

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANTHONY REID, et al., : Honorable John E. Jones, III
 :
 Plaintiffs, :
 :
 v. : No. 18-CV-0176
 :
 JOHN WETZEL, et al., :
 :
 Defendants. : Complaint filed January 25, 2018

SETTLEMENT AGREEMENT

I. INTRODUCTION

A. On January 25, 2018, Plaintiffs filed this lawsuit on behalf of a class of prisoners currently sentenced to execution and confined within the Capital Case Units (“CCU”) of the Pennsylvania Department of Corrections (“DOC”). Plaintiffs challenge conditions of their confinement and allege, *inter alia*, that Defendants have violated the Eighth and Fourteenth Amendments to the United States Constitution. Defendants expressly deny that they have violated any constitutional rights of Plaintiffs.

B. Counsel for Plaintiffs have conducted an extensive investigation of the conditions of confinement of class prisoners and have obtained many policies, directives, prisoners’ medical and disciplinary records, and other pertinent materials.

C. Defendants have provided, through counsel, further documents set out in requests made by Plaintiffs, and Plaintiffs' experts have conducted on-site tours of the State Correctional Institutions containing CCUs.

D. Plaintiffs and Defendants, without conceding any infirmity in their claims or defenses, and prior to completing formal discovery, have engaged in extensive settlement negotiations in an effort to resolve the claims raised in this litigation. They now desire to achieve an appropriate remedy amicably to resolve this litigation, avoid the risks and expense of further litigation, and provide relief based on constitutional principles.

E. The Parties acknowledge that the DOC and Defendants have implemented and continue to implement improvements and that these improvements have been ongoing throughout the litigation.

F. Defendants are entering into this Settlement Agreement ("Agreement") for the purpose of settlement. Nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing (including allegations of the Complaint), all of which the Defendants expressly deny. The Defendants do not admit to any violation of law, and do not admit to any wrongdoing that was or could have been alleged by the Plaintiffs before the Effective Date of this Agreement. No part of this agreement shall constitute evidence of any liability, fault, or wrongdoing by Defendants, the DOC or the Commonwealth of Pennsylvania.

II. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

- A. “A Roster” refers to prisoners who have no currently identified Psychiatric/Intellectual Disability needs and no history of such.
- B. “Action” refers to the above-entitled action captioned *Anthony Reid, et al., v. John Wetzel, et al.*, Case No. 18-CV-0176, in the United States District Court for the Middle District of Pennsylvania.
- C. “Administrative Custody” refers to a status of confinement in segregated housing units for non-disciplinary reasons, which provides closer supervision, control and protection than is provided in general population.
- D. “B Roster” refers to prisoners placed on the inactive Mental Health/Intellectual Disability roster, but not currently identified as SMI. Prisoners on this roster have a history of Psychiatric/Intellectual Disability needs but are not current consumers of mental health services.
- E. “Capital Case Unit” or “CCU” refers to distinct housing units currently contained at SCI-Greene, SCI-Phoenix and SCI-Muncy that exclusively house prisoners sentenced to execution, and any like housing units hereafter established at other correctional facilities in the Commonwealth.
- F. “Capital Case Prisoners” or “CCU Prisoners” refers to prisoners sentenced to execution.
- G. “C Roster” refers to prisoners placed on the active Mental Health/Intellectual Disability roster, but not currently identified as SMI.

H. “Commencement Date” refers to the date, on the same date or following the Effective Date, on which all provisions of Section V of this Agreement have been implemented.

I. “D Roster” refers to prisoners on the active Mental Health/Intellectual Disability roster who are classified as SMI.

J. “Defendants” refers to John Wetzel, Secretary of the Pennsylvania Department of Corrections; Robert Gilmore, Superintendent of SCI-Greene; and Tammy Ferguson, Superintendent of SCI-Phoenix, in their official capacities, and their successors in office, subordinates, and agents.

K. “Department” and/or “DOC” refers to the Pennsylvania Department of Corrections.

L. “Diversionary Treatment Unit” refers to a secure unit that provides expanded and personalized mental health services primarily to prisoners with a SMI who have committed disciplinary infractions or are on administrative custody status, but sometimes also to C-Roster prisoners.

M. “Effective Date” refers to the date upon which the Court grants final approval to this Agreement.

N. “General Population Unit” refers to a DOC housing unit for L-2, L-3, and/or L-4 prisoners who are not in need of being housed in a unit that requires enhanced security restrictions. General Population Units are organized to effectuate out of cell time without the use of restraints, and provide a variety of

programmatic opportunities, including but not limited to recreational, educational, rehabilitative, and religious activities off unit.

O. “Parties” refers to the Plaintiffs and the Defendants in the lawsuit captioned above.

P. “Plaintiffs” refers to the plaintiff class certified by the Court, comprising “all current and future death-sentenced prisoners in the Commonwealth of Pennsylvania.”

Q. “Preliminary Approval Date” is the date on which the Court gives preliminary approval to this Agreement.

R. “Restricted Housing Unit” is a segregated housing unit used by the DOC to house prisoners placed in Disciplinary and Administrative Custody.

S. “Serious Mental Illness” or “SMI” is defined according to Department Policy 13.8.1, Section 2(B), and includes a current diagnosis or recent significant history of Substance-Induced Psychotic Disorder, Schizophreniform Disorder, Schizophrenia, Delusional Disorder, Brief Psychotic Disorder, Schizoaffective Disorder, Bipolar I and II and Major Depressive Disorder; “SMI” also includes diagnoses commonly characterized by breaks with reality leading to a significant functional impairment involving acts of self-harm; “SMI” also includes a diagnosis of an intellectual disability or other cognitive disorder that results in a significant functional impairment; “SMI” also includes any prisoner sentenced under the classification of Guilty But Mentally Ill.

