# NATIONAL PRISON PROJECT LITIGATION DOCKET

## ALABAMA

**Henderson v. Thomas (M.D. Ala.)**
In March 2011, the NPP and the ACLU of Alabama filed a class action on behalf of all Alabama prisoners with HIV, challenging under the Americans with Disabilities Act the Alabama Department of Corrections' policies of segregating all prisoners with HIV, requiring all men with HIV to wear a white arm-band and otherwise publicly disclosing prisoners' HIV status, arbitrarily excluding prisoners with HIV from work release, and categorically denying them participation in a host of other critically important rehabilitative, vocational, and community re-entry programs. In December 2012, following a month-long trial, Judge Myron E. Thompson entered a lengthy opinion finding in Plaintiffs' favor on all of their claims. In September 2013 the judge entered a remedial decree, which provided for one hundred percent of the relief the Plaintiffs had sought in their Complaint, including a categorical end to HIV segregation in the Alabama Department of Corrections. The Court also awarded Plaintiffs $1.3 million in attorneys' fees. The case was covered extensively in the national media, including the New York Times, the Wall Street Journal, and an op-ed in the Washington Post by Sir Elton John. Plaintiffs are now monitoring to ensure that the State complies with the remedial decree.

## ARIZONA

**Parsons v. Ryan (D. Ariz., 9th Cir.)**
In March 2012 the NPP and the ACLU of Arizona filed this statewide lawsuit challenging the Arizona Department of Corrections' use of long-term solitary confinement and its failure to provide minimally adequate medical, mental health, and dental care to its 34,000 prisoners. Prisoners known to be seriously mentally ill are held in conditions of extreme social isolation and sensory deprivation, often causing catastrophic psychiatric harm. Chronic shortages of health care staff mean that desperately sick prisoners are told to "be patient" or "pray" to be cured. In October 2012 the court denied the state's motion to dismiss the case, and in March 2013 it certified a statewide class of approximately 34,000 prisoners. The state appealed the class certification order to the 9th Circuit, which unanimously affirmed in June 2014. In August 2014 the court denied the state's motion for summary judgment. Trial is scheduled for October 2014.

**Graves v. Arpaio (D. Ariz., 9th Cir.)**

The NPP challenged conditions of confinement for pretrial detainees in the Maricopa County Jail in Phoenix, one of the nation's largest, run by Sheriff Joe Arpaio, the self-styled "toughest Sheriff in America." In October 2008, following a month-long trial, the district court found that the Sheriff and the County were subjecting detainees to unconstitutional overcrowding and denying them their rights to adequate nutrition, sanitation, exercise, and medical and mental health care. The court entered a broad injunction and granted Plaintiffs $1.2 million in attorney fees. The Sheriff appealed; in October 2010 the court of appeals affirmed the district court judgment. We asked the district court to appoint independent experts to monitor the County's compliance with the judgment, and to report periodically to the court. In August 2013, the Sheriff and the County filed a motion to terminate the case. In March 2014, the court held a two-week trial, and a decision is pending.

## CALIFORNIA

**Hernandez v. County of Monterey (N.D. Cal.)**

In September 2013, the NPP joined as co-counsel with the ACLU of Northern California, the Monterey County Public Defender's office, and Rosen, Bien, Galvan, and Grunfeld in a class action challenging unconstitutional and unlawful conditions of confinement at the Monterey County Jail. The Jail is a chronically overcrowded facility where prisoner-on-prisoner and gang violence are a daily occurrence. In the fourteen months leading up to the September 2013 filing of the amended complaint, there were over 150 assaults at the Jail. The facility is also plagued by dangerous and inadequate medical and mental health care, and the suicide rate over the past four years is three times the national average. Disabled prisoners are also systematically discriminated against and excluded from many programs and services at the facility.

In May 2014, we filed a motion to certify a class in the case, and Defendants filed two motions to dismiss the claims. Briefing and discovery on those motions is ongoing.

**Lyon v. U.S. Immigration and Customs Enforcement (N.D. Cal.)**

In January 2014 the NPP joined as co-counsel with the ACLU of Northern California and Orrick, Herrington & Sutcliffe LLP in a class action challenging the inadequate telephone access afforded to immigration detainees in Northern California. Various restrictions on their telephone access, as well as the high cost of telephone calls and barriers to arranging private unmonitored attorney-client calls, make it difficult or impossible for detainees to obtain counsel, consult with counsel, and gather information and evidence necessary for their immigration cases. The denial and restriction of telephone access has also substantially prolonged the incarceration of many detainees because they have been forced to ask for continuances to retain counsel, consult with counsel, or prepare their cases. The case seeks to remove these barriers to effective representation and to a full and fair hearing by modifying ICE telephone access policies and practices.

