

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

---

Troy D. and O’Neill S.,	:	
	:	Civil Action No.
Plaintiffs	:	1:10-cv-02902-JEI-AMD
	:	
v.	:	Honorable Joseph E. Irenas
	:	Honorable Ann Marie Donio
	:	
Mickens, et al.,	:	
	:	<b>SECOND AMENDED COMPLAINT</b>
	:	
Defendants	:	<b>Jury Demanded</b>
	:	

---

**INTRODUCTION**

1. Plaintiffs Troy D. and O’Neill S. bring this civil rights action for compensatory and punitive damages, as well as declaratory and injunctive relief, for injuries suffered as a consequence of their commitment to the New Jersey Juvenile Justice Commission (“JJC”) following their adjudications of delinquency. Both boys were subjected to excessive and intolerable isolation and room seclusion throughout their commitment to JJC. While their experiences were distinct, the conditions of their isolation were similarly cruel, both physically and emotionally, often with no access to education, treatment or other therapeutic support. They were frequently denied personal possessions and proper clothing, nutrition and medical care, and were allowed no physical recreation or exercise or other interaction with their peers. The isolation was imposed for days or weeks at a time, for both alleged minor behavioral infractions as well as for their purported protection. Troy was confined to a seven-foot-by-seven-foot cement cell for approximately 178 days of the 225 days he was committed to the custody of JJC; O’Neill was repeatedly isolated in “prehearing” isolation even before he was actually found to

have committed any infractions. In both cases, the excessive use of isolation was imposed in violation of the boys' procedural and substantive due process rights under the Fourteenth Amendment to the United States Constitution, and in violation of New Jersey state law and regulations.

2. Since its inception, the juvenile justice system has promised treatment over punishment, and rehabilitation over retribution. The New Jersey juvenile justice system is no exception. New Jersey's Juvenile Code aims "to provide for the care, protection and wholesome mental and physical development of juveniles coming within the provisions of this act." N.J.S.A. § 2A:4A-21(a) (2009). The story of Troy and O'Neill is a chilling example of what occurs when these promises are broken. Rather than provide rehabilitation and treatment, officials abused power and authority and subjected vulnerable youth to inhumane and punitive practices.

3. Indeed, despite repeated requests by both Troy and O'Neill for mental health and medical treatment, counseling and contact with other youth, Defendants consistently rebuffed them. Confined to their cells, both boys were effectively cut off from any significant human interaction with either their peers or staff. Incredibly, on certain occasions when either Troy or O'Neill asked for services, they were warned that such gestures or requests would only extend the period of time they would be secluded. In a classic "Catch 22," both boys found that the sane gesture of seeking help or release from their intolerable conditions was construed as further evidence or justification for their continued isolation.

4. Plaintiffs thus ask this Court a simple but profoundly important question: may the State of New Jersey, consistent with state and federal law, isolate youth under highly restrictive conditions without providing due process or any appropriate legal basis for such isolation when less restrictive measures could have been used? Plaintiffs submit that the policies and practices

described below cannot withstand such scrutiny.

**NAMES AND ADDRESSES OF PARTIES**

5. The name and post office address of each named party is as follows:
  - a) Plaintiff Troy D., (hereinafter “Troy”), Juvenile Medium Security Facility, P.O. Box 307, Burlington Street, Bordentown, NJ 08505.
  - b) Plaintiff O’Neill S. (hereinafter “O’Neill”), 4542 North Marvine Street, Philadelphia, PA 19140.
  - c) Defendant Veleria Lawson, Executive Director of the New Jersey Juvenile Justice Commission, P.O. Box 107, Trenton, New Jersey 08625-0107.
  - d) Defendant Felix Mickens, Deputy Executive Director for Operations, Juvenile Justice Commission, P.O. Box 107, Trenton, New Jersey 08625-0107.
  - e) Defendants “John or Jane Doe # 1-4”, members of Juvenile Classification Committee, Juvenile Justice Commission, P.O. Box 107, Trenton, New Jersey 08625-0107.
  - f) Defendants “John or Jane Doe # 5-9”, members of Institutional Classification Committee, Juvenile Medium Security Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - g) Defendant Linda Thomas, Superintendent, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - h) Defendant William Howard, Assistant Superintendent, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.

- i) Defendant Craig Farr, Superintendent, New Jersey Training School, P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.
- j) Defendant Cleo Hendrix, Assistant Superintendent, New Jersey Training School, P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.
- k) Defendant John Pinto, Assistant Superintendent, New Jersey Training School, P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.
- l) Defendant Gregory Ackles, Assistant Superintendent, Juvenile Reception and Assessment Center, P.O. Box 679, Burlington Street, Bordentown, New Jersey 08505.
- m) Defendant Barbara Roberts, Administrator, Juvenile Reception and Assessment Center, P.O. Box 679, Burlington Street, Bordentown, New Jersey 08505.
- n) Defendant Peter Gaeta, Correctional Officer and Shift Commander, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
- o) Defendant Antonio Morichetti, Correctional Officer and Shift Commander, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
- p) Defendant John Greene, Shift Commander, New Jersey Training School, P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.
- q) Defendant Scott Anema, Shift Commander, Juvenile Medium Secure

- Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
- r) Defendant Arbuckle, Correctional Officer, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - s) Defendant Sgt. Jonathan Session, Correctional Officer, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - t) Defendant Jeff Saville, Correctional Officer, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - u) Defendant Lt. Raymond O’Neill, Correctional Officer at the Juvenile Medium Security Facility and Courtline Hearing Officer, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - v) Defendant Capt. Chell, Correctional Officer, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - w) Defendants “John or Jane Doe # 10-11”, Correctional Officers, Juvenile Medium Secure Facility, P.O. Box 307, Burlington Street, Bordentown, New Jersey 08505.
  - x) Defendant Chief Stellman, Correctional Officer, New Jersey Training School, P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.
  - y) Defendant Mitten, Correctional Officer, New Jersey Training School, P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.
  - z) Defendant “John or Jane Doe # 12,” Correctional Officer, New Jersey

Training School, P.O. Box 500, Grace Hill Road, Monroe Township, New Jersey 08831.

