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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

LOUIS HENDERSON, DANA HARLEY,
DARRELL ROBINSON, DWIGHT SMITH,
ALBERT KNOX, ROOSEVELT JAMES,
JOHN HICKS, APRIL STAGNER, ASHLEY
DOTSON, and MELINDA WASHINGTON, on
behalf of themselves and of all those similarly
situated,

Civil Case No.

2:11-cv-224-

Plaintiffs,

v.

ROBERT BENTLEY, Governor of Alabama;
KIM THOMAS, Commissioner, Alabama
Department of Corrections; BILLY
MITCHEM, Warden, Limestone Correctional
Facility; FRANK ALBRIGHT, Warden, Julia
Tutwiler Prison for Women; BETTINA
CARTER, Warden, Decatur Work
Release/Community Work Center; EDWARD
ELLINGTON, Warden, Montgomery Women's
Facility, in their official capacities,

CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Defendants.

CLASS ACTION COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Upon entering the state prison system in Alabama, each prisoner must submit to a test for the Human Immunodeficiency Virus ("HIV"). A positive test result will determine almost every aspect of that person's life for as long as he or she is in prison. More than the severity of their crime, the length of their sentence, or almost any other factor, the HIV test will determine where the prisoner will be housed, eat, and recreate; his or her access to in-prison vocational, rehabilitative and faith-based programs; and whether he or she will have the

opportunity for supervised work in the community, which is often the key to successful transition after release from prison. Prisoners diagnosed with HIV are segregated from all other prisoners and cannot keep their HIV status confidential. Every male prisoner who tests positive for HIV is required to wear an armband publicly identifying him as a person with HIV.

2. Alabama's segregation policy, as described below, excludes Plaintiffs from a wide range of critically important prison programs and jobs, and denies them equal access to rehabilitative and community re-entry opportunities. This exclusion denies prisoners with HIV equal opportunities for personal rehabilitation and may result in prisoners serving longer sentences simply because they have HIV. Alabama's policies and practices also result in involuntary public disclosure of the prisoners' HIV status, in violation of medical ethics and international human rights law, and result in permanent stigmatization, causing prisoners with HIV to suffer severe emotional distress and impairing their opportunities for employment upon release from prison.

3. Alabama's policies originated in the mid-1980s, when a tidal wave of public fear over the HIV/AIDS epidemic led a majority of state correctional systems to adopt policies requiring the segregation of prisoners with HIV. These policies were the product of a time when widespread popular confusion existed over the methods of HIV transmission, treatment options were virtually nonexistent, and HIV was considered a death sentence.

4. By the mid-1990s, however, new classes of antiretroviral medications proved extremely effective at suppressing the virus. These medications have changed HIV from a fatal disease to a chronic condition that can be successfully treated. Nowadays, people with HIV who receive appropriate treatment can look forward to a normal lifespan.

5. Also by the mid-1990s, the methods of HIV transmission had been clearly

established, and myths that HIV could be transmitted through casual contact (such as handshakes, hugs, sharing food, or using the same toilet seats) had been widely debunked. Prison systems throughout the nation decided that HIV segregation was neither sound correctional policy nor justified by legitimate public health considerations. By 1994, only six prison systems had segregation policies. By 2003, that number had dwindled to three states—Alabama, South Carolina, and Mississippi. In 2010, the Mississippi Department of Corrections terminated its segregation policy.

6. Today, Alabama is one of only two states in the nation—South Carolina is the other—that continues to segregate all prisoners with HIV in separate, specially designated housing units.

7. Alabama insists that segregation is justified by the need to provide medical care and to prevent HIV transmission in prison. Prison systems throughout the United States have shown, however, that the states can meet their obligations to incarcerate prisoners safely and to provide them with necessary medical care without requiring prisoners with HIV to forfeit their right to be free from disability -based discrimination.

8. Plaintiffs are prisoners with HIV in the custody of the Alabama Department of Corrections (“ADOC”) who bring this action on their own behalf and on behalf of the approximately 250 other prisoners in ADOC custody who have tested positive for HIV. They seek declaratory and injunctive relief against the Alabama Department of Corrections for discriminating against them on the basis of their HIV status and excluding them from participation in, or denying them the benefits of, ADOC services, programs, or activities for which they are qualified, because they have HIV, in violation of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, and Section 504 of the Rehabilitation Act.

Jurisdiction and Venue

9. This Court has jurisdiction over this action pursuant to 28 USC §1331.

10. Venue is proper in this District pursuant to 28 U.S.C. §1391 because the Alabama Department of Corrections is headquartered in Montgomery, Alabama, Defendants Bentley and Thomas have their offices there, and a substantial part of the events or omissions giving rise to this claim occurred in this District.

Parties

Defendants

11. Defendant Robert Bentley is the Governor of the State of Alabama. The Governor is vested with ultimate authority and responsibility over the corrections system. Ala. Code 1975 § 14-1-15 (2010). The Governor has the authority to promulgate rules and regulations necessary to the management and security of all prisons and jails. Ala. Code 1975 § 14-1-8 (2010). Governor Bentley is sued in his official capacity.

12. Defendant Kim Thomas is the Commissioner of the Alabama Department of Corrections. The Commissioner is responsible for heading the Department of Corrections, for the independent direction, supervision and control of the Department of Corrections, and for approving and issuing administrative regulations and changes. Ala. Code. 1975 § 14-1-1.3 (2010). He is sued in his official capacity.

13. Defendant Billy Mitchem is the warden at Limestone Correctional Facility (“Limestone”). He is responsible for the day-to-day operation and management of Limestone. He is sued in his official capacity.

14. Defendant Frank Albright is the warden at Julia Tutwiler Prison for Women (“Tutwiler”). He is responsible for the day-to-day operation and management of Tutwiler. He is

sued in his official capacity.

15. Defendant Bettina Carter is the warden at Decatur Work Release/Community Work Center (“Decatur Work Release”). She is responsible for the day-to-day operation and management of Decatur Work Release. She is sued in her official capacity.

16. Defendant Edward Ellington is the warden at the Montgomery Women’s Facility. He is responsible for the day-to-day operation and management of Montgomery Women’s Facility. He is sued in his official capacity.

Plaintiffs

Plaintiff Louis Henderson

17. Louis Henderson is a person with HIV. He is a prisoner housed in a segregated dormitory at Limestone. He is serving a twenty-five year sentence for Theft of Property I. Mr. Henderson has remained free of disciplinary violations (“disciplinary free”) for at least four years. His custody level is minimum-in. Minimum-in custody prisoners are eligible to work in jobs outside the perimeter of the prison, when supervised by a correctional officer.

18. In August 2009, Limestone’s classification team recommended that Mr. Henderson’s custody be lowered to minimum-out, making him eligible for work assignments outside the prison and without the direct supervision of a correctional officer, and that he be moved to Decatur Work Release. In July 2010, Limestone’s classification team recommended that Henderson’s custody be lowered further, to minimum-community, and again recommended that he be moved to Decatur Work Release. He has been medically cleared for work release. Despite the classification team’s recommendations, ADOC has not lowered his custody level and he remains at Limestone.

