CASE NO. 11-6031

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUANA VILLEGAS,
Plaintiff/Appellee,
v.
METROPOLITAN GOVERNMENT OF DAVIDSON COUNTY/NASHVILLE – DAVIDSON COUNTY SHERIFF'S OFFICE,
Defendant/Appellant,

On Appeal from the United States District Court for the Middle District of Tennessee
(No. 09-00219)

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION FOUNDATION AND AMERICAN CIVIL LIBERTIES UNION OF TENNESSEE IN SUPPORT OF PLAINTIFF/APPELLEE JUANA VILLEGAS

Susan Talcott Camp
Alexa Kolbi-Molinas
ACLU Foundation
Reproductive Freedom Project
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633

Amy Fettig
ACLU Foundation
National Prison Project
915 15th Street, NW, 7th Floor
Washington, DC 20005
(202) 548-6608

Tricia Herzfeld
Legal Director
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
(615) 320-7143

Kathryn E. Barnett
Lieff Cabraser Heimann & Bernstein, LLP
150 4th Avenue North, Suite 1650
Nashville, TN 37219
(615) 313-9000

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

United States Supreme Court Cases

Sixth Circuit Cases

Other Cases

STATUTES

OTHER AUTHORITIES

RULES

PRELIMINARY STATEMENT

In accordance with Fed. R. App. P. 28(d) and consistent with the designations used by the District Court, Plaintiff/Appellee Juana Villegas will be referred to as "Ms. Villegas" and Defendant/Appellant Metropolitan Government of Nashville and Davidson County will be referred to as "Metro." The Davidson County Sheriff's Office is referred to as "DCSO."

STATEMENT OF AUTHORSHIP

No party's counsel has authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person, other than *Amici Curiae*, contributed money that was intended to fund preparing or submitting this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to 6 Cir. R. 29(c)(1) and Fed. R. App. P. 26.1, *Amici Curiae* American Civil Liberties Union Foundation, Inc., a 501(c)(3) nonprofit corporation incorporated in the State of New York, and the American Civil Liberties Union of Tennessee, a 501(c)(3) nonprofit corporation incorporated in the State of Tennessee, make the following disclosure:

1. Neither *Amici* are a publicly held corporation or other publicly held entity.

2. Neither *Amici* have a parent corporation.

3. No publicly held corporation or other publicly held entity owns 10% or more of either *Amici*.

4. Neither *Amici* is a trade association.

INTERESTS OF *AMICI CURIAE*

The American Civil Liberties Union Foundation ("ACLU") is a nationwide, nonprofit, nonpartisan organization of more than 500,000 members dedicated to preserving the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. Consistent with that mission, the Reproductive Freedom Project of the ACLU Foundation has long fought to ensure that women, including pregnant women, are accorded equal treatment under the law. Additionally, the National Prison Project of the ACLU Foundation was established in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the National Prison Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state, and federal level through public education, advocacy, and successful litigation. The ACLU and its legal projects have long fought to ensure incarcerated women have access to safe, necessary, and appropriate reproductive health care throughout pregnancy.

The ACLU of Tennessee is the ACLU's Tennessee affiliate. With more than 3,000 supporters statewide, the ACLU of Tennessee has worked consistently

to protect the civil liberties guaranteed under state and federal law, including women's rights to equality and reproductive freedom.

This case is critical for the thousands of women and girls who give birth in American jails, prisons and youth detention centers every year. For these individuals the harms and risks of shackling during labor, delivery and postpartum and the lack of postpartum care are serious threats. The Eighth and Fourteenth Amendments represent critical protections against the substantial risk of serious harm for women, girls, and babies created by correctional policies and practices such as those at issue in this case. At a time when state legislatures and other courts have intervened to prohibit the use of shackles and protect the health of women prisoners and their babies, a reversal of the District Court in this case would constitute a giant step backward for prisoners and detainees in the Sixth Circuit and beyond.

While Ms. Villegas's brief presents compelling arguments in support of the District Court's judgment, *Amici* write separately to provide the Court with the benefit of their expertise litigating these issues and working with medical staff, pregnant women prisoners, and prison administrators.

INTRODUCTION

This is a case of shocking and deliberate indifference to the wholly obvious, serious medical needs of Juana Villegas and the child she was about to deliver.

Metro violated the Constitution not merely by knowingly ignoring obvious and serious medical needs and promulgating policies that place pregnant women at risk of serious harm, but also by contravening clear medical orders of which they had actual knowledge. It is therefore a simple case: a corrections officer's refusal to comply with medical orders based on corrections policies that place detainees at serious risk of substantial harm *ipso facto* constitutes deliberate indifference to a detainee's serious medical need.

On July 3, 2008, while nine months pregnant, Ms. Villegas was arrested for a minor traffic violation. When she went into labor two days later, DCSO officers took her to the hospital in chains – her arms handcuffed in front of her chest and her ankles shackled together. Appellee Br. at 6. Under Metro's orders, Ms. Villegas, who had no history of violence or uncooperative behavior and who was not accused of any violent crime, remained in shackles and/or handcuffs for 36 hours – almost the entire time she was at the hospital. *Id*. at 13, 20. As required by Metro's policies, DCSO officers kept Ms. Villegas in shackles throughout the majority of her labor, until approximately two hours before she delivered her son.[1] DCSO officers reapplied the shackles the next morning, less than six hours after delivery. *Id.* at 8. Ms. Villegas remained chained to her bed throughout her

[1] See *Villegas v. Metro. Gov't of Davidson Cnty.*, 789 F. Supp. 2d 895, 914 n.7 (M.D. Tenn. 2011) (noting the uncontested fact that Ms. Villegas was shackled as a result of Metro's policy).

postpartum recovery and "was not permitted to leave her room to walk the hallway in order to loosen her muscles and ensure against blood clots." *Id.* Her legs were shackled together even while she used the restroom, showered, and slept. *Id.* Despite the risk of injury to her newborn, she remained shackled to the bed while she held and nursed him. *Id.* Under Metro's orders and policies, she remained in chains despite that the maternity ward was secure, despite the constant presence of armed correctional officers posted either inside or directly outside her room; and, most importantly, despite repeated medical orders to remove the shackles. *Id*. at 9-10, 22-23, 33.

The mistreatment and abuse did not end there, however. When Ms. Villegas was discharged without her infant, DCSO officers deliberately disregarded doctor's orders that she use a breast pump to guard against a serious and excruciatingly painful infection because Metro's policies barred such medically necessary treatment.[2] Because jail officials refused to obey that clear medical order; refused to transport the pump from the hospital to the jail; failed to provide any alternative care at the jail; and thus forbade her from pumping her breast milk, Ms. Villegas developed mastitis – precisely the severe and excruciating infection that the doctors had ordered the pumping protocol to prevent. *Id*. at 10, 33-34.

[2] See *Villegas*, 789 F. Supp. 2d at 899 (noting the uncontested fact that Ms. Villegas was denied her breast pump as a result of jail policy).

By promulgating policies that prevent adequate medical care for serious medical needs and by ignoring clear medical orders both to unshackle Ms. Villegas during labor and postpartum recovery and to ensure her access to a breast pump upon discharge from the hospital, Metro improperly and unjustifiably interfered with her medical care and treatment. As such, Metro's actions deliberately jeopardized the health and safety of both Ms. Villegas and her child; caused her unnecessary physical and psychological pain; and caused her to develop a serious, painful, and wholly preventable infection.

ARGUMENT

The District Court correctly held as a matter of law that by shackling Ms. Villegas during labor and delivery and denying her access to the breast pump – both against doctors' orders – Metro displayed deliberate indifference to her obvious and serious medical needs. *Villegas v. Metro. Gov't of Davidson Cnty.*, 789 F. Supp. 2d 895, 916 (M.D. Tenn. 2011). That decision – which was grounded in the undisputed facts of the case and the well-established case law of the Supreme Court, this Court, and other federal courts – should be affirmed.[3]

[3] The District Court correctly followed precedent established by the Eighth Circuit in analyzing Ms. Villegas's claims as conditions-of-confinement claims – in which the question whether there was any security justification for Metro's refusal to follow medical orders could, at most, limit the scope of the court's decision, but not justify the application of a separate standard. *See Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 528 (8th Cir. 2009) (en banc) (stating that the court was applying the Eighth Amendment conditions-of-confinement standard of "deliberate

It is now axiomatic that when the government takes a person into custody, thereby restricting her ability to access medical care, it must provide for her medical needs. *See Harrison v. Ash*, 539 F.3d 510, 517 (6th Cir. 2008) ("Having stripped [detainees] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." (quoting *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)). As the Supreme Court held more than thirty-five years ago, "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'" and "is inconsistent with contemporary standards of decency." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *see also Blackmore v.*

---

indifference" from *Farmer* rather than the Eighth Amendment use-of-force standard applicable to prison riots from *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986)). The Eighth Circuit discussed the asserted security interest in shackling the plaintiff in *Nelson*:

> While "deliberate indifference to a prisoner's serious illness or injury can typically be established or disproved without the necessity of balancing competing institutional concerns for safety of prison staff," from the record evidence in Nelson's case there does not even appear to have been a competing penological interest in shackling her.

Nelson, 583 F.3d at 530-31 (citations omitted); *see also Curry v. Scott*, 249 F.3d 493, 506 n.5 (6th Cir. 2001) (claims of supervisory liability for use of force apply the deliberate indifference standard, not the "malicious and sadistic standard"). Here, the District Court noted the same total lack of evidence supporting any penological interest in shackling Ms. Villegas. *Villegas*, 789 F. Supp. 2d at 915-16 & n.8.

Kalamazoo Cnty., 390 F.3d 890, 895 (6th Cir. 2004) ("The Eighth Amendment forbids prison officials from 'unnecessarily and wantonly inflicting pain' on an inmate by acting with 'deliberate indifference' toward the inmate's serious medical needs." (quoting *Estelle*, 429 U.S. at 104-05); *Berryman v. Rieger*, 150 F.3d 561, 566 (6th Cir. 1998) ("[A] prisoner who suffers pain needlessly when relief is readily available has a cause of action against those whose deliberate indifference is the cause of his suffering." (quoting *Boretti v. Wiscomb*, 930 F.2d 1150, 1154-55 (6th Cir. 1991)). The Constitution thus prohibits correctional officials from "intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed." *Estelle*, 429 U.S. at 104-05; *see also Harrison*, 539 F.3d at 517.[4]

To prove deliberate indifference to a serious medical need, a detainee must make both an objective and subjective showing. *Comstock v. McCrary*, 273 F.3d 693, 702-03 (6th Cir. 2001). To satisfy the objective component, a detainee must show (1) the existence of a serious medical need and (2) that an official's act or omission created an objective risk of serious harm. *Id*. To satisfy the subjective

[4] Although courts sometimes evaluate pre-trial detainee medical care claims under the Eighth Amendment standard, Due Process guarantees pretrial detainees such as Ms. Villegas *at least* the "same deliberate-indifference standard of care as the Eighth Amendment." *Ford v. Cnty. of Grand Traverse*, 535 F.3d 483, 494-95 (6th Cir. 2008)); *see also City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) ("[T]he due process rights of a [pre-trial detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner.").

component of the test, a detainee must prove that the official was subjectively aware of the risk posed by his actions. *Farmer*, 511 U.S. at 837. Ms. Villegas has met her burden as to both the objective and subjective components of the test.

I. The District Court Properly Held as a Matter of Law and Uncontested Fact, Ms. Villegas Demonstrated she had Serious Medical Needs and that Metro Exposed her to Substantial Risks of Serious Harm.

Considering the objective component in light of clearly established precedent, the District Court properly held that Ms. Villegas demonstrated both the existence of serious medical needs and that Metro's actions exposed her to substantial risks of serious harm.

A serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Harrison*, 539 F.3d at 518 (citing *Blackmore*, 390 F.3d at 897); *Preyor v. City of Ferndale*, 248 Fed. Appx. 636, 642, 643-44 (6th Cir. 2007) (unpublished). Ms. Villegas established the existence of her serious medical needs in both ways: her condition as a laboring and then lactating woman (1) resulted in medically prescribed treatment that Metro refused to comply with; and (2) was also completely obvious to lay persons as a serious medical need. First, it is undisputed that Metro flouted medical orders by shackling Ms. Villegas in spite of the "no restraint order" issued by physicians and the repeated requests by medical personnel to remove the restraints, Appellee Br.

at 10, 22-23. In addition, the District Court found that denial of the breast pump prescribed by hospital physicians to prevent serious infection was a "denial and interference with care prescribed by a health care provider." *Villegas*, 789 F. Supp. 2d at 916; *see also Harrison*, 539 F.3d at 518. Those medical orders alone establish the existence of Ms. Villegas's serious medical needs and the harm she suffered from Metro's refusal to comply with those orders.

