UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELET CHARLES and CAROL SMALL,

Plaintiffs,

v.

COUNTY OF ORANGE, NEW YORK; COUNTY OF ORANGE SHERIFF'S DEPARTMENT; ORANGE COUNTY DEPARTMENT OF MENTAL HEALTH; NICOLE KAYE, Clinic Director, Orange County Correctional Facility, in her individual capacity; CARMEN ELIZONDO, former Clinic Director, Orange County Correctional Facility, in her individual capacity,

Defendants.

Case No. 16-cv-5527

COMPLAINT AND JURY DEMAND

PRELIMINARY STATEMENT

1. Plaintiffs Michelet Charles and Carol Small are two individuals who suffer from serious, ongoing mental illnesses. They bring this civil rights action to challenge the dangerous, deliberately indifferent, and unconstitutional acts of Orange County and its employees in failing to provide any discharge planning to Plaintiffs when they were released from civil immigration detention at the Orange County Correctional Facility ("Orange County Detention Center"). Discharge planning is an essential part of mental healthcare in institutional settings and consists of a plan created prior to release to ensure that upon discharge from a provider's care, people with mental illnesses do not relapse, and face hospitalization, increased risk of suicide, homelessness, and other related instability. Defendants are constitutionally obliged to provide Plaintiffs with adequate medical care while they are confined to immigration detention.

Although Defendants provided Plaintiffs with mental healthcare during their detention, they failed to provide fully adequate care by neglecting to create and implement a discharge plan before Plaintiffs were released.

2. During the many months that Defendants held Mr. Charles and Ms. Small in civil immigration detention in 2014 and 2015, they each received regular mental healthcare in the facility. Plaintiffs regularly met with psychiatrists. Plaintiffs received prescription medication to treat their illnesses. As a result of this course of treatment, before being released from civil immigration detention, Plaintiffs were stable and regularly taking appropriate medication. However, when Defendants discharged Mr. Charles and Ms. Small, they abruptly abandoned their care. Defendants made no attempt to plan for Plaintiffs' mental healthcare and medications to continue for even a few days until they could access new care. Instead, Defendants dumped Plaintiffs on the street, with no means to access mental healthcare. Defendants were aware that Plaintiffs' medications were for serious mental illnesses, and that the medication could not be stopped abruptly without serious consequences, yet Defendants failed to provide Plaintiffs with interim medication, referrals for ongoing psychiatric care, or any of the other basic elements of discharge planning upon their release. Defendants were aware that, without mental healthcare, Plaintiffs were at substantial risk of relapse, hospitalization, or worse. Yet, Defendants did nothing.

3. Plaintiff Michelet Charles is a United States lawful permanent resident who is diagnosed with bipolar and schizoaffective disorders. For years, Mr. Charles managed his illnesses through consistent mental healthcare. He maintained a steady job, raised a family, and otherwise contributed to his community. In 2014, Mr. Charles was confined in civil immigration detention at Orange County Detention Center. Orange County held Mr. Charles for almost a

year, during which it provided him with coordinated psychiatric care and psychotropic medication. On July 22, 2015, Mr. Charles was brought from Orange County to New York City, for an appearance at the Varick Street Immigration Court. Following success at his immigration hearing, he was released onto the streets of Lower Manhattan with his identification and nothing more. Defendants failed to provide Mr. Charles with any plan for his continued mental healthcare, a single referral to a mental healthcare provider, or any interim medication. Mr. Charles even returned to Orange County Detention Center the following day on the advice of his Deportation Officer, yet Defendants refused to provide him with an interim supply of his medication. Without a plan or the resources necessary to obtain care, as a result of Defendant's unconstitutional conduct, Mr. Charles' mental health quickly spiraled downward. After two weeks without treatment, Mr. Charles suffered total psychiatric decompensation. He was admitted—incoherent, hallucinating, and suicidal—to a hospital's psychiatric unit where he remained under inpatient care for almost two months.

4. Whether released from Varick Street Immigration Court in Manhattan, or directly from Orange County Detention Center in Goshen, New York, Defendants still failed to provide discharge planning.

5. Plaintiff Carol Small is a United States lawful permanent resident who was diagnosed with paranoid schizophrenia during her time in immigration detention. Prior to detention, Ms. Small had lived for years in the Bronx working at a hair salon. Ms. Small was confined in civil immigration detention at Orange County Detention Center for eight months, beginning in 2014. During that time, she experienced paranoia and extreme symptoms of mental illness, until she was diagnosed and provided with treatment in the form of coordinated psychiatric care and psychotropic medication. On January 19, 2016, Ms. Small was released

from Orange County Detention Center without medication or any other form of discharge planning to manage her diagnosed paranoid schizophrenia. Ms. Small was released from Orange County Detention Center at approximately 6:30 at night with only eighty dollars in cash. Ms. Small found her own way to a train station, and, from there, to Penn Station in Manhattan. She did not arrive in Manhattan until approximately 1:00 in the morning and spent the night in a diner. Ms. Small's mental healthcare only resumed when, days after her release, she checked herself into a hospital emergency room.