- aa) Defendant Dennis Wert, New Jersey Juvenile Justice Commission, P.O. Box 107, Trenton, New Jersey 08625-0107.
- bb) Defendants “John or Jane Doe # 13-16,” Courtline Hearing Officers, New Jersey Juvenile Justice Commission, P.O. Box 107, Trenton, New Jersey 08625-0107.
- cc) Defendant James T. Plousis, Chairman of the New Jersey State Parole Board, P.O. Box 862, Trenton, New Jersey 08625.
- dd) Defendant Dr. Tamiko Smith, Director, Office of Specialized Interagency Services, Juvenile Justice Commission, P.O. Box 107, Trenton, New Jersey 08625-0107.
- ee) Defendant Teresa Buxton, Administrator, Office of Specialized Interagency Services, Juvenile Justice Commission, P.O. Box 107, Trenton, New Jersey 08625-0107.
- ff) Defendant Jason Fleming, Psychologist, University Correctional HealthCare, University of Medicine & Dentistry of New Jersey, P.O. Box 863, Trenton, New Jersey 08625.
- gg) Defendant Tara M. Lally, Psychologist, University Correctional HealthCare, University of Medicine & Dentistry of New Jersey, P.O. Box 863, Trenton, New Jersey 08625.
- hh) Defendant Angela Clack, Psychologist, University Correctional HealthCare, University of Medicine & Dentistry of New Jersey, P.O. Box

863, Trenton, New Jersey 08625.

- ii) Defendant Ellen Zupkus, Psychologist, University Correctional HealthCare, University of Medicine & Dentistry of New Jersey, P.O. Box 863, Trenton, New Jersey 08625.
- jj) Defendant Keli Drew Lockhart, Psy.D, University Correctional HealthCare, University of Medicine & Dentistry of New Jersey, P.O. Box 863, Trenton, New Jersey 08625.
- kk) Defendant Susanna Carew, Psychologist, University Correctional HealthCare, University of Medicine & Dentistry of New Jersey, P.O. Box 863, Trenton, New Jersey 08625.
- ll) Defendant Robert S. Randolph, M.D., University Correctional HealthCare, University of Medicine & Dentistry of New Jersey, P.O. Box 863, Trenton, New Jersey 08625.

### **JURISDICTION**

6. Jurisdiction of this Court is proper pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3)-(4), in that claims are brought under 42 U.S.C. § 1983 for the redress of rights secured by the Fourteenth Amendment to the United States Constitution. This Court has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

7. Plaintiffs' claims for compensatory and punitive damages are authorized by 42 U.S.C. §1983; N.J. Const. art. I, ¶ 1; and N.J.S.A. §§ 10:6-2, 59:1-2, 59:3-1, 59:8-3, 59:9-4.

8. Plaintiffs' claims for attorney's fees are authorized by 42 U.S.C. § 1988; N.J. Const. art. I, ¶ 1; and N.J.S.A. §§ 10:6-2, 59:9-5.

9. Plaintiffs' claims for costs are authorized by Fed. R. Civ. P. 54(d)(1) and N.J.S.A.

§ 10:6-2(f).

10. Plaintiffs' claims for a civil penalty are authorized by N.J.S.A. § 10:6-2(e).

11. Plaintiffs' claims for declaratory relief are authorized by 28 U.S.C. §§ 2201-2202; 42 U.S.C. § 1983; N.J. Const. Art. I, ¶ 1; and N.J.S.A. § 10:6-2.

12. Plaintiff O'Neill's claims for injunctive relief are authorized by 42 U.S.C. § 1983; N.J. Const. Art. I, ¶ 1; and N.J.S.A. § 10:6-2.

13. Venue is proper in the district of New Jersey pursuant to 28 U.S.C. § 1391(b) because all Plaintiffs reside in this district, the Defendants are located in this district, and the acts and omissions giving rise to the claims herein occurred in this district.

### **PARTIES**

#### **Plaintiff Troy D.**

14. Troy D. ("Troy") was born on March 21, 1993 and is a citizen of the United States.

15. At the time of the incidents and omissions complained of herein Troy was a minor.

16. Troy has been in the custody of Cumberland County Division of Youth and Family Services (DYFS) since he was three years old. Troy's mother died of a drug overdose in August 2005. Troy's father retains his parental rights to Troy.

17. Prior to the time of the incidents and omissions complained of herein, Troy had been diagnosed with a number of mental and behavioral disabilities including:

- a) Conduct Disorder, Childhood Onset Type and Adult Onset Type;
- b) Learning Disorder NOS (Not Otherwise Specified);
- c) Borderline traits;



- d) Post-Traumatic Stress Disorder;
- e) Bipolar Disorder NOS;
- f) Antisocial Personality Disorder;
- g) Psychosis NOS;
- h) Mood Disorder NOS;
- i) Depressive Disorder NOS with psychotic features; and
- j) Parent-Child Relational Problem.

18. Troy has been hospitalized multiple times for mental health treatment since 2005, including stays at the Bridgeton Crisis Unit, Kennedy Crisis Unit, and Trinitas Hospital.

19. Troy has been assessed for educational purposes and is eligible for special education. Troy has an Individualized Education Plan (IEP).

20. When Troy receives proper support, he is able to succeed in school, and enjoys movies, magic, playing cards, sports including basketball and football, writing poetry and rap, and spending time with his brothers and sisters. He aspires to own a retail clothing store and/or become a counselor or social worker who helps children.

21. While Troy resided in the Cumberland County Juvenile Detention Facility, he earned “honors” status and participated in school and other center activities.