III. GENERAL PROVISIONS

A. Warranty and Voluntary Agreement

Plaintiffs and Defendants warrant that they have entered into this agreement voluntarily and of their own accord without reliance on any inducement, promise or representation by any other party, except those that are expressly set forth in this Agreement. This Agreement contains and constitutes the entire understanding and agreement between the Plaintiffs and Defendants respecting the subject matter hereof and may not be changed or altered in any way except as expressly set forth herein.

B. Warranty of Understanding and Acknowledgement

Plaintiffs and Defendants have carefully read this Agreement, know and understand its contents, and freely and voluntarily agree to all of its terms and conditions.

C. Governing Law

The parties agree that, except to the extent any provision is governed by federal law that supersedes state law, this Agreement shall be construed and governed by the laws of the Commonwealth of Pennsylvania.

D. Construction

No party shall be considered the drafter of this Agreement, or any provision contained herein, for the purposes of any statute, case law, or rule of interpretation or construction, that would or might cause any provision to be construed or interpreted as against the drafter. The parties also agree that signed

electronic .pdf versions of this Agreement shall have the same force and effect as original copies of the Agreement.

E. Entire Agreement

The terms of this Agreement and its exhibits as written constitute the entire agreement between the Parties, and there are no other terms relied upon by the Parties, verbal or otherwise.

F. Severability

If any part of this Agreement is or shall be declared invalid or unenforceable by operation of law, or by any tribunal of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, but shall continue in full force and effect. If any provision of this Agreement, or application of such provision to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons or circumstances other than to those as to which it is held invalid, shall not be affected thereby unless to do so would destroy the essential purpose of this Agreement.

G. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

H. Authorization

The representatives executing this Agreement on behalf of Plaintiffs and Defendants are empowered to do so and thereby bind Plaintiffs and Defendants in accordance with the terms of this Agreement.

I. Further Assurances

The parties agree to take all actions reasonably necessary to effectuate the approval, performance, validity and enforceability of this Agreement.

J. Waiver and Amendment; Preservation of Remedies

This Agreement may be amended only by an agreement in writing executed by all of the parties hereto, pursuant to Section VII(A), *infra*. The failure by any party hereto to insist upon strict performance of any of the terms or conditions of this Agreement shall not be deemed a waiver of any of the rights or remedies that such party may have, and shall not be deemed a waiver of any subsequent breach or default. To be effective, any waiver with regard to this Agreement must be in writing and signed by the party granting the waiver, and any such waiver shall apply only to the matter or instance specifically waived.

IV. SETTLEMENT APPROVAL

A. Preliminary Approval

As soon as practicable following execution of this Agreement, the parties shall apply to the Court for a preliminary order:

1. Granting preliminary approval of this Agreement for purposes of disseminating notice to Plaintiffs;
2. Approving the form, contents, and dissemination of the notice of this Agreement to Plaintiffs; and
3. Scheduling a fairness hearing to review comments and/or objections regarding this Agreement, consider the fairness, reasonableness, and adequacy of this Agreement, and consider whether the Court should order final approval of this Agreement and grant class counsel's requested fee award.

B. Final Approval

1. This Agreement shall be subject to the final approval of the Court. The parties shall cooperate in presenting this Agreement to the Court for final approval and/or at any hearing under Rule 23(e) of the Federal Rules of Civil Procedure. If the Court does not grant final approval, this Agreement shall be null and void and of no force and effect, and nothing herein shall be deemed to prejudice the position of any party with respect to this Action or otherwise, and neither the existence of this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be admissible in evidence, referred to for any purpose in the Action or in any other litigation or proceeding, or construed as an admission, presumption, or concession by any Defendant of any liability or the truth of any of the allegations in the Action.

V. MODIFICATION OF CONDITIONS OF CONFINEMENT IN THE CCUs

A. Development of General Population Setting in the CCU

1. The CCU shall be operated as a general population unit that exclusively houses prisoners sentenced to death. The CCU shall no longer be classified as a Level 5 housing unit requiring enhanced security protocols. The CCU shall not be classified as Administrative Custody and shall not be subject to any Department of Correction policies (such as DC-ADM 802) specific to the operation of an Administrative Custody unit. Prisoners confined to the CCU shall be provided with all the rights and privileges afforded to those prisoners housed on standard general population units at the various institutions of the DOC system.

2. Comparable to other general population units, prisoners confined in the CCU shall have access to the following:

- a) All newly received Capital Case Prisoners shall be assessed by a registered nurse or licensed psychologist, depending upon the time of intake, for purposes of completing a Suicide Indicator Checklist; appropriate mental health follow-up contacts shall be made in accordance with 13.8.1, Access to Mental Health Care.¹

¹ Department policy 13.8.1, effective March 9, 2015, and entitled "Access to Mental Health Care," governs the provisions of this agreement that concern the provision of psychological, psychiatric, or mental-health services. The version of that policy dated March 9, 2015, last modified on December 18, 2018, and attached hereto as Exhibit 1 shall remain the controlling version of that policy unless modified as set forth below. Any proposed modification to policy 13.8.1 that would impact the care, treatment, or services provided to prisoners housed in the Capital Case Unit will be disclosed to Plaintiffs' counsel no less than 30 days prior to such modification taking effect. If Plaintiffs' counsel conclude that the proposed modification would have a significant

b) Movement-related Use of Restraints and Strip Searches

- (i) Because the CCU shall be operated as a general population housing unit, prisoners confined in the CCU shall not be subjected to strip-searching or to shackling, tethering, or other physical restraints when moving about within the unit, unless such security measures are required by officers responding to a temporary, emergent situation or as part of efforts to restore order during a security disturbance.
- (ii) Prisoners confined to the CCU likewise shall not be subjected to strip-searching or to shackling, tethering, or other physical restraints when traveling outside the CCU unless either (1) an individualized determination is made by the Superintendent that a security concern necessitates the measures being applied; or
(2) such measures are the standard procedure

adverse effect on the care, treatment, or services provided to prisoners housed in the Capital Case Unit, they shall have the right to bring the proposed modification before the Court. If the Court agrees that the proposed modification would have a significant adverse effect on the care, treatment, or services provided to prisoners housed in the Capital Case Unit, it shall not take effect. Policy modifications that merely correct grammar or spelling mistakes, reformat or renumber policy provisions, or address other non-substantive issues shall not require advance disclosure.