6. As people confined in civil immigration detention facilities, Plaintiffs were forced to rely on Defendants to provide adequate medical care. By their acts, Defendants exhibited deliberate indifference to Plaintiffs' serious medical needs, and created a substantial risk that Plaintiffs would relapse absent medicine and treatment. Defendants' conduct fails to comply with minimally acceptable constitutional standards of institutional mental healthcare. Orange County maintained a persistent widespread custom, and unofficial policy, that deprived people with mental illness of this critical treatment. This is the opposite of how discharge from an institutional setting for people with serious mental illnesses should work. Indeed, almost two decades ago, the jail at Rikers Island began to end its similar practice of discharging people with mental illness without any psychiatric medication or treatment referrals. Further, widely accepted standards of medical care establish that discharge planning is an essential component of adequate institutional mental healthcare. Defendants themselves knew that discharge planning is an essential piece of adequate mental healthcare: the most recent guidance from the federal government agency that contracts with Orange County to confine civil immigrant detainees, such as Plaintiffs—the Immigration and Customs Enforcement Agency ("ICE")—itself requires discharge planning. Despite these high stakes, and the consensus that adequate mental

healthcare must include discharge planning, Defendants failed to provide it to Plaintiffs and caused Plaintiffs to experience extreme emotional distress and harm.

7. Defendants' failure to provide discharge planning constitutes deliberate indifference to Plaintiffs' serious medical needs in violation of the Fourteenth Amendment of the United States Constitution. Plaintiffs seek compensatory and punitive damages against the Defendants for violations of their rights.

PARTIES

8. Plaintiff Michelet Charles is a lawful permanent resident of the United States, who was a resident of New York State before he was confined at Orange County Detention Center. He currently resides in Riverdale, Georgia. He was detained at Orange County Detention Center on July 25, 2014, and was released on July 22, 2015.

9. Plaintiff Carol Small is a lawful permanent resident of the United States who resides in the Bronx, New York. While she was confined at Orange County Detention Center, Ms. Small was known as Annemarie Soloman. She was detained at Orange County Detention Center on May 14, 2015, and was released on January 19, 2016.

10. Defendant County of Orange is the municipality that oversees Orange County Detention Center, where Plaintiffs Charles and Small were held. Orange County operates Orange County Detention Center, and through its senior officials, promulgates and implements policies with respect to the provision of mental healthcare for people confined to Orange County Detention Center. In addition, upon information and belief, senior officials within the County Defendants' organizations are aware of and tolerate the practice of failing to provide discharge planning by subordinate employees in Orange County Detention Center, including those that

may be inconsistent with formal policy. These practices, because they are widespread, long-standing and embedded, constitute unwritten and unofficial Orange County policies or customs.

11. Defendant Orange County Sheriff's Office is the division of the County of Orange that operates Orange County Detention Center. The Orange County Sherriff's Office is the signatory to an Inter-Governmental Services Agreement between ICE and Orange County, pursuant to which, people in civil immigration detention are confined at Orange County Detention Center.

12. Defendant Orange County Department of Mental Health is a department of the County of Orange which, pursuant to the Inter-Governmental Services Agreement between ICE and Orange County, is responsible for providing mental health services to people confined in Orange County Detention Center.

13. Defendant Nicole Kaye is the Clinical Director at the Orange County Correctional Facility. Upon information and belief, at the time of Mr. Charles' release from Orange County Detention Center and during the time Ms. Small was confined to Orange County Detention Center, she was an employee of the Orange County Department of Mental Health and responsible for provision of appropriate mental healthcare to people confined in civil immigration detention at Orange County Detention Center, including Plaintiff Charles and Plaintiff Small.

14. Defendant Carmen Elizondo was the Clinical Director at the Orange County Correctional Facility. Upon information and belief, during the time Mr. Charles was confined at Orange County Detention Center, she was an employee of the Orange County Department of Mental Health and responsible for provision of appropriate mental healthcare to people confined

in civil immigration detention at Orange County Detention Center, including Plaintiff Charles and Plaintiff Small.

15. Defendants County of Orange, Orange County Sheriff's Office, and the Orange County Department of Mental Health are collectively known as "County Defendants," and Defendants Kaye and Elizondo are collectively known as "Individual Defendants."

JURISDICTION AND VENUE

16. This action is brought under the Fourteenth Amendment of the United States Constitution and under 42 U.S.C. § 1983 to redress Defendants' deprivation of Plaintiffs' constitutional rights.

17. Jurisdiction is conferred upon this court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts of civil actions arising under the Constitution, laws, or treaties of the United States; and 28 U.S.C. § 1343(a)(3) and (4), which provide for jurisdiction in the United States district courts of civil actions to redress deprivation of rights secured by the Constitution and States of the United States.

18. Venue lies properly with this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims in this Complaint occurred in this district.

FACTS

19. Pursuant to an Inter-Governmental Services Agreement between the United States Department of Homeland Security, ICE, and Orange County, ICE and Orange County confine hundreds of people at Orange County Detention Center every year in civil immigration detention. Operating under the Department of Homeland Security, ICE is the federal law enforcement agency charged with the detention and removal of immigrants. These individuals, including Plaintiffs, are subject to jail-like conditions while they await the outcome of their civil

immigration removal and deportation cases. They experience complete restriction of their freedom while confined. On information and belief, the majority of people who are confined to civil immigration detention are lawful permanent residents or visa holders who have criminal convictions for crimes that the federal government now considers, either in the first instance or after a series of convictions, as a cause for removal. People who are confined to immigration detention may have completed a criminal sentence by the time they are confined to immigration detention, or may not have been required to serve any sentence at all.

20. Pursuant to the agreement between ICE and Orange County, people confined in civil immigration detention are held in custody to assure their presence throughout the administrative hearing process and for court appearances related to their removal proceedings. People confined to civil immigration detention are not charged with criminal violations. Nevertheless, people confined to civil immigration detention are housed in similar conditions to people who are criminally incarcerated.

21. During the period of Plaintiffs' detention, the County Defendants provided discharge planning for people with mental illness who were criminally incarcerated in Orange County Detention Center, but housed in a separate wing from those, such as Plaintiffs, who were subject to civil immigration detention. Despite the demonstrated ability of County Defendants to provide this critical service to individuals incarcerated or detained in Orange County Detention Center, the County Defendants maintained a persistent, widespread custom and unofficial policy of failing to do so for people confined in civil immigration detention, such as Plaintiffs in this action.

