sutton hearing, Warden Meyers testified that the lack of available storage space prevents PCJ from issuing more than one uniform to any inmate.

K. Inadequate Sleep

115. Warden Meyers testified during the Sutton hearing that the last inmate count at PCJ takes place at 11 p.m. and can last up to 45 minutes. He further testified that breakfast is distributed at 4:30 a.m. Some inmates report being served breakfast as early as 3:00 a.m.

116. In the intervening period, inmates are frequently prevented from sleeping by other factors. As one inmate recently explained:

[B]ecause of this small proximity of the dorm the noise level is excruciating because people always making noise. Not everybody sleeps at the same time. So between the guys making noise, which you can't tell them not to make noise, that would only invite trouble It is very nerve racking

117. Persistent loud noises – roll call, the blare of televisions until they are finally shut off between 2:00 a.m. and 3:00 a.m., and the loud clanking of the breakfast wagons which arrive between 3:00 a.m. and 4:30 a.m. – create an unrelenting cacophony that does not allow the inmates sufficient sleep.

118. The resulting sleep deprivation that inmates experience at PCJ has caused them to experience physical and psychological harm, and poses a serious and ongoing threat to their physical and mental health.

L. PCJ Presents a Deadly Risk of Harm from Fire

119. PCJ also presents a serious fire hazard. Samuel Gaita, the City of Paterson Fire Inspector, testified at the Sutton hearing that (a) that PCJ does not have a sprinkler system except in the basement, offices and the medical unit, (b) that smoke detectors are missing, (c) that the overcrowding in PCJ has increased the risk of a fire, (d) that smoke would make evacuation and response very difficult, and (d) that these deficiencies all violate the applicable fire regulations.

120. According to Inspector Gaita, fire regulations require a passive sprinkler system throughout PCJ. PCJ, however, does not comply.

121. Instead, the only fire suppression system available for use in the units consists of fire extinguishers and a hose at the end of the corridors. This is supplemented by a “fire watch,” which Inspector Gaita characterized as “men that just patrol the jail just looking for fires.” In the event of a fire, someone other than an inmate would “have to grab the hose [in the corridor or stairwell] and pull it off the rack and turn the value on manually to open up the water.”

122. Inspector Gaeta also indicated that the fire alarm system at PCJ “is in trouble” and that he couldn’t even tell if the system would even function or not. A recent inspection also found that some smoke detectors in the facility were missing and others had to be replaced.

123. Fire Inspector Gaita called the absence of sprinklers and working fire alarm systems in the units “serious violations” of the local fire code. He also testified that the overcrowding at PCJ “increase[s] the risk of fire.” When Gaita was asked, “do you consider the situation to be of crisis proportions,” he responded, “[y]es. Because the way I feel, the human response could always be delayed in any situation especially if there’s a fire and it’s heavy smoke, you would have to try and find it. As having these either sprinkler system or fire alarm system in place, it will pick it up earlier and at least the suppression system would try to put it out.”

124. The City of Paterson Fire Department has issued PCJ numerous fire and safety code violations, including a continuing violation for the absence of a sprinkler system in the units, a violation for failing to maintain a working fire alarm system, and a violation for inoperable smoke detectors. As late as May of this year, PCJ still had 23 fire code violations.

125. Despite being fully aware of the problem, Defendants have failed to remedy the dangerous situation and continue to subject inmates to substantial risk of serious physical harm.

M. Use of Dogs To Intimidate Inmates

126. PCJ uses dogs to patrol the facility. Both Warden Meyers and Joseph Hartmann from the DOC testified at the Sutton hearing that PCJ is the only New Jersey jail they are aware of that uses canine units.

127. In 2004, National Public Radio (“NPR”) broadcast a report detailing the use of dogs to terrorize inmates at PCJ. The next day, the federal government prohibited use of canine units with federal detainees. However, PCJ continued to use dogs for what a Sheriff’s Department spokesman has characterized as “behavior modification.”