Moreover, even absent such clear medical orders, as the District Court noted, there is no longer any question that pregnancy, childbirth in particular, and the immediate postpartum period present serious medical needs. *Villegas*, 789 F. Supp. 2d at 914-15. As this Court and others have repeatedly held, childbirth "presents a situation where the medical need [is] blatantly obvious and the medical risks [are] great." *Havard v. Wayne Cnty.*, 436 Fed. Appx. 451, 456 (6th Cir. 2011) (unpublished); *see also id.* at 454 ("The virtually inevitable result of pregnancy and labor is the birth of a child" and "the birth of a child always presents a risk of serious injury to both mother and child."); *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 530 n.5 (8th Cir. 2009) (en banc) ("That labor is inherently risky is well known. . . . and the hazards associated with labor and childbirth have entered the collective consciousness."); *Brawley v. Washington*, 712 F. Supp. 2d 1208, 1218-20 (W.D. Wash. 2010) (holding that labor presents serious medical need); *Pool v. Sebastian Cnty., Ark.*, 418 F.3d 934, 944-45 (8th Cir. 2005) (holding that although

inmate was not yet "showing," the fact that she was pregnant, bleeding, and passing blood clots demonstrated objectively serious medical need); *Doe v. Gustavus*, 294 F. Supp. 2d 1003, 1008 (E.D. Wis. 2003) (the later stages of pregnancy constitute a serious medical need). Metro does not attempt to argue otherwise. Appellant Br. at 17-18.

Given the obvious risks inherent in childbirth, it is not surprising that every court to address the question has found that shackling a woman during labor, delivery, and postpartum is alone "sufficient . . . from an objective standpoint, [to show both] that she had a serious medical need and [that she] was exposed to an unnecessary risk of harm." *Brawley*, 712 F. Supp. 2d at 1220; *see also Nelson*, 583 F.3d 522; *Women Prisoners of D.C. Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 668 (D.D.C. 1994), *modified in part on other grounds*, 899 F. Supp. 659 (D.D.C. 1995); *Reynolds v. Sielaff*, 81 Civ. 107, ¶ 85 (PNL) (S.D.N.Y. 1990) (unpublished) (stipulation and order of settlement entered Oct. 1, 1990 prohibiting corrections department from using restraints on women during delivery) (attached hereto as Addendum 1). Indeed, for nearly two decades, courts have consistently held that shackling is "inherently dangerous to both the mother and the unborn fetus." *Nelson*, 583 F.3d at 529, 532-34. Thus, the District Court's decision merely reflects what is now settled law: that "shackles interfere[] with [a pregnant woman's] medical care, could be an obstacle in the event of a medical emergency,

and cause[] unnecessary suffering at a time when [she] would [] likely be[] physically unable to flee because of the pain she was undergoing and the powerful contractions she was experiencing as her body worked to give birth." *Nelson*, 583 F.3d at 530.

Furthermore, the unbroken line of cases on which the District Court relied serves to affirm that shackling a woman during and after labor and delivery is considered "inhumane" and "violates contemporary standards of decency." *Women Prisoners*, 877 F. Supp. at 668. This judicial consensus is amply supported by medical evidence. For example, the American Congress of Obstetricians and Gynecologists ("ACOG"),[5] the National Commission on Correctional Health Care ("NCCHC"),[6] the American Medical Association ("AMA"),[7] the American Public Health Association,[8] and the Association of Women's Health, Obstetric and

---

[5] *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, ACOG, Number 511 (Nov. 2011), *available at* http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Health_Care_for_Underserved_Women/Health_Care_for_Pregnant_and_Postpartum_Incarcerated_Women_and_Adolescent_Females.

[6] *Restraint of Pregnant Inmates, Position Statement*, NCCHC (adopted Oct. 10, 2010) *available at* http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html.

[7] *Shackling of pregnant women in labor*, AMA, Policy Statement, H-420.957, *available at* https://ssl3.ama-assn.org/apps/ecomm/PolicyFinderForm.pl?site=www.ama-assn.org&uri=%2fresources%2fdoc%2fPolicyFinder%2fpolicyfiles%2fHnE%2fH-420.957.HTM (last visited May 1, 2012).

[8] Appellee Br. at 22 (RF 94-18).

Neonatal Nurses ("AWHONN ")[9] have all publicly opposed the practice.[10] It is also notable that correctional health standards specifically require that correctional facilities provide for appropriate postpartum care, such as breast pumps and other medical devices and treatments to address the medical needs of women after childbirth.[11]

Despite the weight of case law, professional medical and correctional standards, and the obvious risks caused by a refusal to provide for Ms. Villegas's serious medical needs, Metro's policies on their face flouted the "contemporary standards of decency" expressed by these authorities and were the direct cause of Ms. Villegas being shackled during labor and postpartum recovery and being

---

[9] *Shackling Incarcerated Pregnant Women, Position Statement*, AWHONN, 40 J Obstet. Gynecol. Neonatal Nurs. (Oct. 20, 2011), *available at* http://onlinelibrary.wiley.com/doi/10.1111/j.1552-6909.2011.01300.x/pdf.

[10] In noting these medical, statutory and policy authorities as evidence of Eighth Amendment requirements in light of "contemporary standards of decency," the District Court properly applied the type of "objective factors" courts routinely analyze to make such determinations. *See, e.g.*, *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981); *Atkinson v. Taylor*, 316 F.3d 257, 265 & n.7 (3d Cir. 2003) (relying on Executive Order and federal regulation on smoking in public buildings as evidence of societal consensus); *Lopez v. LeMaster*, 172 F.3d 756, 761 (10th Cir. 1999) (holding that state health standards for minimum level of supervision and staffing in jails "provide persuasive authority concerning what is required"); *Rodriguez v. McClenning*, 399 F. Supp. 2d 228, 237-38 (S.D.N.Y. 2005) (relying on trend toward statutory prohibition of sexual contact between prison employees and prisoners in holding that "any sexual assault of a prisoner by a prison employee constitutes cruel and unusual punishment").

[11] *See Standards for Adult Correctional Institutions*, ACA, Standard 4-4353 (4th Ed. 2003); *Standards for Health Services in Jails*, NCCHC, Standard J-G-07 (2008).

denied a prescribed medical device to address the postpartum condition of lactation. *See Villegas*, 789 F. Supp. 2d at 899, 914 n.7. Hence, the District Court correctly ruled that as a matter of law and uncontested fact, Ms. Villegas met her burden on the objective component of the test.

II. The District Court Properly Held that as a Matter of Law and Uncontested Fact, Ms. Villegas Demonstrated Metro Staff were Aware of the Risks Inherent in Shackling her and in Forbidding her to Express her Breast Milk.

The subjective component of the Eighth Amendment test requires showing that corrections officers were deliberately indifferent to a detainee's serious medical needs. As this Court has recognized on multiple occasions, "[d]eliberate indifference" is a state of mind akin to criminal recklessness: "'the official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" *Curry v. Scott*, 249 F.3d 493, 506 (6th Cir. 2001) (quoting *Farmer*, 511 U.S. at 837); *Phillips v. Roane Cnty., Tenn*. 534 F.3d 531, 539-42 (6th Cir. 2008); *Harrison*, 539 F.3d at 517. However, "a plaintiff need not show that the official acted 'for the very purpose of causing harm or with knowledge that harm [would] result.'" *Comstock*, 273 F.3d at 703 (quoting *Farmer*, 511 U.S. at 835). As the District Court properly recognized, "'a detailed inquiry into [the officer's] state of mind,' is unnecessary as conscious indifference is not required." *Villegas*, 789 F. Supp. 2d at 913 (quoting *Weeks v. Chaboudy*, 984 F.2d 185, 187 (6th Cir. 1993)).

Ms. Villegas met her burden on this subjective component for two reasons: (1) as the uncontested record shows, Metro refused to comply with clear medical orders and repeated requests by medical staff due to its own policies and (2) deliberate indifference can be inferred from the obviousness of the risks to which Metro exposed her.

A. The uncontested record in this case demonstrates Metro refused to comply with medical orders – to unshackle Ms. Villegas and to allow her to express her breast milk – despite knowledge of the risks so created.

Metro showed deliberate indifference to Ms. Villegas's serious medical needs by failing to comply with doctors' orders to remove the shackles and allow her to express her breast milk. In *Estelle*, the Supreme Court explained that deliberate indifference is evidenced by corrections officers "intentionally denying or delaying access to medical care or intentionally interfering with the treatment *once prescribed*." *Estelle*, 429 U.S. at 104-05 (emphasis added). Courts have consistently held that the failure to carry out medical orders constitutes deliberate indifference. As this Court has held, "[c]omplying with a doctor's prescription or treatment plan is a ministerial function, not a discretionary one," *Boretti*, 930 F.2d at 1156, and failure to do so is deliberate indifference. *See, e.g.*, *id.* at 1154 (finding that failure to follow prescribed protocol of changing dressing on plaintiff's wound daily constituted deliberate indifference); *Byrd v. Wilson*, 701

F.2d 592, 594 (6th Cir. 1983) (same as to failure to provide medicine and diet prescribed for inmate with cirrhosis); *Newsome v. Peterson*, 66 Fed. Appx. 550, 551 (6th Cir. 2003) (unpublished) (same as to failure to provide prescribed migraine medication); *Hines v. Wilkinson*, 34 F.3d 1068, 1994 WL 419563, *3 (6th Cir. Aug. 10, 1994) (same as to failure to provide prescribed medication).

Metro did exactly this. It is uncontested that Metro knew of the "No Restraint" order that Ms. Villegas's physicians issued, for the officers at the hospital phoned prison authorities for permission to remove the restraints pursuant to that medical order. Appellee's Br. at 10, 22-23. It is also uncontested that Metro denied the permission; ignored the order; and refused the repeated, direct requests of medical staff to remove the restraints.[12] It is likewise uncontested that medical staff provided Ms. Villegas with a breast pump and prescribed its use to avoid a serious infection; that Metro forbade her to take the pump back to the jail, and thus forbade her to express her breast milk; and that, as a result, she "developed mastitis" and experienced "excruciating pain." Appellee Br. at 10, 33-34. Metro's only defense – that Ms. Villegas did not challenge that denial and insist on access to a pump (Appellant Br. at 11) – is no defense at all: the medical

[12] As described above, *supra* Introduction, within an hour of Ms. Villegas's arrival at the hospital, "Dr. Robertson signed a physician order asking that the shackles be removed"; hospital staff repeatedly asked the DCSO officers to remove the restraints; and the DCSO officers themselves discussed the existence of the "no restraint" order. Appellee Br. at 9-10, 22-23.

needs test does not place the burden *on a detainee* to insist that correctional officers comply with explicit medical orders when they so blatantly refuse to do so. The case law leaves no doubt that this is the government's responsibility. *See Harrison*, 539 F.3d at 517.

Finally, it is uncontested that Metro's own policies required that the medical orders at issue be disregarded by correctional officers. *See Villegas*, 789 F. Supp. 2d at 899, 914 n.7.[13] There is no question that Metro was fully aware of its own policies. Indeed the record demonstrates that at least one of the officers questioned the safety of the policy while Ms. Villegas was being transported to the hospital, *id*. at 898, and another disregarded the policy during his shift, but re-shackled her before shift change because of the policy. *Id*. at 899.

Thus, by instituting and enforcing policies that required shackling Ms. Villegas during labor and postpartum recovery and denying her access to a breast pump, Metro intentionally interfered with the care prescribed by doctors, which constitutes deliberate indifference under the Eighth and Fourteenth Amendments. *Estelle*, 429 U.S. at 104-05.

---

[13] In contrast to the mandatory shackling required by Metro's policies, the Eighth Circuit noted in *Nelson* that the shackling policy in question was discretionary and therefore the question was whether a fact finder could determine that the correctional officer who shackled the plaintiff disregarded an obvious risk. *Nelson*, 583 F.3d at 527, 529. Here there is no question that Metro policy required that officers disregard Ms. Villegas's serious medical needs by shackling her during labor and postpartum recovery.