I. Plaintiff Michelet Charles

A. Michelet Charles' Life before Immigration Detention

22. Plaintiff Michelet Charles is a 55-year-old lawful permanent resident who has lived in the United States for 34 years.

23. In or around 1984, when Mr. Charles was 25 years old, he was diagnosed with schizoaffective and bipolar disorders. Unless treated, these illnesses cause Mr. Charles to suffer from psychotic symptoms such as hallucinations and delusions as well as periods of mania and depression.

24. Before he was detained at Orange County Detention Center, Mr. Charles received psychiatric care for his mental illnesses, including prescriptions for Risperdal and Depakote, taken daily, from the outpatient facility, Pederson-Krag Center of Long Island.

25. For 21 years, Mr. Charles worked in the restaurant industry and supported his family while managing his mental illnesses through psychiatric care including the prescription medication regimen. Mr. Charles has four adult daughters and maintains a strong relationship with them.

B. Defendants' Custody and Medical Treatment for Mr. Charles

26. On or about July 25, 2014, ICE officials arrested Mr. Charles and confined him at Orange County Detention Center pending the outcome of his removal proceeding. He was confined as a civil immigrant detainee for 363 days, from July 25, 2014 until July 22, 2015.

27. When Mr. Charles entered Orange County Detention Center, medical personnel at the facility medically evaluated him, and diagnosed him with bipolar disorder with psychotic features.

28. During the year he was confined to Orange County Detention Center, Defendants, as required by the Inter-Governmental Services Agreement, provided him with medically necessary treatment and prescription medicine for his mental illnesses.

29. His treatment included meeting with a psychiatrist to monitor his condition every three weeks at Orange County Detention Center.

30. Medical employees of Defendant Orange County Department of Mental Health, overseen by Defendants Kaye and Elizondo, prescribed Risperdal and Zyprexa to Mr. Charles and administered them to him on a daily basis. According to Mr. Charles' medical records, Defendant Elizondo signed Mr. Charles' treatment plan for the time he was confined to civil immigration detention.

31. Mr. Charles' daily prescription regimen is necessary to manage his mental illnesses.

32. Medical records state that Mr. Charles reported to his medical providers that his medical regimen was "therapeutic," meaning it alleviated his symptoms. The medical records also note that while at Orange County Detention Center, Mr. Charles was psychiatrically stable. He remained psychiatrically stable on the date of his release.

C. Defendants Failed to Provide Discharge Planning to Mr. Charles

33. Mr. Charles' immigration merits hearing was scheduled to occur on July 22, 2015 at Varick Street Immigration Court at 201 Varick Street, New York, NY 10014 ("Varick Street Immigration Court").

34. Upon information and belief, the County Defendants were aware that if Mr. Charles prevailed at his hearing, he could be released from custody that day at Varick Street Immigration Court.

35. Prior to July 22, 2015, Defendants did not provide discharge planning to Mr. Charles, including but not limited to providing him with information about his prescriptions. Additionally, Defendants did not discuss any other details of Mr. Charles' release with him or his immigration attorney.

36. On July 22, 2015, Mr. Charles was transported to Varick Street Immigration Court for his immigration hearing.

37. On that date, Defendants did not provide Mr. Charles or his immigration attorney with a written discharge plan, a list of his medications, a supply of medication, a list of outside referrals, a list of providers for continuing care, his belongings (clothing), money he had in commissary, or any other information or assistance with respect to his known medical condition.

38. At his immigration hearing on July 22, 2015, Mr. Charles obtained immigration relief and was consequently released from civil immigration detention.

39. After the hearing, Mr. Charles' immigration attorney discussed Mr. Charles' release with ICE Deportation Officer Rodriguez.

40. Deportation Officer Rodriguez stated that ICE did not have a supply of medication for Mr. Charles, and that he should return to Orange County Detention Center, over 65 miles away, if he needed to obtain a supply of his prescription medication.

41. Prior to his release on July 22, 2015, Defendants did not provide Mr. Charles with an interim supply of the medication that Orange County Detention Center medical providers had prescribed to him for the past year. He was released without any information or documentation of what he should or could do next to obtain treatment for his mental illnesses, and without his belongings, or the money he had in the commissary.

42. Defendants failed to provide Mr. Charles with a written prescription for the medication that the medical employees of Defendant Orange County Department of Mental Health had prescribed to him during the period of his civil detention.

43. Defendants failed to contact any pharmacy to arrange for Mr. Charles to obtain a prescription for the medications that he was prescribed by medical employees of Defendant Orange County Department of Mental Health in the months before his release from civil detention.

D. Defendants Refuse to Provide Mr. Charles with a Post-Release Supply of Medication

44. On July 23, 2015, Mr. Charles and his daughter, Michelle Charles, travelled over two hours from her home in Long Island, New York to Orange County Detention Center to try and obtain Mr. Charles' prescription psychiatric medication, his belongings, and his money from commissary.

45. When Michelle Charles asked an employee at the front desk at Orange County Detention Center for her father's medication, the employee of Orange County Detention Center refused to provide it. The Orange County employee stated that the person who had transported Mr. Charles to Varick Street Immigration Court was responsible for providing a continuing supply of medication.

46. The Orange County employee also stated that as a matter of institutional policy, after a person is released from its custody, Orange County Detention Center can no longer provide medication.

47. After Mr. Charles and his daughter were unable to obtain a supply of medication from their in-person visit to Orange County Detention Center, Mr. Charles' immigration attorney

contacted Deportation Officer Rodriguez and requested that a supply be provided to Mr. Charles. Deportation Officer Rodriguez ignored her inquiry.