19. Mr. Henderson is qualified for a number of ADOC programs, privileges,

activities, and services, including, for example, residence in the Faith-Based Honor Dorm at Limestone; transfer to a lower security level facility; transfer to a facility providing vocational training in heating and air, small engine repair, and information systems; transfer to a ADOC facility closer to his home in Mobile; and work release. Defendants exclude him from all of these programs and services solely because he has HIV.

Plaintiff Darrell Robinson

20. Darrell Robinson is a person with HIV. He is a prisoner housed in a segregated dormitory at Limestone Correctional Facility. He arrived at Limestone Correctional Facility in 2009 for a probation violation. His end of sentence (“EOS”) date is August 17, 2012. He has remained disciplinary free since arriving at Limestone. His current custody level is minimum-out.

21. Mr. Robinson is qualified for many important programs from which ADOC excludes him solely because he has HIV. At Limestone, he is excluded from the Faith-Based Honor Dorm and the senior dorm. He wants to participate in furniture restoration and cabinet making programs, which are available at other ADOC facilities but not at Limestone. He would like transfer to a lower security facility, or to an ADOC facility closer to his home in Mobile. He would like the opportunity to participate in work release. ADOC’s HIV policy excludes him from all of these important programs solely because he has HIV.

22. In 2009, the Limestone classification team recommended that Mr. Robinson be moved to Decatur Work Release. Dr. Joiner, the HIV specialist for the Alabama Department of Corrections, has determined that Mr. Robinson does not need to be on any HIV medication, and has not prescribed HIV medication for Mr. Robinson. Nevertheless, ADOC will not medically clear him for work release because he does not meet ADOC’s arbitrary medical eligibility

criteria for work release for prisoners with HIV. Under these criteria, prisoners with HIV who are not prescribed HIV medication must have a viral load below 1000 and a CD4 number greater than 700 or CD4 % above 35. Even though ADOC designates Mr. Robinson as medically ineligible for work release, it has assigned him for the past year to work on an outdoor clean-up squad involving many hours of hard labor in the sun and he has performed these duties without medical problems.

Plaintiff John Hicks

23. John Hicks is a person with HIV. He is a prisoner housed at Decatur Work Release. Mr. Hicks is prohibited by ADOC from working in food services jobs solely because he has HIV. Mr. Hicks is a certified welder, and would like to transfer to a facility where he can apply those skills, but is prohibited from transferring to another facility solely because of his HIV status. In or around June 2010, a former Limestone inmate disclosed Mr. Hicks' HIV status to all the inmates at the Decatur Work Release. This prisoner knew that Mr. Hicks has HIV because of ADOC's HIV segregation policy. Mr. Hicks is afraid that other inmates will disclose his status to potential employers.

Plaintiff Roosevelt Jones

24. Roosevelt James is a person with HIV. He is a prisoner housed at Decatur Work Release. Because of Limestone Correctional Facility's policy of segregation, the correctional officers and other prisoners at Decatur Work Release know Mr. James has HIV, and he is afraid that other prisoners will disclose his HIV status to potential employers.

25. Mr. James has been assigned to only a few short-term jobs since he arrived at Decatur Work Release in May of 2010. He is certified in upholstery/automotive interior and trim. He would like to transfer to a work release center in Mobile or Birmingham where his Calhoun

College upholstery professor, who has upholstery shops there, could help him obtain work. He is barred from transfer to these work release centers solely because he has HIV.

26. Furthermore Mr. James is eligible for a four-hour pass, which would allow him to leave the prison for a few hours to visit his family. He cannot take advantage of this important privilege because his family lives in Birmingham, and he is barred from transferring to Birmingham, solely because he has HIV.

Plaintiff Albert Knox

27. Albert Knox is a person with HIV. He is a prisoner housed in a segregated dormitory at Limestone Correctional Facility. He has been at Limestone for approximately two years for drug possession. His EOS date is March 12, 2013. Mr. Knox is qualified for a number of ADOC programs, privileges, activities, and services, including residence in the Faith-Based Honor Dorm and the senior dorm, from which Defendants exclude him solely because he has HIV.

28. On January 22, 2010, while Mr. Knox was participating in the eight-week Substance Abuse Program ("SAP"), he received two disciplinary reports for eating his lunch meal in the Population Chow Hall with the other SAP participants, who do not have HIV. The disciplinary reports charged him with being in an unauthorized area and intentionally creating a security, safety, or health hazard. The second charge was eventually dropped. For simply eating lunch with the other SAP participants, Mr. Knox was dropped from the program and spent 45 days of a 90 day sentence in a disciplinary segregation cell. Mr. Knox has been disciplinary free for approximately nine months, and is once more participating in the SAP program. However, solely because he has HIV, he is still prohibited from residing in the SAP dormitory or eating with the other program participants.

Plaintiff Dwight Smith

29. Dwight Smith is a person with HIV. He is a prisoner housed in a segregated dormitory at Limestone Correctional Facility. Mr. Smith has been at Limestone for five years. His EOS date is January 11, 2013.

30. Mr. Smith has a clear disciplinary record. His custody level is minimum-out, and he has been medically cleared for work release. Limestone's classification team has recommended him for work release two or three times, but ADOC has yet to approve his transfer to Decatur Work Release Center. On information and belief, ADOC has not approved his transfer solely because he has HIV.

31. Besides work release, Mr. Smith is qualified for a number of other ADOC programs, privileges, activities, and services, including the Faith-Based Honor Dorm and the senior dorm at Limestone; transfer to a lower security level facility; transfer to the Alabama Therapeutic Education Center; transfer to a facility providing vocational training such as barbering; and transfer to an ADOC facility closer to his home in Atlanta. Defendants exclude him from all of these programs and services solely because he has HIV.

Plaintiff Ashley Dotson

32. Ashley Dotson is a person with HIV. She is a prisoner housed in a segregated dormitory at Julia Tutwiler Prison for Women. She has been at Tutwiler since December 2010 for a probation violation. Her EOS date is July 16, 2012. She has no disciplinary violations. Her custody level is minimum-out. Ms. Dotson is qualified for a number of ADOC programs, privileges, activities, and services, including residence and participation in the SAP program and work release, from which Defendants exclude her solely because she has HIV.

Plaintiff Dana Harley

33. Dana Harley is a person with HIV. She is a prisoner housed in a segregated dormitory at Julia Tutwiler Prison for Women. In the fall of 2010, Defendant Warden Albright learned that Ms. Harley was in a consensual relationship with a general population prisoner, "Jane Doe." Warden Albright telephoned that prisoner's mother, "Mrs. Smith," and determined that Mrs. Smith knew Plaintiff Harley but did not know Harley's medical status. Warden Albright ordered Jane Doe to immediately disclose Harley's HIV status to Mrs. Smith, warning Jane Doe that if she did not do so, he would. Jane Doe complied. By ordering the completely gratuitous disclosure of Plaintiff Harley's HIV status to a person in the free-world community, Warden Albright caused Harley anxiety, humiliation and distress.