for all prisoners in the applicable circumstances (e.g., search of prisoner following a contact visit). All individualized determinations with respect to prisoners confined in the CCU shall be reconsidered by the Superintendent every three months and the reasons for extending these measures beyond three months shall be documented.

c) Prisoners confined in the CCU shall not be required to wear clothing of a different color or style from those worn by non-CCU Prisoners.

d) Prisoners confined in the CCU shall be permitted to obtain a work assignment. Such work assignments shall include on-unit jobs, as well as jobs occurring outside, but adjacent to, the CCU—including, but not limited to, work in the satellite kitchen at SCI-Greene, and groundskeeping, snow-removal, and grass-mowing work in the areas surrounding the CCU.

e) Prisoners confined in the CCU shall be permitted to use the telephone system on a daily basis, for no less than fifteen (15) minutes per usage, and whenever available.

f) Prisoners confined in the CCU shall be permitted to purchase televisions, tablets, radios, and all other approved items available to prisoners in standard general population units.

g) Within thirty (30) days of the Effective Date, prisoners confined in the CCU shall be offered at least four (4) hours of out-of-cell time for activities per day, seven (7) days a week, and a total of at least forty-two and a half (42.5) hours of out-of-cell time for activities per week. This out-of-cell time shall be offered during normal waking hours (7:00 am to 9:00 pm). Although the foregoing are required minimum standards, the parties agree that the goal in managing the CCU is to approximate as closely as possible the residential setting of prisoners confined in general population units. Prisoner participation in out-of-cell activities shall be logged and recorded on the tracking form appended here as Exhibit 2.

h) The out-of-cell activities offered to every CCU Prisoner shall include, but are not limited to:

- (i) Yard and outdoor exercise
- (ii) "Block out" time
- (iii) Law library
- (iv) Congregate meals
- (v) Treatment or counseling team meetings
- (vi) Religious worship and congregation
- (vii) Work assignments
- (viii) Organized educational or vocational programming
- (ix) Treatment or recreational programming

i) The requirement of out-of-cell time set forth in paragraph g, *supra*, shall not be satisfied by such activities as showers, medical appointments, attorney meetings, classification or disciplinary hearings, or court hearings.

j) The Parties agree that the failure to offer the forty-two and a half (42.5) hours of weekly out-of-cell time required by paragraph g, *supra*, for a period of up to two (2) consecutive weeks, shall not itself qualify as substantial noncompliance with this Agreement.

k) Outdoor exercise shall be offered for a minimum of two (2) hours per day, seven (7) days a week, weather permitting. Prisoners shall have access to water during exercise periods, or be permitted to bring water with them. When weather does not permit outdoor exercise, “block out” time shall be offered as an alternative.

l) Prisoners confined in the CCU shall be permitted to shower and shave daily.

m) Re-socialization Assistance.

(i) For prisoners on the active mental-health roster (*i.e.*, those assigned to the C Roster or D Roster), psychology staff and treatment teams shall ensure that each prisoner’s individualized recovery plan includes elements designed to aid the individual’s re-socialization and transition

from a solitary-confinement setting to a general-population setting. For any such prisoner whose participation in out-of-cell opportunities falls below twenty-five (25) hours in two (2) weeks in any rolling four-week period, that prisoner's treatment team will engage with the prisoner in a confidential setting in order to encourage the prisoner to engage in more out-of-cell activities and to create a written action plan for achieving that result.

- (ii) For prisoners not on the active mental-health roster (*i.e.*, those assigned to the A Roster or B Roster), if any such prisoner's participation in out-of-cell opportunities falls below twenty-five (25) hours in two (2) weeks in any rolling four-week period, the staff member responsible for tracking the prisoner's out-of-cell time will initiate a referral of the prisoner to the appropriate psychological staff, who then will be responsible for ascertaining the reason for the non-participation in out-of-cell activities, including through engagement with the prisoner

in a confidential setting and, if appropriate, development of an individualized, written recovery plan for the prisoner that is designed to increase the prisoner's participation to out-of-cell activities.

n) No less frequently than every ninety (90) days, the Licensed Psychologist Manager shall conduct a written programming audit of all group programs (including organized educational or vocational programming and treatment or organized recreational programming) that have been offered in the CCU in the period since the most recent programming audit was completed (the "audit period"). This written audit shall include, at a minimum, (i) an analysis of the nature and quality of the programming offered during the audit period; and (ii) an assessment of whether the programming offered during the audit period adequately addresses the needs of CCU Prisoners, including, in particular, their need for meaningful social interaction. The written audit shall be provided promptly to Plaintiffs' counsel.

o) Prisoners confined in the CCU shall have access to educational programming, and shall be made aware of educational opportunities available at their institution. Such programming shall include both out-of-cell and in-cell options for Adult Basic Education, General Equivalency

Diploma courses, and individual or self-study programs. All educational programming shall be provided at no cost to the prisoner.

p) Prisoners confined in the CCU shall have access to congregate religious activities. On a weekly basis, each faith representative will visit the CCU for the purpose of providing a congregate religious activity. Congregate religious activities and worship shall occur during prescribed “block out” or dayroom times. Religious audiotapes and reading materials shall also be available.

q) Prisoners confined in the CCU shall have access to legal materials and a law library, including:

- (i) Each housing unit in which Capital Case Prisoners are housed shall contain a law library that gives prisoners direct and personal access to a legal database of caselaw, statutes, and legal treatises (such as Westlaw or Lexis-Nexis);
- (ii) Each law library shall provide adequate lighting, seating for no fewer than two (2) people, desk space adequate for a work area, and shelving that is secure;
- (iii) Each CCU Prisoner shall be given written instructions containing a current list of materials available in the law library, the procedures to

request use of the law library, and the hours the law library is available. A typewriter, computer, or word processor shall be kept in each law library for CCU Prisoners to use; if a computer or word processor is used, the associated printer shall likewise be located in the law library;

- (iv) The law library shall be open and available to CCU Prisoners during daily out-of-cell time for a minimum of six (6) hours per day, seven (7) days a week;
- (v) The Officer-in-Charge of the CCU shall schedule use of the law library;
- (vi) A CCU Prisoner may request two-hour blocks of time to work in the law library. If no other prisoner is scheduled to use the law library after the two-hour block of time, the prisoner shall be permitted to continue using the law library until such time as another prisoner is scheduled to use the library;
- (vii) Two (2) or more Phase I CCU Prisoners may work together in the law library provided the prisoners agree to use the library together;

- (viii) A CCU Prisoner may request to be put on an “on call” list to use the law library if no one is scheduled to use it during the daily out-of- cell time.
- (ix) A logbook shall be maintained recording prisoner use of the law library, including each prisoner’s name and number, date of use, length of time used and whether the prisoner worked with another CCU Prisoner;
- (x) At least once a week, or more often if necessary, the facility law librarian/designee shall deliver requested legal materials from the facility’s general population law library and pick up requests for legal materials from the CCU;
- (xi) The facility librarian shall be responsible for ensuring that all legal materials required by policy to be maintained in the capital case law library are available. If any materials are destroyed or go missing, the librarian shall be immediately notified by unit staff, or alternatively can be notified by a DC-135 prisoner request to staff member form, and will initiate the replacement process. A record of the inventory shall be maintained;

(xii) If a CCU Prisoner does not have representation and is illiterate or non- English speaking, he/she may be permitted, with the approval of the Facility Manager/designee, to exchange legal information with another CCU Prisoner. Prisoners assisting one another with legal work shall be permitted to exchange legal materials directly.

(xiii) A CCU Prisoner shall be permitted to exchange legal materials from his or her cell with legal materials being held in storage at least once every thirty (30) days. The Unit Management Team shall authorize more frequent exchanges based upon demonstrated need.

r) Prisoners confined in the CCU shall have access to the same non-legal reading materials as the prisoners in each institution's standard general population units. CCU Prisoners shall be permitted to retain reading materials in accordance with the same policies governing the retention of reading materials for the standard general population units in each institution.

s) Prisoners confined in the CCU shall be able to purchase sleeping masks from the commissary and shall be permitted to wear them in their cells.

t) Frosted cell windows in SCI-Phoenix shall be replaced with transparent glass or other transparent material.

u) CCU exercise yards shall be configured as set forth in Exhibits 3 and 4 attached hereto.

v) Because the CCU will no longer be a Level 5 unit, a CCU Prisoner shall not be required to change cells every ninety (90) days unless there is a finding of elevated escape risk for that prisoner.

w) Because the CCU will no longer be a Level 5 unit, cells on the CCU shall not be constantly illuminated during nighttime hours.

B. CCU Prisoner Discipline

1. Prisoners confined in the CCU shall be subject to the same disciplinary rules and procedures as prisoners housed in standard general population units.

2. A CCU Prisoner who is seriously mentally ill shall be subject to the same disciplinary rules and procedures as seriously mentally ill prisoners housed in standard general population units and shall be subject to disciplinary custody sanctions to be served in the Restricted Housing Unit or Diversionary Treatment Unit, if clinically indicated.

3. At the expiration of the sanction term, the prisoner shall be returned to the CCU.

C. Mental Health Care of CCU Prisoners

1. Mental health care, including psychiatric care, of prisoners confined in the CCU shall be rendered in accordance with 13.8.1, Access to Mental Health

Care, the frequency and acuity of which shall be determined by the prisoner's roster status.

2. Any prisoner confined in the CCU whom staff notices to be exhibiting signs of mental decompensation shall immediately be referred for emergency mental health treatment, a suicide indicator checklist screening, and the implementation of an Individualized Treatment Plan, if medically indicated.

3. Prisoners confined in the CCU shall have access to all DOC mental health and health care units (including those at other DOC facilities), if their treatment needs require such housing. Those units include, but are not limited to, Psychiatric Observation Cells, Medical Observation Cells, Mental Health Unit, Special Assessment Unit, Special Observation Unit, Secure Residential Treatment Unit, Behavior Management Unit, and institutional infirmary cells.

D. Physical and Mental Baseline Evaluations

1. Within six (6) months of the Effective Date of this Agreement, the Department shall arrange for all prisoners confined in the CCU to receive a physical and mental health evaluation for purposes of establishing baselines.

2. The evaluations shall be made by independent and licensed physicians, not employed by the DOC or its health care contractor, who shall conduct the aforementioned evaluations at the facility. The proposed physicians should have correctional experience, which may include the monitoring of correctional systems. The parties must agree on the physicians who shall conduct the aforementioned evaluations at the facility. No more than six (6) physicians

shall be retained at any one time for purposes of completing the evaluation. Any dispute over the proposed physicians may be submitted to the court for resolution. Should a physician need to terminate his or her affiliation with this project for any reason, the process set forth above shall be used for selecting a replacement.

3. The medical evaluation shall include tests routinely conducted during a yearly medical check-up, with considerations made for age, pre-existing conditions, and readily apparent conditions.

4. The mental health evaluation shall include an assessment by the appointed physicians to determine the accuracy and appropriateness of the prisoner's current mental health diagnosis, roster status and psychotropic medication regimen. Both parties shall have an opportunity to review and, if the parties are unable to agree on a resolution, raise with the court, any concerns regarding either the evaluation of a particular prisoner or a particular physician's evaluations.