128. Dogs are routinely permitted to bark ferociously, growl, snarl, and lunge at PCJ inmates. There have also been instances in which PCJ inmates have been bitten and required hospital treatment.

129. Even visitors are not immune from the canine patrols. For example, an attorney interviewed on the NPR broadcast described how, during a client visit, a dog was permitted to lunge at him, barking ferociously, coming within an inch of his leg.

130. Upon information and belief, defendants have long been aware of the danger that the canine units present, but have failed to adopt the policies, provide the training, and institute the supervision necessary to prevent the dogs from causing the PCJ inmate population unwarranted psychological and physical harm.

N. Excessive Force by Correction Officers.

131. It is a sad fact of life for inmates at PCJ that correction officers have created a “culture of violence.” Many inmates report that they have been subjected to assaults and beatings at the hands of the abusive PCJ correction officers, and that “crazy beat downs” occur

“all the time” at PCJ, and for no reason. PCJ inmates speak about correction officer violence as ordinary events. Many PCJ inmates have either been beaten by a correction officer without provocation, or have seen an inmate being beaten by a correction officer without provocation.

132. Inmates consistently report that these beatings follow a familiar pattern: the inmate has done little or nothing to provoke the officer, the inmate is then removed from the housing unit and taken to a location where there are no security cameras, and is then beaten by a correction officer or a group of officers. Many of these beatings occur while the inmate is handcuffed, lying face down on the ground, or standing with his hands against the wall, as directed by an officer.

133. There also appears to be a pattern of covering up the most serious beatings: inmates report that those who have suffered visibly severe injuries are placed in “the hole” (i.e., in segregation) until their wounds have healed. Inmates who have been beaten are also routinely charged with offenses such as abusive language, or threatening an officer, in order to make the excessive use of force appear justified. Those who have seen the events leading up to inmate beatings report that such charges are often bogus, and are sometimes brought against inmates who did no more than use a curse word in the course of a conversation with an officer.

134. Plaintiff Carley reports that he has been beaten by correction officers without provocation on two occasions. The first beating occurred shortly after Plaintiff was detained at PCJ: Plaintiff was taken by an officer, shoved into an area that was under the security camera, and thus out of the camera’s sight, and hit four times in the abdomen. A similar incident happened approximately ten days later.

135. On another occasion, Carley reports that he was touched inappropriately by a correction officer. Specifically, during a “pat down,” the officer groped and fondled Carley’s

genitals with his right hand for several seconds. After three years of detention at PCJ, Carley had experienced a sufficient number pat downs to know that this was not routine behavior on the part of the correction officer.

136. Plaintiff Andrew Crawford recalls a particularly heinous beating that he suffered at the hands of several PCJ correction officers. First, one officer punched him in the ribs without provocation. Then, several other officers then joined in the beating, jumping on Crawford, hitting him with their fists, and kicking him in his body and his face. As a result, Crawford sustained injuries to his nose and lip, and bled from his face. When the officers were finished beating Crawford, he was simply instructed to clean himself up.

137. Plaintiff Roy Schmitt was also beat by several correction officers during an incident in early February 2008; shockingly, the beating occurred immediately after he had tried to commit suicide. Earlier in the day, Schmitt – who suffers from severe depression, and was taking prescription anti-depressants – had informed correction and medical staff members that he was feeling suicidal. He was taken to a part of the jail known as the “receiving area,” where he was held for several hours. At some point, he was told that he would be put in “the hole” if he was feeling suicidal. Feeling hopeless and depressed, Schmitt took a sheet, tied one end around his neck and the other to a metal piece at the top of a nearby door, climbed on a bench, and succeeded in hanging himself momentarily. Several correction officers immediately rushed to him and held Schmitt up so that he would not hang. Before taking Schmitt down, however, the officers punched him. After the officers untied him, and placed him on the floor, the officers then kicked Schmitt numerous times in the body. The officers then took the sheet, which was still tied to Schmitt’s neck, and dragged him down the hallway. When Schmitt was taken past a nurse’s office, the nurse on duty noticed what was happening and told the officers to stop, telling

them “you can’t do that, you guys are going to get in trouble.” The nurse then asked the officers to bring Schmitt to the medical area, where she examined him and became concerned that his neck had been seriously injured when he attempted to hang himself. Schmitt was then taken to St. Joseph’s Hospital, and given a neck brace. Thereafter, he was taken to a psychiatric facility, where he remained for approximately five weeks. When Schmitt returned to PCJ, he requested to speak with someone from the Internal Affairs office on several occasions, but his requests were never granted.