Plaintiff April Stagner

34. April Stagner is a person with HIV. She is a prisoner housed in a segregated dormitory at Julia Tutwiler Prison for Women. A correctional officer told Ms. Stagner that she is a disgrace to women because she has HIV, and that working in the HIV unit makes the officer fear for her life. Ms. Stagner's treatment by ADOC staff reflects such attitudes. For consensually kissing another inmate on the cheek (which poses no risk of HIV transmission), Ms. Stagner was given forty-five days in segregation and twenty-one days' loss of privileges. On information and belief, prisoners without HIV who engage in similar conduct typically receive much lighter punishment, if any.

Plaintiff Melinda Washington

35. Melinda Washington is a person with HIV. She is a prisoner housed in a segregated dormitory at Julia Tutwiler Prison for Women. She has been subjected to harsher punishment solely because she has HIV.

ADOC Policy on HIV Segregation

36. Alabama law mandates HIV testing of all prisoners coming into ADOC's custody. Ala. Code § 22-11A-17, 38 (2008). The law does not require segregation of prisoners with HIV. As a matter of administrative practice and policy, however, ADOC immediately segregates all prisoners who test positive for HIV and houses them separate and apart from all other prisoners for the duration of their prison confinement.

37. Appropriate prisoner classification is the backbone of the security program of any prison or jail. Like virtually every other prison system in the nation, ADOC uses an objective classification system to assign prisoners to appropriate custody levels. These classifications are based on the level of security and supervision the prisoner requires and the prisoner's program needs, including consideration of which prisoners can be safely housed together; the degree of restrictiveness of confinement necessary to protect the safety of other prisoners, prison staff, and the public; and the extent to which a particular classification will interfere with a prisoner's access to medical, mental health, educational, and other programs. Prison classification experts use standardized risk instruments and evidence-based judgments to make these decisions.

38. ADOC classifies all prisoners as close-custody, medium-, or minimum-custody. Close-custody is the most restrictive custody to which a prisoner may be assigned, and is reserved for prisoners who have demonstrated severe behavioral problems, some prisoners sentenced to life without parole, and some detainees awaiting trial or sentencing for capital offenses. Close-custody prisoners are usually housed in single cells at a close-security institution.

39. Medium-custody prisoners are eligible for assignment to formalized institutional treatment programs or work assignments within the confines of a secure institution. They may be housed in dormitories or double-occupancy cells at a medium- or close-security institution.

When outside the institution, medium-security prisoners must be accompanied by an armed correctional officer.

40. Minimum-custody is the lowest custody designation. There are three levels of minimum- custody: minimum-in, minimum-out, and minimum-community. Minimum-in custody prisoners may receive work assignments inside a medium- or close-custody facility, or off-property when supervised by a correctional officer. Minimum-out custody prisoners are eligible for work assignments off-property without the direct supervision of a correctional officer. They may be placed at community work centers or minimum security camps. Minimum-community custody prisoners are at the lowest custody level and are typically approaching the final stage of incarceration. They are supervised during their time spent at work release centers and while participating in facility activities, but need not be directly supervised at other times.

41. ADOC's segregation policy trumps all the usual considerations that prison officials take into account in making classification decisions, and results in prisoners at different custody levels being housed together for no reason other than that they have HIV. This automatic override of standard classification principles negatively impacts prisoners' safety and security, and denies prisoners with HIV the same opportunity afforded other prisoners to earn greater liberty and privileges through good behavior.

Current Medical Consensus Concerning Treatment of Prisoners With HIV

42. The health status of people with HIV varies widely, as does their need for medical attention. Many people who test positive for HIV remain asymptomatic for many years. Current guidelines suggest that some people with HIV may not require treatment with antiretroviral medication. These people usually require no special medical attention other than quarterly blood

tests to verify that the disease is has not progressed.

43. The Centers for Disease Control, the U.S. Department of Health and Human Services, and the International AIDS Society have issued national consensus guidelines on the treatment of HIV. According to these guidelines, when blood tests show that the concentration of the virus in a patient's blood has increased and the immune system has declined to certain levels, patients should consult with an HIV specialist to decide on an individualized medication regimen. Once a patient is clinically stable on a medication regimen, however, he or she will generally have a markedly reduced need for care by an HIV specialist other than a check-up once every few months, to determine whether the medication regimen needs any modification. Where services are decentralized, many correctional systems have implemented telemedicine to overcome obstacles to providing on-site medical care for HIV treatment. In other settings, providers and consultants near to the correctional facility have successfully provided comprehensive HIV care.

44. There is a broad national consensus in the medical-correctional community that segregation of prisoners merely because they test positive for HIV is unnecessary and potentially harmful. The National Commission on Correctional Health Care ("NCCHC") counsels that medical management of prisoners with HIV should parallel that offered to persons in the community. NCCHC explains as follows:

Decisions on housing HIV-positive inmates should be based on what is appropriate for their age, gender, and custody class. NCCHC opposes routine segregated housing for HIV-positive inmates. HIV-positive inmates, like any other inmate, may require a higher level of care that may not be available at all institutions. This is a clinical judgment, based upon the acuity of care required for the patient. Patients with HIV infection may require isolation if, for example, they have pulmonary tuberculosis. HIV patients should not be medically isolated solely because of their HIV status.

Nat'l Com'n on Corr. Health Care, Position Statement: Administrative Management of HIV in Correctional Institutions, (rev. Oct. 8, 2005), *available at* http://www.ncchc.org/resources/statements/admin_hiv2005.html.

45. Isolation of prisoners with HIV may harm the treatment outcomes for those people. People with HIV, and particularly prisoners with HIV, already suffer from an increased prevalence of depressive symptoms. *See* Springer SA & Altice FL, *Managing HIV/AIDS in correctional settings*, 2 CURR HIV/AIDS REP 165-70 (2005); Altice FL, Kamarulzaman A, Soriano VV, Schechter M, Friedland GH, *Treatment of medical, psychiatric, and substance-use comorbidities in people infected with HIV who use drugs*, 376 LANCET 59-79 (2010). Segregating these individuals into dedicated HIV units is stigmatizing and humiliating. Imposing greater stigmas on them, particularly through forced disclosure of their HIV status, can compound their depressive symptoms. These depressive systems are in turn associated with worse HIV treatment outcomes.