**Plaintiff O’Neill S.**

22. O’Neill S. (“O’Neill”) was born on October 4, 1992 and is a citizen of the United States.

23. At the time of the incidents and omissions complained of herein O’Neill was a minor.

24. O’Neill is currently in the 12th grade. He enjoys math, family holidays, spending

time with his brothers and sisters, collecting army action figures, and cooking breakfast for his mother.

25. O'Neill has been assessed for educational purposes and found to be eligible for special education. He has an IEP.

### **DEFENDANTS**

#### **Veleria Lawson, Executive Director of the New Jersey Juvenile Justice Commission ("Veleria Lawson")**

26. Veleria Lawson is, and was at all relevant times, the Executive Director of the New Jersey Juvenile Justice Commission ("JJC") and is responsible for ensuring that it complies with state and federal law. She is sued here in her official capacity for acts and omissions under color of state law.

27. The JJC was established in 1995 by the New Jersey legislature. P.L. 1995, c. 280, codified at N.J.S.A. § 52:17B-169 *et seq.* The JJC is the single state executive agency with centralized authority for planning, policy development and provision of services in the juvenile justice system. The JJC's three primary responsibilities are: (1) the care and custody of juvenile offenders committed to the agency by the courts, (2) the support of local efforts to provide services to at-risk and court-involved youth, and (3) the supervision of youth on juvenile parole. Pursuant to this authority, JJC operates six facilities identified as "secure." The JJC is also responsible for promulgating regulations governing the administration and operation of the juvenile justice system, including, *inter alia*, N.J.A.C. §§ 13:101-6.17(e), 13:101-6.6(c) and 13:101-8.1(a), challenged herein, and at all relevant times was, and continues to be, responsible for its enforcement.

**Juvenile Justice Commission’s Juvenile Classification Committee  
 (“JJC-JCC”)**

28. The Juvenile Justice Commission’s Juvenile Classification Committee (“JJC-JCC”) is responsible for determining a juvenile’s classification, the JCC facility to which a juvenile in the custody of JJC is initially assigned, and for approving transfers from one JJC facility to another. Once a juvenile completes the reception and assessment process at the Juvenile Reception and Assessment Center (“JRAC”), the juvenile appears before the JJC-JCC for assignment to an appropriate facility. The JJC-JCC is chaired by the JJC’s Director of Operations. Members of the JJC-JCC are appointed by the JJC’s Executive Director (Defendant Veleria Lawson) and include representatives from secure facilities, non-secure facilities, JJC’s Office of Substance Abuse, and JJC’s Life Skills and Leadership Academy. To reassign and transfer a juvenile, the JCC must consider a number of factors including the ongoing assessments of the juvenile's needs and progress, and the safety and security of the juvenile, other juveniles, staff and the public. N.J.A.C. §§ 13:100-2.2 to -2.3.

29. Defendant Felix Mickens was at all relevant times Deputy Executive Director for Operations of the Juvenile Justice Commission (“JJC”) and chair of the JJC’s Juvenile Classification Committee.

30. Defendants “John or Jane Doe # 1-4” were at all relevant times members of the JJC’s Juvenile Classification Committee.

**Juvenile Medium Security Facility Institutional Classification Committee  
 (“JMSF-ICC”)**

31. The Juvenile Medium Security Facility’s Institutional Classification Committee (“JMSF-ICC”) is responsible for determining a juvenile’s custody status within JMSF,

monitoring the juvenile's progress, and assigning the juvenile to appropriate programs or activities within JMSF.

32. Defendants "John or Jane Doe # 5-9" were at all relevant times members of the Juvenile Medium Security Facility's Institutional Classification Committee.

**Administrators of the Juvenile Medium Security Facility, the Juvenile Reception and Assessment Center, and New Jersey Training School operated by the New Jersey Juvenile Justice Commission ("Administrators")**

33. Defendant Linda Thomas was at all relevant times Superintendent of the Juvenile Medium Secure Facility and Superintendent of the Juvenile Reception and Assessment Center.

34. Defendant William Howard was at all relevant times an Assistant Superintendent at the Juvenile Medium Secure Facility.

35. Defendant Craig Farr was at all relevant times Superintendent of the New Jersey Training School.

36. Defendant Cleo Hendrix was at all relevant times an Assistant Superintendent at the New Jersey Training School.

37. Defendant John Pinto was at all relevant times an Assistant Superintendent at New Jersey Training School.

38. Defendant Gregory Ackles was at all relevant times an Assistant Superintendent at the Juvenile Reception and Assessment Center.

39. Defendant Barbara Roberts was at all relevant times an Administrator at the Juvenile Reception and Assessment Center.

**Shift Commanders at Juvenile Medium Security Facility, Juvenile Reception and Assessment Center, and New Jersey Training School operated by the New Jersey Juvenile Justice Commission (“Shift Commanders”)**

40. Defendant Peter Gaeta was at all relevant times a Shift Commander at the Juvenile Medium Secure Facility and was the custody staff member responsible for the maintenance of security while on duty.

41. Defendant Antonio Morichetti was at all relevant times a Shift Commander at the Juvenile Medium Secure Facility and was the custody staff member responsible for the maintenance of security while on duty.

42. Defendant John Greene was at all relevant times a Shift Commander at the New Jersey Training School and was the custody staff member responsible for the maintenance of security while on duty.

43. Defendant Scott Anema was at all relevant times a Shift Commander at the Juvenile Medium Secure Facility and was the custody staff member responsible for the maintenance of security while on duty.

**Correctional Officers at Juvenile Medium Security Facility operated by the New Jersey Juvenile Justice Commission (“JMSF Correctional Officers”)**

44. Defendant Arbuckle was at all relevant times a correctional officer at JMSF.

45. Defendant Sgt. Jonathan Session was at all relevant times a Correctional Officer at the Juvenile Medium Security Facility.

46. Defendant Captain Jeffrey Saville was at all relevant times a Correctional Officer at the Juvenile Medium Security Facility.

47. Defendant Lt. Raymond O'Neill was at all relevant times a Correctional Officer at the Juvenile Medium Security Facility. He also acted as a Courtline Hearing Officer, as described below.