5. The mental health evaluations shall also include an inquiry by the appointed physicians into and assessment of the impact of long-term restrictive housing on each prisoner. Plaintiffs' expert shall develop a proposed assessment that will then be shared with Defendants' counsel and expert(s) for their review and comment. If the parties agree on the contents of the assessment, it shall be adopted and performed by the physicians retained to perform the required mental health evaluations. If the parties are unable to agree on the contents of the assessments, they shall submit the assessment proposed by Plaintiffs' expert, along

with Defendants' objections and proposed modifications, to the Court for resolution. The purpose of this assessment is to assist the Defendants in developing appropriate individualized plans for re-integration and re-socialization of CCU Prisoners into a general population setting, as well as to identify patterns that require adjustments to policies and protocols in order to promote mental health and prosocial interaction.

6. The evaluations, including any modifications that result from any dispute between the parties regarding the prisoner's initial evaluation shall become part of the prisoner's institutional medical record, to be referred to for all follow-up treatment.

7. Nothing in this section shall be read as requiring a CCU Prisoner to undergo a physical or mental health examination should that prisoner wish to decline such examination(s); nor shall any such refusal by a CCU Prisoner preclude that CCU Prisoner from subsequently consenting to the performance of such examination(s).

E. Phased Contact Visitation

1. Within thirty (30) days after the Effective Date of this Agreement, Defendants shall allow prisoners confined in the CCU to have contact visits with their attorney(s) and spiritual advisor(s), unless an individualized determination is made by the Superintendent that contact visits for a particular CCU Prisoner present a serious security threat.

2. Within sixty (60) days after the Effective Date of this Agreement, Defendants shall allow each CCU Prisoner to have at least one (1) contact visit per month with individuals who have been approved for the prisoner's visitor list, unless an individualized determination is made by the Superintendent that contact visits for a particular CCU Prisoner present a serious security threat. Individuals listed on a prisoner's visitor list are subject to the same screening and security measures as are individuals on the visitor lists of non-CCU Prisoners. Defendants shall not limit a person's eligibility for inclusion on a CCU Prisoner's visitor list based on the lack of a familial or legal relationship between the CCU Prisoner and the person seeking inclusion on that prisoner's visitor list. The visits provided for in this paragraph shall be in addition to the legal or religious contact visits provided for in Section V(E)(1).

3. Within one hundred and eighty (180) days after the Effective Date of this Agreement, Defendants shall allow all visits of CCU Prisoners to be contact visits, unless an individualized determination is made by the Superintendent that contact visits for a particular CCU Prisoner present a serious security threat or temporary institutional needs dictate that all visits, regardless of prisoner classification or housing, must be non-contact.

4. All non-contact visit orders made pursuant to paragraphs 1-3 above shall be reconsidered by the Superintendent every three (3) months and the reasons for continuing such an order beyond three (3) months shall be documented.

5. All visits shall be not less than one (1) hour in duration.

6. If during the life of this Agreement DOC documents multiple serious security breaches that lead DOC to conclude that this policy of allowing contact visits to CCU Prisoners needs to be re-evaluated, the DOC may initiate a review of this sub-section. If DOC seeks such a reconsideration, it shall in the first instance discuss proposed changes to contact visitation practices with Plaintiffs' counsel. If the parties cannot agree on proposed changes, the matter will be presented to the court for resolution.

F. Phased Integration into the General Population

1. CCU Prisoners whose convictions or capital sentences are modified by the court, either through direct appeal, Post-Conviction Relief filing, or habeas petition shall be re-integrated into the standard general population of the Department of Corrections. The re-integration shall include re-classification of the prisoner and transfer to a temporary general population unit, where the prisoner will be assigned dedicated security and treatment staff to ameliorate any re-integration or re-socialization issues that may arise. The temporary unit shall include all privileges associated with standard general population, but will reflect a smaller population. While housed in the temporary unit, the prisoner shall still be subject to all disciplinary procedures imposed upon standard general population prisoners for any infraction of institution rules. After the prisoner has spent an appropriate amount of time in the temporary unit, the prisoner shall be transferred to his permanent institution and housing unit as dictated by the re-

classification process and based upon his individualized security level, medical and mental health needs, and all other factors contemplated by the classification process. In the event that the Commonwealth of Pennsylvania seeks appellate review of the decision modifying the prisoner's conviction or sentence, re-classification and any modifications to the prisoner's housing or conditions of confinement will not occur until the resolution of the appeal. The Parties agree, however, that the provisions of the foregoing sentence shall be deemed revised to conform to the decision of the U.S. Court of Appeals for the Third Circuit in *Ernest Porter v. Pennsylvania Department of Corrections, et al.*, No. 18-3505, or any other case before that court which resolves this issue prior to the release of a decision in *Porter*.

2. The Department commits to continually and constantly re-evaluate the CCUs. These evaluations will consider the efficacy of operating two separate CCUs, and specifically consider security needs, CCU Prisoner population decreases, costs, and other logistical concerns associated with the operation of those units. If and when the CCU Prisoner population decreases to a level at which the operation of two separate CCUs becomes impracticable, the Department may elect to consolidate the CCUs. Similarly, if and when the CCU Prisoner population significantly decreases to a level such that the security benefits of operating a separate CCU are no longer realized or are outweighed by the operational requirements of such a system, the Department may elect to employ individualized

determinations of those remaining CCU Prisoners to integrate them into non-CCU units that meet their various security and treatment needs.

3. In the event that, prior to the reclassification provided for in Section V(F)(1) above: (a) a final judgment is issued in which imposition of the death penalty is held unconstitutional in the Commonwealth of Pennsylvania, and that final judgment retroactively declares that all death-sentenced prisoners be re-sentenced to a life sentence or some other appropriate sentence, or directs the trial courts to resentence all death-sentenced prisoners to a life sentence or some other appropriate sentence; or (b) imposition of the death penalty is otherwise declared unlawful in the Commonwealth of Pennsylvania and that declaration is applied retroactively to all currently death-sentenced prisoners, Defendants shall, within thirty (30) days of the effective date of that determination, re-classify each CCU Prisoner under the Pennsylvania Additive Classification Tool and transition that prisoner into a housing setting commensurate with his or her needs, behavior and risk assessment under the same guidelines as prisoners who are serving a life sentence.