46. Providing HIV treatment without also providing other evidence-based re-entry interventions adds to the many obstacles that individuals with HIV face upon release from prison. Re-entry to the community is a complex process that requires addressing a number of educational, vocational, psychosocial, substance abuse treatment, and medical needs, especially for those with HIV. Failing to address those needs while the person is incarcerated can ultimately lead to worse health outcomes upon release from prison. For example, a prisoner with HIV might benefit most by having access to education and vocational training programs so that he might gain reasonable access to employment on release. Alternatively, effective drug treatment may be critical to a person's optimal HIV treatment outcome; treating the HIV but excluding him from this program will have dire consequences.

Discrimination Against Prisoners with HIV at Limestone

Segregation of Prisoners with HIV at Limestone

47. Limestone is divided into three sections: A-side, B-side, and C-side. B-side, which houses general population prisoners, has a capacity of 1,166. C-Side, which is used to house the Faith-Based Honor Dorm and pre-release prisoners, has a capacity of 700. A-side, with a capacity of 637 prisoners, contains the HIV living area, the senior dormitory, the healthcare unit, and the segregation cells for especially dangerous or difficult-to-manage prisoners and those in protective custody.

48. Prisoners who test positive for HIV are categorically excluded from the general population dormitories and are housed together in a single HIV living area on the A-side of Limestone, whatever their custody level.

Public Disclosure and Stigmatization at Limestone

49. Defendants publicly disclose prisoners' HIV status to all other prisoners, prison staff, and free-world visitors at Limestone, in a variety of ways. Prisoners with HIV are required to wear white armbands signifying their assignment to the HIV living area at all times, even when the prisoners are working outside the prison gates. When free-world people take tours of Limestone, correctional officers point out the prisoners with HIV and disclose their HIV status. Some family members have learned that their loved ones have HIV through these various stigmatizing practices. The stigmatization follows the prisoners into the free world, and the widespread knowledge of their medical condition may result in potential employers refusing them jobs.

50. There are two exercise yards at Limestone, A-side and B-side. Prisoners who do not have HIV are allowed to use both sides of the yard, but prisoners with HIV are restricted to

recreation on the A-side of the yard. As a matter of official policy, ADOC allows prisoners with HIV and prisoners who do not have HIV to recreate together on the A-side of the yard. In practice, when prisoners who do not have HIV arrive at Limestone and go through an orientation process, security staff warns them that they should stay away from the A-side of the yard unless they want to get HIV.

Exclusion from Limestone Senior Housing

51. General-population prisoners at Limestone who are at least forty years old and older are eligible for housing in a seniors' dormitory. Prisoners with HIV, however, are excluded from senior housing even if they otherwise meet the criteria. Louis Henderson, Dwight Smith, Albert Knox, and Darrell Robinson are otherwise eligible to reside in the senior dorm, but are excluded solely because of their HIV status.

Exclusion from Limestone Residential Substance Abuse Treatment Program

52. One of the dormitories at Limestone houses a residential substance abuse treatment program ("SAP"). The residential component is an important part of substance abuse treatment programs. Experts view residential therapeutic treatment programs as among the most effective models for in-prison substance abuse treatment. *See* NAT'L INST. ON DRUG ABUSE, RESEARCH REPORT SERIES: THERAPEUTIC COMMUNITY, NIH PUB. NO. 02-4877 (Aug. 2002), *available at* <http://drugabuse.gov/PDF/RRTherapeutic.pdf>. Defendants permit some prisoners with HIV to participate in classes in the residential SAP program at Limestone. However, Defendants exclude those prisoners from living in the dormitory with the other participants, even though the residential component is important to the efficacy of the program.

53. As noted above, Albert Knox is currently participating in the SAP program, but is prohibited from living or taking meals with other program participants solely because he has

HIV, and was disciplined for having lunch with his fellow participants. Prisoners with HIV are also excluded from participating in pre-treatment and aftercare with the other participants.

54. Currently there are only three prisoners with HIV participating in the SAP program. Upon information and belief, only a few prisoners with HIV are allowed to participate in the SAP classes at a time, regardless of how many are qualified to participate.

55. On information and belief, prisoners without HIV may become eligible for important benefits, including placement in a work release center, once they complete the residential SAP program. Prisoners with HIV do not become eligible for these benefits upon completion of the SAP program even if otherwise qualified.

Exclusion from Limestone Residential Pre-release Unit

56. General-population prisoners who are near the end of their sentence or have been granted parole are housed in a pre-release dormitory for ninety days to participate in residential programming, intended to prepare prisoners for release by providing the life skills they will need to successfully transition from prison to the community. Prisoners with HIV are excluded from the residential component and are offered this programming on a more limited basis solely because of their HIV status. Prisoners with HIV attend pre-release programming only for a few weeks and even then only for a few hours a day.

Exclusion from Limestone Faith- Based Honor Dormitory

57. Limestone prisoners with good disciplinary records are eligible for housing in the Faith-Based Honor Dorm, where they have access to coveted benefits and privileges. On information and belief, the goal of the Faith-Based Honor Dorm is to reduce recidivism, provide a program based on opportunity and responsibility for those inmates willing to make a productive change in their lives, and to provide a safe, secure, and healthy environment. On

information and belief, ADOC views positively a prisoner's participation in the Faith-Based Honor Dorm in determining his security classification, risk assessment, and job placement. On information and belief, such participation is also viewed favorably by the Parole Board in determining parole eligibility. Prisoners receive other benefits as well. For example, approximately every six months families of the prisoners housed there are permitted to visit and bring food and other items to their loved ones.

58. Prisoners with HIV are categorically excluded from the Faith-Based Honor Dorm. One of the segregated HIV dorms, which also contains a psychiatric ward, contains an area informally dubbed an "honor dorm" but it offers none of the amenities and privileges accorded to prisoners in the general population Faith-Based Honor Dorm. Louis Henderson, Dwight Smith, Albert Knox, and Darrell Robinson are otherwise eligible to participate in the general population Faith-Based Honor Dorm, but are prohibited solely because they have HIV. A number of prisoners with HIV recently requested applications for the Faith-Based Honor Dorm but were refused because they have HIV.

Exclusion from Kitchen Jobs and Other Jobs at Limestone

59. Qualified general-population prisoners at Limestone are eligible for jobs in the prison kitchen or dining room, preparing and serving meals to the prisoner population. These jobs are generally considered extremely desirable because they allow prisoners to gain marketable work skills and experience. ADOC categorically excludes prisoners with HIV from kitchen jobs. There is no medical justification for this policy, which has been expressly rejected by the scientific community. The US Centers for Disease Control and Prevention ("CDC") states:

There is no known risk of HIV transmission to co-workers, clients, or consumers from contact in industries such as food-service establishments. Food service workers known to

be infected with HIV need not be restricted from work unless they have other infections or illnesses (such as diarrhea or hepatitis A) for which any food-service worker, regardless of HIV infection status, should be restricted.

CDC, “HIV and Its Transmission” (July 1999).