48. According to Mr. Charles' medical file from Orange County Detention Center, on July 23, 2015, the day *after* Mr. Charles' release, a Clinical Social Worker signed a document entitled "Continuing Care Plan/Discharge Summary" ("Discharge Summary").

49. Defendant Kaye co-signed the Discharge Summary on August 3, 2015.

50. The Discharge Summary explicitly anticipates that Mr. Charles would have projected financial, mental health, social support, and housing needs. The Discharge Summary states that "Medication," "Psychiatric Treatment," and "Substance Abuse Treatment," would be among Mr. Charles' "Projected Mental Health Needs." However, Defendant Kaye and her team provided no "discharge" services to Mr. Charles consistent with this document.

51. Defendant Kaye and her team failed to ensure that a copy of this Discharge Summary document was given to Mr. Charles or his immigration attorney.

52. Defendant Kaye and her team failed to arrange for the provision of any medication to Plaintiff at the time of his release or thereafter.

E. Mr. Charles Decompensates and Relapses Because Defendants Failed to Provide Discharge Planning

53. After his release without an interim supply of his necessary medications, or a discharge plan to coordinate continued care, Mr. Charles soon began psychologically decompensating. For example, he exhibited bizarre behavior, and was disorganized and mumbled when he spoke. His family reports that he was manic, anxious, and paranoid.

54. Because he was detained on the date that he was required to renew his Medicaid benefits, Mr. Charles' Medicaid was terminated and he was unable to immediately access his health insurance upon release. Reconnection requires a new application, in addition to identity

and immigration status confirmation. Defendants made no arrangements or plan to re-connect Mr. Charles to his Medicaid benefits.

55. By August 4, 2015, Mr. Charles was experiencing extreme symptoms of psychosis, whereupon his thoughts and emotions were so impaired that he lost contact with reality.

56. On August 4, 2015, Mr. Charles' family called 911 for emergency medical assistance. When the police responded, they transported him to the Emergency Room at Good Samaritan Hospital in West Islip, New York.

57. On August 5, 2015, Mr. Charles was hospitalized in an inpatient psychiatric unit of North Shore LIJ South Oaks Hospital ("South Oaks Hospital"), in Amityville, New York.

58. Medical records upon admission state that he had worsening aggressive, disorganized, and bizarre behavior, and was preoccupied with paranoia.

59. Mr. Charles spent over two months at South Oaks Hospital in order to stabilize his condition. During that time, he was separated from his family and community while he was undergoing intense medical treatment.

60. Medical records indicate that only after 56 days in South Oaks Hospital did Mr. Charles appear to rebound to his baseline, meaning a return to a more psychiatrically stabilized state.

61. Mr. Charles was discharged from South Oaks Hospital on October 9, 2015.

62. Before, during, and after his hospitalization until the present, Mr. Charles suffered and continues to suffer extreme emotional distress because Defendants were deliberately indifferent to his serious medical needs, including their duty to provide him with discharge

planning prior to and at the time of his release for the period of time reasonably necessary for him to obtain treatment.

II. Plaintiff Carol Small

A. Defendants' Custody and Medical Treatment for Plaintiff Carol Small

63. Plaintiff Carol Small is a 45-year-old lawful permanent resident of the United States who has lived in the United States for 13 years.

64. Before she was detained, Ms. Small worked as a hairdresser in the Bronx, New York, lived on her own, and supported herself.

65. The County Defendants confined Ms. Small in civil immigration detention at Orange County Detention Center for approximately seven months, from May 14, 2015 until January 19, 2016.

66. Around June 2015, while in detention, Ms. Small began experiencing symptoms of mental illness, including visual and auditory hallucinations.

67. Ms. Small became extremely paranoid and delusional. She believed she was being monitored by the government through a chip implanted in her tooth, that there was a government conspiracy to poison her, and that the poison was coming through the vents. She made complaints to the ICE hotline and wrote letters to the sheriff and deportation officers with these assertions. In late June 2015, a psychiatrist at Orange County Detention Center evaluated Ms. Small and diagnosed her with paranoid schizophrenia.

68. On or about September 8, 2015, upon information and belief, the County Defendants transferred Ms. Small to the inpatient psychiatric ward at Kings County Hospital for intensive treatment for her mental illness.

69. On or about October 15, 2015, after stabilizing, Ms. Small was transferred back from Kings County Hospital's inpatient psychiatric ward to Orange County Detention Center.

70. Upon her return to Orange County Detention Center, medical employees of the Orange County Department of Mental Health, overseen by Defendant Kaye, provided Ms. Small with medically necessary treatment and continued to prescribe and administer her prescription medication.

71. Defendant Kaye signed Ms. Small's intervention care plan, which set forth her treatment while confined to Orange County Detention Center.

72. After her hospitalization at Kings County Hospital, Ms. Small saw a psychiatrist about once every four weeks at Orange County Detention Center.

73. In the time directly before her release on January 19, 2016, Ms. Small's prescription medication regimen consisted of Trazodone, Benztropine, and Olanzapine, which she took on a daily basis.

74. While on the above-referenced set of medications, Ms. Small remained psychiatrically stable.

75. Ms. Small's prescription regimen is necessary to manage her mental illnesses.

B. Defendants Failed to Provide Discharge Planning to Ms. Small

76. On January 11, 2016, an Immigration Judge granted Ms. Small immigration relief and ordered her release from civil immigration detention based on a stipulation between the ICE prosecutor and Ms. Small's immigration attorney. The stipulation ordered her release directly from Orange County Detention Center.

77. On January 19, 2016, at around 6:30 in the evening, in below-freezing temperatures, County Defendants released Ms. Small from Orange County Detention Center,

miles from where she lived prior to being confined in civil immigration detention. Upon her release, Orange County Detention Center gave Ms. Small eighty dollars in cash.

