

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

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

9 Anthony M. Stiegler (SBN 126414)  
10 Mary Kathryn Kelley (SBN 170259)  
Cooley Godward Kronish LLP  
11 4401 Eastgate Mall  
San Diego, CA 92121-1909  
12 Tel: (858) 550-6035

13 *Counsel for Plaintiff*  
[Additional Counsel Appear on Signature Page]

14  
15 **UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

16 ISAAC KIGONDU KINITI, ) *Case No. 3:05-cv-01013-DMS-PCL*  
17 )  
18 Plaintiff, ) **MEMORANDUM OF POINTS AND**  
19 v. ) **AUTHORITIES IN SUPPORT OF**  
20 BARBARA WAGNER, et al., ) **MOTION FOR LEAVE TO AMEND THE**  
21 Defendants. ) **FIRST AMENDED COMPLAINT AND**  
 ) **ADD PARTIES**  
 )

22 **Introduction**

23 This action began in May 2005 with the filing of a *pro se* Complaint by plaintiff Isaac  
24 Kigondu Kiniti. In his original Complaint, as in his First Amended Complaint, Mr. Kiniti alleges  
25 violations of his constitutional rights stemming from, *inter alia*, the severe overcrowding of  
26 immigration detainees at San Diego Correctional Facility (SDCF). *See* Petitioner's [sic] First Am.  
27 Compl., June 29, 2006 (Rec. Doc. 12) at 4-13. Plaintiff Kiniti, by and through his attorneys, now  
28 submits this Memorandum of Points and Authorities in Support of his Motion for Leave to Amend

1 the First Amended Complaint and Add Parties. Plaintiff requests that this Court grant leave to file  
2 the Proposed Second Amended Complaint joining additional plaintiffs and defendants, substituting  
3 as a party the current Warden of SDCF for the former Warden, and deleting several individual  
4 defendants as well as all claims for damages. The Proposed Second Amended Complaint seeks only  
5 classwide injunctive and declaratory relief. In connection with the Proposed Second Amended  
6 Complaint, Kiniti moves separately for an order certifying the following plaintiff class:

7 SDCF Class: *All immigration detainees in ICE custody who are now or in the future will be*  
8 *confined at San Diego Correctional Facility.*

9 For the reasons set forth below, Plaintiff’s Motion for Leave to Amend the First Amended  
10 Complaint and Add Parties should be granted.

11 **Argument**

12 **I. Leave Should be Granted for Plaintiff to File a Second Amended Complaint that**  
13 **Adds Parties.**

14 A. **Background**

15 On May 9, 2005, plaintiff Isaac Kigonde Kiniti filed a *pro se* Complaint against Corrections  
16 Corporation of America, Inc. (CCA) as well as the Warden and several officers at SDCF. On August  
17 4, 2005, the Court reviewed Kiniti’s Complaint pursuant to the screening requirements that apply  
18 to claims proceeding *in forma pauperis* and issued an order dismissing without prejudice various  
19 claims raised in the Complaint, terminating several defendants named in the Complaint, and granting  
20 Kiniti leave to file an amended complaint. *See* Order, Aug. 4, 2005 (Rec. Doc. 3) (hereinafter the  
21 “August 4 Order”). The Court discussed Kiniti’s allegations of overcrowding and triple-celling in  
22 connection with his substantive due process claims, and instructed him to identify as defendants in  
23 an amended complaint those individuals to whom he had complained about the conditions of  
24 confinement in the general population. *Id.* at 18.

25 On June 29, 2006, Kiniti, still acting *pro se*, filed his First Amended Complaint, and the  
26 remaining defendants filed an Answer on October 30, 2006. Plaintiff, now represented by counsel,  
27 requests leave to file a Second Amended Complaint to delete all damages claims and add a claim  
28 for injunctive and declaratory relief on behalf of the putative SDCF Class. In conjunction with this  
motion, plaintiff seeks to join four additional plaintiffs who are currently detained at SDCF and, like

1 him, intend to serve as representative plaintiffs. Plaintiff also seeks to substitute as a party the  
2 current Warden of SDCF, Joe Easterling, for the former Warden, Barbara Wagner, and to join  
3 several new defendants, including Assistant Warden Charles Howard and officials within the  
4 Department of Homeland Security, Immigration and Customs Enforcement (ICE).<sup>1</sup>