60. Similarly, in its compliance guidelines for restaurants and other food service employers, the Equal Employment Opportunity Commission (“EEOC”) states there is no medical basis for categorically excluding people living with HIV from jobs in the food service industry. *See* EEOC, “How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers” (2004), *available at* http://www.eeoc.gov/facts/restaurant_guide.html.

61. Likewise, the CDC excludes HIV from the list of diseases that can be transmitted through the food supply. *See* 74 Fed. Reg. 61152-53 (Nov. 23, 2009). *See also* Ala. Dep’t of Public Health, Fact Sheet: Basic Facts About HIV and AIDS (undated), *available at* <http://adph.org/aids/assets/HIVAIDSFactSheet.pdf> (noting that HIV cannot be transmitted from “drinking glasses, eating utensils or towels,” or “coming into contact with . . . sneezes, coughs, tears or sweat.”).

62. The ADOC Commissioner conceded in 2010 that there is no medical rationale for the policy, and stated that the only reason ADOC excludes prisoners with HIV from food service jobs is that it believes other prisoners would dislike eating food prepared by them. Even if some prisoners were opposed to allowing people with HIV to work in food service, ADOC’s decision to base its classification policy on prisoners’ unfounded fears and prejudices lacks any legitimate penological justification and is completely at odds with basic principles of prison classification. Moreover, by deferring to prisoners’ unfounded fears and prejudices about HIV, prison officials reinforce those purported fears and prejudices.

63. ADOC's decision to reinforce prisoners' unfounded fears is all the more harmful because ignorance about the disease is a major contributing factor to the HIV/AIDS epidemic in the South. The shame and stigma attached to a disease that many people connect with behaviors deemed objectionable, such as homosexuality and extra-marital sex, discourages many people from being treated—or even tested—for HIV/AIDS, lest their neighbors find out. Lani Luciano, *Southern Discomfort—Coping with HIV/AIDS in the South Poses Challenges* (Dec. 11, 2002) available at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=15025.

64. ADOC also excludes prisoners with HIV from a variety of other jobs at Limestone, including receiving runner, administrative runner, Calhoun College runner, and jobs in the store, the canteen, the hospital, the healthcare unit, farm squad, and the visitation yard. Prisoners with HIV who are assigned yard maintenance or sanitation jobs are allowed to work only on the side of the prison where prisoners with HIV are housed, whereas other population prisoners assigned to those jobs work in both yards.

Exclusion from Limestone Dining Hall

65. The dining hall at Limestone is located on the B-side of the Limestone facility, and all General-population prisoners housed on the B-side have their meals in the dining room. General-population prisoners housed on A-side who do not have HIV also have their meals in the dining room. Meanwhile, prisoners with HIV are categorically excluded from the dining room. There are too few dining tables in the HIV dorm to accommodate all the prisoners who live there, so some must eat inside their cells or sit outside the dorm, with no access to a sanitary eating area.

Disparate Punishment at Limestone of Prisoners with HIV

66. ADOC generally manages irresolvable serious personal conflicts among general

population prisoners at Limestone by housing the prisoners in separate dorms. However, this option is unavailable for prisoners with HIV because they are relegated to a single segregated housing area. Consequently, when two prisoners with HIV have a personal conflict with each other, ADOC resorts to locking one or both of them in isolation cells.

67. Prisoners with HIV receive disciplinary citations for appearing without the white armbands that identify them as living in the HIV dormitory. Most general population inmates are not required to wear armbands identifying their dorms, and those few who are required to wear such armbands—for example, prisoners in the Faith-Based Honor Dorm are supposed to wear orange armbands—are either not punished or receive only mild punishment for appearing without these armbands.

Discrimination Against Prisoners with HIV at Tutwiler

Segregation of Prisoners with HIV at Tutwiler

68. Of the 15 housing units at Tutwiler, prisoners with HIV are excluded from all but two: an HIV dormitory housing all custody levels together, and the “healthcare unit.” The so-called “healthcare unit” contains five holding cells, two isolation rooms used primarily to house prisoners with HIV in disciplinary segregation, protective custody, or isolation, and eight infirmary beds.

Public Disclosure and Stigmatization of Prisoners with HIV at Tutwiler

69. Upon arriving at Tutwiler, all prisoners are placed in the receiving unit and tested for HIV. Those prisoners who test positive for HIV are placed in a solitary confinement cell in the so-called HIV “healthcare unit,” where they may remain for weeks. Some of these women have just learned their HIV status for the first time. Solitary confinement is in itself a traumatic experience. For a person to be moved into solitary confinement immediately after being told she

has HIV can be emotionally devastating.

70. Because of ADOC's policy of segregating all prisoners with HIV, everyone at Tutwiler knows about their medical status. Correctional officers often do not refer to prisoners with HIV by their name or institutional numbers as they do for other prisoners, but simply as "E Dorm" (which everyone knows is the dormitory where prisoners with HIV are housed). One prisoner with HIV was forced to tell her two oldest children about her HIV status after two women who had been at Tutwiler told people in her small town about her HIV status.

Disparate Punishment at Tutwiler of Prisoners with HIV

71. ADOC generally manages irresolvable personal conflicts among general population prisoners at Tutwiler by housing the prisoners in separate dorms. Because there is only one dorm designated for all prisoners with HIV, ADOC cannot assign the prisoners to separate dorms, and instead often resorts to sending to solitary confinement one or the other of the women involved in the conflict.

72. Defendant Albright has designated Melinda Washington and "Sally Roe," another prisoner with HIV, as enemies. Rather than house them in separate dormitories, as he would if they were HIV-negative, he keeps one in solitary confinement and the other in the HIV dorm, rotating them once every ninety days. Similarly, Warden Albright has designated Dana Harley and fellow prisoner with HIV "Mary Jones" as enemies, and instead of assigning them to separate dormitories he keeps one prisoner in solitary confinement and the other in the HIV dorm, rotating them about once every ninety days.

73. The conditions in solitary confinement for women with HIV are extremely punitive. Enforced isolation and idleness for three months at a time is in itself traumatizing, and the conditions in the HIV solitary confinement cells are particularly harsh. Opportunities for

showers and exercise are meager; the cells themselves are filthy, with leaking toilets and spider infestations; and prisoners in solitary confinement are exposed day and night to the screaming, raving and other outbursts of seriously mentally ill prisoners who are also housed in the so-called “healthcare unit.”

Exclusion of Prisoners with HIV from the Tutwiler Medical Dormitory

74. On information and belief, women with serious medical needs requiring nursing care or in-patient care are housed in the Medical Dorm—so long as they do not have HIV. Prisoners with HIV who have comparable medical needs are categorically excluded from the medical dorm: they are either left in the HIV dorm, or else housed in the “healthcare unit” which is a unit used primarily to house prisoners with HIV in disciplinary segregation, protective custody, or isolation.