48. Defendant Capt. Chell was at all relevant times a Correctional Officer at the Juvenile Medium Security Facility.

49. Defendants "John or Jane Doe # 10-11" were at all relevant times Correctional Officers at the Juvenile Medium Security Facility.

**Correctional Officers at New Jersey Training School  
operated by the New Jersey Juvenile Justice Commission  
("NJTS Correctional Officers")**

50. Defendant Chief Stellman was at all relevant times a Correctional Officer at the New Jersey Training School.

51. Defendant Mitten was at all relevant times a Correctional Officer at the New Jersey Training School.

52. Defendant "John or Jane Doe # 12" was at all relevant time a Correctional Officer at the New Jersey Training School.

**Courtline Hearing Officers at Juvenile Medium Security Facility and  
New Jersey Training School  
operated by the New Jersey Juvenile Justice Commission  
("Courtline Hearing Officers")**

53. Defendant Dennis Wert was at all relevant times a Courtline Hearing Officer for the New Jersey Juvenile Justice Commission.

54. Defendant Raymond O'Neill was at all relevant times a Courtline Hearing Officer for the New Jersey Juvenile Justice Commission. He also acted as a Correctional Officer at the Juvenile Medium Security Facility, as described above.

55. Defendants “John or Jane Doe # 13-16” were at all relevant times Courtline Hearing Officers for the New Jersey Juvenile Justice Commission.

**James T. Plousis, Chairman of the New Jersey State Parole Board  
 (“James Plousis”)**

56. James T. Plousis is, and was at all relevant times, the Chairman of the New Jersey State Parole Board and is responsible for ensuring that it complies with state and federal law. He is sued here in his official capacity for acts and omissions under color of state law.

57. The New Jersey State Parole Board published The Parole Book: A Handbook on Parole Procedures for Juvenile Residents in May, 2005. In this handbook, the State Parole Board promulgated procedures to be followed in juvenile parole hearings in the State of New Jersey.

58. As it applies here, “parole” is a conditional release of a delinquent youth from a Juvenile Justice Commission (JJC) secure facility under the supervision of the JJC's Parole and Transitional Services Division.

59. Within the State Parole Board is a specialized Juvenile Unit, which sets a tentative release date for youth committed to JJC facilities, and reviews each youth’s progress, institutional adjustment, and program participation every three months (quarterly) to determine if the tentative release date should be changed.

60. The State Parole Board’s Juvenile Unit also conducts annual review hearings, determining the reasons for a youth’s continued confinement. At annual review hearings the Juvenile Unit can certify a parole release date with pre-release conditions; impose special conditions of parole; reduce a youth’s tentative release date; increase a youth’s tentative release date; or continue a youth’s case until the next quarterly review.

61. After a youth's conditional release on parole, the State Parole Board's Juvenile Unit conducts probable cause hearings to determine if a youth has violated a condition of parole, as well as final revocation hearings.

**Juvenile Justice Commission Office of Specialized Interagency Services  
("OSIS Staff")**

62. The JJC's Office of Specialized and Interagency Services ("JJC-OSIS") coordinates activities and collaborates with other government agencies such as the Office of Children's Services - Division of Youth and Family Services and Division of Child Behavioral Services, Housing Mortgage Finance Agency, Division of Mental Health Services, State Parole Board, Social Security Administration and Department of Labor. This office is responsible for the organization of resources and activities, particularly for youth in JJC facilities and programs who are in need of mental health and sex-offense-specific services.

63. Defendant Dr. Tamiko Smith was at all relevant times the Director of the Office of Specialized Interagency Services.

64. Defendant Teresa Buxton was at all relevant times an Administrator within the Office of Specialized Interagency Services.

**University Correctional HealthCare (UCHC) and University Behavioral HealthCare (UBHC) within the University of Medicine & Dentistry of New Jersey (UMDNJ)**

65. University Behavioral HealthCare ("UBHC") and University Correctional Health Care ("UCHC"), which are both within the University of Medicine & Dentistry of New Jersey ("UMDNJ"), have an interagency agreement with the New Jersey Department of Corrections to manage all aspects of the provision of mental health care to juveniles within JJC facilities.



**Mental Health Service Providers of University Correctional HealthCare within the  
University of Medicine & Dentistry of New Jersey  
("Mental Health Providers")**

66. Defendant Jason Fleming was at all relevant times a psychologist with University Correctional HealthCare ("UCHC") within the University of Medicine & Dentistry of New Jersey ("UMDNJ").

67. Defendant Tara M. Lally was at all relevant times a psychologist with UCHC within the UMDNJ.

68. Defendant Angela Clack was at all relevant times a psychologist with UCHC within the UMDNJ.

69. Defendant Ellen Zupkus was at all relevant times a psychologist with UCHC within the UMDNJ.

70. Defendant Keli Drew Lockhart, Psy.D. was at all relevant times a psychologist with UCHC within the UMDNJ.

71. Defendant Susanna Carew was at all relevant times a psychologist with UCHC within the UMDNJ.

72. Defendant Robert S. Randolph, M.D. was at all relevant times a psychiatrist with UCHC within the UMDNJ.

73. All Defendants except Veleria Lawson and James Plousis are "Individual Defendants."

**FACTS**

**Troy D.**

74. On or about February 18, 2009, the Superior Court of New Jersey, Chancery Division, Family Part, in Cumberland County New Jersey adjudicated Troy delinquent, and

ordered Troy committed to the custody of the JJC.

75. Upon his commitment to the JJC, Troy was first sent to the Juvenile Reception and Assessment Center (“JRAC”) for assessment.

76. Once JRAC completed its assessment, the JJC-JCC Defendants assigned Troy to the Juvenile Medium Security Facility (“JMSF”).

77. For the majority of the relevant time period, Troy was confined at JMSF. He was also confined for shorter periods of time at JRAC and the New Jersey Training School (“NJTS”), also known as “Jamesburg.”