In April 2014, the Court certified a class of "all current and future immigration detainees who are or will be held by ICE in Contra Costa, Sacramento, and Yuba counties." A settlement conference took place in June 2014.

**Rosas v. Baca (C.D. Cal.)**

In September 2011 the NPP and the ACLU of Southern California published a major report, Cruel and Usual Punishment: How a Savage Gang of Deputies Controls the LA County Jails. The report, the product of three years of intensive investigation by the ACLU, detailed a shocking pattern of long-standing, pervasive, savage beatings of prisoners by Sheriff's deputies organized in gangs inside the jail. In January 2012, the ACLU and the law firm of Paul Hastings LLP filed Rosas v. Baca, a class action lawsuit seeking injunctive relief from the systemic violence documented in the report.

The ACLU allegations triggered a firestorm of publicity, helped launch a wide-ranging federal criminal investigation, and prompted the Los Angeles County Board of Supervisors to appoint a blue-ribbon panel of retired federal judges and prosecutors, the Los Angeles Citizens Commission on Jail Violence, to hold public hearings and make findings and recommendations. In September 2012, the Citizens Commission on Jail Violence released its final report, findings and recommendations. The Commission concluded that "[t]here has been a persistent pattern of unreasonable force in the Los Angeles County jails that dates back many years," and recommended far-reaching reforms. Since that time there have been more than eighteen federal criminal indictments for deputy brutality, and millions of dollars in jury verdicts have been awarded to some of the victims who brought damages cases.

In January 2014, a few weeks after the indictments, Sheriff Lee Baca abruptly announced his retirement after 15 years on the job. Shortly thereafter, the Sheriff's Department entered into intensive settlement negotiations with the Rosas Plaintiffs.

## FLORIDA

**Carruthers v. Israel (S.D. Fla.)**

This is a longstanding class action regarding conditions at the Broward County Jail (BCJ). The case was settled in 1994, resulting in a consent decree mandating a population cap and improvements in various operations at the jail. In 1996 the jail filed a motion to terminate the decree pursuant to the Prison Litigation Reform Act, and the NPP joined the case to assist local counsel in preparing for the evidentiary hearing. In 2002 three court-appointed experts filed reports regarding conditions at the jail. The experts identified numerous systemic problems, including unnecessary and excessive force; inadequate reviews of use-of-force incidents; lack of meaningful disciplinary sanctions for serious violations of use-of-force policies; that use of the restraint chair is not properly regulated or documented; that the jail does not provide medical staff with appropriate training; that medical staff do not exercise appropriate medical judgment; and that "many prisoners with serious mental disorders (often associated with active psychotic features) were not receiving adequate mental health treatment."

Subsequently the parties have repeatedly agreed to postpone the termination hearing while the court-appointed experts re-inspect the jail. In 2006, the jail was plagued by serious overcrowding. The NPP urged the Sheriff to contract with the U.S. Department of Justice, National Institute of Corrections (NIC), to conduct an audit and determine the cause of the overcrowding. The Sheriff agreed, and the NIC completed its audit in April 2007. As a result of the audit, the Sheriff asked

the county commission to nearly double the size of the supervised release program.

In 2009, the Sheriff closed one of the five jail facilities, and the daily population climbed through 2010, resulting in overcrowding in the remaining jail buildings. We filed a motion asking the court to appoint Dr. James Austin, a nationally recognized expert on correctional population management, to conduct a jail and justice system assessment, and make recommendations for criminal justice reforms to lower the BCJ population. The court granted our motion. For the past two years, Dr. Austin has been working with jail, court, and county officials to implement criminal justice reforms to reduce the jail's population. He is expected to release a progress report in late 2014 documenting these efforts and additional reforms that could further reduce the number of men and women held at the Jail.