B. Deliberate indifference is also properly inferred from the obvious risk of harm caused by Metro's actions.

As the Supreme Court has held, knowledge is inferred "from the fact that the risk of harm is obvious." *Hope v. Pelzer*, 536 U.S. 730, 737 (2002) (quoting *Farmer*, 511 U.S. at 842). Because government officials "do not readily admit this subjective component, . . . 'it [is] permissible for reviewing courts to infer from circumstantial evidence that a prison official had the requisite knowledge.'" *Phillips*, 534 F.3d at 539-40 (quoting *Comstock*, 273 F.3d at 703); *Estate of Carter v. City of Detroit*, 408 F.3d 305, 313 (6th Cir. 2005). Notably, a detainee in Ms. Villegas's position need not prove that officers had personal knowledge of her individual medical needs; rather, she need prove only that they had personal knowledge that pregnant women in general are at risk of injury from shackling, and that immediately postpartum, a woman forbidden to express breast milk as ordered by her physician is at risk of medical harm. *Bishop v. Hackel*, 636 F.3d 757, 767 (6th Cir. 2011) (citing *Taylor v. Mich. Dep't of Corr.*, 69 F.3d 76, 81 (6th Cir. 1995) ("*Farmer* makes it clear that the correct inquiry is whether [an official] had knowledge about the substantial risk of serious harm to a particular class of persons, not whether he knew who the particular victim turned out to

be.")).[14] Therefore, failure to address an obvious risk of harm is sufficient to show deliberate indifference.

Here, the District Court properly found that Metro was deliberately indifferent to Ms. Villegas's serious medical needs because the increased medical risks caused by both shackling a woman during labor and postpartum recovery and denying access to her medically prescribed breast pump were obvious. *See Villegas*, 789 F. Supp. 2d at 916. In doing so, the District Court followed a long line of consistent judicial findings. In *Nelson*, for example, the Eighth Circuit recognized that "[t]he obvious cruelty inherent in [shackling women during labor] should have provided [the officer] with some notice that [her] alleged conduct violated [the plaintiff's] constitutional protection against cruel and unusual punishment. [She] was treated in a way antithetical to human dignity . . . and under circumstances that were both degrading and dangerous." 538 F.3d at 534 (quoting *Hope*, 536 U.S. at 745). Likewise, the court in *Women Prisoners* held that a corrections officer who shackles a woman in labor acts with "deliberate

[14] The subjective prong does not ask whether correctional officers actually caused an injury, but rather whether they were indifferent to a risk of harm. Thus, defense expert's claim that chaining Ms. Villegas during labor and postpartum recovery "did not enhance [her] medical risks" or cause her "excessive pain" would be irrelevant – even if it were true. *See* Appellant Br. at 17-18. Notably, the District Court found the testimony of neither Metro's medical expert nor its correctional expert credible. *See Villegas*, 789 F. Supp. 2d at 916-17 n. 9. Here, DCSO officers showed deliberate indifference because they took actions known to place any woman in labor or immediately postpartum at risk of harm.

indifference . . . since the risk of injury to women prisoners is obvious." *Women Prisoners*, 877 F. Supp. at 699*; see also Brawley*, 712 F. Supp. 2d at 1220 ("Existence of this subjective state of mind may be inferred from the fact that the risk of harm is obvious."); *see also Nelson*, 583 F.3d at 530 n.5 (noting the inherent risk of childbirth; the high worldwide mortality rates for women during childbirth; and the universal awareness of its dangers).

Here too, the obviousness of the risk Metro inflicted on Ms. Villegas is supported by national standards, laws, policies, and practices that reject the use of shackles on pregnant women because it interferes with necessary medical care and places the woman and fetus at risk of serious harm. *Villegas*, 789 F. Supp. 2d at 918-19; *Nelson*, 583 F.3d at 531-34. Not only do national medical organizations unanimously agree that shackling pregnant women during labor, delivery, and the postpartum period poses serious and unnecessary risks on the health of a woman and her baby, but even federal law enforcement agencies and *correctional* health and professional associations oppose the practice. *See* Point 1, *supra*. For example, policies issued by Immigration and Customs Enforcement ("ICE"),[15] the Federal Bureau of Prisons,[16] and the United States Marshals Service,[17] as well as

[15] ICE, Detention Standards §§ 4.4(V)(e)(1), 4.4(V)(A)(1) (2011), *available at* http://www.ice.gov/doclib/detention-standards/2011/medical_care_women.pdf.
[16] *Escorted Trips, Program Statement No. 5538.05*, Federal Bureau of Prisons (Oct. 6, 2008), *available at* http://www.bop.gov/policy/progstat/5538_005.pdf ("An inmate who is in labor, delivering her baby, or is in post-delivery recuperation, or

those by NCCHC,[18] and the American Correctional Association ("ACA")[19] all prohibit shackling a woman during labor, delivery, and postpartum recovery, except in the most extraordinary circumstances, because it is unnecessary and puts the woman's health at risk. Similarly, sixteen states (Arizona, California, Colorado, Hawaii, Florida, Idaho, Illinois, Nevada, New Mexico, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington and West Virginia) have explicitly banned the practice of shackling women during labor, delivery and

---

who is being transported or housed in an outside medical facility for the purpose of treating labor symptoms, delivering her baby, or post-delivery recuperation, should not be placed in restraints unless there are reasonable grounds to believe the inmate presents an immediate, serious threat of hurting herself, staff or others, or there are reasonable grounds to believe the inmate presents an immediate and credible risk of escape that cannot be reasonably contained through other methods.").

[17] *Restraining Devices*, U.S. Marshals Service Directives § 9.1 (Jun. 1, 2010), *available at* http://www.usmarshals.gov/foia/Directives-Policy/prisoner_ops/restraining_devices.pdf ("Restraints should not be used when compelling medical reasons dictate, including when a pregnant prisoner is in labor, is delivering her baby, or is in immediate post-delivery recuperation.").

[18] *Restraint of Pregnant Inmates, Position Statement*, NCCHC (adopted Oct. 10, 2010), *available at* http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html ("Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff.").

[19] *Public Correctional Policy on Use of Restraints With Pregnant Offenders*, ACA (ratified Jan. 24, 2012), *available at* http://www.aca.org/government/policyresolution/view.asp?ID=78 ("Leg restraints should be used only in extreme circumstances during transport and never during labor and delivery.").

postpartum recovery or limited such practices to extraordinary circumstances.[20] The harms and risks of shackling pregnant women are so well known that Metro conceded that its guidelines did not adequately provide for the medical needs of women in labor. Appellee Br. at 23-24. ("Sheriff Hall admitted that the policies in effect in July 2008 did not, to his satisfaction, take into account the practicality of the circumstance of the pregnant inmate.").[21]

Hence, the obviousness of the risks to which Metro exposed Ms. Villegas also establishes Metro's deliberate indifference.

CONCLUSION

For the reasons set forth above, *Amici Curiae* respectfully request that the Court affirm the District Court's grant of partial summary judgment to Ms. Villegas.

By: */s/ Alexa Kolbi-Molinas*

Susan Talcott Camp (NY Bar No. 268870)
Alexa Kolbi-Molinas (NY Bar No. 4477519)
American Civil Liberties Union Foundation

[20] 2012 Ariz. Legis. Serv. Ch. 43 (S.B. 1184); Cal. Penal Code § 3423; Colo. Rev. Stat. § 17-1-113.7; Haw. Rev. Stat. § 353-122; 2012 Fla. Sess. Law Serv. Ch. 2012-41 (S.B. 524); Idaho Code § 20-902; 55 Ill. Comp. Stat. 52-15003.6; Nev. Rev. Stat. §209.376; N.M. Stat. § 33-1-4.2; N.Y. Correct. Law § 611; 61 Pa. Const. Stat. § 5905; R.I. Gen. Laws. § 42-56.3-3; Tex. Gov't Code. Ann. § 501.066; Vt. Stat. tit. 28, § 801a; Wash. Rev. Code § 72.09.651; W. Va. Code § 31-20-30a.

[21] Notably, Metro changed its policy after the incident that is the subject of this case to eliminate the shackling of pregnant inmates. Appellee Br. at 24.

Reproductive Freedom Project
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
tcamp@aclu.org
akolbi-molinas@aclu.org

Amy Fettig (DC Bar No. 484883)
American Civil Liberties Union Foundation
National Prison Project
915 15th Street, NW, 7th Floor
Washington, DC 20005
(202) 548-6608
afettig@npp-aclu.org

Tricia Herzfeld (BPR No. 026014)
Legal Director
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
(615) 320-7143
tricia@aclu-tn.org

Kathryn E. Barnett (TN Bar No. 15361)
Lieff Cabraser Heimann & Bernstein, LLP
150 4th Avenue North, Suite 1650
Nashville, TN 37219
(615) 313-9000
ACLU of TN Cooperating Attorney

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the forgoing Brief of *Amici Curiae* in support of Plaintiff/Appellee Juana Villegas complies with the type-volume limitation specified in the Fed. R. App. P. 32(a)(7)(B)(i). The Brief is proportionately spaced, has a typeface of 14 points or more and contains 5,415 words exclusive of the table of contents, table of authorities, preliminary statement, statement of authorship, corporate disclosure statement, and certificate of service.

Dated: May 9, 2012 By: */s/ Alexa Kolbi-Molinas*

CERTIFICATE OF SERVICE

I certify that the foregoing document has been served via the CM/ECF system upon the following on this 9th day of May 2012:

Phillip F. Cramer
John L. Farringer IV
William L. Harbison
Ryan T. Holt
SHERRARD & ROE,PLC 150
3rd Avenue South, Suite 1100
Nashville, Tennessee 37201
(615) 742-4200
pcramer@sherrardroe.com
jfarringer@sherrardroe.com
bharbison@sherrardroe.com
rholt@sherrardroe.com

Elliott Ozment
1214 Murfreesboro Pike
Nashville, Tennessee 37217
(615)321-8888
elliott@ozmentlaw.com

Attorneys for Plaintiff/Appellee

Kevin C. Klein
Allison L. Bussell
METROPOLITAN DEPARTMENT OF LAW
P.O. Box 196300
Nashville, Tennessee 37219
kevin.klein@nashville.gov
allison.bussell@nashville.gov

Attorneys for Appellant

Dated: May 9, 2012 By: */s/ Alexa Kolbi-Molinas*

ADDENDUM 1

Pursuant to 6 Cir. R. 28(f) and Fed. R. Cir. P. 32.1(b), *amici* hereby attach *Reynolds v. Sielaff*, 81 Civ. 107 (S.D.N.Y. 1990) (stipulation and order of settlement entered Oct. 1, 1990) (unpublished), which to *amici's* knowledge is not available in a publicly accessible electronic database.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DANIEL REYNOLDS, CARLOS CRUZ, TYRONE McGRAW, MADRICK WALLACE, LINDA GRIER, individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

ALLYN SIELAFF, Commissioner of the Department of Correction of the City of New York; J. EMILIO CARILLO, M.D., President of the Health and Hospitals Corporation of the City of New York; ESTA ARMSTRONG, Director of Prison Health for the Health and Hospitals Corporation; WOODROW MYERS, M.D., Commissioner of the Department of Health of the City of New York; BILLY JONES, M.D., Commissioner of the Department of Mental Health, Mental Retardation and Alcoholism Services of the City of New York; MICHAEL PASTENA, JAMES BIRD and LEE MAJOR, Deputy Wardens in Command of the prison wards at Bellevue, Elmhurst and Kings County Hospitals, respectively; DANIEL SCHWARTZ, M.D., HENRY WEINSTEIN, M.D., and ARTHUR CRONIN, M.D., Directors of the prison wards at Kings County, Bellevue and Elmhurst Hospitals, respectively; ALAN CHANNING, JAMES BUFORD and PETE VELEZ, Executive Directors, Bellevue Hospital Center, Kings County Hospital Center and Elmhurst Hospital Center, respectively; MICHAEL TANNENBAUM, Acting Assistant Commissioner for Prison Health Services of the Department of Health of the City of New York; DAVID DINKINS, Mayor of the City of New York; individually and in their official capacities,

Defendants.

