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3:05-CV-01013 KINITI V. WAGNER
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UNITED STATES DISTRICT COURT
For The Southern District Of California

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Isaac Kigonde Kiniti)
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Petitioner,)
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v.)
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Barbara Wagner,)
ET ALL,)
Respondents.)
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)
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BY: *R*)
)
CASE NO: 05cv 1013- DMS(PLC))
)
)
PETITIONER'S FIRST
AMENDED COMPLAINT

INTRODUCTION

On May 9, 2005, Plaintiff Isaac Kigonde Kiniti, proceeding pro se, filed a civil rights complaint against the Corrections corporation of America [CCA] and several CCA employees, alleging various causes of action under 42 U.S.C. § 1983.

On August 4, 2005, this Court issued an order dismissing Plaintiff's claims against Defendants without prejudice pursuant to 28 U.S.C. § 1915(e)(2), with the exception of his Fifth Amendment and Retaliation claims against certain Defendants. In that Order, the Court granted plaintiff forty-five days leave to file a First Amended Complaint.

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On September 19, 2005 Plaintiff filed a motion for extension of time to file a First Amended Complaint. On September 23, 2005, this Court issued an Order granting Plaintiff's request, which allowed him to file an amended complaint on or before November 22, 2005. Plaintiff, failed to file a first amended complaint with the Court.

On May 10, 2006, the Court issued a notice of hearing for an Order to Show Cause [OSC] as to why Plaintiff's Complaint should not be dismissed pursuant to local rule 41.1 and Fed. R. Civ. P.4(m). On May 19, 2006 Plaintiff filed a "Motion Requesting Court to Reconsider its Decision to Dismiss Plaintiff's Complaint."

In that motion, Plaintiff indicated he had not been able to file a First Amended complaint due to the lack of access to any relevant legal materials and the lack of access to reasonable time in the law library at the detention facility.

Based on review of Plaintiff's motion, and upon good cause showing, the OSC hearing scheduled for May 26, 2006 was vacated and reset for Friday, August 4, 2006. Plaintiff was advised that in order to avoid dismissal of his complaint, he must file a First Amended Complaint with the Court no later than July 7, 2006.

Thus this instant First Amended Complaint.

AMENDED COMPLAINT

On 11/3/04 I Isaac K. Kiniti the plaintiff was admitted to the San Diego Correctional Facility [SDCF] as a temporary room and board civil detainee.

The facility houses various Federal inmates and INS detainees.

The INS contracts this duties to the Corrections Corporation of America [hereafter 'CCA'] who are thus in charge of the daily running of the facility.

On 11/4/04 as I was leaving my cell to go eat the officer in charge of the unit instructed me to go back inside my cell and shut the door.

Thinking this was normal procedure I complied with the order. The result was that I did not get to eat my meal. I then wrote a grievance on this officer. The unit manager Ms. Straussberg said she would talk to the officer to ensure that all detainees are fed, so in good faith I dropped this grievance.

The following day I received a cellmate whom we were not compatible at all due to the fact that the detainee spoke no English at all and I do not speak Spanish furthermore the detainee had a practice of throwing used toilet paper with excrement in the trash can in the cell instead of flushing the used toilet paper. Due to the lack of communication and to avoid confrontation I could not inform this detainee that his behavior was not only gross but also a health hazard and it also made living in the cell unbearable because of the smell.

This was made worse by the fact that we were on lockdown basis for at least 22 hours a day. I called officer Morino and informed her about the situation.

The officer instead of addressing my concerns was very rude as she told me that I was not in a hotel and should get used to it. I then filed a grievance on this officer and the lack of a working classification system which would ensure that cell mates were compatible to minimize conflicts due to the nature of close quarter living and the fact that detainees were on lockdown 22hours a day. The unit manager Ms. Straussberg said she would retrain officer Morino but refused to address the classification issue to ensure cellmate compatibility. As she said CCA policy was not grievable.

CCA is a for profit private run company. The contract between INS and CCA is that CCA is contracted and paid by INS to house INS detainees like myself.

Therefore the more detainees they house the more profit the company makes.

As a result CCA ignored minimum standards and accepted more detainees than it could adequately house in an effort to increase and maximize its profits.

As per CCA policy and under CCA management SDCF housed three detainees in a tiny cell designed to house only two detainees.

The result was that there was no room at all in the cell for detainees to move about as the detainee assigned to sleep on the floor took any available floor space.

Thus detainee movement in the cells was non-existent. This resulted in detainees being forced to lay on their beds for long periods of time resulting in bed sores and muscle atrophy as there was no space in the overcrowded cell where a detainee could do push ups or run on the spot. The recreational exercise period provided was not meaningful as over sixty detainees were cramped into a fenced concrete space measuring about 30 by 25 ft deprived of any equipment except for a basketball, which detainees could not play due to the sheer volume of number of individual present in that tiny space.

Due to the lack of space in the tiny cell, the detainee assigned to sleep on the floor was forced to sleep with his head next to the toilet bowl thus he was constantly urinated on and awaked by the flushing sound whenever anyone used the toilet at night or during the day when he lay on his bed as there was no space to move around in the tiny cell. Furthermore, due to the proximity of the toilet bowl to the head of the detainee assigned as the floor sleeper the other detainees were forced to relieve themselves next to the floor sleeper's head, which was next to the toilet bowl.

This problem was compounded by the fact the detainees were on lockdown status for sixteen to twenty two hours a day. Thus, detainees were routinely degraded and humiliated as they were forced to relieve themselves in open view and their

cellmates were forced to watch and to endure the smell coming from the toilet as their cellmates relieved themselves in this tiny cell.

These conditions offend evolving standards of decency, as they constitute to psychological torture, which amounted to punishment.

Due to the overcrowding detainees had to wait for extended periods of time to see a doctor due to the number of detainees waiting to see the doctor. This so taxed the medical services that only the most serious cases got any medical attention at all whilst other serious cases were dismissed as non life threatening and left to cure themselves with only Tylenol being "prescribed".

While I was housed at the SDCF I was assigned to sleep on the floor and endured all the above hardships and deprivations.

Due to overcrowding CCA basically assigned detainees to any available cell without classifying them in regard to cellmate compatibility considerations.