Exclusion of Prisoners with HIV from the Tutwiler Faith-Based Honor Dorm

75. The Faith-Based Honor Dorm at Tutwiler is a residential program designed to help prisoners develop life skills, personal growth, and accountability with outcomes of positive personal, family, institutional, and community relationships. The objective of the Faith-Based Honor Dorm is to provide prisoners the opportunity to demonstrate their willingness to pursue positive productive change in an atmosphere conducive to this change. The goal of the Faith-Based Honor Dorm is to reduce recidivism, provide a program based on opportunity and responsibility for those inmates willing to make a productive change in their lives, and provide a safe, secure, and healthy environment which can be supervised with minimal security. On information and belief, ADOC and the Parole Board view participation in the Faith-Based Honor Dorm favorably in determining security classification, risk assessment, job placement, classification review, and parole eligibility. Otherwise qualified prisoners with HIV are

categorically excluded from the Faith-Based Honor Dorm.

Exclusion of Prisoners with HIV from the Residential Component of the Tutwiler Substance Abuse Dormitory

76. The substance abuse dorm houses general population prisoners who are participating in the 8-week Substance Abuse Program (“SAP”), and also in the six-month Crime Bill Substance Abuse Program (“CB SAP”), which is funded by the federal government. Prisoners with HIV are categorically excluded from the residential component of these programs. They are allowed to participate for instruction but must return to the HIV dormitory to sleep—and even to use the bathroom. Plaintiff Ashley Dotson is otherwise eligible to participate in the residential component of this program, but is excluded solely because of her HIV status.

Exclusion of Prisoners with HIV from Tutwiler Kitchen Jobs

77. Otherwise-qualified prisoners with HIV are prohibited from holding jobs in the kitchen and the laundry, solely because they have HIV. Exclusion of Prisoners with HIV from Community Corrections

78. The Community Corrections Program (“CCP”) offers prisoners who can be safely monitored in the local community the opportunity to work in the community during the day, returning at night to a county jail. There are currently 34 community corrections programs in Alabama. According to statistics compiled by the ADOC, it costs only about \$13 per day to supervise and house a person in the CCP, compared to \$41.47 per day for incarceration in an ADOC prison. On information and belief, all qualified prisoners with HIV are categorically excluded from the CCP. The institutional diversion officer at Houston County Community Corrections told a prisoner with HIV who is otherwise eligible for CCP, “due to your medical condition and disability HCCC is not going to be able to accept you in any of our programs.”

This prisoner does not have any medical condition or disability other than HIV.

Discrimination Against Prisoners with HIV in Work Release

79. ADOC has a work release program, which offers prisoners the opportunity to reside in low security facilities while working for either a state or a private employer. Prisoners are permitted to keep a percentage of their wages while demonstrating responsibility and establishing a relationship that might lead to employment when their sentence is complete.

80. According to ADOC's Work Release policy, "The fundamental purposes of Alabama's work release program are to assist selected prisoners in preparing for release and to aid in making the transition from a structured institutional environment back into the community."

81. Although there are eleven work release centers in Alabama— nine for men, two for women—ADOC permits men with HIV to be assigned only to the center in Decatur and women to be assigned only to the work release center at the Montgomery Women's Facility. General-population prisoners with a six month clear record are eligible to apply for a lateral transfer. Lateral transfers are granted to general-population prisoners in order to place the prisoners closer to their families and to increase their job opportunities. Prisoners with HIV are categorically ineligible for lateral transfers to other work-release centers. Restriction to a single center unnecessarily limits their job opportunities and prevents prisoners with HIV from getting a job near their home and family.

82. For example, Plaintiff Roosevelt James could have a job in Birmingham or Mobile applying his skills in upholstery/automotive interior and trim. Instead, he is kept at Decatur Work Release where he has only had a few short-term jobs since his arrival in May 2010. Limitation to a single facility may also limit the number of prisoners with HIV who can

participate in work release once the single center reaches its capacity.

83. Even when prisoners with HIV are admitted to the work release program, ADOC discriminates against them in job placement. ADOC refuses to place prisoners with HIV in food service jobs, which constitute the majority of jobs available to prisoners placed at the Montgomery Women's Facility and a substantial number of the jobs available at Decatur Work Release. Jobs with a paper company are also available to women in Montgomery Women's Facility who do not have HIV; ADOC either discriminatorily refuses to place prisoners with HIV with the paper company, or else acquiesces in the discriminatory refusal of the paper company to accept women workers with HIV. A correctional officer told a woman with HIV that she could not work in the paper factory because she might get a paper cut.

84. Because of ADOC's policy of segregation, the other prisoners at Decatur Work Release and Montgomery Women's Facility already know the HIV status of newly-arriving prisoners. Around June 2010, an inmate from Limestone Correctional Facility disclosed Plaintiff Hicks' HIV status to all of the other inmates at Decatur Work Release. Correctional officers at Decatur Work Release also know which inmates have HIV. A correctional officer at Montgomery Women's Facility told one inmate with HIV not to touch him because she had "that stuff." Another prisoner with HIV at Montgomery Women's Facility believes that she was never assigned a job because of status-based discrimination by Warden Ellington; he told her that he was concerned other prisoners would talk about her HIV status on the job, and that this would end up adversely affecting ADOC.

85. ADOC's work release policy for prisoners with HIV also imposes unnecessarily restrictive medical clearance criteria. If not taking HIV medications, prisoners with HIV must have "a viral load of less than 1,000 and a CD4 count greater than 700." This arbitrarily high

threshold prevents otherwise qualified prisoners with HIV from participating in work-release programs, without medical justification. Furthermore, prisoners who are on HIV medication must have successfully participated in the Keep On Person (“KOP”) medication program for six consecutive months or more prior to going to work release, and have a viral load of “less than 48 for four consecutive readings, and a CD4 count greater than 450,” to be eligible for work release. The HIV specialist for Limestone and Tutwiler comes to each of the facilities approximately once every three months. In other words, it could take up to a year before a prisoner on HIV medication has had the four consecutive readings necessary to become eligible for work release. For example, one prisoner with HIV at Tutwiler has been eligible for work release since July 2010, but was not medically cleared until January 2011.

86. As a result of the arbitrary thresholds for those who do not need medication, some prisoners with HIV are excluded from work release because, paradoxically, they are too healthy to need HIV medications. This forces individuals like Plaintiff Darrell Robinson to choose between foregoing work-release or undergoing premature, medically unnecessary HIV treatment. Defendants’ HIV specialist has decided that Mr. Robinson has no current medical need for HIV medications, because his CD4 count is between 600 and 700, and his viral load is stable at 3000. To meet ADOC’s eligibility requirements for work release, however, Mr. Robinson would have to take HIV medications, despite the lack of medical need, long enough to meet the 6-month KOP program participation requirement and have four viral load readings taken. This means that he would be prematurely subjecting himself to the risks of potent HIV medications not just during work-release, but also for six months or perhaps a year before even being cleared.