----------x

STIPULATION AND ORDER OF SETTLEMENT

81 Civ. 107 (PNL)

WHEREAS, this action was commenced on January 9, 1981,

by a class of all pre-trial detainees who were or would be confined in the medical and psychiatric wards operated by the New York City Department of Correction and the Health and Hospitals Corporation then located at Bellevue, Kings County and Elmhurst Hospitals and all prisoners who, while under DOC custody, were or would be placed on civilian medical wards at any of these three hospitals, seeking declaratory and injunctive relief to remedy alleged violations of plaintiffs' rights under the First, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution; and

WHEREAS, defendants filed their answer on June 10, 1981, denying the allegations in the complaint; and

WHEREAS, class certification was granted on consent by this Court on February 2, 1981; and

WHEREAS, the Court certified a class of (1) all pre-trial detainees who are or will be confined on the medical ward at Bellevue or the psychiatric wards at Bellevue, Kings County and Elmhurst Hospitals, and (2) all prisoners (detainees and sentenced misdemeanants) who are "outposted" on the civilian medical wards at these hospitals. Persons are confined on these wards pursuant to N.Y. Crim. Pro. Law § 730 (competency evaluation), N.Y. Crim. Pro. Law § 390.30 (sentencing evaluations) or N.Y. Corr. Law § 508 (emergency medical or psychiatric treatment); and

WHEREAS, the parties agree that for the purposes of this stipulation, the class shall include inmate/patients on the Bellevue and Kings County forensic medical wards for purposes of all structural

fire safety claims which were raised or could have been raised in connection with these wards; and

WHEREAS, plaintiffs filed a first amended complaint on September 7, 1983; and

WHEREAS, plaintiffs filed a second amended complaint on June 26, 1986, to add new allegations that defendants were deliberately indifferent to the serious psychiatric needs of class members housed and to be housed on the forensic psychiatric wards at Bellevue ("19 West") and Elmhurst ("D-11") Hospitals; and

WHEREAS, defendants filed an answer to the second amended complaint on December 14, 1988 denying the allegations in that complaint; and

WHEREAS, the parties have exchanged relevant documents and have engaged in substantial discovery; and

WHEREAS, the parties agree that the Court has jurisdiction over this action and the parties, and that the Court has the authority to order the relief set forth in this stipulation; and

WHEREAS, the parties, without conceding any infirmity in their claims or defenses, have agreed that the terms of this stipulation are appropriate; and

WHEREAS, nothing in this stipulation shall be construed as evidence of an admission by defendants of any violation of any law, regulation, rule or order, or of an agreement by defendants that the provisions of this stipulation set forth the minimum standards for medical or psychiatric care required by the United States Constitution or by New York State law; and

WHEREAS, nothing in this stipulation shall be construed as evidence that defendants maintained a policy or practice that was intended to result or, in fact, resulted in the deprivation of any rights, privileges or immunities of any member of the plaintiff class;

IT IS HEREBY STIPULATED AND AGREED by the parties, subject to approval and entry as an order by the Court after notice is given to the plaintiff class, as follows:

Census

1. Defendants shall limit the census on D11 and 19 West to 18 and 40 patients, respectively. The parties recognize, however, that on occasion there may arise the need to temporarily exceed the census on either or both of these wards because of unanticipated emergency circumstances. In the event the census exceeds the above-stated levels for more than 72 hours, defendants agree to notify plaintiffs' counsel, and the independent monitor during his/her tenure (see paragraphs 73 to 80, infra), as to the reason for such excess and their plans to return the census to the level required by this stipulation on an expedited basis.

Treatment Services

2. The hospital staff assigned to wards D11 and 19 West shall provide services to inmate/patients on those wards in conformity with the written policies and procedures of their respective hospitals, and of the New York City Health & Hospitals Corporation.

3. These treatment services shall include:

a. Each inmate/patient upon admission to D11 or 19 West shall be evaluated by a psychiatrist, who shall interview the

inmate/patient daily for the first five business days after admission and at least three times a week thereafter. Such interviews shall be conducted in a confidential setting, unless such a setting is clinically contraindicated or would pose a physical danger to the staff as documented in the inmate/patient's chart, in which case the presence of other hospital staff will be effected in a manner which minimizes the intrusion into the patient/psychiatrist relationship. The length of these interviews shall be determined by the treating professional in accordance with his/her medical judgment, but shall be maximized to increase the likelihood the patient will benefit from these interviews. In the event an inmate/patient is assessed to be at risk of suicide, including, but not limited to, those inmate/patients on suicide watch, he/she shall be interviewed by a psychiatrist at least daily. Where an inmate/patient is actually seen and interviewed by a psychiatrist during a team meeting (see paragraph "3.d.," infra), such contact shall count as a psychiatrist interview under this sub-paragraph.

b. Each inmate/patient on D11 and 19 West shall receive a full admission physical examination within 24 hours of his/her admission to the ward. Laboratory tests and x-rays shall be ordered, as appropriate, and the results shall be followed up in a timely and appropriate manner by the physician responsible for the inmate/patient's treatment. Appropriate medical consultations, including, but not limited to, nutritional assessments, shall be ordered by the treating physician, who shall ensure that such consultation occurs within a medically appropriate time frame and that

the consultant's recommendations for treatment are followed by the staff of D11 or 19 West.

c. Each inmate/patient on D11 and 19 West shall be seen and assessed by a member of the hospital's social service staff within five days following his/her admission. Thereafter, the member of the social service staff shall interview the inmate/patient at least once a week. Such weekly interview shall be in addition to any contact with the inmate/patient at the weekly treatment team meeting. The social service staff member shall collect psychosocial information, including relevant data from family members and significant others, law enforcement organizations and other components of the criminal justice system and other appropriate sources. Social service staff assigned to the wards shall also provide appropriate concrete and referral services to inmate/patients and significant others and group and individual therapy and counseling as appropriate. The length of such sessions shall be determined by the social service staff member assigned to the ward in accordance with his/her clinical judgment, but shall be maximized to increase the likelihood that the patient shall benefit from these meetings. The unit social service staff shall also be responsible to serve as the liaison with 1) the inmate/patient's defense attorney, when appropriate; and 2) DOC in cases where an inmate/patient is eligible for a supervised off-ward visit to a significant family event pursuant to DOC Directive 4012 (attached as Exhibit 1), or its successors. Such visits shall be permitted unless the inmate/patient's treating psychiatrist determines that such visit is

clinically contraindicated. Such a determination shall be documented in the inmate/patient's chart.

d. Treatment of inmate/patients on D11 and 10 West shall be provided by a treatment team comprised of a psychiatrist, psychologist, social worker, nurse and activity therapist, who shall meet together, with the inmate/patient when appropriate, to plan for treatment and assess its efficacy. Individualized treatment plans consistent with professional standards and tailored to each patient's needs shall be formulated and followed, and inmate/patients shall not be discharged unless the discharge is consistent with the treatment plan and is clinically appropriate. Treatment plans shall be based on physical, emotional, behavioral and social assessments which are consistently and thoroughly conducted for each patient. An Initial Treatment Plan shall be created within three business days following the patient's admission, and a Comprehensive Treatment Plan shall be formulated no later than ten days after admission. Thereafter, the treatment team shall meet at least weekly, with the inmate/patient where appropriate, to measure the patient's progress and modify the treatment plan when necessary. Each inmate/patient shall have a primary therapist with whom the inmate/patient shall meet one-on-one as frequently as medically appropriate, but no less than two times each week in a setting which affords a reasonable level of privacy. The length of these meetings shall be determined by the primary therapist in accordance with his/her clinical judgment, but shall be maximized to increase the likelihood that the patient shall benefit from these meetings.

e. Group therapies, as appropriate, shall be available to inmate/patients on D11 and 19 West for no less than six (6) hours per week. Such group sessions on both wards shall include a community meeting held at least once a week and substance abuse groups.

Recreation/Activity Therapy

4. HHC shall provide appropriate types of structured recreational/activity therapy on the three forensic psychiatric wards amounting to at least an average of four hours per day, seven days a week, which amount shall include on 19 West and the KCHC forensic psychiatric ward any outdoor recreational activities. In no event shall fewer than two hours of structured activities be provided on any given day. This amount shall be exclusive of time required for individual inmate/patient charting.

5. Defendants shall make available on 19 West and the KCHC forensic psychiatric ward a minimum of seven hours of outside recreation, weather permitting, each week. Access to such outside recreation shall be afforded at least four days a week. Defendants shall ensure that any replacement space for D11 includes outdoor recreational space, to which inmate/patients shall have access at least seven hours each week, weather permitting.

6. In addition to the structured activities referred to in paragraphs 4 and 5, supra, defendants shall make available on the three forensic psychiatric wards several forms of unstructured activities, including board games and cards, movies, television and radio, as appropriate, so that during hours when no structured

activities are scheduled, inmate/patients can avail themselves of such alternate activities.

7. Defendants shall maintain suitable indoor exercise equipment for the use by inmate/patients on the three forensic psychiatric wards and shall provide no less than one hour per day of exercise to inmate/patients. Inmate/patients on the KCHC forensic psychiatric ward shall be accorded at least one hour per day of exercise, either in the gymnasium or in the outdoor facility. Inmate/patients on 18 West shall be given access to the indoor exercise equipment maintained on the ward for at least 14 hours per week and no less than one hour per day. Inmate/patients on D11 shall have access to the indoor exercise equipment maintained on the ward for no less than one hour per day. In addition, HHC agrees to give access to the inmate/patients on D11 to either an exercise bicycle or an equivalent piece of equipment during the hours between 8:00 a.m. and 11:00 p.m. each day. Such access may be restricted during routine ward activities and meals, if the conduct of which would be disturbed by the use of such equipment. HHC agrees to maintain the indoor exercise equipment currently available to the three forensic psychiatric wards, including the following specific items: 18 West-- one universal gym, two rowing machines, one exercise bicycle, one tread mill, one sit-up bench; D11-- one rowing machine, one stereo cassette player, three exercise mats, one treadmill, one exercise bicycle, in good repair and shall repair or replace with equivalent equipment any item which breaks.

Staffing

8. Defendants agree to provide funding sufficient to maintain at least the following staff:

19 West --	1	Unit Chief (psychiatrist)
	4	FTE psychiatrists
	2	FTE psychologists
	2.5	FTE social workers
	3	recreational therapists
D11 --	3	half-time psychiatrists, one of whom serves as unit chief
	1	FTE psychologist
	1	FTE social worker
	1.5	FTE recreational therapists
	1	FTE psychiatric resident

For purposes of this agreement, FTE ("full time equivalent") for all clinical staff members, except psychiatrists and psychiatric residents, shall mean the provision of services on the ward for 35 hours per week. A full time psychiatrist line on 19 West means the provision of services on the ward for 30 hours per week. Each half time psychiatrist line on D11 represents the provision of services on the ward for 20 hours per week. A full-time psychiatric resident line on D11 means the provision of services on the ward for 25 hours per week.

9. HHC shall endeavor to keep all the positions identified in paragraph 8, supra, filled at all times. Vacancies shall be filled

expeditiously, and HHC shall temporarily replace absent staff on D11 and 19 West where possible.

10. Notwithstanding the provisions of paragraph 8, supra, HHC may raise the number of employees in one discipline and lower the number in another discipline. HHC shall ensure that any such change does not adversely affect the treatment services to be provided pursuant to paragraphs 2 through 7, supra. In the event HHC elects to make such a change, defendants shall first notify plaintiffs' counsel. HHC shall also notify the monitor if such staffing changes are contemplated during his/her tenure.

11. HHC shall make a good faith effort to fill expeditiously any vacant allocated lines on the nursing staffs of D11 and 19 West, including utilization of overtime and per diem nurses. Defendants agree to continue to allocate funds for the hiring of nursing staff at a level which meets 95% of the HANYS Standard for the average daily census at each ward.

12. At no time shall either D11 or 19 West be without a registered nurse physically present on the ward during all tours, seven days a week. At least one nursing professional shall be present in the patient areas on D11 at all times.