Thus mentally ill patients and some extremely violent detainees were always housed in general population and gang members were also housed in the same housing units and cells as non-gang members.

This resulted in rapes, assaults, and psychological stress of detainees.

By housing non gang member detainees like myself with violent and predaroty gang member detainees in the same units and cells CCA knew but disregarded the obvious risks to the non-gang member detainees safety.

This resulted in numerous incidents of violence as detainees of various nationalities and different affiliations were housed together without being classified to ensure cellmate compatibility, therefore the risk and acts of serious violence were obvious as they were pervasive, well known, and easily determinable by detention officials. Nevertheless, CCA officials disregarded these obvious risks to detainees as they continued to pack their already overcrowded detention facility with more detainees in order to increase their profits.

A fact that can be established should the court grant plaintiff discovery as these incidents of pervasive violence of detainees in cells is documented.

The failure to classify, at least into separate categories of persons who pose grave risks to particular groups of detainees and the subsequent housing of these gang affiliated violent detainees in general population is deliberate indifference as it constituted a failure to protect.

Furthermore, when a detainee approached CCA management and requested to be moved to a different cell due to the fact that he was incompatible with his cellmates, CCA policy was to out rightly refuse and ignore any such cell changes.

CCA policy therefore ensured that no affirmative action be taken to prevent imminent harm. When the individual detainee persisted in his request for a cell change he was quickly sent to segregation. This tactic was employed not for protective custody purposes, as the said detainee in all instances always had

another individual in a different cell within the same unit with whom he was compatible with, but as an intimidation technique meant to discourage any detainee from insisting that he needed a cell change. Since he would only end up in segregation, where the conditions frightened many detainees due to their harshness. The detainee-victims were sent to segregation for requesting cell changes, even though they posed no potential danger to institutional authority and only sought services that the institution should have had an interest in providing. This chronic overcrowding also meant that detainees could not be fed at the same time as they exceeded the maximum seating capacity available. This resulted in the management having to feed detainees in two distinct different shifts. This meant that detainees eating in the second shift were always fed cold meals. Furthermore in an attempt to spend as little as possible on detainees in order to maximize on profits CCA served detainees inadequate and nutritionally deficient meals which posed a serious risk to detainees health. I lost almost 15 lbs in three weeks after being admitted at the SDCF due to this poor diet. Almost 250 detainees went on hunger strike in a vain attempt to have this issue addressed.

CCA was aware that the meals they served were inadequate and nutritionally unbalanced but ignored this issue. This can be proved by the fact that during inspections in order to hoodwink the inspectors CCA served detainees a very

different menu consisting of hot, adequate and nutritious meals. However, this lasted only for the duration of the inspections. Had CCA been serving detainees adequate and nutritionally balanced meals they would have had no need to radically change their menu during inspections. This was done for purposes of deception. Furthermore, CCA officers went out of their way to ensure that detainees did not get a chance to talk to the inspectors. During the inspections CCA would lock down detainees on any pretext and also verbally order that no detainee is to talk to an inspector and failure to do so would result in segregation. CCA had a well-established policy of putting entire housing units on lockdown for a considerable amount of time, on the pretext that a single identified detainee had disrespected staff or refused to obey an order. This automatically resulted in the identified detainee being assaulted by other detainees after the lockdown was lifted for having caused them to be put on lockdown. Thus CCA officers forced detainees to comply with their orders under threats that they would lockdown the whole facility and inform the other detainees that the reason for the lockdown was because of the identified detainees un-cooperation or misconduct. This practice was widespread and common. The officers did it with the specific intent that should a detainee refuse to comply then other detainees would assault him and force him to comply in order not to be placed on lock down. Therefore the officers

knowingly and intentionally put detainees at serious risk of serious injury by other detainees for failure to comply with their orders.

I wrote grievances about these conditions, and the said grievances should be on file with CCA and would be available should the court grant plaintiff discovery.

I also wrote the office of the Inspector General and a Mr. Ndaula from the Immigrants Rights Project detailing the above.

CCA was well aware of the chronic overcrowding at their detention center but due to the profit motive behind it they ignored and persisted in housing detainees in a severely overcrowded facility. Thus CCA was deliberately indifferent to the problems I and other detainees endured due to the overcrowding.

It was not uncommon at all to find a severely mentally ill detainee housed in the general population. Furthermore, gang members and non-gang members were housed together in the same units and same overcrowded cells.

Due to overcrowding detainees were forced to compete for scarce resources such as seats on the rare occasions when the day room was open. This resulted in hostility and conflict that led to violence amongst detainees.

Detainees were also in confrontation due to the lack of space to move about in their cells due to the overcrowded cells, thus the overcrowding constituted a constant threat of violence, as it was only a matter of time before violence erupted.

These facts can be fully established should the court grant petitioner discovery.

Had CCA wanted to alleviate the overcrowding problem they could have but due to the profit motive they chose to ignore it. This fact is proven by the fact that when the Inspector General came to investigate CCA due to the numerous complaints his office had received about CCA. CCA immediately stopped housing three detainees to a cell. The court should grant plaintiff discovery so that he can present the report the Inspector General compiled when he investigated CCA, which detailed many violations, which CCA was aware of but ignored, and thus it corroborates plaintiff's claims of deliberate indifference by CCA. The resulting investigation by the Inspector General resulted in the warden being terminated.

I wrote grievances about the above inhumane conditions and circumstances that I and all the other detainees were being subjected to See Exhibit A on the original Complaint. Conditions that were well known to CCA management and staff.

Should the Court grant discovery all the above-mentioned grievances would be on file at CCA.

The unit manager Ms. Harper called me into her office and advised me to refrain from writing any more grievances, she also informed me once again that CCA policy was not grievable and any grievance I wrote about CCA policy was not going to be addressed.

Thus on the above issue I exhausted my administrative remedies as there were no administrative remedies available for grievencing CCA policy.

Harper refused to address and dismissed the grievances I filed about the above-mentioned conditions due to the fact that CCA policy was not grievable.