78. Before her release on January 19, 2016, Defendants did not provide Ms. Small a written discharge plan, a list of her medications, or a list of outside referrals or providers for continuing care.

79. Defendants failed to engage in any discharge planning with Ms. Small although she remained confined at Orange County Detention Center for eight days when her pending release was a certainty, namely between January 11, 2016 and January 19, 2016.

80. The Orange County Defendants released Ms. Small from Orange County Detention Center without any information or documentation of what she should or could do next to obtain treatment for her mental illness.

81. Defendants failed to provide Ms. Small with an interim supply of the medication that employees of Defendant Orange County Department of Mental Health, overseen by Defendant Kaye, had prescribed to her during the last months of her confinement.

82. Defendants failed to provide Ms. Small with a written prescription for the medication that the medical employees of Defendant Orange County Department of Mental Health, overseen by Defendant Kaye, had prescribed to and provided for Ms. Small during the last months of her detention.

83. Defendants failed to call in a prescription to any pharmacy for the medication that medical employees of Defendant Orange County Department of Mental Health, overseen by Defendant Kaye, had prescribed to and provided for Ms. Small during the last months of her detention.

84. Defendants did not provide Ms. Small with information about the names or quantities of the prescriptions she was prescribed during her detention.

C. Ms. Small's Efforts to Seek Medication on Her Own After Release

85. With the $80 in cash that Orange County Detention Center provided to Ms. Small, she took two trains to New York Penn Station, arriving at approximately 1:00 a.m. Thereafter—with no prior arrangements made—Ms. Small had to look for a place to stay the night.

86. Ms. Small spent the first night after her release in a diner before returning to the shop in the Bronx where she had worked prior to detention the next morning at around 9:00 a.m.

87. After a few days of staying with family members, a social worker from the organization that provided Ms. Small with immigration representation arranged for Ms. Small to live in a shelter.

88. While Ms. Small was struggling to re-establish her life after release from civil immigration detention, she was extremely distressed and worried for her own health, and the possibility of relapsing without the medication she had been taking to treat her mental illness. Given her previous symptoms of delusions and paranoia, the risk of relapse frightened her.

89. On January 21, 2016, Ms. Small went to the Emergency Room at North Central Bronx Hospital in an effort to receive a prescription for her medication.

90. Because Ms. Small had been hospitalized at North Central Bronx Hospital before her detention, and had written down her own list of the medications she was taking while detained, the hospital prescribed her with the same medications without doing a full psychological evaluation, thus shortening the time until she could resume treatment for her illness.

91. Before, during, and after her release until the present, Ms. Small suffered and continues to suffer extreme emotional distress because Defendants were deliberately indifferent to her serious medical needs, including their duty to provide her with discharge planning prior to, and at the time of, her release for the period of time reasonably necessary for her to obtain treatment.

III. The Standard of Care for People in Civil Immigration Detention Includes Discharge Planning

92. A broad array of professional mental health and medical associations agree that the standard of reasonable and adequate medical care for people incarcerated or detained includes discharge planning, and that adequate discharge planning includes providing a supply of interim medication, a summary of medical records (including admission diagnosis, discharge diagnosis, all diagnostic test results, list of medications prescribed, summary of care provided, summary of detainee's response to treatment, medical complications encountered, and any outside healthcare referrals), and a continuity of care plan including referrals to community-based providers.

A. The American Psychiatric Association Recommends Discharge Planning

93. The American Psychiatric Association is the primary professional association of psychiatrists in the United States and the largest psychiatric organization in the world.

94. The American Psychiatric Association is responsible for publishing the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM"), the leading authority of the codification of psychiatric conditions that is used by clinicians worldwide to diagnose mental illness. Courts are regularly guided by the American Psychiatric Association's conclusions on mental health, as published in the DSM, and look to the American Psychiatric Association to

establish definitions and standards as they apply to mental health. *See, e.g.*, *Farmer v. Brennan*, 511 U.S. 825, 829 (1994); *Hall v. Florida*, 134 S. Ct. 1986, 1990 (2014).

95. The American Psychiatric Association also publishes *Psychiatric Services in Correctional Facilities*, which includes guidelines for mental healthcare in correctional facilities.

96. In that publication, the American Psychiatric Association recognizes that "[t]imely and effective discharge planning is essential to continuity of care and an integral part of adequate mental health treatment." According to the American Psychiatric Association, discharge planning includes "a sufficient supply of current psychotropic medications to last until the patient can be seen by a community healthcare provider; scheduling appointments with mental health agencies for patients with serious mental illness, especially those receiving psychotropic medication; and arranging with local mental health agencies to share records, as appropriate, and to have prescriptions renewed or evaluated for renewal."

B. The American Psychological Association Requires That Psychiatrists Conduct Discharge Planning

97. The American Psychological Association is the largest scientific and professional association of psychologists in the United States.

98. The American Psychological Association publishes *Ethical Principles of Psychologists and Code of Conduct*, which consists of guidance as well as enforceable standards of professional conduct for psychologists.

99. *Ethical Principles of Psychologists and Code of Conduct* includes as part of its enforceable standards of conduct, a requirement that psychologists "make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted . . . by the [patient's] relocation . . . [and to] make reasonable efforts to provide for orderly and appropriate

resolution of responsibility for . . . patient care in the event the [psychologist-patient] relationship ends, with paramount consideration given to the welfare of the . . . patient."

C. The American Association of Community Psychiatrists Recommends Discharge Planning

100. The American Association of Community Psychiatrists ("AACP") is an organization of psychiatrists whose mission is to promote health, recovery, and resilience in people, families, and communities.