VI. IMPLEMENTATION OF AGREEMENT

A. Defendants shall, in consultation with Plaintiffs, draft a written implementation plan specifying time and manner in which each substantive provision of this Agreement shall be implemented. In no event, however, shall Defendants' implementation plan provide for a period of implementation that extends more than one hundred eighty days (180) from the Effective Date.

B. Defendants may, for good cause, modify their implementation plan, provided, however that (a) Defendants provide Plaintiffs with at least fourteen (14) days' advance notice of any proposed change and the facts that justify the proposed change; and (b) absent Plaintiffs' express written agreement, no such modification may extend the implementation period beyond the one hundred eighty (180) day deadline included in Section VI(A), *supra*.

C. If Plaintiffs believe that good cause to modify the implementation plan is lacking or that Defendants are in substantial noncompliance with the terms of the implementation plan, Plaintiffs may, after providing Defendants with 14 days' written notice, submit the dispute to the Court for resolution.

D. Should any provision of Defendants' implementation plan conflict with a provision of this Agreement, the provisions of this Agreement shall control.

VII. MONITORING OF AGREEMENT

A. Commencement of Monitoring

The Parties agree that monitoring shall commence on the Effective Date and shall remain in effect until the Agreement is terminated as set forth in Section IX, *infra*.

B. Technical Compliance Consultant Selection, Authority and Autonomy

1. The Parties have jointly selected Mr. Rick Raemisch to serve as the initial Technical Compliance Consultant ("TCC") to assess and report to the Parties and the Court on the DOC's implementation of the terms of this Agreement.

2. Once selected, the TCC shall operate independently of the Parties' control.

3. The TCC will serve until the Agreement is terminated as set forth in Section IX, *infra*.

4. The TCC may contract or consult with other persons or entities (collectively, "Technical Compliance Team" or "TC Team") to assist in the evaluation of compliance.

5. If a selected TCC is unable or unwilling to serve or continue serving as the TCC, the Parties will confer within forty-five (45) days of the notice of the TCC's inability or unwillingness to serve to jointly select a successor. If the Parties are unable to agree upon the selection of a new TCC, each Party will submit two (2) names along with resumes or curriculum vitae and cost proposals to the Court, which will select a replacement.

6. The TCC may be terminated at any time by agreement of the Parties. The Parties will confer within fifteen (15) days of termination to jointly select a new TCC. If the Parties are unable to agree upon the selection of a new TCC, each Party will submit two (2) names along with resumes or curriculum vitae and cost proposals to the Court, which will select a replacement.

7. After notice to the other Party, a Party may unilaterally seek to terminate the TCC for good cause by filing an appropriate motion with the Court. In the event the Court decides that good cause for termination has been

established, a new TCC will be selected via the procedure set forth in Paragraph 5, *supra*.

8. The TC Team is permitted to engage in *ex parte* communications with either Party, either Party's counsel, and the Court.

C. Technical Compliance Consultant Access

1. The TC Team will have full and complete access to the CCUs, and all other areas of the facilities to which CCU prisoners have access, for the purpose of assessing compliance with the terms of this Agreement.

2. The TC Team will have access to all prisoner security/classification records; prisoner medical and mental health records; logs of out-of-cell participation; applicable policies; and other documents necessary and relevant to ensure compliance with the Agreement.

3. The TC Team will be permitted to conduct confidential interviews with all personnel who work with CCU Prisoners or whose work otherwise affects the implementation of the provisions of this Agreement.

4. The TC Team will be permitted to conduct confidential interviews with CCU Prisoners. However, CCU Prisoners are not required to speak with the TC Team and such refusal on the part of a CCU prisoner shall not be construed as a refusal to cooperate on the part of the Plaintiffs.

5. Defendants will encourage all employees and contract staff to fully cooperate with the TCC.

D. Technical Compliance Consultant Onsite Visits and Reporting

1. The TC Team will be permitted to conduct up to four (4) visits per calendar year, each consisting of up to five (5) eight-hour days of onsite compliance assessments, during the term of this Agreement. All onsite visits will take place on specific dates and times mutually agreed upon by the Parties. If the Parties are unable to agree on dates and times, the TC Team may visit upon giving no less than ten (10) days' notice to the Parties.

2. Within thirty (30) days of the Commencement Date, the TC Team will conduct an orientation site visit of both CCUs. Each orientation site visit may take up to three (3) eight-hour days.

3. The TC Team will deliver to the Parties and the Court an initial "Compliance Report" within ninety (90) days of the Commencement Date, and then no less frequently than every six (6) months thereafter. The TCC's initial Compliance Report will provide a detailed report of the conditions at the time of the visit, and inform the Parties what information the TCC will require Defendants to routinely report and with what frequency as the assessment proceeds.

4. Defendants shall provide to the TC Team information reasonably related to the terms and subject matter of this Agreement. Defendants shall provide requested information to the TC Team and to Plaintiffs within fifteen (15) days of the request, with the exception of data or documents requested in conjunction with a site visit, which Defendants shall provide at least seven (7)

days prior to the site visit. Should any dispute arise regarding the TC Team's access to the CCUs or to documents or information, either Party or the TC Team may bring that dispute to the Court for resolution; the Parties and the TC Team shall have an opportunity to present to the Court their views on the dispute.

5. The TCC shall provide a draft Compliance Report to the Parties for comment at least thirty (30) days prior to its official release to the Parties and the Court. The Parties shall provide comments, if any, to the TCC within fifteen (15) days of receipt of the draft. The TCC shall consider the responses of the Parties and make appropriate changes, if any, before delivering to the Parties and the Court the final Compliance Report for that reporting period.