138. This was not the first time that Schmitt had experienced violence at the hands of a PCJ correction officer. Schmitt had been detained at PCJ in 2004, and was placed in “the hole” after telling an officer that he was feeling suicidal. Thereafter, Schmitt became agitated and began to bang his head against the wall. Instead of trying to help him, or taking him to a medical professional, a correction officer simply kicked Schmitt in the groin and hit him.

139. Upon information and belief, PCJ correction officers also use guns loaded with rubber pellets, and have fired the pellets at inmates during roll calls – causing inmates to experience pain and scarring at the site of the injuries. Inmates report that correction officers often handcuff inmates before shooting the pellets at them. Recently, inmates report that an inmate was shot in the eye by a correction officer, and that the inmate required intensive medical treatment as a result.

140. Those inmates who have spoken with correction officers about specific incidents of violence report that the officers are glib, telling the inmates that they will never get in trouble because their “lawyers are too good,” or taunting inmates by saying “if I did that [to you], why wasn’t I charged?” Inmates report that the correction officers at PCJ appear defiant and invulnerable, treating them “like dogs,” and acting as if the law does not apply to them. One

inmate stated that an essential difference between PCJ and other jails at which he has been detained is that the inmates are “scared to death” of the correction officers at PCJ.

141. This culture of violence has already caused many inmates at PCJ to suffer serious physical and psychological harm, and exposes all PCJ inmates to a substantial and continuing risk of such harm.

142. Upon information and belief, the defendants are aware of the PCJ correction staff's misconduct, or have failed to adopt the policies, provide the training, and institute the supervision necessary to prevent such misconduct.

O. Pattern of Indifference to Inmate Violence and to Inmates' Medical Needs.

143. Although correction officers have a duty to protect inmates from violence perpetrated by other inmates, PCJ officers often fail to do so. Numerous inmates report that it is well-known that PCJ officers refuse to stop fights between inmates, and one surmised that an inmate could get killed and the correction officers would not do anything to stop it.

144. Likewise, inmates at PCJ have observed a pattern of indifference toward their medical needs. Multiple inmates have reported that an inmate housed in 4 Main Annex had a severe diabetic seizure. Although several inmates called for an officer, and even kicked at a door to try to get an officer's attention, no one came to assist the seizing inmate for at least fifteen minutes.

145. Plaintiff Angel Colon, an inmate with a serious asthma condition, has himself experienced this deliberate indifference on the part of the PCJ correction staff. On August 1, 2008, Colon began experiencing the symptoms of an asthma attack, including having difficulty catching his breath. Because he was scared that he would become entirely unable to breathe, he told the first officer he encountered what was happening and asked to go to the medical unit for

treatment with a nebulizer – which he had received on other hot summer days. The officer ignored him and simply walked away.

146. Plaintiff Roy Schmitt has also experienced the PCJ correction officers' indifference to inmate medical conditions on numerous occasions. Although it is well-known that he suffers from chronic and severe depression, his complaints about feeling suicidal either fall on deaf ears, or result in Schmitt being thrown in "the hole," where inmates with disciplinary problems are placed. The PCJ medical staff is aware of this pattern of indifference: when Schmitt told a PCJ doctor that he was feeling suicidal, the doctor responded that he knew what would happen if Schmitt told an officer – he would be thrown in "the hole."

147. Upon information and belief, numerous other inmates have experienced this pattern of indifference toward severe medical and psychiatric conditions.