78. The JJC-JCC Defendants were responsible for and directed all of Troy’s transfers between JMSF, JRAC and NJTS.

79. Starting at his initial intake at JRAC and throughout his custody at the various JJC facilities, Defendants were aware that Troy had serious mental health issues, including a history of auditory and visual hallucinations, cutting, suicidal ideation, suicide attempts and other self-harm; that he had previously been hospitalized on several occasions; and he was on medication.

80. From February 25, 2009 until October 7, 2009, a total of 225 days, Troy was in the custody of the JJC.

81. Troy was placed in isolation in a cell for at least 178 days, and possibly as many as 188 days, out of the total 225 days he was in the custody of JJC.

82. For 21 partial or whole days while in JJC custody, Troy was hospitalized. For the remaining 212 days Troy was held in JJC facilities, 161 days were spent at JMSF, of which Troy was held in isolation for at least 151 days (93.7% of Troy’s time at JMSF), and possibly as many as 161 days (100% of Troy’s time at JMSF).

83. Troy was held in isolation on the following dates:
- a) February 28, 2009 – March 3, 2009 in JRAC (4 days);
  - b) March 9, 2009 – March 10, 2009 in JRAC (2 days);
  - c) March 11, 2009 – March 17, 2009 in JMSF (7 days);
  - d) March 18, 2009 in JMSF and JRAC (1 day);
  - e) March 21, 2009 – March 22, 2009 in JRAC (2 days);
  - f) April 7, 2009 – April 14, 2009 in NJTS (8 days);
  - g) April 15, 2009 – April 17, 2009 in NJTS (3 days);
  - h) April 21, 2009 in NJTS (1 day);
  - i) April 22, 2009 – May 1, 2009 in JMSF (10 days);
  - j) May 5, 2009 – May 17, 2009 in JMSF (13 days);
  - k) May 28, 2009 – June 4, 2009 in JMSF (8 days);
  - l) June 5, 2009 in NJTS and JMSF (1 day);
  - m) June 6, 2009 – June 23, 2009 in JMSF (18 days);
  - n) June 30, 2009 – July 26, 2009 in JMSF (27 days);
  - o) July 27, 2009 – July 28, 2009 in JMSF and JRAC (2 days);
  - p) July 29, 2009 – August 19, 2009 in JMSF (22 days);
  - q) August 20, 2009 in JMSF and JRAC (1 day);
  - r) August 21, 2009 – August 26, 2009 in JRAC (6 days);
  - s) August 27, 2009 in JRAC (1 day); and
  - t) August 28, 2009 – October 7, 2009 in JMSF (41 days).

84. Based upon available records, Troy may also have been held in isolation from May 18, 2009 through May 27, 2009 at JMSF (10 days).

85. For all but the last four weeks of his commitment to JJC, the conditions under which Troy was held in isolation, either on “close watch” or “constant watch,” were inhumane and akin to being locked in a closet:

- a) Troy was confined to a seven-foot-by-seven-foot cement cell and only allowed out for hygiene purposes;
- b) Troy’s movement was so restricted that he was not allowed to take a walk or engage in any type of recreation or exercise;
- c) Troy took all his meals in the isolation cell;
- d) Troy was not allowed to have educational or other materials in the isolation cell, nor was he permitted to have any books in the isolation cell;
- e) although Troy was eligible for special education and had an IEP, he was not provided any special education; and
- f) Troy was not given any opportunity to interact with peers.

86. The physical conditions of the isolation cell in which Troy was held were likewise inhumane. The isolation cell was approximately seven feet wide by seven feet long, with only a concrete bed slab, a toilet, a sink, and at times a mattress pad. The mattress pad was frequently removed. The isolation cell had painted white walls and gray floors. The only light in the isolation cell, located above the sink and toilet, remained on twenty-four hours a day. Although there was one window in the isolation cell, it was frosted so that Troy could not see anything outside. Finally, the isolation cell was oriented such that Troy could not see any other children housed in nearby cells.

87. For at least 120 days, including one period of over fifty consecutive days, Troy was ordered to remove his clothes and wear a Ferguson gown (a bulky, heavy duty, sleeveless

smock).

88. On multiple occasions, Troy complained of extreme cold. These complaints were particularly acute when Troy was housed in a cell with no mattress for days or weeks at a time, and when Troy was ordered to remove his clothes and wear a Ferguson gown. Troy complained on multiple occasions that taking a shower while he was provided with only a Ferguson gown exposed him more to the cold; however, he was routinely punished with extended isolation for refusing to take a shower.

89. Between September 6, 2009 and October 7, 2009, Troy's final four weeks in JJC custody, Troy may have been permitted brief periods of recreation time alone or with facility staff outside of the isolation cell. These opportunities were provided Troy only after attorneys associated with the Children's Justice Clinic of Rutgers School of Law - Camden became aware of Troy's situation and openly questioned the conditions of his confinement.

90. At all relevant times, the JMSF-ICC defendants directed Troy's custody status and housing within JMSF, including his constant isolation and denial of treatment services, education or any opportunity to engage in activities with others.

91. At all relevant times, Defendants Administrators and Shift Commanders directed changes in Troy's "watch" status, including his placement in isolation for a majority of his confinement, his lack of access to treatment services, education, or any peer interaction.

92. At all relevant times, the Mental Health Service Provider Defendants either directed changes in Troy's watch status leading to the isolation and deprivations described above or, in the alternative, were prevented from providing proper mental health treatment to Troy by Defendants Administrators and Shift Commanders.

93. Individuals charged by JJC to evaluate Troy repeatedly recommended individual

therapy and other mental health treatment for Troy throughout his commitment to JJC.

94. Although a mental health counselor at JRAC noted that Troy participated actively in therapeutic services during his initial stay there, Troy received almost none of the mental health treatment recommended for him because of his constant isolation. At all relevant times, the JMSF-ICC Defendants directed that Troy not participate in treatment services, including mental health treatment services and specialized sex offender treatment services.