## MARYLAND

**Duvall v. O'Malley (D. Md. and 4th Cir.)**

This case involves conditions in the Baltimore City Detention Center, a jail operated by the State of Maryland. In 2002 the NPP, working with the ACLU of Maryland and local counsel, discovered that female detainees in the jail were being exposed to heat indices in excess of 115 degrees because the facility was unventilated. As a result, pregnant women and women with chronic diseases were at great danger of immediate injury or death. We sought partial reopening of a 1993 consent decree regarding conditions at the jail and an injunction safeguarding the women. Shortly before a scheduled hearing on our motion, the jail agreed to a new consent order admitting that conditions related to the heat and lack of ventilation in the facility violated the Eighth Amendment. Following a subsequent hearing, the jail agreed to air condition the entire Women's Detention Facility.

After the consent order, we continued to investigate other problems at the jail involving failure to provide medical, mental health, and dental care, as well as deficient housing, sanitation, laundry facilities, food services, plumbing, and vermin eradication. In 2003, we filed a motion to reopen the portions of the 1993 consent decree covering these conditions, and the jail filed a motion to terminate that decree. The court denied the termination motion, and the jail appealed to the Fourth Circuit. In 2005, the Fourth Circuit granted our motion to remand the case to the trial court. The parties ultimately negotiated a settlement agreement, which was approved by the court in May 2012. We continue to monitor the State's compliance with the settlement.

## MISSISSIPPI

**DePriest v. Walnut Grove Correctional Authority (S.D. Miss.)**

In November 2010, the NPP and the Southern Poverty Law Center filed suit on behalf of the 1,500 young men, ages 13 to 22, sentenced as adults and confined in Walnut Grove Youth Correctional Facility, a prison run by the GEO Group, the second-largest private prison operator in the world. The suit challenged a pattern of physical and sexual abuse by security staff, prolonged solitary confinement, abuse and neglect of mentally ill youth, and failure to provide educational services to young people with special needs. In March 2012, federal judge Carleton

Reeves heard testimony – including from a 15 year old who had been seriously abused. The Court entered a groundbreaking decree that requires the State to move all youth under the age of 18, and all vulnerable youth under the age of 20, out of the privately-operated prison and into a separate facility operated by the state, governed in accordance with juvenile rather than adult correctional standards; categorically prohibits solitary confinement of youth; and provides all prisoners with protection from staff violence and abuse. The judge wrote that the youth, "some of whom are mere children, are at risk every minute, every hour, every day. Without court intervention, they will continue to suffer unconstitutional harms, some of which are due to aberrant and criminal behavior [by prison staff]. [Walnut Grove] has allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate." He added, "The sum of these actions and inactions…paints a picture of such horror as should be unrealized anywhere in the civilized world."

Since then the Court and Plaintiffs' counsel and experts have been closely monitoring compliance with the decree. In 2013, all youth under the age of 18 and all vulnerable youth under the age of 20 were removed from the private prison at Walnut Grove into a newly constructed state facility, where they receive a rich array of educational programming and have ample access to mental and medical health care; the State has been complying with the ban on solitary confinement and regimented disciplinary programs, and with all of the other provisions of the decree. The State is also making progress, under intensive monitoring by Plaintiffs' counsel and court-appointed experts, in coming into compliance with the provisions of the decree that cover Walnut Grove, where prisoners over the age of 18 continue to be housed.

**Dockery v. Epps (S.D. Miss.)**

The NPP, the Southern Poverty Law Center, and the Law Offices of Elizabeth Alexander filed a federal lawsuit in May 2013 on behalf of prisoners at the East Mississippi Correctional Facility (EMCF), describing the for-profit prison as hyper-violent, grotesquely filthy and dangerous. The facility, located in Meridian, Mississippi, is supposed to provide intensive treatment to the state's prisoners with serious psychiatric disabilities, many of whom are locked down in long-term solitary confinement. The suit, filed against the Mississippi Department of Corrections, challenges the isolation of the mentally ill; inadequate mental health and medical care; abuse and violence at the hands of staff; failure to protect prisoners; pervasive filth and unsanitary conditions; and inadequate nutrition and food safety. Since the case's filing, the law firm of Covington and Burling has also undertaken representation of the Plaintiffs in the case.

In February 2014, the Court issued a protective order restraining Defendants and their agents from retaliating against, assaulting, and punishing prisoners. In March and April 2014, Plaintiffs' experts toured the prison, resulting in six expert reports addressing various problems therein. The horrific conditions at the facility were featured in a front page article in the New York Times in June 2014. Discovery is ongoing, and in August 2014, we will file a motion to certify a class.