13. HHC shall endeavor to minimize the temporary reassignment of D11 or 19 West staff. Such staff shall not be temporarily reassigned to other wards unless such temporary reassignment is deemed essential to address an unanticipated, emergency situation on another ward. HHC shall not rely disproportionately on the temporary reassignment of D11 or 19 West

staff to handle such unanticipated emergency situations and shall make every effort to terminate D11 or 19 West staff's temporary reassignment as soon as possible. HHC shall notify plaintiffs' counsel, and the monitor during his/her tenure, whenever any D11 or 19 West staff has been reassigned pursuant to this paragraph for two consecutive days. Should the second consecutive day fall on a weekend or holiday, notice shall be provided on the next business day. Nothing in this paragraph shall allow HHC to provide treatment services in a quantity less than required by paragraphs 2 through 7, supra.

14. Notwithstanding the provisions of paragraph 13, supra, HHC reserves the right to temporarily reassign any psychiatrist on 19 West, the evaluating psychiatrists on D11, and social service staff and psychologists on both D11 and 19 West, should the daily census fall below 9 on D11 and 25 on 19 West. Should either hospital choose to exercise this right, HHC shall notify plaintiffs' counsel, and the monitor during his/her tenure, as to the amount and category of staff resources to be temporarily diverted and the justification for such diversion. Should the census return to 9 or 25 or above, diverted staff resources shall be returned to D11 or 19 West immediately. Nothing in this paragraph shall allow HHC to provide treatment services in a quantity less than required by paragraphs 2 through 7, supra. In no event shall any individual staff member be placed on another ward for more than three hours per day. Defendants may avail themselves of the provisions of this paragraph during the first two years following the entry of this

stipulation as an order of the Court. During this period, the monitor may evaluate the impact of this paragraph on the provision of the services required by paragraphs 2 and 3, supra. If the monitor determines that diversion of staff resources pursuant to this paragraph has resulted in a decrease in the treatment services required to be provided pursuant to paragraphs 2 and 3, supra counsel for plaintiffs may make an application to the Court to strike this paragraph from the agreement. If, however, the monitor does not find that the diversion of resources pursuant to this paragraph has resulted in a decrease in the treatment services required to be provided by this stipulation, defendants shall be relieved of their obligation to notify plaintiffs' counsel, and the monitor during his/her tenure, of their decisions to exercise their rights under this paragraph.

15. Each of the three forensic psychiatric wards shall have a unit chief who shall be responsible for ensuring that the following are performed and/or utilized in conformity with appropriate medical standards including, but not limited to hospital policy and procedure manuals, State and JCAHO standards and this agreement: adequate treatment to patients; timely and individualized admission work-ups and treatment planning; obtaining of charts of previous hospital admissions; the provision of medical services, including timely admission physicals, prompt laboratory work and follow-up of abnormal results, and appropriate consults with other services of the hospital when needed; assessment of suicidality and assaultiveness; timely and appropriate contacts with inmate/patients (and others,

when appropriate) by all disciplines; formulation of appropriate admission and discharge criteria; professionally and clinically appropriate use of seclusion and restraint; professional and clinically appropriate use of medication; and the documentation of all of these services and contacts as appropriate. In addition, this person shall be responsible for the proper performance and appropriate attendance by staff in all disciplines and shall assist the Chief of Psychiatry in the timely conduct of peer and quality assurance reviews. The unit chief shall also assist the Chief of Psychiatry to ensure that his/her ward has appropriate space, staff and supplies.

Separation of Treatment and Evaluation Services

16. HHC shall endeavor to ensure that psychiatrists on D11 and 19 West who conduct specific evaluations pursuant to New York Criminal Procedure Law § 730 shall not also be involved in the provision of treatment services to inmate/patients they evaluate. However, in an emergency, and during the annual and sick leave of the treating psychiatrists, any psychiatrist may provide treatment to any inmate/patient regardless of the psychiatrist's involvement in a "730 evaluation."

Physician's Orders

17. Orders written by physicians shall be followed as written and watches shall be conducted as ordered. Only physicians may modify such orders. HHC recognizes that one-to-one watches are at times clinically appropriate and should be ordered when indicated.

Seclusion & Restraint

18. The modalities of seclusion and restraint shall be utilized on the three forensic psychiatric wards in strict conformity with State law and the policies and procedures of the hospitals. These modalities shall not be used for ward management, punishment, or as a substitute for an appropriate watch. Medical staff shall carefully note in the inmate/patient's medical chart the specific reasons and justifications for orders for seclusion or restraint.

19. The unit chiefs on the three forensic psychiatric wards shall be responsible for reviewing each use of seclusion or restraint within 24 hours of the time the procedure was initiated, or, if the 24 hour period ends on a weekend or holiday, as soon as the unit chief returns to the ward. Such reviews are intended to ensure the procedure was ordered appropriately and that the chart reflects adequate justification for its use.

20. An inmate/patient in seclusion or restraint shall be observed every 15 minutes by mental health staff and the condition and behavior of the inmate/patient shall be noted in his/her chart. Inmate/patient in restraints shall have their limbs massaged and exercised every two hours and this shall be noted in the patient's chart.

21. Inmate/patients in seclusion or restraints shall be afforded access to a bathroom upon their request. Bed pans shall not be utilized as an alternative to such access, unless the inmate/patient is too agitated to be safely allowed such access, in which case use of the bed pan shall be noted in the inmate/patient's chart.

22. Medical and nursing staff assigned to D11 and 19 West shall receive appropriate training concerning the proper utilization of seclusion and restraint and annual, in-service re-training. Such training shall at a minimum address the requirements of New York State law set forth at 14 N.Y.C.R.R. 27.7.

23. Any person in seclusion on D11 for 12 continuous hours shall be personally examined, and the need for continued seclusion evaluated, by an attending physician. Any person in seclusion for 24 continuous hours shall be personally examined, and the need for continued seclusion evaluated, by the unit chief.

24. Any person in restraints on D11 for six continuous hours shall be personally examined, and the need for continued restraint evaluated, by an attending physician. Any person in restraints for 12 hours shall be personally examined, and the need for continued restraint evaluated, by the unit chief.

25. In the event the time periods set out in paragraphs 23 and 24, supra, relating to the requirement of a personal examination by the unit chief and during non-business hours or at a time when the unit chief is not scheduled to be on the ward, an appropriate attending physician shall examine the inmate/patient and evaluate the need for continued seclusion or restraint. The unit chief shall personally examine the inmate/patient, and evaluate the need for continued seclusion or restraint, at the beginning of his/her next day on the ward.

26. The obligations set forth in paragraphs 23-25, supra, shall cease after two years from the date of entry of this stipulation as an order of the court.

Use of Psychotropic, Tranquilizing and Sedating Medication

27. Medication shall not be administered or threatened as a means for exercising ward management. Medication over objection on the three forensic psychiatric wards shall be administered only pursuant to court order, see Rivers v. Katz, 67 N.Y.2d 485 (1986) (also see 14 N.Y.C.R.R. 527.8), or in emergencies as defined by State law, specifically 14 N.Y.C.R.R. 527.8(c)(1).

28. P.R.N. orders for psychotropic, tranquilizing or sedating medication shall be written only when medically appropriate, and the writing of such orders shall be monitored carefully by the unit chiefs on D11 and 19 West on a frequent and regular basis, but not less than weekly, to ensure that they are written appropriately. No psychotropic, tranquilizing or sedating medication orders shall be written "p.o., but if refuse, i.m."

29. Before administering psychotropic, tranquilizing or sedating medication pursuant to a PRN-IM order to a non-objecting inmate/patient on D11 or 19 West, nursing staff must make its best efforts to have the inmate/patient first assessed by the inmate/patient's psychiatrist or another psychiatrist responsible for providing services to D11 or 19 West. This psychiatrist shall interview the inmate/patient, assess the need for the medication and document this information in the inmate/patient's chart. In the event that a psychiatrist is not available within a reasonable time under the

circumstances of the situation to interview and assess the inmate/patient's need for the medication, nursing staff may administer the PRN-IM medication and must document the following information in the inmate/patient's chart:

a. the specific evidence establishing the need for the PRN medication;

b. a description of the inmate/patient's behavior;

c. an account of alternative modalities explored prior to the administration of the medication;

d. the inmate/patient's consent, including his/her signature, if the inmate/patient can provide it, and a notation that the inmate/patient was made aware of his/her right to object to the medication; and

e. a description of all efforts made to secure the presence of a psychiatrist, including an explanation of why a psychiatrist was determined to be unavailable to come to the ward within a reasonable time.

30. No medication shall be administered to an inmate/patient on D11 or 19 West pursuant to a standing or PRN order over the inmate/patient's objection unless (1) the conditions in paragraph 27, supra, are met; and (2) nursing staff has first made its best efforts to have the inmate/patient seen by the patient's psychiatrist or, in his/her absence, a psychiatrist responsible for providing services to D11 or 19 West to determine that such administration is clinically appropriate. In the event that a psychiatrist is not available within a reasonable time under the

circumstances of the situation to assess the inmate/patient and his/her need for medication over objection, nursing staff may administer the medication and must document the following information in the inmate/patient's chart:

a. the specific evidence establishing the need for the medication, including a statement indicating that the medication is being administered over objection because of an emergency, as defined in 14 NYCRR §527.8;

b. a description of the inmate/patient's behavior, including a detailed explanation of any dangerous condition justifying medication over objection;

c. an account of alternative modalities explored prior to the administration of the medication; and

d. a description of all efforts made to secure the presence of a psychiatrist, including an explanation of why a psychiatrist was determined to be unavailable to come to the ward within a reasonable time.

31. Each administration on D11 and 19 West of psychotropic, tranquilizing or sedating medication pursuant to a PRN-IM order where a psychiatrist did not interview and assess the patient immediately prior to the administration shall be reviewed during the next business day by each hospital's Director of Psychiatry or his/her designee to ensure that such administration was appropriate. Such review may include, should the reviewer believe them to be necessary, interviews with the involved staff and patients. The determination of appropriateness shall be documented in the

patient's chart. This review shall continue during the monitoring period set out in paragraphs 73, 83 and 127, infra. During the monitoring period, plaintiffs' counsel shall be provided monthly with copies of the chart notes reflecting each occasion when medication is administered pursuant to PRN-IM orders as well as any review of such administrations. The parties agree that plaintiffs' counsel shall be permitted to depose members of the plaintiff class at the hospitals to preserve testimony alleging violations of paragraphs 29 and 30, supra, during the monitoring period. After the end of the first year from the date of the entry of this stipulation as an order of the Court, plaintiffs may request, at any time during the remainder of the monitoring period, that the Court conduct a hearing concerning defendants' compliance with the terms of paragraphs 29 and 30, supra. If such a hearing is ordered to be held, the Court shall allow the parties to conduct reasonable discovery limited to the issues to be decided at the hearing. Should plaintiffs prove that, on either D11 or 19 West defendants have engaged in a pattern of abusive administration of medication pursuant to PRN-IM orders, the parties agree to the entry of an order modifying this stipulation to prohibit the writing of PRN-IM orders for a period of seven and a half years from the entry of the Court's modification order. Such modification shall apply only to the ward concerning which the Court has found a pattern of abuse. Should the monitoring period end without such a modification being ordered, nursing staff shall continue to comply with the substantive requirements of paragraphs 29 and 30, supra and be required to write a professionally appropriate note, reflecting

the inmate/patient's behavior, his/her need for the medication and the nurse's best efforts to secure the presence of a psychiatrist prior to the administration of the medication each time medication is administered as set forth in paragraphs 29 and 30, supra, but nursing staff shall be relieved of the additional specific charting obligations set forth in those paragraphs.

Charting

32. HHC shall ensure that all medical staff record significant contacts with an inmate/patient housed on D11 or 10 West in his/her medical chart, in accordance with professional standards and the written policies and procedures of the hospitals. These chart entries must include, but need not be limited to, the following:

a. Psychiatrists shall prepare a unit admission note and thereafter shall record each of their daily contacts with an inmate/patient during the first five business days after admission, and each of the thrice weekly contacts thereafter described in paragraph 3.a., supra. Such documentation must address at a minimum the inmate/patient's mental status, response to treatment plan and any unresolved medical problems. A descriptive entry in the treatment plan, where the inmate/patient was seen by the team at its meeting, may, for the purposes of this agreement, constitute one of the three weekly chart notes. In addition, psychiatrists shall chart each daily contact made with an inmate/patient who has been assessed as a suicide risk.

b. Unit social service staff shall record their weekly contact with each inmate/patient.

c. Should an inmate/patient's primary therapist be a clinical staff member other than a psychiatrist, that person shall record each treatment contact with the inmate/patient in the patient chart.

d. Nursing staff shall be responsible for at least one note per tour for the first 72 hours after admission and thereafter at least one note in each inmate/patient's chart each day.

e. HHC shall endeavor to ensure that all notes made in patient's charts on D11 and 19 West are legible.