Numerous detainees then warned me against writing grievances as CCA had an established policy of retaliating against detainees who filed grievances by placing them in the segregation unit for extended periods of time using the slightest of excuses as reason for placing these detainees' in segregation where the living conditions were very harsh. Detainees were on 24 hr lockdown with recreation provided in cold temperatures at six o'clock in the morning for only one hour a day in a caged box devoid of equipment and measuring roughly 8 by 12 ft. This was done to discourage detainees from going outside as CCA did not provide any winter clothing thus detainees were forced to endure the cold wind outside. CCA was well aware of this fact but in order to maximize their profits they sold winter clothing in their commissary but the detainees who could not afford to buy their own sweaters were forced to endure the cold as none were provided by CCA.

The grievance system was my only option of addressing issues in regards to my detention, so I tried to use this system to try and resolve issues regarding my detention.

Though I have no constitutional right to a grievance system I have a right to seek redress about the conditions of confinement in a court of law. However, no court of law would address my issues until I first exhausted any available administrative

remedies, which in this case was the grievance system. Thus the grievance system is a step that is required if not mandated for one to exhaust before one can petition the government for redress concerning an issue. Therefore retaliation for using the grievance system is in actuality retaliation for attempting to seek redress in a court of law. As the grievance system is the first step in presenting an issue before the court. Furthermore, both INS and CCA policy out rightly forbid retaliation in any form for using the grievance system in an effort to address issues.

On 11/24/04 during the 4.00pm count. Officer Teran who was the unit officer was involved in an argument with a white Caucasian detainee. Officer Teran ordered the detainee to get into his cell so that he could perform the mandatory institutional count but the said detainee refused to comply, forcing the officer to place him in a security holding cell for the duration of the count as he was physically obstructing the officer from performing count.

During count officer Teran approached my cell, I was sleeping on the floor due to the chronic overcrowding. The officer ordered me and my two cellmates to approach the door. As I approached the door I had my headphones on listening to my radio and I was involved in a conversation with my cellmates. Officer Teran very rudely asked me if I was talking to him, as a sign of respect I removed my headphones and informed him that I was having a private conversation with my cellmates that had nothing to do with him. Teran continued being rude and told me

that I had better not be talking to him “or else”. He conveyed this message with an implied threat. On noticing the threat I told officer Teran that I was not scared of his threats and he was welcome to open the door and carry out his threat. Teran then went ahead with the count. After he was done with count he called Sgt. Santizo who came and asked me to accompany him outside. I complied with the order. When I got outside I explained to the Sgt what had happened. I explained to Santizo that when Teran told me to approach the door I took longer than Teran wanted, but my delay was due to the overcrowded cell where three detainees are crammed into one tiny cell with the detainee assigned to sleep on the floor taking up all the space that was available in the cell to move about. Therefore I had to wait for the other two detainees to go to the door then wait for them to get back on their bunks before I could find space to move towards the door as Teran had requested.

I further explained to Santizo that Teran could clearly see me as I was not obstructed by anything and he was standing barely three feet from where I was laying down. Therefore, Teran could count me just as he counts other detainees who are using the restroom during count as the officer does not demand them to stop using the restroom to come to the door nor does he ask his other cellmates to come to the door but counts everyone in the cell at their respective positions.

Sgt. Santizo then listened to Teran's side of the story and after that he concluded that the incident was a minor issue as it was a result of miscommunication.

Sgt. Santizo then dismissed the whole incident as a minor incident and allowed me to return to my cell.

However, just as I left to return to my cell counselor Alvarez and Ms. Harper arrived at the scene.

Without even knowing what was going on Ms Harper immediately ordered me to face the wall and immediately began to harshly question me on what had taken place. Every time I turned to look at Ms Harper so that I could answer her questions she screamed at me not to look at her and to look at the wall. Her actions were not done for any security reasons, as I was not shouting or violent and taking into consideration my diminutive stature of 5.5 feet and 127 pounds and the fact that there were four officers present. Ms. Harper's actions were done with the sole intent of harassing and intimidating me. Ms Harper and counselor Alvarez then ordered that I should be taken to the segregation unit. Whilst the other detainee who was Caucasian and who had refused to go to his cell for count was told by Ms. Harper that he could return to his cell. This obviously was a case of selective enforcement and racially motivated due to the fact that I am black. The other Caucasian detainee was in the same situation as I was in, for both of us had allegedly disrupted count though his offence was actually more serious than mine

as the officer could not perform count until he first had the detainee secured in a security holding cell. I on the other hand, my incident was minor in nature as I was securely locked in my assigned cell and thus was not in a position to physically interfere with the officer performing count. This disparity in adverse action against me compared to no adverse action having been taken at all against the Caucasian detainee who was similarly situated with me was racially motivated.

Under the uniform disciplinary procedures, I had a created liberty interest in remaining free from disciplinary segregation like the Caucasian detainee with whom I was similarly situated with and who was not placed in segregation.

Both INS and the detainee handbook mandate that segregation not be imposed unless certain conditions are present. In this case, none of the conditions required were present to warrant segregation.

For Harper and Alvarez then to order my Segregation without a prior hearing nor affording me an opportunity to refute any claims against me was a violation of due process, as the postponement of the procedural protections was not justified by apprehended emergency conditions. As I was then confined in segregation for about nine days without a hearing pending the disciplinary proceeding.

Furthermore, INS standards mandate that only detainees who are a serious security risk to themselves or the institution should be placed in segregation pending investigation into their alleged conduct.

Every other detainee who commits a forbidden act is to be charged with the offense tried before a hearing panel and only after a hearing panel finds him guilty can he be sentenced to segregation by the panel to a period predetermined in the detainee handbook according to the offense charged.

Harper and Alvarez were in violation of due process and INS standards when they ordered me placed in segregation before affording me a hearing before a hearing panel to determine my guilt and taking into consideration that I was not under investigation for any alleged offense. Moreover, neither was I a security risk to myself nor the institution for "failing to stand count".

My alleged offense of "failure to stand count" did not manifest sufficient dangerousness to justify a nine-day pre hearing detention in the segregation unit.

There have been numerous incidents of detainees refusing to stand count at the facility. With the exception of myself none of these other numerous detainees were ever placed in segregation for failure to stand count. Therefore, placing me in administrative segregation for failure to stand count even before a hearing panel found me guilty was not done for any administrative or security reasons but was done purposely as punishment for not obeying Harper's order to stop writing grievances.