## MONTANA

**Langford v. Bullock (D. Mont.)**
This case was filed following a serious disturbance at the Montana State Prison (MSP) that resulted in seven deaths. The lawsuit challenged inadequate medical and mental health care, overcrowding, and inadequate environmental and fire safety conditions, classification policy, and sex offender policies. The parties settled all issues except those related to treatment of protective custody prisoners, which were ultimately tried in a separate case filed by the Department of Justice.

In 2005, after eleven years of monitoring during which the defendants built an infirmary, doubled physician staff, hired a medical director, and revised their health care policies, the health care experts appointed pursuant to the settlement agreement found that the prison had complied with the agreement's medical provisions, and those provisions were dismissed. The defendants also filed a motion to dismiss the provision of the agreement requiring them to comply with the Americans with Disabilities Act (ADA). The NPP opposed the motion, and asked the district court to appoint a disabilities expert to inspect the prison. In January 2006, the district court denied the State's motion to dismiss the ADA provision and appointed a disabilities expert. The State appealed to the Ninth Circuit, which unanimously upheld the district court's order.

In January 2011, the State agreed to make a number of long-overdue renovations to physical barriers faced by disabled MSP prisoners. Among the renovations are the retrofitting of more cells on the high security side of the prison and the installation of an elevator in the support building on the low security side, which will for the first time allow disabled prisoners to use the library and to participate in classes and vocational programs offered on the second floor of that building.

In September 2012, two disabilities experts completed a comprehensive ADA assessment at MSP and produced a report on their findings. In it, they recommended changes to policies and procedures, as well as physical plant renovations, to bring MSP into compliance with the ADA. Defendants agreed to implement a number of these recommendations over a nine-month monitoring period. Plaintiffs continue to monitor Defendants' ADA compliance.

## RHODE ISLAND

**Inmates of the Rhode Island Training School v. DeFrances (D.R.I.)**
This class action involves conditions of confinement and program management at the central juvenile facility in Rhode Island. It was originally settled by entry of a consent decree in 1979. In 1997, because of continuing failures to obey the consent decree, the court reactivated the Special Master to work with the parties to resolve compliance issues. The NPP entered this case as class counsel in 1999. In March 2000, the parties negotiated a comprehensive revision of the consent decree. In 2002, with our active participation, Rhode Island agreed to construct a new juvenile facility and the state legislature appropriated $60 million to fund it. A dispute between the Governor and the legislature over siting the facility delayed construction, and we worked with state officials to resolve the issue. Ground was broken for the new facilities in November 2005, and two new state-of-the-art facilities have now been opened to replace the aging and decrepit

facilities where youth were previously held.

In July 2008 the Rhode Island legislature passed a law capping the population of securely confined youth in the state. The legislature also passed a law requiring the development of a risk assessment instrument to help keep youth in the community and out of secure confinement. The population of incarcerated youth has substantially decreased in the last few years due to changes in sentencing policy and a focus on community placements. In 2013, the average daily census of all children detained or adjudicated in the state was less than 90 youth. Rhode Island is also now a site for the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI), which focuses on implementing evidence-based tools to divert low-risk youth from unnecessary detention.

As part of the court's order we also worked with the State and the court's Special Master to create an updated handbook for youth held at the Training School that advises them of their rights and facility rules in an easy-to-understand format. The parties also developed a new grievance system that is responsive to youth needs, includes parents and guardians in the process, and provides for external oversight. We continue to work with the Special Master and Rhode Island officials to revise policies and procedures in the Training School and to implement best practices. We are now working with officials at the Training School and within Rhode Island's Department of Children, Youth and Families to adopt JDAI standards for both the detained and adjudicated populations at the Training School and will be bringing in a team of outside experts to audit the facility's compliance with these best practice standards.

## SOUTH CAROLINA

**Prison Legal News v. DeWitt (D.S.C.)**

Representing Prison Legal News, a monthly publication that provides information about prisoners' legal rights, the NPP and the ACLU of South Carolina obtained both a sweeping injunction that greatly expands detainees' access to publications and religious items and the largest-ever monetary settlement in a case involving censorship by a correctional institution. Filed in October 2010 against officials responsible for banning Prison Legal News at the Berkeley County Detention Center in South Carolina, the case challenged various Detention Center policies regarding publications, including a ban on all reading material – with the exception of the Bible. In April 2011, the U.S. Department of Justice intervened in the case, supporting the ACLU's position that the Detention Center's policies on access to publications violate the constitutional rights of detainees. Following the January 2012 settlement, we monitored the County's compliance. In light of the County's substantial improvement in complying with the Constitution, we did not oppose its March 2014 motion to terminate the injunction, which was granted in April 2014. In August 2014 we settled our claim for attorney fees and costs covering the two-year monitoring period.