87. Before Plaintiff Albert Knox came to prison, he worked in a full-time managerial position and never required HIV medication. But he has been told that he will not be medically

cleared until he begins taking HIV medication. Similarly, Plaintiff Ashley Dotson has been and will continue to be held at a high security facility as a result of this arbitrary HIV medical policy, even though she has been otherwise eligible for work release since she arrived at Tutwiler in December 2010.

88. ADOC's arbitrary medical clearance policy affects not only eligibility for work release, but also custody levels more generally. Prisoners with HIV who would otherwise be eligible for the least restrictive custody levels, minimum-out or minimum-community, instead receive the more restrictive custody level of medium-in, solely because they have not been medically cleared for work release.

89. Furthermore, on information and belief, prisoners with HIV who meet the ADOC eligibility criteria for work release are often barred from transfer to work release centers for no reason other than their HIV status. Upon information and belief, ADOC has never admitted more than a handful of men with HIV to the work release—perhaps fewer than ten in total. ADOC recently allowed one prisoner with HIV to be transferred to the Decatur Work Release Center. Before that, it had been almost a year since ADOC had placed any men with HIV in the Decatur Work Release Center, even though several men with HIV were eligible for placement in work release, including Plaintiffs Louis Henderson, Dwight Smith, and Darrell Robinson. During that time, general population inmates continued to be placed in the Decatur Work Release Center. Upon information and belief, HIV status discrimination, not a lack of bed space, is the reason for this disparity; there is bed space for at least fifteen other prisoners in the dorm where Plaintiffs John Hicks and Roosevelt James are housed, in addition to space in the other dormitories at Decatur Work Release Center.

90. ADOC has similarly not transferred any women with HIV to the Montgomery

Women's Facility for work release since approximately August 2009. Upon information and belief, only four women with HIV have ever been sent to Montgomery Women's Facility.

Discriminatory Exclusion of Prisoners with HIV from Other ADOC Facilities

91. Limestone is one of approximately 27 prisons that ADOC maintains for male prisoners. Some offer unique programs, privileges, services and activities that are unavailable at Limestone. General-population prisoners with a six month clear record are eligible to apply for a lateral transfer. Lateral transfers are granted to general-population prisoners in order to place the prisoners closer to their families and to allow them to participate in programs, services, and activities not offered at their current institution. Yet all male prisoners with HIV, even if they are otherwise eligible and qualified, are categorically excluded from transferring to those facilities and participating in the programs, services, and activities offered there.

92. For example, prisoners with HIV are excluded from the Frank Lee Youth Center in Deatsville, Alabama. The Youth Center is a minimum-security facility, intended to architecturally resemble a school rather than a prison. Frank Lee houses first offenders who are forty years old or less; have never committed a sex offense or a violent offense involving serious injury to the victim; have a sentence of 20 years or less; and are eligible for minimum-out custody. Prisoners assigned to the Youth Center on a long-term basis are eligible to attend a trade school for vocational training or GED and perform free labor in community work squads with neighboring municipalities. Frank Lee Youth Center offers trade classes in cabinet making, carpentry, commercial foods, electrical technology, furniture restoration, and plumbing. None of these trades are available to the men at Limestone.

93. Prisoners with HIV are also categorically excluded from the Alabama Therapeutic Education Center ("ATEF") in Thomasville, Alabama and Columbiana, Alabama, which offer

special vocational classes. ATEF trains inmates to be placed in skilled jobs once they are released into society or are eligible for work release. The trades taught at these prisons include carpentry, roofing, dry wall, painting, framing, electrical, plumbing, tile and masonry, fork lift operator, cabinet making, and barbering. Not all of these trades are taught at Limestone. Participation in trades improves the job possibilities for inmates upon release and the classification and parole boards look favorably upon it.

94. Prisoners with HIV are categorically excluded from Ventress Correctional Facility, located in Clayton, Alabama. Ventress houses prisoners with medium-custody or below, and makes available a number of substance abuse programs including a secular eight-week treatment class, and a 15-week program for inmates with dual disorders, neither of which is offered at Limestone. Ventress also offers academic and vocational educational programs, including heating and air conditioning and small engine repair, which are provided by the nearby Sparks Technical College and are not available at Limestone. In addition, Ventress provides community services to city, county and state agencies—opportunities that are not available at Limestone.

95. Prisoners with HIV are categorically excluded from St. Clair Correctional Facility in Springville, Alabama. St. Clair makes available a Therapeutic Community Substance Abuse Program that is not available at Limestone. The Alabama Correctional Industries operates a vehicle restoration facility and a chemical plant inside St. Clair. The facility provides on-site classroom settings for academic/vocational educational programs, including electrical technology and furniture restoration, which are provided by Gadsden State Community College and are not available at Limestone. St. Clair also provides a total care medical infirmary with complete dental care, dialysis, a cancer unit, emergency room, and diagnostic services that are

not available at Limestone.

96. Prisoners with HIV are categorically excluded from the Hamilton Aged and Infirm Center (“HAIC”), located in Hamilton, Alabama. HAIC has approximately five acres within a security fence, and houses minimum and medium custody inmates who are aged or infirm. A staff of minimum custody inmates provide facility upkeep and community work.

97. Prisoners with HIV are categorically excluded from Elmore Correctional Facility, located just north of Montgomery. Elmore is the recycling headquarters for ADOC and also maintains compost for the local area. Inmates classified as minimum-in custody work upon the institution’s property while under the supervision of ADOC employees; minimum-out inmates may work off the property under free-world supervision. Inmates employed on renovation crews of the Alabama Correctional Industries are housed at their work sites until weekends and holidays when they are returned to the institution. Elmore provides trade classes in barbering, cabinet making, carpentry, commercial foods, electrical technology, furniture restoration, and plumbing, which are not available at Limestone.

98. Prisoners with HIV are categorically excluded from the Farquhar Cattle Ranch is located approximately eight miles east of Greensboro. The Ranch houses minimum-custody inmates, who, when not working on the Ranch, work on community work projects for county, city, and other government agencies.

99. Prisoners with HIV are categorically excluded from Donaldson Correctional Facility, located just west of Birmingham. Donaldson offers trade classes in barbering, carpentry, electrical technology, plumbing, and special education. These classes are not offered at Limestone.

100. Prisoners with HIV are categorically excluded from Draper Correctional Facility,

located just north of Montgomery. Draper's stated goal is to maintain an appropriate level of security that will eliminate escapes and present no dangerous threats to the community, while at the same time providing adequate housing, education and productive work for the inmates. Each inmate has an assigned job within the institution, on a large farming operation, a furniture plant, or a vehicle garage. Draper offers trade school programming in barbering, cabinet making, carpentry, commercial foods, electrical technology, furniture restoration, plumbing, and special education, which are not available at Limestone.