Furthermore, due to the chronic overcrowding in the cell most officers just count detainees where they are, as requiring them to come to the door is not only time

consuming but unnecessary as all the detainees are in clear view on their beds.

Thus on those rare instances that officers have told me to approach and stand for count I have on numerous occasions refused to stand for count due to the lack of standing space in the crowded cells. All these incidents I and numerous other detainees have reused to stand count were never even considered as infractions as nobody was ever charged with an offense nor even counseled for disobeying an order from an officer. All these incidents were ignored by the officers as they knew that it was not only unreasonable but also time wasting to ask three detainees to crowd at the door of the cell for count. This simple task was made impossible due to the limited space in the cell available for detainee movements as the detainee assigned to sleep on the floor took up all the floor space.

That is why after Sgt. Santizo heard both sides of the incident he determined that it was a minor incident involving a lack of communication and sent me back to my housing unit. By Harper and Alvarez then arriving at the scene and overriding Santizo's decision and ordering that I should be placed in segregation proves that I was not placed in segregation for merely refusing to stand count as had that been the reason Santizo could have ordered me placed in segregation which he did not. By Santizo an experienced correctional SGT characterizing this incident as minor and Harper using the same incident to order me placed in segregation shows that Harper used this incident only as an excuse for having me placed in segregation.

The real reason being that I had refused to obey Harper's earlier order to stop writing grievances.

This incident did not warrant my placement in segregation before I saw a hearing panel to determine my guilt, a fact that Santizo was aware of when he sent me back to my housing unit.

Some detainees have committed various more serious offenses than failing to stand count in the facility and in each incident these detainees were first charged with the alleged offense taken before a hearing panel before they were placed in administrative segregation. This is a fact that can be easily established should the Court grant plaintiff discovery.

For Harper and Alvarez to then order for me to be placed in segregation for a minor infraction. Which no other detainee has nor would have been sent to segregation for. As numerous detainees have refused to stand count on a regular basis and non has been sent to segregation, and doing this without even the benefit of a hearing panel to determine my guilt or innocence, can only be reconciled to the fact that this incident was only a pretext for placing me in administrative segregation. The real reason being retaliation for my refusal to obey Harper when she ordered that I should stop writing grievances. This coupled with the racial and selective punishment employed against detainees of African ethnicity at CCA. Other detainees of color know Ms Harper's racial attitude and they can verify that

she has referred to other black detainees as monkeys on various occasions.

Furthermore, disciplinary reports and sanctions imposed would prove that detainees of African origin are disproportionately punished and receive harsher sanctions than detainees of other origins.

Ms. Harper did not follow the procedures set forth by INS standards and the detainee handbook before imposing her sanctions on me.

Segregation represents a major change in the conditions of detention and is normally imposed only when it is claimed and proved that there has been a major act of misconduct.

By her arbitrary and capricious actions towards me Harper denied me the equal protection of the law and due process of the law. Furthermore, she was in violation for retaliating against me by placing me in segregation as a pretext for exercising my first amendment rights of freedom of speech and the right to seek redress in a court of law.

Filing a grievance is a required step in seeking any redress before a court of law.

As one has to exhaust any administrative remedies available before the court can address his issue. Thus was I planning on seeking redress from the courts I had to first exhaust any administrative remedies available, in this case the grievance system.

Furthermore, the detainee handbook outrightly prohibits retaliation in any way, shape or form to detainees for writing grievances in an attempt to raise an issue concerning their detention.

On arrival at the segregation unit the officers proceeded to deprive me of my clothes. I was then placed in a cell where the air conditioning was turned on at a maximum without clothes or a blanket. Taking into consideration that the temperatures outside was about 30 degrees the cell was freezing. I was fed in this condition and it was not until an hour later was I given clothes and a blanket.

I wrote a grievance about this.

Through out my stay in segregations the temperatures in the cell were extremely cold making sleeping impossible in that cold. All the detainees who were housed in that unit during this period all complained about the cold but their concerns and requests for an extra blanket were ignored.

I requested Harper and Alvarez to authorize me to receive an extra blanket to which they flatly refused though as Unit managers they had the authority to do so.

I then approached the facility doctor and psychiatrist requesting them to order that I be issued an extra blanket due to the negative effect the extremely low temperatures were having on my health. In the alternative I requested that the management reduce the setting on the air conditioning, as the single paper-thin blanket provided was no protection against the cold in those temperatures.

In addition, due to the cold it was impossible to sleep thus I was also suffering from sleep deprivation. This situation was worsened by the fact that the cells were constantly illuminated for 24 hrs a day making sleep difficult.

Both the facility Doctor and Psychiatrist informed me that they were aware of this problem as other detainees had complained about the same issue to them but it was a CCA policy and CCA was well aware of this issue but CCA policy was that no detainee was to be issued an extra blanket and CCA policy was not grievable.

In desperation I attempted to block the vent with toilet paper in an effort to reduce the amount of cold air blowing from the vent.

On noticing that I had put toilet paper on the vent, officers ordered me to take down the toilet paper from the vent. I informed the officers that it was extremely cold in the cell and I would gladly take down the toilet paper if they reduced the amount of cold air coming out of the vent or if I was issued another blanket.

The officer informed me again that CCA was aware of the issue but it was CCA policy to issue detainees with only one blanket and there was nothing he could do about it.

I was then issued a disciplinary report for covering the vent in an attempt to keep the cold air out of my cell. See Exhibit B in the original Complaint.

As a result of these very cold temperatures I had to stay folded up almost in half in an attempt to conserve body heat. I assumed this fatal position even during the day

as the temperatures were extremely low during the day as well as at night, as a result I developed serious back pains which persist to this day. I also developed a nasty cough and cold thus my health was negatively affected.

I had a sleeping disorder for which I was under medication for at that time.

These conditions further worsened my conditions resulting in a complete sleep deprivation condition, which in turn caused depression.

CCA is well aware that the temperatures in the segregation unit are extremely low and purposely use these very low temperatures as a form of punishment.