95. For example, as part of Troy's delinquency disposition, he was mandated to receive sex-offense-specific treatment. While Troy was 'scheduled' for twice weekly treatment, he was generally unable to receive this treatment due to his seclusion and his "constant" or "close watch" status, which restricted his movement. Louis Castle, L.C.S.W, repeatedly noted his inability to provide treatment to Troy because of his isolation or "lock-down" status. During the 178 days Troy spent in isolation, he was provided with only approximately six sex offense treatment sessions. Those sessions ranged in duration from approximately ten minutes to twenty five minutes.

96. During the 178 days Troy spent in isolation, he was provided with only nine other types of individual therapy sessions, averaging 22 minutes each.

97. While he did not receive the recommended mental health treatment, Troy was checked almost daily by a mental health clinician conducting special observation status (SOS) rounds, which merely assessed his classification status. Lasting an average 12 minutes per day, the SOS clinician asked Troy a series of questions, including:

- a) if he was oriented to time, place, and person;
- b) if he had cut himself since the day before;
- c) if he felt like hurting himself or others;

- d) if he was experiencing any audio or visual hallucinations;
- e) if he was taking his medication;
- f) if he was showering;
- g) if he was eating;
- h) if he was sleeping well; and
- i) how he would rank his mood on a scale from 1 to 10.

98. SOS exams were routinely conducted through the door of Troy D's cell, a solid door with iron bars over glass windows and a slot large enough for a food tray, without privacy. The only occasions on which the clinician entered Troy's cell for an SOS exam were to use force to examine Troy D's arms for new cuts. For example, on August 30, 2009, Defendant Tara Lally noted that Troy "initially refused to speak to this writer and closed his eyes when [she] arrived. Sgt. and two officers were needed to enter cell, as did this writer, to assess Troy's arms. No new wounds noted."

99. Clinicians making SOS rounds did not provide therapeutic counseling, even when Troy directly asked for help. For example, on June 12, 2009, Defendant Tara Lally noted that Troy "appeared frustrated that this writer would not discuss thoughts of self-harm at greater length or [his] increase in AH [audio hallucinations]." On August 17, 2009, on or about the anniversary of his mother's death, Troy asked Defendant Angela Clack during SOS rounds "if he could come out of his cell and to the office for counseling." Dr. Clack denied his request and noted that, "Troy did not want to accept the reason why that isn't possible at this time." On August 19, 2009, after Troy's father cancelled a visit, Troy told Defendant Susanna Carew who was conducting SOS rounds that he felt depressed and had urges to cut himself. He asked for

crisis counseling, but was denied. Dr. Carew told him that seeking this sort of help “would only justify keeping him on constant watch longer.”

100. Numerous SOS logs note Troy asking to be removed from isolation and the clinician explaining “that he will be assessed on a day-by-day basis and that there is no set time frame for which he will remain on constant watch.”

101. Despite reported constant one-on-one observations of Troy by JJC staff, Troy suffered from serious mental problems and engaged in self-harm, including cutting, throughout his commitment to JJC.

102. Troy often used caulk or tile from the floor and walls, and other materials in the isolation cell to cut himself. Troy had multiple open lacerations and numerous self-inflicted wounds throughout the period of his confinement.

103. According to JJC records, Troy also had suicidal thoughts and/or made suicide attempts on several occasions. For example, Troy was sent to the Trinitas Regional Medical Center emergency room after attempting to kill himself. There, on June 24, 2009, he told medical personnel that he had “no reason to live” and “nothing to look forward to.” JJC records also note that Troy experienced auditory and/or visual hallucinations on several occasions throughout his confinement.

104. Defendant Ellen Zupkus was aware that isolation exacerbates suicidal ideation, but did not act to remove Troy from this setting, or, in the alternative, was prevented from providing proper mental health treatment to Troy by Defendants Administrators and Shift Commanders. On September 17, 2009, Troy’s delinquency attorney Sandra Simkins asked Defendant Zupkus whether she was aware that isolation exacerbates suicidal ideation, Defendant Zupkus told Attorney Simkins “[o]f course I know it’s wrong, but my hands are tied by



corrections.”

105. Troy’s declining mental health was also demonstrated in other ways. On multiple occasions, Troy was observed to be crying, in a “catatonic state,” and/or engaging in destructive, disturbed behavior such as banging his head against the wall, urinating out of the isolation cell, or smearing feces on the walls of the isolation cell.

106. On several occasions throughout the time he was held in isolation, Troy indicated to JJC staff that he wanted to be released from isolation.

107. Defendants’ inhumane isolation of Troy exacerbated his mental health problems, and also caused him to act out or create situations that would lead to his temporary removal from the isolation cell – usually to a hospital – as a method of coping with the excessive isolation he endured.

108. Isolation was contra-indicated for Troy because he had a history of mental illness, psychiatric hospitalizations, self-harm, and suicidal actions.

109. Research has shown that isolation exacerbates mental health problems, including suicidal ideation, and that these concerns are particularly acute for minors.

110. For example, in 1999, the Office of Juvenile Justice and Delinquency Prevention of the United States Justice Department commissioned “the first comprehensive effort to determine the scope and distribution of suicides by youth in our public and private juvenile facilities throughout the country.” The study found that fifty percent of victims were in isolation at the time of their suicide, and sixty-two percent of victims had a history of isolation, noting “rates of suicidal behavior appeared to be higher for youth who were isolated from their peers or assigned to single room housing.” Lindsey M. Hayes, Nat’l Ctr. on Inst. & Alternatives, *Juvenile Suicide in Confinement: A National Survey* 42 (2004; see also Steven H. Rosenbaum, Chief,

Special Litig. Section, Remarks before the Fourteenth Annual National Juvenile Corrections and Detention Forum (May 16, 1999) ("The use of extended isolation as a method of behavior control, for example, is an import from the adult system that has proven both harmful and counterproductive when applied to juveniles. It too often leads to increased incidents of depression and self-mutilation among isolated juveniles, while also exacerbating their behavior problems. We know that the use of prolonged isolation leads to increased, not decreased, acting out, particularly among juveniles with mental illness.")