33. As set forth in paragraphs 18, 28 and 30, supra, all uses of seclusion or restraint and administrations of medication over objection shall be noted in the inmate/patient's chart in a manner which provides a clear description of the reasons and justifications for the use of such modalities.

34. HHC shall also maintain the following records on D11 and 19 West:

a. Logs reflecting inmate/patient attendance at treatment groups referred to in paragraph 3.e., supra.

b. Logs reflecting inmate/patient attendance at recreation/activity therapy groups referred to in paragraphs 4 and 5, supra.

c. Logs required to be maintained by State law.

d. Logs showing the names of inmate/patients secluded and/or restrained and the date on which such modalities were utilized.

35. The obligation to maintain the logs described in paragraph 34(a), (b) and (d), supra, shall cease at the end of the

fifth year following the entry of this stipulation as an order of the Court unless the monitoring period set forth in paragraphs 73-84, infra, is extended by the Court pursuant to paragraph 127, infra. In that event, HHC's obligation to maintain these logs shall continue until the end of the monitoring period ordered by the Court.

Quality Assurance

36. HHC shall ensure that there is in place adequate quality assurance programs at Elmhurst, Kings County and Bellevue Hospitals to regularly and periodically each year review the adequacy of medical and psychiatric care, including charting, and other aspects of care referred to in this stipulation on the three forensic psychiatric wards.

Physical Environment

37. Each inmate/patient on D11 and 19 West shall be provided with lockable storage space in which his/her personal belongings may be kept. Each inmate/patient shall have unmediated access to his/her locked storage space unless such access is clinically contraindicated and the basis of such contraindication is noted in the inmate/patient's chart. Where patients require assistance in obtaining access to their property, such assistance shall be provided by clinical staff. Should defendants choose to replace the current storage space for inmate/patients at the KCHC forensic psychiatric ward, such replacement space shall be lockable.

38. HHC shall furnish the three forensic psychiatric wards in a manner appropriate for acute in-patient psychiatric wards and shall endeavor to maintain appropriate climate control.

39. HHC shall maintain the three forensic psychiatric wards in a state of cleanliness and hygiene that meets appropriate standards for hospitals, including the control of rodents, insects and other vermin.

Lock-in and Lock-out

40. Inmate/patients on D11 and 19 West shall not be locked in their rooms for any reason at any time, except as provided in paragraph 42, infra. Should a physician order that an inmate/patient be placed in his/her room with a direction not to come out at any time other than during the eight hour sleeping period each night, the medical staff must comply with the requirements for the utilization and charting of seclusion, as set forth in State law and this agreement. The practice of lock-in/feed-in status on 19 West shall be prohibited. Inmate/patients on 19 West may be temporarily removed to the holding cells adjacent to the ward only upon a physician's order and shall be provided with a one-to-one watch by nursing staff during the time they are in the cell. Such removal pursuant to a doctor's order shall be treated as a use of seclusion and shall be entered in the inmate/patient's chart as such, and shall be recorded on the log required to be maintained pursuant to paragraph 34.d., supra. The notation on the log shall indicate the use of the holding cell for the purposes of seclusion.

41. Inmate/patients on the KCHC forensic psychiatric ward shall not be denied access to their dormitory areas during lock-out unless a clinician orders lockout for a specific inmate/patient. Night

lock-in on the KCHC forensic psychiatric ward may not exceed eight hours.

42. DOC maintains the right to lock inmate/patients in their rooms or dormitory areas in emergencies as set forth in DOC Directive 4009 (attached as Exhibit 2), or its successors.

Role of Correction Staff

43. The role of DOC staff on D11 and 19 West shall be limited to maintaining security. All clinical and programatic functions, including but not limited to the administration of medication, the confinement of an inmate/patient to a room, the distribution of pencils, paper, clothing, and other supplies, and restraining violent or agitated inmate/patients, shall be the responsibility of hospital staff. To that end, HHC shall ensure that sufficient hospital staff is available to:

a. respond to violent actions by inmate/patients;

b. restrain such inmate/patients;

c. place such inmate/patients in restraints or seclusion; and

d. assist in the administration of medication over objection.

44. Correction Officers shall not be utilized to escort patients to and from activities within the confines of 19 West and D11 proper.

45. Where the available hospital staff cannot maintain the safety or security of the ward, correction staff shall be permitted in an emergency to physically intervene in situations where immediate

action is required to prevent injury to persons or serious damage to property.

46. Correction officers assigned to posts on the D11 ward proper shall not be stationed at or near the nurses' station. The purpose of this requirement is to avoid, as much as possible, the concentration of nursing and correction personnel in one location on the unit.

47. All correction staff receiving assignments to the three forensic psychiatric wards shall receive mental health training from DOC within 90 days of their assignment, if they have not already received such training. Upon their assignment to one of the three forensic psychiatric wards, correction officers shall receive an orientation concerning their role pursuant to this agreement. HHC shall provide periodic training to correction officers assigned to the three wards in order to reinforce the information provided at orientation.

48. No correction officer shall be assigned to any of the three forensic psychiatric wards without having been personally interviewed by the commanding officer of the hospital ward to which the officer is to be assigned. No correction officer shall be assigned to any of the three wards 1) who has charges pending alleging unnecessary or excessive use of force or failure to report use of force or failure to accurately report use of force; or 2) who, within the three years prior to the officer's proposed assignment, has been referred for retraining pursuant to Directive 5003, or its successors, or has been found guilty of departmental charges of unnecessary or

excessive use of force or failure to report use of force or failure to accurately report use of force.

Inmate/Patient's Property

49. Inmate/patients on each of the three forensic psychiatric wards shall be permitted to store a reasonable amount of personal property as determined by the space available on the prison wards for such storage. The types of personal property inmate/patients shall have access to shall be the same as that permitted to patients on the civilian psychiatric wards at each hospital, but limited by any restrictions in DOC Operations Order 81/88 (attached as Exhibit 3).

50. Inmate/patients on all three forensic psychiatric wards shall be allowed to keep in their personal possession, unless clinically contraindicated, personal hygiene items in accordance with 14 N.Y.C.R.R. §15.2(a). Any such clinical contraindication must be documented in the patient chart by the primary therapist. Such personal hygiene items shall not include razors, nail files, scissors or other sharp instruments. Any items not allowed to be retained by inmate/patients shall be provided by nursing staff. No razor blade shall be utilized by more than one individual.

51. Inmate/patients on DII shall receive up to three sanitary napkins at a time upon request unless clinically contraindicated as documented in the inmate/patient's chart. Inmate/patients on all three forensic psychiatric wards shall have unmediated access to toilet paper in the bathroom.

52. Inmate/patients on all three forensic psychiatric wards shall be allowed to retain their personal clothing and shall be allowed to wear such clothing at all times, unless clinically contraindicated. HHC shall make provisions on the three wards so that inmate/patients' clothes can be regularly laundered and shall ensure that inmate/patients are permitted to take showers on a daily basis. Should wearing of non-hospital clothing be clinically contraindicated, the treating physician must specifically note such prohibition and the reason for it in the inmate/patient's chart. Inmate/patients shall not be required to change into hospital clothing upon admission to the wards. Defendants shall supply indigent inmate/patients with a reasonable amount of clean civilian clothing upon request.

53. HHC shall maintain an adequate supply of underwear, pajamas, slippers, linens, blankets, pillows, towels and soap for the use of inmate/patients on the wards in accordance with hospital policy and practice.

Ward Rules

54. HHC shall post a clear list of applicable hospital rules and regulations, including but not limited to the right to refuse medication, the right to wear civilian clothes, the visiting policy, and the smoking policy, in a prominent, accessible location on all three forensic wards. In addition, DOC shall maintain a copy of the rule book given to members of the plaintiff class upon their entrance into the jail system, and of the Board of Correction Minimum Standards, in each law library which services each of the three forensic psychiatric wards. A notice shall be prominently displayed on each forensic

psychiatric ward advising members of the plaintiff class that a federal court order governs certain conditions and practices on the ward including: access to psychiatrists and other professional staff, the right to refuse medication, appropriate use of seclusion and restraint, the role of correction staff, the right to wear civilian clothing, activities, including recreation, visits and the possession of personal property. Such notice shall further advise members of the plaintiff class that a copy of this stipulation, as ordered by the Court, is maintained in each ward law library for reference purposes and that questions concerning this stipulation may be directed to plaintiffs' counsel at the Prisoners' Rights Project of the Legal Aid Society.

55. Inmate/patients on D11 and 19 West shall not be prohibited from talking in normal voices at meals.

56. Inmate/patients on D11 and 19 West will not be required to have their fingernails trimmed upon admission to the wards. Defendants retain the right, however, to cut the fingernails of any inmate/patient where such action is necessary for medical reasons as determined and documented by a physician or to prevent a repetition of seriously injurious conduct.

57. Cigarettes shall be made available to inmate/patients on the three forensic psychiatric wards unless medically contraindicated or prohibited by hospital-wide rules.

Inmate/Patient Grievances

58. HHC shall make known to each inmate/patient upon admission to any of the three forensic psychiatric wards the existence and purpose of the hospital's patient advocate responsible for the

forensic psychiatric ward. A procedure shall be maintained so that inmate/patients can confidentially submit any complaint or allegation of physical or verbal abuse by hospital staff to such patient advocate, who shall investigate such complaint or allegation with a view to resolving it. Should the inmate/patient be dissatisfied with the proposed resolution, he/she may notify the hospital's Executive Director, or his/her designee, of his/her dissatisfaction. The Executive Director or his/her designee shall conduct whatever investigation he/she deems necessary; his/her determination is final. HHC shall make available to plaintiffs' counsel for inspection copies of any grievances filed by inmate/patients and the resolutions of such grievances during the monitoring period set forth in paragraphs 73-84 of this stipulation.

59. a. DOC shall establish and maintain Inmate Grievance Procedures at each of the three hospitals which have been approved by the New York City Board of Correction.

b. All allegations of excessive use of force by DOC staff shall be handled in accordance with DOC Directive No. 5004, or its successors. In addition, all use of force incidents occurring on the Bellevue Hospital Prison Ward that are not initially chosen for an IAD investigation shall be reviewed by a Captain assigned to the Incident Review Team and then by the attorney assigned to the Incident Review Team to determine if an IAD investigation is required.

c. DOC shall ensure that each use of force is thoroughly documented. In addition, the supervising officer

reviewing use of force reports shall make recommendations, where appropriate, to the correction officer[s] involved as to how the incident might have been prevented and/or how the level of force might have been minimized.

d. Any correction officer who is found guilty of or pleaded guilty or no contest to unnecessary or excessive use of force, failure to report use of force, or failure to accurately report use of force shall be transferred forthwith from the hospital wards.

Transfer of Funds, Personal Property and Commissary

60. Inmate/patients admitted to any of the three forensic psychiatric wards whose stay in the hospital lasts, or is anticipated to last, more than one week may request that DOC staff transfer their funds from the sending facility to the hospital or the DOC facility responsible for providing commissary to the prison ward and transfer their personal property from the sending facility to the hospital. Inmate/patients may make such requests of hospital staff who shall promptly convey the request to DOC staff. Inmate/patients may be required to sign a form requesting such transfer. DOC will endeavor to transfer such funds and personal property within one (1) business day of such request. Visitors shall be permitted to deposit funds in inmate/patients' accounts.

61. Inmate/patients who have funds in their hospital accounts shall be given access to the commissary available for each hospital prison ward.

62. At no time shall the personal property transferred to, and received from visitors at, the three forensic psychiatric wards

exceed the limits outlined in the existing institutional orders at each prison ward. A summary of the procedures governing the transfer of property and funds and receipt of packages shall be posted in the dayrooms at each of the three forensic psychiatric wards.

Law Library Access

63. DOC shall maintain a mini-law library at each of the three forensic psychiatric wards. These libraries shall be maintained and equipped, and inmate/patients shall be afforded access to such libraries, in accordance with Institutional Orders currently in place at the hospital prison wards. These orders are attached as Exhibits 4(a), 4(b), and 4(c).