On numerous occasions officers have threatened detainees who were misbehaving that they were going to place them in segregation to "cool you off" Which was a direct reference to the extremely low temperatures in segregation. Furthermore, I wrote grievances about these extremely cold temperatures and the lack of adequate clothing to protect against these cold temperatures but my concerns were all ignored.

I was left in segregation for almost ten days before having a hearing to determine my guilt. When I pointed this fact out to Officer Payne. He informed me that at CCA they do what they want and they don't have to follow the regulations set out in the detainee handbook.

When I went for my disciplinary hearing I found Ms. Harper and Counselor Alvarez already in the office talking and laughing with the hearing officer Ms.

Winters. On noticing me the conversation and laughter abruptly ended.

When my hearing began I requested that my witnesses be called to testify on my behalf, as their testimony would have corroborated my story, which was my sole defense.

My witnesses consisted of my two cellmates and the six detainees in the cells next to my cell on the day of the incident. Due to the fact that all these detainees were physically present during the alleged incident and their testimony would have corroborated my story and directly contradicted Teran's version of events.

Ms. Winters flatly refused to call any of my witnesses. Ms. Winters' refusal to call my witnesses was not due to any administrative or security reasons. As the hearing was held in Harper's office, which was adjacent to the housing unit, and I could literally see my witnesses waving at me from the housing unit. Therefore there was no reason why Winters could not call my witnesses. When I asked her why she refused to call my witnesses Winters stated that as the hearing officer it was up to her and not me to decide on whether or not she would listen to any witness testimony and she chooses not to listen to any witness testimony in this case.

I then requested Winters to perform an investigation and interview my witnesses to determine the truthfulness of the charges. Winters responded by reminding me

once again that as hearing officer she was to conduct the hearing as she chose and not as I requested.

Ms. Winters was aware that the only evidence against me was the statements made by officer Teran stating that I refused to stand count and I was insolent towards him. Ms. Winters was aware that my eight witnesses who included my two cellmates and the detainees in the two adjacent cells next to mine who were present during the confrontation between Teran and myself would directly contradict Teran's statements thus seriously raising doubts about the charges against me. These witnesses testimony was relevant and material as it directly contradicted Teran's statements, which were the sole evidence against me.

Furthermore, these witnesses testimony was material as the witnesses had first hand knowledge of the incident, as they were physically present when the incident happened and my witnesses were critical in establishing that the offense I was charged with never occurred.

I also requested that Teran whom did not testify before the panel but only submitted the charges and his statement stating his version of events be called so that I could question him as to the truthfulness of his allegations. To this Winters replied that I was not in court. Thus winters blindly accepted Teran's unchallenged and uncorroborated hearsay statements as the sole evidence establishing my guilt. Winters failed to consider my evidence and this was a denial of due process.

Ms. Winters' refusal to summon my witnesses was a blatant attempt to deny me any evidence establishing my innocence. And in the absence of which, it was left to my word against that of Teran and Winters naturally said she believed Teran's version of events, even though she refused to listen to any of my witnesses who were available and whom she knew would have corroborated my version of events and contradict Teran's statements. Winters denied me the right to be heard as she denied me the right to present mitigating testimony from my witnesses.

Officer Teran submitted an affidavit that contained statements he knew to be false or should have known were false had he not recklessly disregarded the truth. Teran claimed that I completely refused to stand for count though I was talking to Teran whilst standing at the door of the cell the whole time.

As opposed to Teran's version I was standing near the door and thus I stood count, Teran's charges were therefore false, and he knew they were false when he wrote them.

Teran's action was vindictive, as officer Teran and myself had been involved in prior confrontation on a different day. Officer Teran had ordered me not to stand near the stairwell whilst watching TV. I told Teran that I was standing there as all seats were taken and due to the serious overcrowding there was nowhere else left for me to stand without obstructing other detainees watching TV.

Teran still insisted that I stand elsewhere, I then requested Teran to show me an empty space where I could stand and watch TV. Without obstructing other detainees. Teran was unable to show me any empty space and so I refused to move from where I was.

Ms. Winters denied me the right to call witnesses who were present and who could have testified on my behalf and proved that Teran's charges and statements were false. Thus in effect she denied me the right to present my evidence and put up a defense on my behalf.

According to the detainees handbook the infraction I had been charged with "interfering with an officer during count" is a mid category offence which carries a maximum of 3 days in segregation. However, Ms. Winters excessively sentenced me to 36 days in segregation for this minor offence. This was in violation of the sentencing guidelines outlined in the detainee handbook. INS standards are also clear that a detainee cannot be sentenced arbitrarily to a period longer than the sentencing guidelines outlined in the detainee handbook for the specific offense charged. Thus, Winters was in violation of the very standards she was supposed to be upholding. This offense being my first ever charge for a rules violation at SDCF, the punishment imposed was disproportionate to the offense charged. The sanctions imposed by Winters was wantonly cruel as it was excessive and violated due process.

Furthermore, Winters exclusive reliance on a written misbehavior report that I failed to stand up for count, a report prepared by a corrections officer does not constitute substantial evidence warranting my placement in segregation for 36 days. Winters, capriciously and arbitrarily punished me by sentencing me to segregation for a period longer than that permitted by the sentencing guidelines in the detainee handbook. This was done as retaliation for my perceived disobedience of refusing to obey Harper's orders to stop writing grievances.

Harper was the one who had initiated the charges against me when she overrode Sgt Santizo's decision to allow me to return to my housing unit and instead ordered that I be placed in segregation thereby initiating the charges.

Harper was Winters's supervisor and was present during the said sham hearing to ensure that I was punished, as she had set out to do from the very beginning.

Winters was aware that Harper and Alvarez were the ones who had ordered me placed in segregation thus as an impartial hearing officer she should not have allowed them to participate as panel members. Harper and Alvarez were present through out the whole proceedings as panel members. They were not there as witnesses. Their presence with Winters's approval and the very friendly conversation they were having just prior to the hearing. A conversation that abruptly ended when I entered the room is circumstantial evidence of Winters and the hearing panel's unimpartility and a conspiracy between the three to find me

guilty on a sham hearing based on bogus charges and to then excessively punish me as was the case.

Ms. Harper who had ordered that I be placed in segregation before any charges were filed against me and before a hearing panel had found me guilty of any alleged conduct was present through out the whole hearing and acted as a member of the hearing panel.