111. Additionally, rather than provide treatment in response to Troy's pleas for help JJC staff repeatedly resorted to force, including restraints, often resulting in injury to Troy. For example:

a) June 4, 2009, Troy attempted to exit his isolation cell by throwing his liquid medication at SCO Wilson. SOC Morris, SCO Wilson, and Defendant Scott Anema then attempted to force Troy back into his isolation cell. Troy then hit SCO Wilson in the face. SCO Wilson, Defendant Scott Anema and SCO Morris then "wrestled" Troy, slamming Troy's face to the ground and causing it to bleed. Defendant Scott Anema then called over the radio a code 10-46 for assistance. Nine officers – Sgt. Carr, Sgt. L. Wright Jr., SCO M. Nagy, SCO I. Carbonell, SCO Mirra, COR Velasco, SCO S. McKnight, SCO M. Fugee, and COR L. Salava – responded and used force to help the other three officers restrain Troy. Troy was handcuffed and put in leg irons. Even after Troy had been restrained in handcuffs and leg irons, Defendant Scott Anema ordered Defendants to have Troy remain face down on the ground for a few additional minutes. During the altercation, Troy was kicked and punched by one or more

of the twelve staff members. Defendant Superintendent Linda Thomas authorized emergency medical treatment for Troy. Troy was seen at St. Francis Medical Center and then the NJTS infirmary. At St. Francis Medical Center, medical personnel noted that Troy suffered tenderness in his jaw, bruising along the left side of his face, and blurred vision. Although the incident began with Troy's attempt to exit his isolation cell, Defendants Administrators and Shift Commanders failed to provide him with mental health services or other services in the isolation cell, nor did they identify a more therapeutic setting to house Troy.

b) June 5, 2009, Sergeant Cannestro ordered SCO Smelson to strip search Troy and put him in a Ferguson gown. Troy refused to be searched and took a defensive stance with fists raised. Sergeant Cannestro ordered that Troy be "taken down to the ground." SCOs Smelson, R. San Filippo, and P. Leitch then attempted a compliance hold and wrestled Troy to the ground. Troy struggled to avoid being restrained while Sergeant Cannestro and the three other officers handcuffed him and put him in leg irons. Defendants Administrators and Shift Commanders failed to provide mental health services to Troy to address the problem.

c) June 7, 2009, Troy covered his suicide watch camera with a tissue, and began urinating from the isolation cell port and covered the door to the isolation cell with a mattress. When SCO Nagy attempted to move the mattress, Troy tried to take SCO Nagy's pen and SCO Nagy, Sgt. Roberts, SCO W. Stone, and SCO Schaeffer wrestled Troy to the ground and handcuffed him. SCO I.

Carbonell retrieved leg irons and put them on Troy. Troy was then removed from the room and kept in a prone position until he became calm. Troy experienced pain in the left part of his jaw, as well as reddish/blackish bruising of his left eye orbital with a slight weeping of blood from lacerations on his face that he sustained three days earlier in the incident described above. Defendants Administrators and Shift Commanders failed to provide any treatment or therapeutic support to Troy to address the underlying mental health issues.

d) June 16, 2009, at the direction of Sgt. Shearer, SCOs Saraceni, Smelson and Hahn put Troy in mechanical restraints, but Defendants Administrators and Shift Commanders did not address Troy's need for mental health services or a more therapeutic placement.

e) June 23, 2009, Troy was banging his head on the isolation cell wall, wrapping his detention shorts around his neck and stating that he wanted to kill himself. A JMSF officer placed Troy in a restraint chair. Defendants Administrators and Shift Commanders failed to provide any treatment or therapeutic support to address Troy's mental health needs.

f) July 19, 2009, Troy allegedly threatened to use violence against several guards and punched one sergeant. Sgt. K. Roberts, SCO R. Howells, SCO K. Large, and SCO L. Velasco restrained, punched, and wrestled Troy into a compliance hold on the ground, and then placed him in handcuffs and leg irons. Troy sustained bruising to his left eye and left temple. He also experienced pain in his jaw and swelling in his finger. Defendants Administrators and Shift

Commanders failed to provide Troy mental health services or address his need for a more therapeutic setting.

g) August 21, 2009, Troy was removing pieces of caulk from around the mirror in the isolation cell and placing them in his mouth. He stated that “voices” were instructing him to commit suicide and told SCO R. Caporusso that he would bite him. Sgt. Jennings ordered SCO Caporusso to physically restrain Troy and put him in mechanical restraints. SCO Caporusso then brought Troy down to the ground and five additional officers – Sgt. Jennings, SCO E. Hahn, SCO M. Fugee, SCO B. Pritsch, and SCO Smulson – helped SCO Caporusso to forcefully restrain Troy and ultimately put him in handcuffs. Defendants Administrators and Shift Commanders failed to provide Troy with treatment or therapeutic supports to address his mental health needs.

h) August 26, 2009, Troy cut himself. In response, SCO J. Schaeffer handcuffed him. Later the handcuffs were exchanged for a belly chain. Less than an hour later, Troy again tried to hurt himself with caulk from the isolation cell. SCO J. Schaeffer again handcuffed him. Defendants Administrators and Shift Commanders failed to provide Troy with mental health services or a therapeutic placement.

112. Throughout the weeks and months that Troy was isolated, he continued to decompensate, act out, and engage in self mutilation and other self-destructive behaviors. He repeatedly asked for counseling and treatment and sought release from his oppressive conditions of confinement. Yet Defendants Administrators and Shift Commanders consistently failed to take any measures or steps to improve his situation, provide relief from his physical and social

isolation from peers or other persons, arrange for treatment or counseling, recreation or education. In response to Troy's explicit and implicit cries for help, Defendants Administrators and Shift Commanders simply extended his isolation and restrained him or used force against him repeatedly.