148. The defendants are aware of the PCJ correction staff's misconduct, or have failed to adopt the policies, provide the training, and institute the supervision necessary to prevent such misconduct.

P. Retaliation Against Inmates Who File Grievances, Frustration Of The Grievance Process, And Deliberate Interference With Inmates' Access To The Courts

149. Many inmates are unable to formally complain about the array of conditions problems at PCJ because correction officers frequently refuse to provide them with grievance forms or refuse to accept such forms, and/or retaliate against those who do file grievances. The frustration of the inmate grievance process is so common at PCJ that it reflects a clear pattern of behavior on the part of PCJ correction officers.

150. Almost all of the Plaintiffs have experienced the frustration of the grievance process. The most common complaint is that when inmates request a grievance form, correction officers respond that none are available, or simply ignore the request.

151. For example, Plaintiff Winifred Gates requested a grievance form in July of 2008, but was never given a form. When Gates finally obtained a copy of the PCJ Grievance Form from his attorney, and tried to submit it, a correction officer initially refused to accept it. When the officer finally agreed to take the form, Gates asked him to sign it on a line designated for an officer's signature, but the officer refused.

152. Similarly, when Plaintiff Roy Schmitt attempted to file a grievance challenging the conditions of confinement at issue in this lawsuit, the officer on duty refused to sign the grievance form, and suggested that someone "higher up" needed to sign them. However, the Inmate Handbook – which sets forth the grievance procedure – states that a grievance may be submitted to a correction officer on the floor.

153. When Plaintiff Andrew Crawford initially attempted to file a grievance complaining of the conditions of confinement at issue in this lawsuit, the grievance form was returned to him because it was "not one page." However, nothing in the Inmate Handbook states that a grievance must be limited to a single page.

154. Inmates consistently report that they are only able to obtain grievance forms from correction officers who are "sympathetic" – leaving them to the whim of the particular officers with whom they come into contact to determine whether they will be able to obtain a grievance form.

155. Many PCJ inmates who are able to secure and file grievances are subjected to a pattern of retaliation, which leaves the inmate population frightened to formally complain about instances in which their rights were violated. Several of the plaintiffs named in this lawsuit have experienced retaliatory acts immediately after, or within a few days, of filing a grievance.

156. Soon after Plaintiff Andrew Crawford filed his grievance, a correction officer approached him and ordered him to report to “the bars,” (the area where the correction officer was supervising the inmate living areas) with all of his legal papers. Crawford was extremely frightened, but immediately complied. When Crawford arrived at the bars, he was ordered to hand over all of his legal papers, including copies of grievance forms that his counsel advised him to retain as proof that he had filed the grievance. Crawford’s legal papers were confiscated, and were never returned. Crawford became fearful that he would be harmed physically as a result of filing his grievance, and worried that he would be mistreated if he filed any future grievances.

157. Plaintiff Jubra’eel Lebron was also a victim of this pattern of retaliation at PCJ. On June 17, 2008 – the very same day that he met with his attorneys and then filed a grievance challenging the conditions of confinement that are at issue in this lawsuit – Lebron was transferred from the “2 Main Trustee” unit to the 3-5 unit. The transfer resulted in a loss of privileges because the “Trustee” units are reserved for inmates who are hand selected based on their good behavior. Once selected, trustee inmates are paid \$10 per week to do certain jobs, enjoy greater freedom of movement on their units, are given extra food at meal times, and are granted access to a remote control to change the channels on the television. When Lebron was transferred, he was placed in an ordinary housing unit – thus losing his trustee position and the associated privileges. To his knowledge, Lebron had not done anything to warrant the transfer, other than filing a grievance. In fact, one officer warned Lebron about the consequences of his actions, telling him “you better stop filing grievances.”