Harper's presence was not that of a witness, as she did not testify to anything.

Rather her presence as a panel member was to ensure that I was found guilty to justify her illegal action of ordering me placed in segregation for a minor infraction, which did not warrant segregation before a hearing panel had found me guilty of any charges. As a senior corrections officer with extensive training, Harper was or should have been aware that I had a right to be free from punishment without a prior adjudication of guilt. Moreover, the hearing should have been held prior to rather than after, my unjustified placement in segregation. Taking into consideration that Harper was Winters' superior and the open hostility Winters exhibited towards me from the very beginning of the hearing is circumstantial evidence that Harper, Winters and Alvarez had conspired to find me guilty and to excessively punish me even before the hearing was held. This is further reinforced by the fact that Harper, Winters, and Alvarez were all in Harper's office in deep conversation just before I arrived for the hearing in the

same office. Immediately upon my arrival the officers abruptly finished their conversation and begun to conduct the hearing in a very hostile manner.

The said hearing did not take place until after almost 10 days after I had been placed in segregation, which was in violation of INS policy.

Therefore, Harper and Alavarez's presence in the hearing not as witnesses but as panel members with their junior hearing officer Ms. Winters was clearly a violation of my due process rights to an administrative fact finder free from severe personal conflicts of interest as winters could not find me innocent in opposition to her superiors.

When I pointed out that Harper and Alvarez should not be in the panel, Winters informed me that she and not me made the rules of who was to be in the panel.

The result of this conspiracy was that Ms winters went over the limit established in the sentencing guidelines. When I pointed out to Winters that the sanctions imposed exceeded those permitted by the detainee handbook, Winters replied that as a hearing officer in CCA she was at liberty to impose whatever sentence she pleased and she was going to make sure that I never again disrespected another officer. She also stated that I could appeal her decision to anybody but it would be a waste of time as at CCA the hearing officer's verdict was final. Thus, it was clear that Winters's sanctions which exceeded the

maximum sentence according to the guidelines were arbitrarily imposed as retaliation and punishment for my perceived disrespect of her fellow officers.

In addition, to the grievances I had filed even after being told not to stop by her senior officer Ms. Harper who was one of the hearing panel members.

According to Winters I had disrespected her senior officer by not following her orders and refrain from filing any more grievances.

Officer Teran maliciously and knowingly filed false charges against me, but even with the officer's dishonest statements and a finding of guilt, my 'infraction' did not warrant being sent to the segregation unit for more time than was authorized by the detainee hand book sentencing guidelines.

At SDCF there is no difference between segregation and isolation. Once one is put in segregation he is completely in isolation as he is locked down 24 hours a day in a cell by himself with the only human contact being when the officers bring him his meals which they pass to him through a hole in the door. The detainee in segregation is housed alone and has no contact with any other detainee whatsoever.

In segregation I faced "grievous loss" as I was on lockdown for twenty-four hours a day in solitary confinement thus with no human contact or communication.

My custody status was elevated so that I could not use the law library.

As a civil detainee I had a protected liberty interest in remaining in general population, which required that I be accorded due process before the interest was

infringed by placing me in segregation. As an INS civil detainee I receive a custody review every 60 days to determine if I should be released. Thus my placement in segregation could have a negative adverse effect on my chances of release when my custody review comes up.

Furthermore my hearing was not conducted within the time prescribed by the regulations. When I informed winters of this fact she once again reminded me that at CCA "we do what we want and we make the rule not you" so she proceeded with the hearing regardless. All these were a violation of my due process rights.

Ms. Winters conspired with Ms. Harper and deprived me off the means to present any evidence, as they refused to call my witnesses for no reason and taking into consideration that the hearing was held in Ms. Harper's office which is directly opposite to the housing unit and i could see my witnesses walking about in the housing unit during the hearing. Ms. Winters used this disciplinary proceeding to excessively punish me but the real reason for the excessive, capricious and arbitrary punishment was the numerous grievances I had filed. All this was done as retaliation for my filing grievances thus violating my First amendment rights. What proves this is the fact that before I started filling grievances I had refused to stand count and thus 'interfered with an officer during count'. I had thus been accused of committing the same infraction, but on that occasion the infraction was not serious enough to even warrant a hearing nor a warning nor counseling leave

alone being sent to segregation. But after being warned by Ms. Harper about filling grievances, a warning which I did not heed. The same infraction was now treated as a major offense with excessive punishment. Thus, this action was taken as retaliation and with the intent of discouraging me and other detainees from filling grievances.

Furthermore due to the fact that I typed my grievances Ms. Harper had told me that I couldn't use the library to type my grievances as they were not considered legal work and only legal work could be typed in the library. I had informed Ms. Harper that grievances were legal work and as such I would continue a typing them in the library. Thus by placing me in administrative segregation Ms. Harper's intent was also to stop me from typing grievances as detainees in administrative segregation have no physical access to the library as per C.C.A. policy.

After the hearing, I was not provided any written statement by the hearing panel as to the evidence they relied on and the reasons for their disciplinary action. I was transferred to another facility before being issued the said statements, which would have then afforded me an opportunity to appeal the panel's decision.

During my confinement in the administrative segregation unit I was further punished by being deliberately subjected to degrading and unsafe sanitary

conditions, conditions that fell below the level of human decency with the sole intent of punishment.

On 11/27/04 I informed the officer working in segregation that the toilet in my cell was flooded. The officer told me that he was going to put a work order for the plumber to come and fix it. I was left in this degrading condition of having to live, eat and sleep in a cell reeking of human waste, as the toilet was not fixed for almost five days.

After the toilet broke down Counselor Alvarez came to bring me my legal mail but to my surprise my mail was opened. When I inquired as to why my legal mail was not opened in my presence, Alvarez claimed that he opened the mail when I turned around to get a pencil to sign for it. But since this was not the case I refused to sign for the said legal mail. Alvarez then smiled and told me “ write me up I don’t give a shit.” and walked away. I then filled a grievance about this incident as well, but no one ever addressed my complaints. Before Alvarez left I informed him about my toilet to which he replied that he already knew and I just have to wait until they get to it, as it was not a priority. I requested Alvarez to move me to one of the many numerous empty cells available but he refused, though he was later the same day going to move another detainee from one cell to another empty cell because the detainee ‘did not like’ the cell he was in.