101. The AACP calls continuity of care "an essential and integral component of effective mental health treatment." AACP's position statement on post-release planning provides that "it is imperative that any psychiatric treatment provided during a period of incarceration include planning for post-release follow-up care in the community." According to the AACP, this includes assessing a detainee's insurance status, providing referrals for post-release treatment, and providing detainees with an adequate supply of medication.

D. The American Public Health Association Recommends Discharge Planning

102. The American Public Health Association ("APHA") is one of the largest associations of public health professionals in the United States. APHA publishes *Standards for Health Services in Correctional Institutions*, a set of healthcare standards for people in correctional settings.

103. *Standards for Health Services in Correctional Institutions* requires that a plan for continuity of care be created for people released from correctional facilities, including people with mental illness. Satisfactory compliance with this requirement includes providing each patient with a detailed discharge summary, providing a supply of essential medications sufficient for at least two weeks or until the patient can reasonably be expected to obtain follow-up care, and assisting patients who are eligible to enroll in health insurance programs.

E. The National Commission on Correctional Health Care Recommends Discharge Planning

104. The National Commission on Correctional Health Care ("NCCHC") is a non-governmental organization dedicated to improving the quality of correctional health and mental health services, and to helping correctional facilities provide effective and efficient care. NCCHC provides accreditation to correctional facilities nationwide.

105. NCCHC publishes *Standards*, a nationally recognized framework for evaluating healthcare in correctional settings. As part of *Standards*, NCCHC has created *Standards for Mental Health Services in Correctional Facilities*, a set of requirements for mental healthcare in correctional facilities.

106. Compliance with NCCHC's *Standards* is a key qualification in the NCCHC accreditation process.

107. Orange County Detention Center has sought, and obtained, accreditation from NCCHC.

108. *Standards for Mental Health Services* requires that "discharge planning is provided for inmates with serious mental health needs whose release is imminent." NCCHC defines discharge planning as "the process of providing sufficient medications for short-term continuity upon release and arranging for necessary follow-up mental health services before the inmate's release to the community."

109. *Standards for Mental Health Services* sets forth several levels of importance, and designates the level of importance of each requirement. Whereas some standards in *Standards for Mental Health Services* are designated merely "important," discharge planning is designated "essential," NCCHC's highest designation of importance.

110. Defendants did not provide Plaintiffs with mental healthcare discharge planning that meets the medical standards set forth above.

F. ICE's Guidance Requires Discharge Planning

111. ICE itself recognizes that discharge planning is an essential element of mental health treatment in institutional settings. ICE's own written guidance requires discharge planning for people in civil immigration detention who receive medical treatment, such as Plaintiffs in this action.

112. In 2008, ICE promulgated the 2008 Performance-Based National Detention Standards ("2008 PBNDS"), which, *inter alia*, set standards for the medical care that ICE affords to immigrant detainees.

113. The 2008 PBNDS provide in relevant part:

> The facility administrative health authority must ensure that a plan is developed that provides for continuity of medical care in the event of a change in detention placement or status. . . . Upon transfer to another facility or release, the medical provider shall ensure that all relevant medical records and at least 7 days' . . . supply of medication shall accompany the detainee.

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114. In 2011, ICE promulgated the 2011 Performance-Based National Detention Standards ("2011 PBNDS"), aimed at improving upon the 2008 PBNDS.

115. The 2011 PBNDS provide in relevant part:

> Detainees shall receive continuity of care from time of admission to time of transfer, release or removal. Detainees, who have received medical care, [been] released from custody or removed shall receive a discharge plan, a summary of medical records, any medically necessary medication and referrals to community-based providers as medically-appropriate [sic].

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116. The 2011 PBNDS also require that a detention facility ensure that "a plan is developed that provides for continuity of medical care in the event of a change in detention placement or status." Pt. 4.3.V.W. The 2011 PBNDS state that "[u]pon release from ICE custody, the detainee *shall* receive up to a 30 day supply of medication" and that "the [facility] *must* ensure that a continuity of treatment care plan is developed and a written copy provided to the detainee prior to removal." *Id.* (emphasis added).

117. Defendants did not provide Plaintiffs mental healthcare discharge planning that meets the guidance that ICE set forth in either the 2008 or 2011 PBNDS.

IV. Civil Immigration Detention at Orange County Detention Center

118. In 2008, ICE entered into a contract with Orange County Detention Center to confine people in civil immigration detention from the New York City area awaiting immigration hearings at Varick Street Immigration Court.

119. As part of the contract with ICE, Orange County Detention Center must provide civil immigrant detainees with safekeeping, housing, subsistence, medical, and other services. These services must be provided in compliance with all applicable laws, regulations, fire and safety codes, and policies and procedures.

120. Orange County Detention Center houses both people under civil immigration detention and people in criminal custody at its facility in Goshen, NY. They are in segregated units but live under similar conditions. Civil detainees are confined indoors most of the day, with limited visiting hours.

A. Medical Care for People Confined to Civil Immigration Detention

121. At Orange County Detention Center, the Orange County Department of Mental Health directly provides mental healthcare to people confined to civil immigration detention, such as Plaintiffs. Defendant Kaye is the Director of this program.

122. Employees of Orange County Detention Center screen people confined to civil immigration detention when they enter the facility and assess their medical care needs, including the need for prescription medication.

123. In order to seek medical care at Orange County Detention Center, people confined to civil immigration detention put in "sick call" requests for medical attention, and sometime thereafter a medical professional responds.

124. According to the 2013 Compliance Inspection of the Office of Detention Oversight at the Department of Homeland Security, Orange County Detention Center's mental health department consists of a full time mental health director, two staff psychiatrists, and one psychiatric nurse practitioner.