158. Plaintiff Winifred Gates also experienced a retaliatory transfer after he met with his attorneys and filed a grievance complaining of the conditions of confinement at issue in this

lawsuit. Gates filed the grievance on July 27, 2008. The next day, he was approached by a correction officer who acknowledged that Gates filed the grievance and said that he seemed to have a lot of “problems.” The officer then told Gates that he would “teach [him] what happens to inmates who file grievances,” and informed Gates that he would be transferred the next day. The following day, Gates was ordered to pack up his belongings, and was transferred from the 4 Main Annex unit to the 3-6 unit. This transfer was significant because 4 Main Annex is the “older guys’ unit” (i.e., a unit populated largely by inmates who are 45 years old and above) and, as a result, is considered calmer and less violent than other dormitory style units. Gates, who is 54 years old, was assigned to 4 Main Annex for months before being transferred. By contrast, Gates’ new unit, unit 3-5, is known as the “gang unit,” and is populated by gang members. Not surprisingly, unit 3-5 is a far more dangerous place, and inmates who are not gang members – like Gates – are particularly vulnerable to violence. Moreover, while in 4 Main Annex, Gates was assigned to a bottom bunk for medical reasons, because he suffers from problems with his neck and back. However, when Gates was moved to unit 3-5, he was assigned to sleep on the top of a triple bunk, which required him to climb almost seven feet to reach his bed.

159. Plaintiff Mark Harkins also experienced retaliatory treatment very soon after he filed a grievance challenging his conditions of confinement at PCJ. Specifically, within days of filing his grievance, Harkins was told that he would no longer be given a pain medication that he has been taking for close to a year – and which is necessary to treat intense pain that he experiences as a result of a gunshot wound to his arm that left shrapnel and caused serious nerve damage. Harkins received his pain medication for ten months without interruption while incarcerated in New York, and also received the medication without a problem during the first three weeks of his incarceration at PCJ. However, after he filed his grievance, he was denied the

medication without explanation. When he tried to file a grievance form, he was told by a correction officer that there were no forms available. Harkins proceeded to file a grievance on his own paper, but has received no explanation for the denial of his pain medication.

160. It has become a fact of life for many inmates at PCJ that the consequence of filing a grievance – if they can obtain one – is that they will be “beaten down” by correction officers determined to suppress complaints and avoid lawsuits. While some inmates elect to file grievances despite the danger, often because they are particularly determined to make their complaints known, many other inmates simply accept that the grievance system available to inmates at every other jail and prison in New Jersey is not available to inmates at PCJ.

161. Of course, the consequence of not being able to file grievances is that inmates are not able to challenge their conditions of confinement in court. As such, the pattern of refusing to provide grievance forms and retaliating against those inmates who are able to obtain and file grievances prevents many PCJ inmates from accessing the courts.

162. Upon information and belief, the defendants are aware of this pattern of retaliation and frustration of the grievance process, and either participate in it or are deliberately indifferent to it. The defendants have failed to adopt the policies, or provide the training and supervision necessary to ensure that correction officers are not perpetuating this unlawful pattern of behavior.

Q. Denial of Inmates’ Right To Practice Essential Elements Of Their Religion

163. Many PCJ inmates report that they are deprived of the ability to practice essential elements of their religious faiths.

164. Christian inmates report that they are routinely denied the opportunity to attend group prayer services. For example, Plaintiff Winifred Gates reports that although Catholic

services have been called in the eleven months since he has been detained at PCJ, only one non-Catholic Christian service has been provided during that time.

165. Muslim Inmates report that they are routinely denied the opportunity to engage in aspects of their faith. Of most concern to the inmates is that PCJ deprives them of the opportunity to gather for weekly Friday afternoon prayers, called the “Jumu’ah Prayer,” which is required by the Koran, and must involve a congregation. Plaintiff Juba’eel Lebron has been at PCJ for one year, but has been able to attend only three Jumu’ah Prayer sessions during that twelve month period. Even during the month of Ramadan, the holiest week in Islam, PCJ has not provided inmates the opportunity for Jumu’ah Prayer.

166. Upon information and belief, one reason that inmates are not afforded the opportunity to observe their religion in congregational settings is that there is insufficient space in the jail to accommodate them. In fact, Plaintiff Juba’eel Lebron was told as much by a PCJ correction officer.