For almost five days thereafter I was left to live, eat and sleep in a cell reeking of my own human waste, human waste that was in was in plain sight.

This condition was too debasing and degrading to have been permitted.

Alvarez's actions of deliberately subjecting me to unsanitary living conditions demonstrated deliberate indifference and violated my due process rights as he deliberately placed and left me in unsafe sanitary conditions that posed a serious risk to my health, without any justification. His acts were deliberate as there were other empty cells with working toilets he could have placed me in had he wanted to do so. The conditions Alvarez left me in were clearly not necessary and therefore were repugnant to the conscience of society.

The conditions I was made to endure in segregation were well known to Payne and Alvarez. The persistence of these conditions was then deliberate indifference and these conditions were permitted to persist as "punishment".

Due to all this mistreatment I started suffering from depression and I went on a hunger strike. To my amazement officer Payne came to my cell and told me that he and Alvarez were betting if I would eat the next day and Alvarez had wagered him money that I would succumb to hunger and eat whilst Payne had bet that I would not eat. Thus Payne was coming to let me know that he had faith in me that I would not eat the next day. I informed officer Payne that I would seek redress for all this injustice in a court of law, but Payne told me to go ahead and try

as countless other detainees had and non of them had succeeded due to the fact that C.C.A is a multimillion dollar company and can afford to hire lawyers or bribe judges to ensure that no detainee ever succeeded in suing them. This further shows the official neglect of human misery that I was subjected to. As for the next four days I did not eat anything, as I could not bring myself to eat in a cell smelling and looking at my own excrement.

On 12/2/04 at 8.00am in the morning public health official Ms Graham was making her rounds in the unit. As she got to my cell she called me and told me to flush the toilet due to the smell coming out of my cell. Ms. Graham could not even come close to my cell door due to the ghastly sight that was my toilet and the smell coming from it. I informed Ms. Graham that for the last five days I had been living in that condition. She called counselor Alvarez to inform him about this condition but Alvarez informed her that he was already aware of the situation.

Ms Graham instructed Alvarez that the toilet should be fixed immediately or I should be moved to any of the other empty cells. She informed Alvarez that she was going to come back the next day to check on it.

At about 2.00pm the same day I was to be transferred and it was not until then when I was packing my belongings to leave that Alvarez finally sent for the plumber who immediately came to fix my toilet as I was leaving.

Thus had Alvarez wanted to have my toilet fixed all those days I had to live in a cell looking at and smelling my own excrement he could have done so. But he purposely refused to do so, for the sole intent of punishment by increasing my suffering and degradation. Alvarez's and Payne's conduct violated contemporary standards of decency.

When I was in segregation I was denied even a pencil to write with and could only write my grievances when I managed to borrow a pencil from my next-door cellmate. Since I was on 24 hour lock down I could only give the officers my grievances to put in the mail box for me and I wonder how many actually made it to the mail box for a soon as I handed the officers the grievances they would proceed to read them despite my protests then laugh and tell me to ask those who have been there for a while and they will let me know that I was wasting my time by filling those grievances as nothing will be done and the grievances were not going help me. This proved that CCA was unwilling to address and correct any issues raised by detainees in a grievance form a fact that was known and repeated by numerous officers.

From the numerous officers remarks and detainees complaints it is clear that C.C.A. is unwilling or unable to discipline their officers. Further more these actions were carried out at the direction or with the support of senior officers some of whom like Ms. Harper are the ones in charge of the grievance process.

Taking this into consideration, it leaves no doubt that the officers' remarks about their ability to violate detainees rights with impunity and the futility of filing grievances were correct.

The evidence implies that C.C.A. has failed to adequately train and supervise their officers or worse they know and condone the officers' conduct, which resulted in the officers' unconstitutional conduct towards me and other detainees.

In a detention facility, where all the persons involved are in close and daily contact. The warden and supervisors have the ability to daily monitor the activities of subordinates as well as the conduct of officers on detainees.

As a result the C.C.A. warden knew or should have known of her officers conduct and the cruel treatment they inflicted upon me but she failed to act to stop them. I mailed numerous grievances to the warden and when I was transferred I formally complained to the warden about her officers conduct See Exhibit C she never did address my concerns in any way, as she has not replied to me up to now. Her actions thus demonstrate deliberate indifference.

This conduct by C.C.A. officers towards me is made worse by the fact that I am a civil detainee and not a prisoner or inmate and thus should be accorded more considerate treatment and conditions of confinement than inmates and prisoners whose conditions of confinement are designed to punish. If it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be

unconstitutional to confine detainees who may not be punished at all in unsafe conditions.

Ms. Harper, officers Teran, Payne, Winters and counselor Alvarez conspired under color of Federal law to subject me to the hardships and injuries I suffered in violation of substantive due process and equal protection, whilst under their custody. They acted maliciously, sadistically and with the sole intent to punish me for filing grievances.

The Immigration and Customs Enforcement Agency (ICE) formerly the INS has a duty not to violate detainees due process rights by turning over the management of its detention centers to private correctional entrepreneurs known to violate and mistreat detainees. ICE cannot “avoid its responsibilities... merely by delegating custodial responsibilities to irresponsible private persons, any more than a state could avoid its duty not to impose cruel and unusual punishment by turning over the management of its prisons to private correctional entrepreneurs known to inflict cruel and unusual punishments’. I spoke to an INS official while I was in segregation and he informed me that he was powerless to help me as INS had handed over all the responsibility of running the facility to CCA. Due to the fact that there are numerous law suits against C.C.A the ICE is well aware of the numerous violations of detainees’ rights by C.C.A.

In addition ICE sets standards for the conduct of contract private detention facilities and is required to monitor these facilities.

It is clear that those persons to whom ICE contracts its responsibilities for holding their detainees act as agents of the Federal government. Merely because ICE contracts out this work, it is not relieved of its duty to exercise the constitutional and federal treatment standards of its detainees under the due process clause.

The conditions of detention I was detained under were torturous, inhuman, cruel, humiliating and degrading falling below the level of human decency. They violated my 1st, 5th and 14th amendments of due process and equal protection, as they did not serve any security or administrative need but were permitted to continue even after the officers named above leant of them because they intended these conditions to serve as punishment.