6. The TCC's Compliance Reports shall describe the steps taken by Defendants to implement this Agreement and evaluate the extent to which Defendants have complied with each substantive provision of the Agreement. Each TCC Compliance Report:

a) Shall evaluate the status of compliance for each provision of the Agreement using the following standards: (1) Substantial Compliance; (2) Partial Compliance; and (3) Non-compliance. The TCC will review a sufficient number of pertinent documents and interview a sufficient number of staff and prisoners to accurately assess current conditions. The TC Team may also communicate with ex-prisoners, family members, and community members to assist the TCC's assessment of current conditions;

b) Shall describe the steps taken to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the TCC's findings; and

c) for each of the provisions in the Agreement the TCC shall outline recommended actions for at least the next six (6) months that will assist Defendants in achieving/maintaining compliance with the particular provision.

7. In any proceeding seeking termination of the Agreement pursuant to Section IX, *infra*, the TCC's evaluations of DOC's compliance status (Substantial Compliance, Partial Compliance, or Non-compliance) shall be deemed presumptively correct but may be disputed by one or both of the Parties. In such proceeding the TCC's evaluations of DOC's compliance status shall not be overturned unless clearly erroneous.

8. Nothing in this section shall prohibit the TCC from issuing interim reports to the Parties and the Court should she or he deem it necessary.

E. Prohibition Against Retaliation

Defendants shall not retaliate against any person because that person has provided information or assistance related to this Agreement to the TC Team, the Plaintiffs, or the Plaintiffs' counsel.

F. Confidentiality

All information obtained by the TC Team will be maintained in a confidential manner. Defendants shall not assert any privilege with respect to

monitoring of this Agreement by the TC Team. Within seven (7) days of receipt, the TC Team will distribute to Plaintiffs' counsel all documents, forms, assessments, and reports submitted by Defendants unless Defendants have already distributed such items to Plaintiffs' counsel. The Parties and the TC Team will treat all personally identifiable information obtained pursuant to this Agreement as confidential.

G. Technical Compliance Consultant Cost and Budget

1. The cost of the TCC's fees and expenses shall be borne by Defendants pursuant to a reasonable budget to be agreed upon by and between Defendants and the TCC.

2. Defendants shall provide the TCC with a budget sufficient to carry out the responsibilities described in this Agreement.

3. The TCC shall pay for the services of any person or entity employed or otherwise retained by the TCC to assist with fulfilling the duties required by this Agreement out of his/her approved budget.

4. Any dispute regarding payment of the TCC's fees or expenses may be presented to the Court for resolution.

H. Access to Facilities, Documents and Personnel by Plaintiffs' Counsel

1. Plaintiffs' counsel, agents, and experts shall have reasonable access to the CCUs of SCI-Greene, SCI-Phoenix, and SCI-Muncy for purposes of touring and inspecting the operations of the CCUs. Plaintiffs' counsel shall be permitted to observe daily and routine operations of the CCUs, including out-of-cell

programming, congregate meals, yard and exercise time, and all other non-emergency events occurring regularly during the time of the tour. Plaintiffs shall provide notice of no less than ten (10) days of their intention to inspect the CCUs.

2. Plaintiffs' counsel may request relevant documents from Defendants, which documents shall include, but not be limited to prisoner security/classification records; prisoner medical and mental health records; logs of out-of-cell participation; applicable policies; and other documents necessary and relevant to ensure compliance with the Agreement. Defendants shall provide the requested documents within fifteen (15) days of receiving Plaintiffs' counsel's request, unless the volume or complexity of the request, or other intervening factors, requires more time for production, provided that such additional time may not exceed fifteen (15) days absent the consent of Plaintiffs' counsel. Plaintiffs' counsel may disclose to their agents and experts any such documents received from Defendants.

3. Plaintiffs' counsel, agents, and experts will continue to have the right to conduct confidential interviews with CCU Prisoners and with Defendants' staff and contractors. DOC counsel will be permitted to be present at all such staff interviews.

4. If Defendants refuse a request for access to facilities, documents, or personnel submitted by Plaintiffs' counsel, the Parties may submit their dispute to the Court to resolve whether the request is reasonably calculated to aid in assessing DOC's compliance with the Agreement.

VIII. MODIFICATION; DISPUTE RESOLUTION

- A. The Parties may jointly agree to a modification of this Agreement by a written amendment to the Agreement, signed by both Parties.
- B. If Plaintiffs have a reasonable basis to believe that Defendants are in substantial noncompliance with one or more provisions of this Agreement, Plaintiffs will notify Defendants in writing of the specific compliance issue(s). This notice will identify, with particularity, the basis of the claim that Defendants are not in substantial compliance and the specific provision(s) of this Agreement that are implicated.
- C. Within thirty (30) days of receipt of the notification, Defendants shall provide a good-faith written response to the Plaintiffs' notification with a full factual explanation as to why Defendants believe they are in substantial compliance with the specified provision(s), or an explanation of Defendants' plans to achieve full compliance with the specified provision(s).
- D. If the Parties are unable to resolve the dispute within forty-five (45) days, the Plaintiffs may seek intervention from the Court by filing a motion for enforcement of the provision(s) identified through the aforementioned notice of substantial noncompliance.

IX. TERMINATION OF AGREEMENT; DISMISSAL

- A. Subject to the exceptions set forth in paragraphs (B)-(D), *infra*, this Agreement shall remain in force for a period of three (3) years from the Commencement Date.

B. Notwithstanding the provisions of paragraph (A), *supra*, if Defendants maintain substantial compliance with all material provisions of this Agreement for a period of twenty-four (24) consecutive months following the Commencement Date, either Defendants or Plaintiffs, or the Parties jointly, may file a motion with the Court seeking termination of this Agreement.