101. Prisoners with HIV are categorically excluded from JO Davis Correctional Facility ("Fountain"), located about seven miles north of Atmore on State Highway 21. Fountain maintains cattle, agricultural operations, and vegetable gardens. Additionally, the facility offers vocational programs through the nearby Jefferson Davis Community College, including barbering, cabinet making, commercial foods, plumbing, and small engine repair. These vocational programs are not available at Limestone. Fountain also offers a Relapse Treatment program designed for inmates who have completed one of the other ADOC drug treatment programs and have experienced relapse, either by a failure to remain abstinent or by failing to remain engaged in the recovery process. Utilizing evidence-based practices, the relapse treatment program focuses on post-acute withdrawal recognition and management, relapse warning sign identification and analysis, development of refusal skills, high risk situation identification and management, relapse prevention strategies, and relapse plan development. A relapse program is not available at Limestone.

102. Prisoners with HIV are categorically excluded from Staton Correctional Center, located just north of Montgomery. Staton offers courses in Adult Basic Education, literacy, and special education, college classes, and vocational training programs in auto body and heavy

equipment repair, barbering, commercial food service, cabinet making, electrical technology, furniture restoration, and plumbing. None of these trade school courses are available at Limestone. Staton offers an eight-week matrix stimulant program, which targets the needs of prisoners with a history of methamphetamine and other stimulant dependency. This substance abuse program is not available at Limestone.

103. Prisoners with HIV are categorically excluded from Easterling Correctional facility is located near Clio on Highway 10. Easterling has a dorm dedicated to drug treatment for prisoners who have a history of substance abuse. The program includes a six month secular substance abuse program and secular aftercare. Secular treatment and aftercare is not available at Limestone. Easterling also provides vocational and educational programs through Sparks State Technical College, where prisoners can learn such trades as industrial electricity, cabinet making, and plumbing. Programs for learning these trades are not available at Limestone.

104. Many states have shown that HIV care can be distributed throughout a correctional system without incurring undue expense. For instance, in many states where prisons are located remotely from the urban centers where HIV specialists are typically located, telemedicine has been effectively used to ensure adequate health care irrespective of location. In other states, centers of excellence are created near the urban centers where HIV specialists work. In this way, HIV specialists may be contracted on a part-time basis to provide care within each geographical locale. These models are most effective when experienced HIV specialists provide clear and standardized guidelines for routine care, monitoring, follow-up and regular review.

HIV is a Disability Within the Meanings of the ADA and the Rehabilitation Act

105. HIV is an impairment of the immune system that substantially limits a person with HIV in one or more major life activities. It is therefore a disability within the meanings of

42 U.S.C. § 12102(1)(A) and 29 U.S.C. § 705(9)(B).

Federal Financial Funding

106. ADOC receives federal financial assistance. This assistance includes grants from the U.S. Department of Justice and the U.S. Department of Energy.

Class Action Allegations

107. Each of the named plaintiffs is a prisoner with HIV in the custody of ADOC, who brings this action on their own behalf and on behalf of all other prisoners with HIV in the custody of ADOC, now and in the future.

108. The class is so numerous that joinder of all members is impractical. ADOC currently has approximately two hundred sixty prisoners with HIV in its custody. The class also includes many future members as the facility regularly admits new prisoners with HIV.

109. There are questions of law and fact common to all class members, including but not limited to the following: whether the rights of Alabama prisoners with HIV under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, to be free of HIV-based discrimination, are violated by Defendants' policy and practice of segregating prisoners with HIV, excluding them on the basis of their HIV status from prison programs, jobs, activities and privileges, and publicly disclosing their HIV status.

110. Because the policies and practices challenged in this Complaint apply with equal force to the named Plaintiffs and the other members of the class, the claims of the named Plaintiffs are typical of the class in general.

111. The named Plaintiffs will fairly and adequately represent the interests of the class. They possess a strong personal interest in the subject matter of the lawsuit and are represented by

experienced counsel with expertise in class action prison-conditions litigation in federal court, including class action litigation on the subject matter of this lawsuit. Plaintiffs' counsel has the legal knowledge, experience and resources to fairly and adequately represent the interests of all class members in this action.

112. Defendants have acted or refused to act on grounds generally applicable to the class. Their policies, practices, acts and omissions have affected all class members. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole.

CAUSE OF ACTION

113. Defendants are violating Plaintiffs' rights under Title II of the ADA and Section 504 of the Rehabilitation Act, by subjecting them to discrimination solely on the basis of their testing HIV-positive, and by excluding them from participation in, or denying them the benefits of, ADOC services, programs or activities for which Plaintiffs are qualified, because they have HIV. The actions and omissions which violate Plaintiffs' rights under these statutes include the following:

- a) Denying Plaintiffs the opportunity to participate in or benefit from services, facilities, privileges and advantages for which they are qualified, because they have HIV;
- b) Denying Plaintiffs equal opportunity to participate in or benefit from services, facilities, privileges and advantages for which they are qualified, because they have HIV;
- c) Providing Plaintiffs with benefits or services that are not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to prisoners who do not have HIV;

- d) Applying eligibility criteria that screen out prisoners who are HIV seropositive from fully and equally enjoying services, facilities, privileges, advantages, and accommodations provided by ADOC to prisoners who do not have HIV;
- e) Failing to make reasonable accommodations in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability;
- f) Failing to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified prisoners with HIV;
- g) Depriving prisoners with HIV of visitation by family members by placing them in distance facilities where they would not otherwise be housed;
- h) Denying prisoners with HIV the opportunity to equally participate in or benefit from work-release programs through its arrangements with work-release employers;
- i) Through contractual or other arrangements with work-release employers, utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with HIV to discrimination on the basis of their HIV status;
- j) Aiding or perpetuating discrimination against prisoners with HIV, by providing significant assistance to work-release employers that discriminate on the basis of HIV status.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

- a) Certify, pursuant to Fed. R. Civ. P. 23(b)(2), a class consisting of all prisoners in the custody of the Alabama Department of Corrections, now and in the future, who have tested positive for HIV;

- b) Declare that ADOC's HIV segregation policy violates Title II of the ADA and Section 504 of the Rehabilitation Act;
- c) Enjoin Defendants, their officers, agents, employees and all other persons in active concert and participation with Defendants from engaging in discriminatory policies and practices against Plaintiffs on the basis of their HIV status;
- d) Grant reasonable attorney's fees and litigation costs pursuant to 42 U.S.C. § 12205 and other applicable law;
- e) Order such other and further relief as the interests of justice require.

RESPECTFULLY SUBMITTED:



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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March 2011, I have served the foregoing complaint by delivering a pre-addressed, postage pre-paid copy to the clerk's office to be served by certified mail, and properly addressed as follows:

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Decatur WR / CWC
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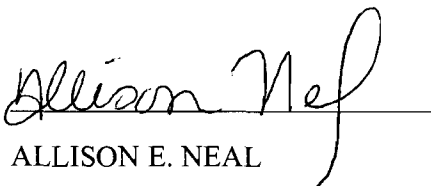
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