No other detainee even in segregation would have been left in the conditions I was left in had not those very conditions been intended to serve as punishment. I was forced to eat and sleep in a cell reeking with human waste; these unhygienic and unsafe conditions were a serious hazard to my health. When I could no longer bear to eat looking and smelling my own waste I was depressed and I went on a hunger strike but the result was complete deliberate indifference by Ms. Harper, officer Payne and Counselor Alvarez who refused to move me to another cell despite the fact that there were numerous other empty cells available. The warden knew or

should have known of my perilous condition but she failed to intervene on my behalf, as the law requires. INS knew of my conditions but refused to intervene though they could have had they wanted, as I was an INS and not a CCA detainee.

This treatment caused untold emotional anguish, mental, psychological, depression and physical suffering. I have a well-documented sleeping disorder for which I was seeing the facility's psychiatrist and was on prescribed medication for. By the cell being extremely cold it deteriorated my medical condition with the result that I could not sleep due to the cold and thus had to try and sleep folded almost in half so as to try and not lose any body heat. This resulted in muscle aches and back pains, which I still suffer today. I saw the facility psychiatrist during this period and requested him to authorize me to have an extra blanket or have the vent blowing the cold air to be reset so as not to blow so much cold air as I could not sleep in this conditions. The psychiatrist informed me that C.C.A. policy required that all detainees be issued only a single blanket and the air conditioning to be as it was and there was nothing he could do about it. As a result I was deliberately left to endure this harsh and unsafe sanitary conditions until I was transferred.

These conditions worsened my medical condition, caused back problems and depression. The conditions I was made to endure caused unnecessary pain including psychological as well as physical pain. Psychological pain which was as

debilitating as much as physical pain. To fence out psychological pain from the 14th Amendment protection would be to open up opportunities to maltreat detainees without constitutional review.

RELIEF SOUGHT

Petitioner requests the court to award him compensation and damages due to the wanton unnecessary pain inflicted on him. Petitioner also suffered psychological pain.

Petitioner seeks \$100,000 Dollars [One Hundred Thousand Dollars] from each and every named defendant for damages. Petitioner seeks an additional 100, 000 Dollars [One Hundred Thousand Dollars] from each and every named defendant as punitive damages.


Petitioner also requests the court to grant an injunctive order prohibiting CCA from housing mentally ill detainees and gang members in the general population housing units. The court should also order CCA to establish a classification system that takes into consideration cellmate compatibility before randomly assigning detainees to any available cell.

Petitioner requests the court to make an unannounced visit to the SDCF and see for itself and interview detainees about the inadequate and nutritionally unbalanced food served and the negative consequences it has on detainees health. The court should then take remedial actions as it sees fit on this issue.

Finally the court should order CCA to retrain its officers about the importance of not violating detainees civil rights and treating them in an arbitrary and capricious manner.

Dated: 6/27/06

Respectfully Submitted



Isaac Kigonde Kiniti

In Pro Se

DEFENDANTS

Defendant Barbara Wagner resides in San Diego
Name (County of residence)

And is employed as a Warden. This defendant is sued in
(Defendant's position/title (if any))

his/her individual official capacity. (check one or both.) Explain how

this defendant was acting under the color of law. The Immigration and

Customs Enforcement Department formerly the Immigration and

Naturalization Service (INS) has contracted the Corrections Corporation of

America (C.C.A) to hold their civil detainees who are in immigration

proceedings before an immigration judge. Ms. Wagner acts as a warden for

this contract detention facility.

Defendant Harper resides in San Diego
Name (County of residence)

And is employed as a Detention officer. This defendant is sued in
(Defendant's position/title (if any))

his/her individual official capacity. (check one or both.) Explain how

this defendant was acting under the color of law. The Immigration and

Customs Enforcement Department formerly the Immigration and

Naturalization Service (INS) has contracted the Corrections Corporation of

America (C.C.A) to hold their civil detainees who are in immigration

proceedings before an immigration judge. Ms. Harper is a detention officer

for this contract detention facility.

Defendant Alvarez resides in San Diego
Name (County of residence)

And is employed as a Detention officer. This defendant is sued in
(Defendant's position/title (if any))

his/her individual official capacity. (check one or both.) Explain how
this defendant was acting under the color of law. The Immigration and
Customs Enforcement Department formerly the Immigration and
Naturalization Service (INS) has contracted the Corrections Corporation of
America (C.C.A) to hold their civil detainees who are in immigration
proceedings before an immigration judge. Ms. Winters is a detention officer
for this contract detention facility.

Defendant Winters resides in San Diego
Name (County of residence)

And is employed as a Detention officer. This defendant is sued in
(Defendant's position/title (if any))

his/her individual official capacity. (check one or both.) Explain how
this defendant was acting under the color of law. The Immigration and
Customs Enforcement Department formerly the Immigration and
Naturalization Service (INS) has contracted the Corrections Corporation of
America (C.C.A) to hold their civil detainees who are in immigration
proceedings before an immigration judge. Ms. Winters is a detention officer

for this contract detention facility.

Defendant Payne resides in San Diego
Name (County of residence)

And is employed as a Detention officer. This defendant is sued in
(Defendant's position/title (if any))

his/her individual official capacity. (check one or both.) Explain how

this defendant was acting under the color of law. The Immigration and

Customs Enforcement Department formerly the Immigration and

Naturalization Service (INS) has contracted the Corrections Corporation of

America (C.C.A) to hold their civil detainees who are in immigration

proceedings before an immigration judge. Mr. Payne is a detention officer

for this contract detention facility.

Defendant Teran resides in San Diego
Name (County of residence)

And is employed as a Detention officer. This defendant is sued in
(Defendant's position/title (if any))

his/her individual official capacity. (check one or both.) Explain how

this defendant was acting under the color of law. The Immigration and

Customs Enforcement Department formerly the Immigration and

Naturalization Service (INS) has contracted the Corrections Corporation of

America (C.C.A) to hold their civil detainees who are in immigration

proceedings before an immigration judge. Mr. Teran is a detention officer
for this contract detention facility.