64. The Code of Conduct governing use of the law libraries, the law library schedule, and a list of the books and equipment available with a brief description of those books and notice that additional materials and assistance may be requested from other DOC law libraries shall be posted continuously in the dayroom area on the three forensic psychiatric wards and, on 19 West, in the law library.

Newspapers, Magazines, Books and Writing Supplies

65. Defendants shall make available a reasonable quantity of magazines and books and English and Spanish newspapers on a daily basis to the inmate/patients on the three forensic psychiatric wards. Inmate/patients shall be provided with writing paper, envelopes and writing instruments upon request, unless clinically contraindicated as documented in the inmate/patient's chart.

Packages

66. Inmate/patients on the prison psychiatric wards shall be permitted to receive packages in accordance with DOC Operations Order No. 81/88.

Religious Services

67. Defendants shall ensure that religious needs of inmate/patients on the prison psychiatric are appropriately met by communal services as available and individual counselling.

Telephone Calls

68. Inmate/patients on the three forensic psychiatric wards shall be permitted to make and receive telephone calls in accordance with DOC Directive 4007 (attached as Exhibit 5), or its successors.

69. Access to the telephones shall be permitted during the day and evening, subject to reasonable limitations to allow for routine ward activities such as meals, medication and count, provided, however, that such access does not constitute a threat to the safety or security of the prison ward.

70. Telephone messages from family or friends of an emergency nature will be conveyed as soon as possible by HHC staff to the inmate/patient, unless his/her psychiatric condition as assessed without delay by a mental health professional warrants delay. However, in no event will the inmate/patient be denied knowledge of such a phone call. Inmate/patients shall be notified of a telephone call from an attorney as soon as possible and shall be permitted to return such calls on the same day except, however, where the attorney phone call is received after 11:00 p.m., in which event the

inmate/patient shall be permitted to return such call the following day.

Visits

71. Inmate/patients on the three forensic psychiatric wards will be permitted visits in accordance with the current DOC visiting policy, as limited by the visiting policy of each hospital. Children younger than the age set by hospital visiting policy shall be permitted to visit unless, after appropriate consultation with the inmate/patient's primary therapist, such a visit is determined to be clinically contraindicated. Notice of the visiting rules, including the provision concerning young children, shall be posted in the dayroom and the visit area.

72. Attorney visiting at Bellevue Hospital shall be conducted at all times in a confidential setting. At Elmhurst and Kings County Hospitals, attorney visits shall be conducted in as confidential a setting as can be arranged.

Monitoring

73. In order to monitor compliance with the foregoing paragraphs of this agreement the parties agree to select within thirty days of entry of this stipulation as an order of the court an impartial, independent forensic mental health professional ("the monitor") who shall be responsible for monitoring compliance with the terms set forth in the foregoing paragraphs of this agreement and to review the provision of treatment to inmate/patients on 19 West and D11 during the first three years following the entry of this stipulation as an order of the Court. If the parties cannot, within

thirty days, agree on the selection of a monitor, each side shall submit up to three names to the Court which shall then choose the monitor from among those submitted.

74. The parties anticipate that the monitor may perform his/her function by conducting periodic site visits accompanied by the counsel for the parties on D11 and 19 West and/or auditing documents concerning inmate/patients and procedures on D11 and 19 West.

75. Defendants shall allow the monitor free access to the premises and the records of D11 and 19 West for inspection and/or audit purposes. During the first two years following entry of this stipulation as an order of the Court, these audits or site visits on D11 and 19 West shall not exceed a total of five for each ward, no more than two of which may be unannounced site visits. Each site visit shall be limited to no more than two days on each ward. Upon notice to the parties by the monitor based upon articulated need, the monitor may conduct up to 2 additional site visits on D11 and 19 West of no more than one day on each. During the third year following entry of this stipulation as an order of the Court, the monitor may conduct up to two scheduled site visits and/or audits on D11 and 19 West, with each site visit lasting no more than two days on each ward. In addition, upon notice to the parties by the monitor, based upon articulated need, the monitor may conduct one additional site visit to D11 and 19 West of no more than one day on each.

76. On each of the monitor's visits to D11 and 19 West, defendants shall provide him/her with a private setting in which the monitor can meet alone with members of the plaintiff class; and shall

allow the monitor to have confidential discussions with the members of each discipline assigned to the wards, as well as with relevant hospital administrators. The monitor shall also be allowed to observe treatment and activity groups. Counsel shall not be present during any of the monitor's activities conducted pursuant to this paragraph.

77. The monitor shall receive, at his/her request, copies of any record maintained or prepared on D11 or 19 West, including but not limited to: inmate/patient charts; logs reflecting attendance at group activities and group therapies; logs reflecting use of seclusion and restraint; and logs and reports maintained by DOC and HHC on these wards. In addition, the monitor shall receive, at his/her request, copies of any quality assurance reports or minutes, or reports of other monitoring agencies relevant to D11 or 19 West.

78. Subsequent to each audit and/or visit, the monitor may prepare a report detailing his/her findings and conclusions. If such report is prepared, copies shall be provided to plaintiffs' and defendants' counsel, who shall have the opportunity to comment on and/or seek modifications to the report. Subsequent to the receipt of any comments and/or proposed modifications, the monitor shall issue a final report, to be provided to counsel for plaintiffs and defendants.

79. Plaintiffs' counsel shall be entitled to receive, at their request, copies of defendants' documentation reviewed by the monitor in connection with any of his/her audits or site visits. Such documentation shall be made available within ten working days after the monitor's receipt of such documentation or the conclusion of the monitor's site visit.

80. At the end of the third year following the entry of this stipulation as an order of the Court, the monitor shall be relieved of any further obligations under this agreement unless the Court, pursuant to paragraph 127, infra, orders an extension of the monitor's term.

81. Defendants shall pay the compensation and expenses incurred by the monitor in pursuit of his/her responsibilities under this agreement. Defendants shall take all steps necessary to secure approval of the relevant agreements so that such compensation and expenses can be paid to the monitor in a timely manner.

82. During the three years during which the monitor performs his/her duties, plaintiffs' counsel shall be allowed to conduct a total of four site visits on each of the three forensic psychiatric wards, of no longer than one day on each ward, at which time they may review any of the types of documentation made available to the monitor in paragraph 77, supra.

83. During the two years following the conclusion of the monitor's duties under this agreement, plaintiffs' counsel shall be entitled to conduct up to four scheduled site visits on each of the three forensic psychiatric wards, of no longer than one day at each ward, at which time they may review any of the types of documentation made available to the monitor in paragraph 77 of this stipulation.

84. Plaintiffs' counsel shall be permitted at any time during the life of this agreement to confer confidentially with any individual member of the plaintiff class during attorney visit hours.

Should plaintiffs' counsel wish to confer confidentially with more than one member of the class simultaneously such consultation shall be permitted during attorney visit hours, subject to defendants' right to schedule such consultations to accord with the operational and security needs of the wards. In addition, during the periods described in paragraphs 73 and 83, supra, plaintiffs' counsel may obtain copies of a reasonable number of patient charts and observe the provision of treatment services and activities on D11 and 19 West, with the limitation that they may not observe individual or group therapy sessions or treatment team meetings at which an inmate/patient is present, unless that inmate/patient gives his/her permission.

Outposted Inmate/Patients

85. Defendants shall utilize mechanical security restraints on inmates receiving medical care on civilian hospital wards ("outposted inmates"), as set forth below, in accordance with DOC Directive 4202, dated August 1, 1990 (attached as Exhibit 6; see paragraph 134, infra). Defendants' responsibilities with respect to implementation of subparagraphs (a) to (h) of this paragraph shall be governed by this directive.

a. DOC will not place mechanical restraints on an outposted inmate where a doctor determines that the inmate: (1) is pregnant and is admitted for delivery of the baby; (2) is dependent on a ventilator or respirator; (3) is in imminent danger or expectation of death; or (4) where the use of mechanical restraints is medically contraindicated. Inmates in these categories will not be shackled when

in bed, or when out of bed to ambulate, unless the inmate while at the hospital has attempted to escape or has engaged in violent behavior which presents a danger of injury.

b. For all other inmates, DOC will not routinely use mechanical restraints but will decide whether to use mechanical restraints on a case-by-case basis, following a review of the inmate's medical condition and security status.

c. For all outposts, a physician responsible for the inmate's medical care is required to inform DOC in writing of the inmate's medical condition on admission and each day. This information will include whether, in the physician's opinion, the inmate falls into one of the four categories listed in paragraph 85.a., supra, or whether the inmate is so weak from his/her illness that he/she cannot walk without assistance, or whether the inmate should not be put in mechanical restraints when he/she ambulates. This information will be reviewed daily by the commanding officer or his designee at each hospital prison ward.

d. Based upon the information provided by the medical staff, and upon the nature of the charges pending against the inmate and his or her criminal and institutional history, DOC will decide on an individual, case-by-case basis whether to put mechanical restraints on an outposted inmate when the inmate does not fall into one of the four categories listed in paragraph 85.a., supra. Among the factors DOC will consider are whether an inmate can ambulate without assistance, the seriousness of the inmate's charges (felony or misdemeanor), the nature of the charge (violent or non-violent), bail

or remand status, infraction history, time remaining to be served on a sentence, parole status, and prior criminal history. With respect to parole violators, DOC shall make best efforts to obtain information concerning the circumstances of the parole violation and the underlying charge. DOC will ensure that a system is in place to routinely provide records and documents necessary to make these determinations. Pending receipt of this information, inmates who are not identified by the medical staff as falling into one of the four categories listed in paragraph 85.a., supra, may be placed in mechanical restraints. In making the decision whether to use mechanical restraints, DOC may also consider the presence of other patients in the room, the proximity of the room to exits and other means of egress and the accessibility to the public.

e. DOC may apply mechanical restraints to an inmate when he/she leaves his/her bed, unless the inmate falls into one of the four categories listed in paragraph 85.a., supra.

f. The ultimate decision to apply mechanical restraints will be made by DOC's Office of Operations.

g. If the medical condition or security status of an outposted inmate should change, DOC may remove mechanical restraints from an inmate who has not been restrained or may apply mechanical restraints to an inmate who had not been previously restrained. In addition, in those cases where an inmate has not been restrained but suddenly evidences behavior or becomes the subject of information which indicates a requirement for such restraints, the

officer guarding the inmate may place mechanical restraints on the inmate pending review by DOC supervisors.

h. A record shall be maintained of the Office of Operations' approval to place mechanical restraints on an outposted inmate. Such record shall include the reasons for the approval, the time and date of the approval, the name of the person giving the approval, and the inmate's name, book and case number and medical status.

86. The provisions of paragraphs 88 to 97, infra, shall apply only to inmates hospitalized at hospitals at which there is a permanent prison ward. Plaintiffs' and defendants' counsel shall prepare a one page notice to be provided by DOC to all outposted inmates by the next business day following their outposting which will advise them of the provisions of this stipulation set forth in paragraphs 85, supra, and 88 to 97, infra.

87. During the first two years after entry of this stipulation as an order of the Court defendants shall provide plaintiffs' counsel, on a bi-monthly basis, with copies of the DOC logs maintained at each prison ward setting forth the name, book and case number, criminal charge, medical condition, mechanical restraint status and reason for mechanical restraint status. During the third through fifth year after entry of this stipulation as an order of the Court defendants shall provide plaintiff's counsel with copies of such logs on a quarterly basis.

88. DOC shall allow all outposted inmates access to toilets immediately upon request unless the inmate's physician has ordered

that bed pans be used instead, in which case an order to that effect must be noted in the inmate's medical chart.

89. No outposted inmate shall remain in mechanical restraints while in a shower. Nothing in this paragraph shall restrict DOC's right to utilize mechanical restraints on an inmate/patient while in a shower where such inmate/patient has been classified "maximum security" pursuant to due process procedures promulgated by DOC in connection with the designation of certain inmates as maximum security.

90. Outposted inmates shall be provided telephone privileges, including the making of long distance collect calls, in accordance with DOC Directive 4007 and its successors; provided, however, such privileges need not be provided to inmates outposted in areas of a hospital in which civilian patients are not permitted access to telephones because of the severity of their illness, such as ICUs and CCUs. Should an inmate be outposted to such a location, a member of the hospital's social service staff shall make best efforts to notify the inmate's family.