167. In fact, Warden Meyers testified at the Sutton hearing that “[i]t’s difficult sometimes to run the programs and there’s limit[ed] space.”

168. Also upon information and belief, there is no other reason – other than lack of space – for denying inmates an opportunity to pray in a congregational setting, a fundamental component of many major religions.

169. Some Muslim inmates have also complained that they are not being afforded Halal meals in the proper ways. For example, inmates have reported that their Halal meals come unwrapped, which renders them unable to eat the meals. When inmates inform correction officers of the problem, and request a proper Halal meal, their requests are often ignored and they are forced to go without food.

170. Upon information and belief, the defendants are aware of the practice of denying inmates the opportunity to observe their religious faiths, and either participate in it or are deliberately indifferent to it. Also upon information and belief, the defendants have failed to adopt the policies or provide the training and oversight necessary to ensure that correction officers are not perpetuating this unlawful pattern of behavior.

III. THE DEPARTMENT OF CORRECTIONS IS COMPLICIT IN ENABLING THESE APPALLING AND UNCONSTITUTIONAL CONDITIONS TO PERSIST

171. The DOC is complicit in enabling the unconstitutional conditions to persist at PCJ.

172. The DOC is responsible for inspecting each county correctional facility in the State, in order to ensure it complies with the relevant administrative regulations. It is well-known that PCJ is not compliant with a host of State regulations, including those governing: overcrowding (e.g., the number of inmates that are housed in each unit and the required amount of square footage per inmate that must exist in the living areas); the amount of day room space that must be provided, separate and apart from the sleeping areas; the number of toilets, sinks, and showers per inmate; the existence of exposed toilets in the vicinity of the inmate living area; and the fire system (including the lack of sprinkler system, failure to maintain a working alarm system, and inoperable smoke detectors).

173. The DOC allows PCJ to continue to operate despite its lack of compliance with numerous regulations by granting the facility "waivers," thus formally exempting PCJ from the regulations it has violated. In fact, PCJ has been operating on waivers since the 1970s, and continues to do so. PCJ is the only correctional facility in New Jersey that has functioned on waivers in this way.

174. Joseph Hartmann testified at the Sutton hearing that the unwillingness of the DOC to apply the immediate remedy of “depopulation” to address overcrowding was based on Passaic County’s reliance on the revenue stream from housing non-local prisoners.

175. While the DOC has recently altered its stance on granting waivers, it has failed to take any enforcement action against the County for its non-compliance with state regulations.

176. While the County’s exemptions relating to overcrowding expired on January 1, 2008, and while requests for extensions were denied on February 15, 2008 and April 15, 2008, the County has still not taken any steps to rectify the situation. Indeed, as noted above, the County has deliberately expanded the inmate population to generate additional revenue.

177. PCJ officials have taken the position that DOC’s waivers allowing the facility to operate absolve them from liability and place responsibility for PCJ’s pervasive problems squarely on the State. For example, when Plaintiffs Carley and Crawford finally received a response to a grievance complaining of the inadequate conditions described herein, PCJ officials responded that they should raise their concerns with the State.

178. By granting waivers to PCJ for more than three decades and by failing to take any enforcement action, the DOC is complicit in exposing PCJ inmates to these heinous and unconstitutional conditions of confinement.

IV. DEFENDANTS’ KNOWLEDGE OF THESE CONDITIONS

179. These appalling conditions of confinement are well-known to the defendants and have been for decades. In addition to the consistent barrage of complaints from inmates, the media, advocacy groups and lawyers, the conditions have been the frequent comment by judges on this Court.

180. In 2006, the Honorable William G. Bassler, U.S.D.J., found that the conditions at PCJ were so notorious as to become the subject of judicial notice in a sentencing proceeding:

THE COURT: It is out of the ordinary. I can take judicial notice of that. Because in the years I've been sitting here meting out sentences, I had affidavits – now I don't have one here, but I certainly can take judicial notice that the conditions in that facility are intolerable. I had a defense attorney come up from the south and he said he's never seen anything like it yet in his practice. It's not right. It's not human. It's just not fair to put somebody in that kind of a facility.