5 B. Legal Standard

6 Because the defendants have already filed an Answer in response to plaintiff Kiniti's First  
7 Amended Complaint, plaintiff may only file a Second Amended Complaint "by leave of court or by  
8 written consent of the adverse party." Fed. R. Civ. P. 15(a). However, where, as here, the proposed  
9 amended complaint purports to join additional parties, the Court must also take into consideration  
10 the Federal Rules of Civil Procedure pertaining to joinder. *Desert Empire Bank v. Insurance Co.*  
11 *of North America*, 623 F.2d 1371, 1374 (9th Cir. 1980); *see also 5 Moore's Federal Practice*,  
12 §20.02[2][a] (Matthew Bender, 3d ed.).

13 Rule 15(a) unequivocally states that "leave shall be freely given when justice so requires."  
14 Fed. R. Civ. P. 15(a). The United States Court of Appeals for the Ninth Circuit has repeatedly  
15 affirmed that Rule 15(a)'s policy of favoring amendments is "to be applied with extreme liberality."  
16 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). Moreover, "[t]his  
17 liberality in granting leave to amend is not dependent on whether the amendment will add causes of  
18 action or parties." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). Indeed,  
19 courts show the same degree of liberality when considering requests to add parties under Rule 20(a).  
20 *See League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 558 F.2d 914, 917 (9th Cir.  
21 1977) ("We start with the premise that Rule 20, Fed.Rules Civ.Proc., regarding permissive joinder  
22 is to be construed liberally in order to promote trial convenience and to expedite the final  
23 determination of disputes, thereby preventing multiple lawsuits.").

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24  
25 <sup>1</sup> Plaintiff's Proposed Second Amended Complaint also withdraws plaintiff Kiniti's  
26 claims against Officers Harper, Alvarez, Winters, Payne and Teran, and re-introduces  
27 CCA as a party to this action. CCA was dismissed as a party by the Court in its August  
28 August 4 Order because CCA as an entity could not be sued for damages under *Bivens*. *See*  
August 4 Order at 8 (citing *Correctional Services Corp. v. Malesko*, 534 U.S. 61, 66 n.2  
(2001)). Plaintiff has withdrawn all claims for damages from the Proposed Second  
Amended Complaint and seeks only injunctive and declaratory relief.

1 Courts have discretion to decide whether to grant a party leave to filed an amended complaint  
2 pursuant to Rule 15(a). In exercising this discretion, courts should consider “whether the  
3 amendment of the complaint would cause the opposing part[ies] undue prejudice, is sought in bad  
4 faith, constitutes an exercise in futility, or creates undue delay.” *Ascon Properties, Inc. v. Mobil Oil*  
5 *Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989) (citing *Leighton*, 833 F.2d at 186); *see also Foman v.*  
6 *Davis*, 371 U.S. 178, 182 (1962) (“In the absence of any apparent or declared reason—such as undue  
7 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
8 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the  
9 amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely  
10 given.’”). In the absence of one of these reasons, “denial of leave to amend is an abuse of discretion  
11 and reversible.” *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983).

12 Rule 20(a) establishes two specific requirements for permissive joinder of parties:

13 (1) a right to relief must be asserted by, or against, each plaintiff or  
14 defendant relating to or arising out of the same transaction or  
15 occurrence or series of transactions or occurrences; and (2) some  
question of law or fact common to all parties must arise in the action.

16 *Desert Empire Bank*, 623 F.2d at 1374. Once these requirements are met, courts must also consider  
17 whether permissive joinder of additional parties “will comport with the principles of fundamental  
18 fairness.” *Id.* at 1375. This inquiry is substantially similar to the inquiry courts typically undertake  
19 in deciding whether to grant leave to amend under Rule 15(a). Namely, courts are instructed to  
20 consider possible prejudice to any party as a result of the proposed joinder, any delay by the moving  
21 party in seeking to amend the pleadings, the moving party’s motives in seeking to amend, as well  
22 as “the closeness of the relationship between the new and the old parties, the effect of an amendment  
23 on the court’s jurisdiction, and the new party’s notice of the pending action.” *Id.*

24 C. The Requirements for Joinder are Satisfied.

25 1. *The Requirements for Joinder of Additional Plaintiffs are Met.*

26 Plaintiff Kiniti seeks to add four new plaintiffs to this action: Jose Morales-Vargas, Sylvester  
27 Owino, Hernan Ismael Delgado and Any Castro. All four are currently detained at SDCF, where  
28 they are housed in cells containing three people, despite the fact that the cells were designed to house  
only two. They each have experienced aspects of the various unsafe and intolerable conditions that

1 flow from the serious overcrowding at SDCF.