## UNITED STATES VIRGIN ISLANDS

**Carty v. DeJongh (D.V.I.)**

This class action culminated in a comprehensive consent decree requiring the Virgin Islands government to remedy severe overcrowding, squalid conditions, and deficient medical and mental health care, and to institute prisoner classification and fire safety measures to ensure the safety and security of prisoners at the two facilities in the system.

The court has held the defendants in contempt of the court-ordered remedies four times over the past dozen years, and has entered a number a specific remedial orders. In November 2004, the court ordered the government to construct a certified forensic facility to house persons found not guilty of criminal offenses by reason of mental illness, and those who are chronically mentally ill.

In January 2008, National Public Radio broadcast a story about our lawsuit and a seriously mentally ill prisoner who had been incarcerated for over five years after he allegedly attempted to steal a bicycle. Shortly thereafter, the government transferred that prisoner and several other severely mentally ill prisoners to psychiatric facilities in the mainland United States.

In June 2009, the NPP's corrections and mental health experts testified in a contempt hearing in St. Thomas. The corrections expert testified that officers had used excessive and unnecessary force against prisoners; that the jail's security systems are in disrepair; and that prisoners are arbitrarily housed in the jail, and the jail is dangerously understaffed, resulting in a rash of prisoner-on-prisoner assaults. The expert also found that the jail had no working disciplinary or grievance systems. The mental health expert testified that the jail still lacks the basic components of a mental health system, and that seriously mentally ill prisoners have needlessly suffered as a result. He also testified that the jail does not have an adequate suicide prevention program, which likely contributed to the most recent suicide at the jail. After further hearings through 2010, the court entered a comprehensive remedial order requiring the defendants to make specific improvements to jail operations to address the problems the experts identified at the June 2009 hearing.

In October 2011 and April 2012, the court's security expert, Dr. Jeffrey Schwartz, testified about significant security breaches and hazards plaguing the jail, which put the lives and safety of prisoners and staff at risk. He made over 100 specific recommendations for improvements to the jail's security operations, staffing, policies training, equipment, and leadership and oversight. Defendants are court-ordered to produce a remedial plan to address the deficiencies Dr. Schwartz has identified.

In August 2013, the parties reached a comprehensive settlement that incorporated all previously ordered relief and additional remedies. Under the settlement, a team of experts began conducting site visits in May 2014 to assess Defendants' compliance. Under the terms of the agreement, the experts must conclude that the Defendants have sustained compliance with each provision of the agreement for at least one year before they can seek termination of the case.

## WISCONSIN

**Flynn v. Doyle (E.D. Wis.)**
In May 2006, the NPP and the ACLU of Wisconsin filed suit on behalf of over 700 women at Taycheedah Correctional Institution (TCI), the largest women's prison in Wisconsin. The lawsuit charged that the state prison system routinely put the lives of women prisoners at risk through grossly deficient medical and mental health care.

The class action complaint also included an equal protection claim alleging that women prisoners at TCI receive a lower level of mental health care than their male counterparts. Male prisoners have access to the Wisconsin Resource Center, which provides individualized in-patient mental health treatment. There was no equivalent facility for women prisoners, despite their disproportionate rates of mental illness and histories of abuse. As a result of this deficiency, an 18-year-old prisoner hanged herself while in "observation" in the mental health unit at TCI.

In March 2007 the court denied the defendants' motion to dismiss and certified a class of prisoners. In January 2009 we filed a motion seeking a preliminary injunction to address the systemic failures to distribute medications appropriately. Among other things, TCI still used correctional officers to deliver medication, a practice that is known to be dangerous. The court granted an injunction containing all of the requested relief in April 2009.

In December 2010 the court approved a comprehensive settlement of Plaintiffs' medical, mental health, and disability access claims. The settlement agreement provides for monitoring by an expert in correctional medical care as well as by Plaintiffs' counsel. Since that time, Plaintiffs' counsel and the expert have been actively monitoring medical care at the facility to ensure that it meets appropriate standards. In September 2011, the Wisconsin Department of Corrections opened a 45-bed mental health facility dedicated to the needs of the state's female prisoners. Since then, the state has constructed and opened a new treatment annex to provide care for women with serious mental illnesses at TCI.

**AUGUST 2014**