I'm not sure that we need to impose a sentence of 70 months. To me that is harsh, in view of the amount of time that was spent in Passaic County Jail. I don't care what you say, the conditions that have been reported to me over the years indicate to me that it's absolutely intolerable, and to impose months on top, or even giving reflection – to impose a sentence in light of the amount of time this defendant spent in Passaic County Jail isn't necessary to provide adequate deterrence. Any amount of time in Passaic County Jail will provide that.

181. In 2008, the Honorable William J. Martini, U.S.D.J., referred to PCJ in an opinion as “a notoriously deplorable institution.”

182. In October of 2007, based on the hearings at which Warden Meyers testified, the Honorable Katharine S. Hayden, U.S.D.J., opined that:

It has become a tired fact of life in these courtrooms that Passaic County Jail is overcrowded, is breaking down, and is a very rough place to serve time. “Tired” because these observations come up so often and alternative resources are so scarce, that the reaction has been a shrug that there is nothing one can do.

183. After detailing in painstaking fashion the numerous disconcerting inhumane conditions that existed as a result not only of the overcrowding at PCJ, but also the deteriorated physical condition of the facility, Judge Hayden asked the following question: “how long we continue to turn a deaf ear [to the conditions at PCJ]?”

184. Absent court intervention, it is clear that Passaic County officials will continue these unlawful practices, and that the Department of Corrections will stand idly by. This is clear from recent statements of the defendants which demonstrate their continuing recalcitrance. For

example, on March 18, 2008, a spokesman for the Sheriff's Department was quoted in the media as stating that "[n]ow that the jail has been hovering around 1,500, we certainly feel that there is capacity for additional inmates without having issues of overcrowding." In June of 2008, the same spokesman described PCJ as "one of the most organized, professional and safely run institutions in the state of New Jersey."

CAUSES OF ACTION

COUNT I

(Violation of the Fourteenth Amendment)

185. Plaintiffs restate and reallege Paragraphs 1 through 184 as though fully set forth herein.

186. The Due Process Clause of the Fourteenth Amendment affords pretrial detainees at least the same rights as those afforded convicted prisoners, if not greater rights. In light of the totality of the circumstances discussed in detail above, Defendants – acting under color of state law – have subjected Plaintiffs, and all other similarly situated pre-trial detainees at PCJ, to conditions of confinement that expose them and the other members of the Class to a substantial risk of serious physical and psychological harm and, as such, constitute unlawful punishment in violation of the Fourteenth Amendment.

187. Defendants are either themselves directly responsible for the unlawful conditions described herein, or caused those unlawful conditions by failing to adopt necessary policies and training programs, and by failing to properly supervise PCJ correction staff.

COUNT II

(Violation of the Eighth Amendment)

188. Plaintiffs restate and reallege Paragraphs 1 through 187 as though fully set forth herein.

189. The Eighth Amendment to the United States Constitution requires that state actors take reasonable measures to guarantee the safety and well-being of inmates in their custody.

190. In light of the totality of the circumstances discussed in detail above, Defendants – acting under color of state law – have subjected Plaintiffs, and all other similarly situated inmates at PCJ, to conditions of confinement that expose them and the other members of the Class to a substantial risk of serious physical and psychological harm and, as such, constitute cruel and unlawful punishment in violation of the Eighth Amendment.

191. Defendants are either themselves directly responsible for the unlawful conditions described herein, or caused those unlawful conditions by failing to adopt necessary policies and training programs, and by failing to properly supervise PCJ correction staff.

COUNT III

(Violation of the Free Exercise Clause of the First Amendment to the United States Constitution)

192. Plaintiffs restate and reallege Paragraphs 1 through 191 as though fully set forth herein.

193. The Free Exercise clause of the First Amendment to the United States Constitution ensures that no state actor shall prohibit the free exercise of religion. That essential First Amendment protection applies even to those individuals who are incarcerated. As such, Defendants are prohibited from restricting Plaintiffs from practicing their religion, unless they have a legitimate penological interest for doing so.