C. If the Court determines that Defendants have been in substantial noncompliance with one or more material terms of this Agreement at any point during the second or third year of the term provided for in paragraph (A), *supra*, the term of this Agreement shall be deemed extended by an additional one (1) year beyond the expiration date set forth in paragraph (A), *supra*.

D. If at the end of the extended term provided for by paragraph (C), *supra*, or at the end of any further extension authorized by this paragraph, Plaintiffs have reason to believe that Defendants are in substantial noncompliance with one or more material terms of this Agreement, they may petition the Court to extend the term of this Agreement by an additional one (1) year. This Agreement may not be terminated while any petition for its extension is pending with the Court.

E. The parties understand and agree that the Court will maintain jurisdiction of this civil action throughout the duration of the Agreement to enforce the provisions of the Agreement and that the Plaintiffs may seek to enforce the Agreement, pursuant to Section VII, *supra*. The parties also agree that, upon termination of the Agreement, they will sign and submit a joint stipulation of

dismissal with prejudice pursuant to F. R. Civ. P. 41(a), thereby ending the Court's jurisdiction over this case.

X. NOTICE

All notices required under this Agreement will be sent overnight mail or overnight courier to the following people:

If to the Plaintiffs:

Amy Fettig, Esq.
ACLU National Prison Project
915 15th St. N.W., 7th Floor
Washington, DC 20005

If to the Defendants:

Timothy A. Holmes, Esq.
Acting Chief Counsel
Department of Corrections
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050

XI. MISCELLANEOUS PROVISIONS

- A. Any headings or subheadings used herein are for reference purposes only and do not affect the substantive provisions of the Agreement.
- B. Based upon the entire record, the parties stipulate, and jointly request that the Court find, that this Agreement satisfies the requirements of 18 U.S.C. § 3626(a)(1)(A) in that it is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right of the Plaintiffs.

C. To allow time for the remedial measures set forth in this Agreement to be fully implemented, the Parties shall not move to terminate this Agreement or to decertify the class for a period of four (4) years from the date of its approval by the Court, except that either party may move at any time to terminate this Agreement pursuant to Section VIII(B) based upon a claim of substantial compliance.

D. Neither this Agreement nor any policies or procedures referenced herein, shall define any state or federal constitutional rights.

XII. ATTORNEYS' FEES AND COSTS

A. The Department will pay costs and reasonable attorneys' fees, in an amount to be determined by the Court, in full and complete satisfaction of any and all Plaintiffs' claims for attorneys' fees and costs up to the Effective Date of the Agreement. The payment shall be made by check and delivered to Witold J. Walczak, ACLU of Pennsylvania.

B. Plaintiffs agree not to seek further fees and costs with respect to work incurred prior to Effective Date.


C. DOC shall pay reasonable fees and costs to the Plaintiffs' attorneys, and their experts, for time spent in the monitoring phase of the litigation. Counsel and experts shall submit invoices for their time and costs on a semi-annual basis. Any disputes over fees and costs shall be adjudicated by the Court.

D. If Plaintiffs are the prevailing party in any proceedings to enforce the terms of this Agreement, Plaintiffs shall be entitled to receive reasonable attorneys' fees


and costs, including expert costs, incurred in connection with those proceedings.

Any disputes over fees and costs shall be adjudicated by the Court.

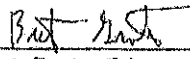
For Plaintiffs



 Wilson M. Brown, III
 Barry Gross
 Mark D. Taticchi
**DRINKER BIDDLE &
 REATH LLP**
 One Logan Square, Suite 2000
 Philadelphia, PA 19103
 (215) 988-2700
 (215) 988-2757
 Wilson.Brown@dbr.com
 Barry.Gross@dbr.com
 Mark.Taticchi@dbr.com




 Witold J. Walczak, PA 62876
ACLU OF PENNSYLVANIA
 247 Fort Pitt Blvd.
 Pittsburgh, PA 15222
 Phone: (412) 681-7864
 Fax: (412) 681-8707
 vwalczak@aclupa.org

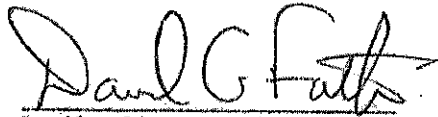


 Bret Grote, PA 317273
 Jamelia N. Morgan, NY 5351176
ABOLITIONIST LAW CENTER
 P.O. Box 8654
 Pittsburgh, PA 15221
 Phone: (412) 654-9070
 bretgrote@abolitionistlawcenter.org
 jamelia@alcenter.org

For Defendants

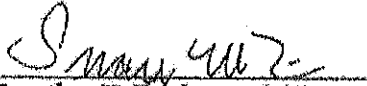


 Timothy A. Holmes
 Joseph G. Fulginiti
 Chase M. DeFelice
 Maria G. Macus
**OFFICE OF CHIEF COUNSEL,
 PENNSYLVANIA DEPARTMENT
 OF CORRECTIONS**
 1920 Technology Parkway
 Mechanicsburg, PA 17050
 Phone: (717) 728-7768
 Fax: (717) 728-0312
 tholmes@pa.gov
 josfulgini@pa.gov
 chdefelice@pa.gov
 mmacus@pa.gov



David Fathi, WA 24893*
Amy Fettig, DC 484889
**ACLU NATIONAL PRISON
PROJECT**
915 15th Street NW, 7th Floor
Washington, DC 20005
Phone: (202) 393-4930
Fax: (202) 393-4931
dfathi@aclu.org
afettig@aclu.org

**Not admitted in DC; practice limited
to federal courts*



Jonathan H. Feinberg, PA 88227
Susan M. Lin, PA 94184
**KAIRYS, RUDOVSKY,
MESSING, FEINBERG &
LIN LLP**
The Cast Iron Building
718 Arch Street, Suite 501 South
Philadelphia, PA 19106
Phone: (215) 925-4400
Fax: (215) 925-5365
jfeinberg@krlawphila.com
slln@krlawphila.com

Dated: November 12, 2019