125. Orange County Detention Center has a psychiatrist on call to provide care for civil immigrant detainees twenty-four hours a day, seven days a week.

126. Plaintiffs received treatment from the Orange County Detention Center psychiatrists, social workers, Defendants Kaye and Elizondo, and other medical providers on a regular basis.

B. Discharge Planning as a Part of Adequate Mental Health Treatment

127. While County Defendants had a program in place to provide for discharge planning (including access to a continuing supply of their medications, and an adequate continuing care plan) for people held in criminal incarceration at county jails, Orange County

maintained a persistent, widespread custom, and unofficial policy, of failing to provide similar services for the civil immigrant detainees it houses, such as Plaintiffs.

128. Upon information and belief, during the relevant time periods when Plaintiffs were confined at Orange County Detention Center, Defendants failed to provide discharge planning to other individuals with serious ongoing mental illnesses who received mental health treatment while confined to civil immigration detention at Orange County Detention Center.

129. Upon information and belief, during the relevant time periods, Defendants did on occasion provide minimal discharge planning in the form of interim medication for one or two people, but Defendants only did so after extraordinary advocacy by the person's immigration attorney and social worker from the immigration representation organization.

130. Employees of County Defendants have acknowledged that Defendants have an unofficial policy of not providing discharge planning for people who are confined to civil immigration detention at Orange County Detention Center.

131. Defendants were aware of the substantial risk of serious harm to Plaintiffs by failing to provide discharge planning. Plaintiffs are individuals with mental health diagnoses and require regular treatment, which Defendants provided while Plaintiffs were detained.

132. While confined at Orange County Detention Center, but prior to her diagnosis and before she began taking her prescription medication regimen, Defendants removed Ms. Small from Orange County Detention Center for inpatient hospitalization at Kings County psychiatric ward. Once she returned to Orange County Detention Center, she stabilized while taking the medication prescribed to address her mental illness. Defendants were aware of the substantial risk of serious harm to Ms. Small related to failing to provide discharge planning and sending her out into the community with only train fare, yet disregarded this risk.

133. Mr. Charles had been hospitalized years prior to his confinement in civil immigration detention. Information about a previous hospitalization of inpatient care was present in Mr. Charles' medical records at Orange County Detention Center, and Mr. Charles had informed the medical providers at Orange County Detention Center of his previous hospitalization. Defendants were aware of the substantial risk of serious harm to Mr. Charles from failing to provide discharge planning and sending him out into the community with only his identification and clothing, yet disregarded that risk.

134. Further, Defendants were aware or should have been aware of the substantial risk to Plaintiffs of failing to provide discharge planning because of the many standards and guidelines setting forth the need and requirement for discharge planning in institutional settings, like the Orange County Detention Center. A wide array of medical professional associations provide that the standard of care requires discharge planning. Additionally, ICE's guidelines applicable to contracted facilities require discharge planning. These guidelines and standards exist because failing to provide discharge planning and leaving someone with mental illness diagnoses who has been receiving regular care without a continuum of care plan, transitional medication allotment, or information on how to seek further care creates a substantial risk of serious harm to that person and the wider community. Defendants disregarded that risk when they did not provide discharge planning to Plaintiffs.

135. County Defendants were also aware of the substantial risk to Plaintiffs of failing to provide discharge planning because they, as well as sister jails in the region, provide discharge planning to individuals whom they criminally incarcerate. Orange County criminally incarcerates nearly 1,000 people in the same facility as Plaintiffs and provides discharge planning to that population, but not for people confined in civil immigration detention.

136. Further, in the year 2000, *Brad H. v. City of New York* established that New York's MENTAL HYGIENE LAW § 29.15 requires that facilities providing mental healthcare in segregated mental health units, such as the jail at Rikers Island in New York City, must provide adequate discharge planning. 712 N.Y.S.2d 336, 343 (Sup. Ct. N.Y. Cty. 2000), *aff'd*, 716 N.Y.S.2d 852 (1st Dep't 2000). Rikers Island has provided discharge planning under a court-monitored consent decree for nearly two decades.

137. In early 2015, New York State expanded the requirement for discharge planning to anyone incarcerated in the state prison system who had received mental health treatment in the three years prior to release. County Defendants disregarded the known risk when they did not provide discharge planning to Plaintiffs.

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983: Violations of the Fourteenth Amendment Due Process Clause (Against County Defendants)

138. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

139. The Due Process Clause of the Fourteenth Amendment requires that civil detainees be afforded adequate medical care during their civil detention.

140. The Due Process Clause of the Fourteenth Amendment also forbids civil detainees from being subjected to punitive conditions as part of their civil detention.

141. The constitutional right to adequate medical care—even in the context of punitive incarceration—includes discharge planning. Non-criminal detainees like Plaintiffs are entitled to at least as much constitutional protection.

142. During their time confined in civil immigration detention at Orange County Detention Center, Plaintiffs Charles and Small had a serious medical need for adequate discharge

planning, including for a plan to ensure uninterrupted access to their medications and any other mental healthcare resources that they require. They are people with mental illnesses whose mental health depends on the continuity of their daily medications and mental healthcare. Without adequate discharge planning, they faced lapsed mental healthcare upon their release from civil detention. As a result, they faced a significantly increased likelihood that they would relapse upon discharge from a provider's care, facing hospitalization, increased risk of suicide, homelessness, and other related instability.

143. Pursuant to the County Defendants' persistent, widespread custom and unofficial policy, County Defendants and its employees denied adequate discharge planning to Plaintiffs Charles and Small with reckless disregard for their constitutional rights.