194. By preventing Class members from practicing their religions without any legitimate penological interest, Defendants have engaged in widespread violations of the First Amendment.

195. Defendants are deliberately indifferent to this pattern of First Amendment violations. Defendants are also responsible for this misconduct because they have failed to adopt the policies or provide the training and oversight necessary to ensure that inmates are afforded the right to observe their religious faith.

196. Defendants are either themselves directly responsible for the unlawful practices described herein, or caused those unlawful practices by failing to adopt necessary policies and training programs, and by failing to properly supervise PCJ correction staff.

COUNT IV
(Violation of the First Amendment, Retaliation)

197. Plaintiffs restate and reallege Paragraphs 1 through 196 as though fully set forth herein.

198. The First Amendment to the United States Constitution ensures that no state actor shall retaliate against any person for engaging in protected speech. In the context of jails and prisons, inmates engage in protected conduct when they file grievances. As such, by engaging in a pattern of retaliating against inmates who file grievances – or by enabling such retaliation by condoning it, being deliberately indifferent to it, failing to adopt the policies, or provide the training and supervision necessary to prevent such retaliation – Defendants violate the First Amendment.

199. Defendants are either themselves directly responsible for the unlawful practices described herein, or caused those unlawful practices by failing to adopt necessary policies and training programs, and by failing to properly supervise PCJ correction staff.

COUNT V

(First Amendment, Restriction on Access to the Courts)

200. Plaintiffs restate and reallege Paragraphs 1 through 199 as though fully set forth herein.

201. The First Amendment of the United States Constitution ensures that inmates in jails and prisons retain the right to access the courts to challenge their conditions of confinement.

202. By engaging in a pattern of frustrating the inmate grievance process, enabling such misconduct, condoning it, being deliberately indifferent to it, and by failing to adopt the policies, or provide the training and supervision necessary to prevent such misconduct, Defendants have prevented Class members from filing grievances. Since inmates are legally required to file grievances before bringing lawsuits challenging their conditions of confinement, this frustration of the grievance process has prevented many Class members from accessing the courts.

203. Defendants are either themselves directly responsible for the unlawful practices described herein, or caused those unlawful practices by failing to adopt necessary policies and training programs, and by failing to properly supervise PCJ correction staff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class that they represents respectfully request that this Court:

- A. Certify this lawsuit as a class action;
- B. Enter a declaratory judgment that:

- (1) Defendants' conduct has violated Class members' Fourteenth Amendment rights to safe, sanitary, and healthy prison conditions, and to be free from punishment, and Eighth Amendment rights to be free of cruel and usual punishment;

- (2) Defendants' conduct has violated Class members' First Amendment rights to freely exercise their religion;
- (3) Defendants' conduct has violated Class Members' First Amendment rights to be free from retaliation when engaging in protected conduct, such as filing grievances;
- (4) Defendants' conduct has violated Class members' First Amendment rights to access the courts to challenge their conditions of confinement;

C. Enjoin the defendants, their officers, agents, employees and successors in office, along with those acting in concert with them, from engaging in the unlawful practices described herein;

D. To the extent that PCJ is permitted to continue housing inmates in excess of its capacity, order the defendants to undertake all action necessary to correct the unlawful conditions of confinement described herein, including but not limited to renovation, repair, and the acquisition and/or installation of all necessary devices and equipment; adoption of necessary policies, provision of training to correction staff, and instituting supervision and monitoring/oversight procedures;

E. Award Plaintiffs all litigation costs, expenses, and attorney's fees recoverable under federal law; and

F. Award all such other relief as this Court deems just and proper, including but not limited to convening a three-judge panel in accordance with the 18 U.S.C. 3626(a)(3) to determine whether PCJ must be ordered to close if it cannot be operated in such a way as to ensure constitutional conditions of confinement.

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