2 The first prong of the joinder inquiry requires that any right to relief asserted by the putative  
3 plaintiffs “aris[e] out of the same transaction, occurrence, or series of transactions or occurrences.”  
4 Fed. R. Civ. P. 20(a). This “transactional relatedness” requirement refers to similarities in the factual  
5 background of the putative plaintiffs’ claims. *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir.  
6 1997). Here, the putative representative plaintiffs assert a single claim for injunctive and declaratory  
7 relief under the Fifth Amendment to the U.S. Constitution. That claim arises out of the putative  
8 defendants’ policies, practices, acts and omissions with respect to chronic and severe overcrowding  
9 at SDCF.

10 The second prong of the inquiry is whether “any question of law or fact common to all these  
11 persons will arise in the action.” Fed. R. Civ. P. 20(a). Courts typically find this requirement to be  
12 easily satisfied, and generally draw comparisons between this inquiry and the commonality inquiry  
13 that is required under Rule 23(a). *See, e.g., Mosley v. General Motors Corp.*, 497 F.2d 1330, 1334  
14 (8th Cir. 1974). In this case, questions of both law and fact common to all plaintiffs are present, as  
15 is established more fully in plaintiff’s Motion for Class Certification Under the [Proposed] Second  
16 Amended Complaint. Plaintiffs are all detainees at SDCF who have experienced, and are currently  
17 experiencing, the dangers and indignities that stem from the chronic and severe overcrowding of  
18 SDCF. Unlike the misjoined plaintiffs in *Coughlin*, the putative plaintiffs here raise a single legal  
19 claim that requires consideration of a single legal standard. *See Coughlin*, 130 F.3d at 1351. They  
20 allege policies, practices, acts and omissions on the part of the putative defendants that have led to  
21 the overcrowding at SDCF, seek only classwide injunctive and declaratory relief, and request leave  
22 to proceed as representative plaintiffs on behalf of all others similarly situated, which will alleviate  
23 the Court’s need to give each of their claims individualized attention. *Id.* at 1350-51.

24 2. *The Requirements for Joinder of Additional Defendants are Met.*

25 Plaintiff Kiniti also seeks to add the following new defendants to this action: Julie L. Myers,  
26 Assistant Secretary, ICE; John P. Torres, Director, Office of Detention and Removal Operations,  
27 ICE; Ron Smith, Director, San Diego Field Office, ICE; Anthony Cerone, ICE Officer-in-Charge  
28

1 at SDCF; and Charles Howard, Assistant Warden of SDCF.<sup>2</sup>

2 Each of the above individuals is closely tied to the policy and practice of overcrowding  
3 described in plaintiff Kiniti's Complaint and First Amended Complaint and in the Proposed Second  
4 Amended Complaint. The putative representative plaintiffs and all members of the putative SDCF  
5 Class are in the legal custody of ICE and the physical custody of CCA. They assert a right to relief  
6 against each of the putative defendants arising out of the same transaction or series of transactions  
7 that form the basis for joining additional plaintiffs to this action—that transaction or series of  
8 transactions includes the putative defendants' policies, practices, acts and omissions with respect to  
9 chronic and severe overcrowding at SDCF. The putative ICE defendants are each alleged to have  
10 actual knowledge of the chronic overcrowding at SDCF and, as the legal custodians of the SDCF  
11 Class, are charged with, *inter alia*, making decisions regarding whether and where to detain  
12 individuals in ICE custody, providing necessary clothing, medical care, housing and security to  
13 ensure the safety and well-being of such detainees, and reviewing the conditions in which such  
14 individuals live. The putative CCA defendants are the physical custodians of the SDCF Class, and  
15 are directly responsible for, *inter alia*, designing and implementing the facility's policies and  
16 practices pertaining to triple-celling, use of force and segregation, and responding to grievances from  
17 detainees regarding conditions that result in unsafe, degrading and punitive treatment.

18 There also exist questions of law and fact common to the parties in this action. The  
19 defendants are all aware of the conditions in which members of the putative SDCF Class are held.  
20 Defendants all share responsibility for the conditions in which immigration detainees at SDCF are  
21 housed and are required by law to ensure that those conditions are neither punitive, nor in violation  
22 of detainees' rights to due process.