91. Correction officers responsible for maintaining security over an outposted inmate shall allow the inmate reasonable privacy during the inmate's telephone calls.

92. Messages from attorneys or from families and others shall be taken by DOC or HHC employees and shall be conveyed to the outposted inmate as soon as possible. The outposted inmate shall be allowed to return the call as soon as possible.

93. Outposted inmates shall be advised as soon as possible after the commencement of the outpost that they may have access to

the mini-law library maintained on the prison ward. DOC shall provide materials from these law libraries to the outposted inmates within 24 hours of a request for these materials.

94. Outposted inmates shall be permitted to receive and mail letters daily. In addition, outposted inmates shall be provided with writing paper, envelopes and writing instruments upon request.

95. HHC shall provide outposted inmates with access to daily newspapers seven days a week and magazines and other reading materials on a daily basis.

96. Outposted inmates shall have the same commissary privileges as the inmate/patients on the respective prison psychiatric wards. See paragraphs 60 and 61, supra.

97. Members of the hospital's social service staff shall visit each outposted inmate at least once per week to provide assistance in contacting family members and defense attorneys, and to ensure that the outposted inmates are receiving the services to which they are entitled pursuant to paragraphs 88 to 97 of this agreement. Members of the hospital's social service staff shall direct an outposted inmate who has any questions concerning DOC's mechanical restraint policy to the appropriate DOC supervisor or to the inmate's treating physician.

FIRE SAFETY

98. Polyurethane foam mattresses with flame retardant ticking shall be used on all three forensic psychiatric wards and on the prison medical wards at Bellevue and KCHC.

ELMHURST HOSPITAL

99. The lobby into which the back stairway at D11 discharges will be sprinklered as part of Elmhurst Hospital's Major Modernization Project. The sprinklers shall be operative by January 1994.

100. File cabinets shall not obstruct the main corridor of D11. Two desks, one in the corner at the front of D11 and one at the door to the visiting area will remain in the corridor. Any furniture or other objects in the main corridor will be situated so as not to block egress.

101. The door to the back stairway of D11 shall be a Fireproof Self-Closing ("F.P.S.C.") door approved by Underwriter's Laboratories ("U.L.") and equipped with self-latching hardware and a special magnetic electronic locking system.

102. The doors to the vertical shafts on D11 housing the chimney and vertical pipes running the height of the building shall be a U.L. approved F.P.S.C. door.

103. On D11, locker rooms, utility room, linen storage, janitor's closet and kitchen shall be enclosed by 1 1/2 hour Class "A" rated fire doors.

104. HHC shall maintain a contract to ensure that the New York City Fire Department ("Fire Department") will be automatically notified by an approved central station of fire alarms at Elmhurst Hospital.

105. Smoke detectors interconnected with the Elmhurst Hospital's fire alarm system installed in the corridor on D11 shall be maintained.

106. The smoke barrier dividing D11 into two smoke compartments of approximately equal size shall be maintained.

107. Inmate/patient rooms on D11 shall be equipped with self-latching psychiatric doors with a fire rating of 1 1/2 hours.

108. The smoke detector in the air conditioning unit for the D11 dayroom shall be maintained to stop the operation of the air conditioner at the first indication of smoke.

BELLEVUE HOSPITAL

109. Smoke detectors installed in the ceiling in each sleeping room and corridor on 19 West and 19 South shall remain connected to the main fire alarm in the Engineering office on the 13th floor Mechanical Room. Engineers shall be on duty 24 hours a day to respond to alarms and communicate with the Fire Department.

110. The windows currently installed on the corridor sides of rooms on 19 West and 19 South shall be replaced with fire-rated wire glazing by August 31, 1990.

111. A new sprinkler system shall be installed in those locker and storage areas on 19 West and 19 South which do not presently have a sprinkler system by March 1992. Sprinklers located in corridors and in other major storage areas and locker rooms shall be maintained in working condition.

112. The laminated plastic vision panels on rooms 19W50 and 19S6 shall be replaced with 1/4" thick wired glass and one layer of 1/4" thick plexiglass by August 31, 1990.

KINGS COUNTY HOSPITAL

113. A 2 hour enclosure from the stairway at the center of Ward A31 to the exterior wall of the building will be constructed by June 30, 1991.

114. Doors to the stairs and linen chutes on A31 shall be 1 1/2 hour Class "B" U.L. labeled, equipped with automatic closing devices and positive latching locksets.

115. The doors to the pipe shafts on A31 which are missing U.L. labels shall be tested by an independent laboratory for fire rating classification. If the doors do not meet code requirement, they will be replaced with appropriately labelled 1 1/2 hour Class "B" rated doors by June 30, 1991.

116. On A31, locker rooms, storage rooms, nourishment station which are non-UL labelled or are presently equipped with louvers shall be replaced with 1 hour fire rated self-closing doors by June 30, 1991.

117. At KCHC, a fire alarm system which transmits an automatic signal to the switchboard room where it is transmitted to the Fire Department shall be maintained. The switchboard shall be manned 24 hours per day, 7 days per week.

118. Battery operated smoke detectors shall be maintained in all sleeping areas on A31 and G-6.

119. Plain glass and plastic vision panels in doors and corridor walls on A31 shall be replaced by June 30, 1991 with 1/4" thick wired glass sandwiched between 2 layers of 1/4" thick plexiglass.

120. The plexiglass in the door separating A31 from the elevator lobby shall be replaced with 1/4" thick wired glass sandwiched between two layers of 1/4" thick plexiglass.

121. Desks and support file cabinets in the main corridor of G-6 shall be situated so as not to block legally required egress.

122. The doors to the stairways on G-6 shall be UL labelled 1 1/2 hour Class"B" doors equipped with automatic closing devices. Doors to the pipe shafts on G-6 shall be replaced with 1 1/2 hour Class "B" doors by June 30, 1991. Vision panels in all doors shall be replaced with 1/4" thick wire glass sandwiched between 2 layers of 1/4" thick plexiglass by June 30, 1991.

123. The locker rooms, kitchen, linen storage, utility room, pipe chase, and clothing room stationary storage on G-6 shall be enclosed in 1-hour fire rated construction by June 30, 1990.

124. Plain glass and plastic vision panels on G-6 shall be replaced by June 30, 1991 with 1/4" wire glass sandwiched between 2 layers of 1/4" plexiglass.

Dispute Resolution

125. In the event that a dispute arises as to whether defendants are out of compliance with the terms of this stipulation, counsel for the parties shall proceed as follows:

a. Counsel for the parties shall make a good faith effort to resolve any differences which may arise between them over such terms. Prior to the institution of any proceeding before the Court to enforce the provisions of this stipulation, plaintiffs' counsel shall notify defendants' counsel and, during the first three years after entry of this stipulation as an order, the monitor in cases of alleged violations of the provisions set forth in paragraphs 1 to 72, supra, in writing of any claim that defendants are in violation of any provision of this agreement.

b. Within ten business days of the receipt of this notice, counsel for plaintiffs and defendants shall meet in an attempt to arrive at an amicable resolution of the claim. If after ten business days following such meeting the matter has not been resolved to plaintiffs' satisfaction, defendants' counsel shall be so informed by plaintiffs' counsel and plaintiffs may then have due recourse to the Court.

c. However, where plaintiffs' counsel asserts a claim that involves a threat to the immediate physical well-being of any member of the plaintiff class, plaintiffs shall have due recourse to the Court within 24 hours of notification to defendants' counsel of such claim.

d. At the time of recourse to the Court, under this paragraph, either party may submit any or all of the reports of the monitor prepared pursuant to paragraph 78, supra.

Continuing Jurisdiction

126. The Court shall retain jurisdiction over this action for the purpose of enforcing the provisions of this stipulation. In the event of any motion for systemic relief based upon defendants' alleged non-compliance with the substantive requirements of this stipulation, defendants shall be considered to be in "compliance" with the provisions of this stipulation unless plaintiffs make a clear and convincing showing that defendants' failures or omissions to meet the terms of this stipulation were not minimal or isolated, but were substantial and sufficiently frequent or widespread as to be systemic.

127. The Court, upon motion and based upon proof of defendants' failure to substantially comply with all or a significant part of this stipulation with respect to D11 or 19 West, may alter the frequency of the monitoring or extend the monitoring periods only for the ward found to be substantially out of compliance by periods of no more than one year for each extension.

Modification of the Terms of the Stipulation

128. Should defendants, during the life of this agreement, desire to modify any substantive provision of this stipulation, they must, in writing, give notice to plaintiff's counsel as to the proposed modification and its rationale.

129. Within five business days, plaintiffs' counsel must respond to the proposed modification in writing to the Corporation

Counsel by indicating their consent or their intent to oppose the proposed modification. If plaintiffs' counsel refuses to consent to the proposed modification, defendants may move, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, for an order modifying the relevant terms of this stipulation.

130. If the proposed modification is made while the monitor is still performing his/her responsibilities pursuant to this agreement, the Court may request an advisory report from the monitor pursuant to Rule 706 of the Federal Rules of Evidence.

Miscellaneous

131. The parties agree that the terms set forth in paragraphs 1, 7 (except the first sentence), 8, 9 (except the second sentence), 23-26, 43 (to extent it prohibits correction staff involvement in programatic activities), 46, 59(b) (second sentence), and 89-123, shall not apply to any new facility, including any ward of any hospital, which shall, in the future, house inmate/patients who otherwise would have been held in facilities that are the subject of this litigation. All other provisions shall apply to any replacement facility. Moreover, defendants agree that in the event that inmate/patients who would have been housed on any of the three forensic psychiatric wards that are the subject of this litigation are instead housed in substitute or replacement facilities they shall be provided with the same range and frequency of services that are required by this stipulation with sufficient staff in each discipline to provide these services.

132. The fact that certain provisions of the stipulation do not directly refer to the forensic psychiatric ward at Kings County Hospital is not intended to suggest that the parties have reached an agreement that the activity or services addressed by the particular provisions are presently provided at Kings County Hospital in a manner or frequency satisfactory to plaintiffs. Those activities and services at the Kings County Hospital forensic psychiatric ward which are not addressed in this stipulation have not been the subject of this litigation, and the extent to which there are constitutional or other deficiencies in these areas, if such deficiencies do exist, is reserved for other litigation.

133. Approval of this stipulation as an order of the Court will settle and compromise all claims raised in the complaints filed in this action, as well as all claims for injunctive and declaratory relief which could have been made prior to the date this stipulation is ordered by the Court concerning a pattern and practice of correction officer misconduct on the three forensic psychiatric wards. However, the parties agree that this stipulation does not resolve plaintiffs' claims, made in this action, that defendants are obligated to: (1) separate the sleeping areas on the Kings County forensic psychiatric ward from the corridors by 1-hour fire rated construction; (2) eliminate the dangers plaintiffs allege to be presented by the "dead end" corridor on the Kings County prison medical ward; and (3) provide mattresses with flame retardant cores on all three forensic psychiatric wards. Plaintiffs reserve the right to litigate these claims

before the Court. Defendants shall have the right to present expert testimony on their behalf in connection with the litigation of any or all of these claims.

134. DOC Directive 4202, annexed to this stipulation as Exhibit 6, shall be maintained under seal by the Clerk of this Court. Plaintiffs' counsel agrees that until the question of whether Directive 4202 is properly disclosable is resolved in this or other litigation, including a proceeding pursuant to New York Public Officers' Law §84 et seq. (FOIL) or by other means, they shall not disclose any copy of this directive. The fact that plaintiffs' counsel has entered into this agreement to maintain this directive under seal to facilitate a

resolution of this proceeding shall not be construed as a concession by plaintiffs or as resolving the question of whether the directive is discoverable in this or other litigation or disclosable under FOIL.

Dated: New York, New York
August 1, 1990

PHILIP L. WEINSTEIN
THEODORE H. KATZ
JONATHAN S. CHASAN
DORI A. LEWIS
Attorneys for Plaintiffs
The Legal Aid Society
Prisoners' Rights Project
15 Park Row - 7th Floor
New York, New York 10038

By: _____
JONATHAN S. CHASAN
JC 9018
DORI A. LEWIS
Staff Attorneys

VICTOR A. KOVNER
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street
New York, New York 10007

By: _____
ROBERT TRACHTENBERG
RT 3505
GEORGIA PESTANA
Assistant Corporation Counsel

SO ORDERED:

_____
United States District Judge

10-1-90
Date