144. This persistent, widespread practice of denying adequate discharge planning was so pervasive that County officials with policy-making authority tacitly authorized the policy, had actual or constructive knowledge of the widespread custom and unofficial policy, and failed to do anything to end the unconstitutional custom and unofficial policy of denying adequate discharge planning.

145. By denying adequate discharge planning to Plaintiffs Charles and Small, County Defendants have acted with deliberate indifference to Plaintiffs Charles' and Small's serious medical needs in violation of the Due Process Clause of the Fourteenth Amendment.

146. By reason of the foregoing, by failing to provide Plaintiffs adequate mental healthcare, and exhibiting deliberate indifference to Plaintiffs' medical needs, County Defendants deprived Plaintiffs of the rights, immunities, and privileges guaranteed to every person in the United States, in violation of 42 U.S.C. § 1983, including but not limited to rights guaranteed by the Fourteenth Amendment of the United States Constitution.

147. By denying adequate discharge planning to Plaintiffs Charles and Small that is regularly afforded to people who are criminally incarcerated, County Defendants subjected Plaintiffs Charles and Small to punitive conditions in violation of the Due Process Clause of the Fourteenth Amendment.

148. As a direct and proximate result of County Defendants' unconstitutional failure to provide discharge planning, Plaintiff Charles' mental healthcare seriously lapsed upon his release from civil detention. He had no access to medication or any other mental healthcare for approximately two weeks. As a result, he suffered psychiatric decompensation that required hospitalization for several months. Additionally, Mr. Charles was unable to return to his employment and lost potential wages as a result of Defendants' failures.

149. As a direct and proximate result of County Defendants' unconstitutional failure to provide discharge planning, Plaintiff Small was at risk of a severe relapse in her mental healthcare. The lack of a discharge plan in advance of a known release date, as well as the failure to ensure that she had access to medication or any other mental healthcare, caused her to suffer severe emotional distress.

150. Accordingly, Plaintiffs Charles and Small are entitled to compensatory damages from County Defendants, including economic damages.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983: Violations of the Fourteenth Amendment Due Process Clause (Against Individual Defendants)

151. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

152. The Due Process Clause of the Fourteenth Amendment requires that civil detainees be afforded adequate medical care during their civil detention.

153. The Due Process Clause of the Fourteenth Amendment also forbids civil detainees from being subjected to punitive conditions as part of their civil detention.

154. The constitutional right to adequate medical care—even in the context of punitive incarceration—includes discharge planning. Non-criminal detainees like Plaintiffs are entitled to at least as much constitutional protection.

155. During their time confined in civil immigration detention at Orange County Detention Center, Plaintiffs Charles and Small had a serious medical need for adequate discharge planning, including a plan to ensure uninterrupted access to their medications, and any other mental healthcare resources that they require. They are people with mental illnesses whose mental health depends on the continuity of their mental healthcare. Without adequate discharge planning, they faced lapsed mental healthcare upon their release from civil detention. As a result, they faced a significantly increased likelihood that they would relapse upon discharge from a provider's care, and face hospitalization, increased risk of suicide, homelessness, and other related instability.

156. Individual Defendants Kaye and Elizondo were involved in, and responsible for, providing and approving mental healthcare for Plaintiffs Charles and Small while they were confined to civil immigration detention at Orange County Detention Center.

157. Individual Defendants Kaye and Elizondo were involved in, and responsible for, the release process for Plaintiffs Charles and Small.

158. By denying adequate discharge planning to Plaintiffs Charles and Small, the Individual Defendants acted with deliberate indifference to Plaintiffs Charles' and Small's serious medical needs in violation of the Due Process Clause of the Fourteenth Amendment.

159. By reason of the foregoing, by failing to provide Plaintiffs adequate mental healthcare, and exhibiting deliberate indifference to Plaintiffs' medical needs, Individual Defendants deprived Plaintiffs of the rights, immunities, and privileges guaranteed to every person in the United States, in violation of 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Fourteenth Amendment of the United States Constitution.

160. By denying adequate discharge planning to Plaintiffs Charles and Small—medical care that is regularly afforded to people who are criminally incarcerated—Individual Defendants subjected Plaintiffs Charles and Small to punitive conditions in violation of the Due Process Clause of the Fourteenth Amendment.

161. As a direct and proximate result of the Individual Defendants' unconstitutional failure to provide discharge planning, Plaintiff Charles' mental healthcare seriously lapsed upon his release from civil detention. He had no access to medication, or any other mental healthcare, for approximately two weeks. As a result, he suffered psychiatric decompensation that required hospitalization for several months.

162. As a direct and proximate result of the Individual Defendants' unconstitutional failure to provide discharge planning, Plaintiff Small was at risk of a severe relapse in her mental healthcare. The lack of a discharge plan in advance of a known release date, as well as the failure to ensure she had access to medication or any other mental healthcare, caused her to suffer severe emotional distress.

163. Accordingly, Plaintiffs Charles and Small are entitled to compensatory damages from the Individual Defendants, including economic damages, as well as punitive damages.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that the Court:

a. Assume jurisdiction over this matter;

b. Issue a judgment against the County Defendants in an amount to be determined by the Court, including compensatory damages for injuries sustained by Plaintiffs Charles and Small in amounts that are fair, just and reasonable;

c. Issue a judgment against the Individual Defendants in an amount to be determined by the Court, including compensatory and punitive damages for injuries sustained by Plaintiffs Charles and Small in amounts that are fair, just and reasonable;

d. Award Plaintiffs the costs of this action;

e. Award Plaintiffs pre- and post-judgment interest, as permitted by law;

f. Award Plaintiffs reasonable attorneys' fees; and

g. Grant Plaintiffs such other relief as the Court deems appropriate and just.

Dated: July 12, 2016
New York, New York

Respectfully submitted,

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