23 D. Granting Plaintiff Leave to Amend to Add Parties is in the Interests of Justice and  
24 Consistent with the Principles of Fundamental Fairness.

25 Once the two requirements for joinder have been met, the Court must decide whether to grant  
26 plaintiff leave to amend the First Amended Complaint to add parties. As discussed above, the  
27 standard for exercising the Court's discretion under Rule 15(a) to grant leave to amend is

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28 <sup>2</sup> As stated previously, plaintiff also seeks to substitute Joe Easterling, Warden of SDCF,  
for Barbara Wagner, former warden, and to re-introduce CCA as a defendant.

1 substantially similar to the standard for exercising the Court’s discretion under Rule 20(a). In both  
2 cases, the Court must ultimately consider, *inter alia*, whether any party will be unduly prejudiced  
3 by the decision to grant leave to amend and add parties, whether there is any evidence of bad faith  
4 on the part of the moving party, and whether granting the motion will result in undue delay or loss  
5 of jurisdiction.

6 In the instant case, none of the factors laid out by the Supreme Court in *Foman* is present.  
7 Although plaintiff Kiniti’s case was originally filed as a *pro se* Complaint in May 2005, the case  
8 remains at a very early pre-trial stage. No discovery has taken place and the Case Management  
9 Conference before the Court has not yet even occurred. In fact, Defendants’ own proposed Case  
10 Management Plan anticipates a deadline of February 23, 2007 for “[a]ny motion to join other parties,  
11 to amend the pleadings, or to file additional pleadings.” Defs.’ Proposed Case Management Plan  
12 and Pl.’s Req. for Extension of Time, II.B. (Rec. Doc. 31). As a result, plaintiff Kiniti cannot be  
13 accused of undue delay, bad faith, or dilatory motive. Moreover, none of the putative defendants  
14 would be prejudiced by the Court’s decision to grant plaintiff leave to amend and add parties, and  
15 the amendment is by no means futile. Rather, the class action claim raised in the Proposed Second  
16 Amended Complaint regarding the putative defendants’ unconstitutional policies, practices, acts and  
17 omissions leading to chronic and severe overcrowding is directly related to the claims raised by  
18 plaintiff Kiniti. Because those claims arise from a policy and practice that affects all of the  
19 immigration detainees at SDCF, allowing amendment of the First Amended Complaint to include  
20 class claims on that issue serves judicial economy and would benefit defendants, who would  
21 otherwise be subjected to multiple, parallel challenges to the operation of the very same policy and  
22 practice.

23 Moreover, from the time plaintiff filed his original Complaint in this action until the present,  
24 he has appeared *pro se*. He has twice requested and been denied appointment of counsel, and only  
25 recently obtained counsel. Although plaintiff has argued admirably on his own behalf to date, it is  
26 in the interest of justice and consistent with the principles of fundamental fairness that plaintiff be  
27 permitted to file a Second Amended Complaint with the assistance of counsel. Permitting plaintiff  
28 to file a Second Amended Complaint will permit the Court to consider more clearly the factual and

1 legal issues before it, and will further the administration of justice.

2 **Conclusion**

3 For the reasons set forth above, Plaintiff's Motion for Leave to Amend the First Amended  
4 Complaint and Add Parties should be granted.

5  
6 Dated: January 24, 2007

Respectfully submitted,

7 By: s/ David Blair-Loy

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

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

19 Judy Rabinovitz (*pro hac vice* pending)  
20 American Civil Liberties Union Foundation  
Immigrants' Rights Project  
125 Broad Street, 18<sup>th</sup> Floor  
21 New York, NY 10004  
Tel.: (212) 549-2618  
22 Fax: (212) 549-2654  
Email: [jrabinovitz@aclu.org](mailto:jrabinovitz@aclu.org)

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

27  
28 Anthony M. Stiegler (SBN 126414)  
Mary Kathryn Kelley (SBN 170259)  
Cooley Godward Kronish LLP

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4401 Eastgate Mall  
San Diego, CA 92121-1909  
Tel: (858) 550-6035  
Fax: (858) 550-6420  
Email: [astiegler@cooley.com](mailto:astiegler@cooley.com)

*Counsel for Plaintiff*