113. Defendants JJC-JCC members, JMSF-ICC members, Administrators, Mental Health Providers, OSIS Staff and others met regularly to review reports and documentation that described the conditions of Troy's confinement, including, but not limited to, his lack of treatment services, lack of educational program, his self-harming behaviors and overall deterioration as a result of the conditions of his confinement. These Defendants regularly made decisions as to Troy's custody status and housing within JMSF such that Troy was essentially in isolation for a majority of his confinement and prevented from, *inter alia*, receiving treatment services, participating in an education program, or engaging in any activities with others.

114. For most of the occasions on which Troy was placed in isolation, Troy was denied any procedural due process, including proper notice, the assistance of counsel or any other advocate, or the opportunity to be heard on whether he should be held in isolation.

115. On September 30, 2009, the Children's Justice Clinic of Rutgers School of Law – Camden filed a motion for recall and post-dispositional relief on behalf of Troy in the Superior Court of New Jersey, Chancery Division, Family Part, in Cumberland County. The motion sought immediate transfer from JMSF to a psychiatric hospital, citing Troy's constant isolation, lack of education, programming or counseling at JMSF and alleging that the isolation Troy experienced at JMSF exacerbated Troy's pre-existing mental health issues.

116. On October 7, 2009, Troy was moved from JMSF to Trinitas Psychiatric Hospital.

117. On or about October 15, 2009, the Superior Court of New Jersey, Chancery

Division, Family Part, in Cumberland County New Jersey vacated its order committing Troy to JJC custody.

118. Sometime in late October 2009, Troy was transferred from JMSF to the Carrier Clinic, a Residential Treatment Center in Bell Meade, New Jersey.

119. Troy was not in the custody of the Juvenile Justice Commission when the initial Complaint was filed.

**Plaintiff O’Neill S.**

120. On February 27, 2009, Judge Charles Dortch, Superior Court of New Jersey, Camden County, adjudicated O’Neill delinquent for conspiracy to distribute compact discs and ordered O’Neill committed to the custody of the JJC.

121. The JJC-JCC placed O’Neill in the Ocean Residential program, a small non-secure community home offering substance abuse treatment.

122. O’Neill left the campus of JJC’s Ocean Residential program without permission in order to protect himself from assaults by other juvenile residents.

123. On May 31, 2009, Judge Dortch adjudicated O’Neill delinquent for escaping his placement at the JJC Ocean Residential program; O’Neill was placed by the JJC-JCC in the JMSF facility.

124. O’Neill remained at JMSF until he was transferred to NJTS by the JJC-JCC.

125. Between June 2009 and October 2010, O’Neill was placed in isolation on approximately fourteen different occasions, for a total of approximately 50 days.

126. Upon arrival at JMSF on May 31, 2009, Defendants placed O’Neill in isolation for four days for leaving JJC’s Ocean Residential Program without permission. O’Neill received no procedural due process before being placed in isolation. O’Neill remained there from 11:00

p.m. on May 31, 2009 until his “Courtline” hearing (a disciplinary hearing) at 10:27 a.m. on June 3, 2009. SCO Quin and Defendant Lt. Raymond O’Neill placed him in prehearing room restriction. Officer R. Davis supervised this placement. Defendant JMSF Assistant Superintendent William Howard, acting as the Superintendent’s designee pursuant to N.J.A.C. § 13:101.8.1(a), approved the decision to place O’Neill in prehearing room restriction.

127. At O’Neill’s disciplinary hearing on June 3, 2009, the Courtline hearing officer recommended “leniency.” However, at the time of the hearing O’Neill had already spent four days in isolation. The JJC refers to the practice of holding youth in isolation before giving them a disciplinary hearing as “prehearing room restriction.”

128. On July 31, 2009, O’Neill was placed in prehearing isolation at JMSF for more than three days. He was there from 8:50 a.m. on July 31, 2009 until the Courtline hearing at 10:30 a.m. on August 3, 2009. O’Neill received no procedural due process before being placed in prehearing isolation. Officers Sgt. P. Thurman, SCO Pontichelli, and Off. Markee requested the prehearing isolation status. Defendant Arbuckle, acting as the Superintendent’s designee, approved the placement.

129. O’Neill’s prehearing room restriction exceeded the total sanction ultimately recommended for his disciplinary violation. At the Courtline hearing, Defendant Dennis Wert ordered that O’Neill receive a sanction of one day isolation, and credited the three days O’Neill already served in prehearing isolation toward this sanction.

130. On August 14, 2009, Defendants placed O’Neill in prehearing isolation at JMSF for three days, from 9:00 a.m. on August 14, 2009 until the Courtline hearing at 10:00 a.m. on August 17, 2009, for possession of a sharp pen. O’Neill received no procedural due process before being placed in prehearing isolation. Officers COR L. Towns, SCO Cimmino, COR



Belloni and Lt. E. Spierer ordered O'Neill in prehearing isolation. Officer G. Williams supervised this placement. Defendant Capt. Jeffrey Saville, acting as the Superintendent's designee, approved the placement.

131. Again, O'Neill's prehearing room restriction exceeded the total sanction ultimately recommended for his disciplinary violation. At the Courtline hearing, Defendant Dennis Wert ordered that O'Neill receive a sanction of one day in isolation. Although Defendant Wert ordered that O'Neill's three days in prehearing isolation be credited toward his one day sanction, O'Neill was nevertheless kept in isolation for an additional day following the hearing.

132. On October 6, 2009, Defendants placed O'Neill in prehearing isolation at JMSF for one day from 8:45 a.m. on October 6, 2009 until the Courtline hearing at 11:45 a.m. on October 7, 2009, after an altercation in which he sustained injuries from a guard, including a large area of abrasion to his Adam's apple and several other scratches and abrasions. O'Neill received no procedural due process before being placed in prehearing isolation. Officers Tuno, Stone and Peter Gaeta ordered the placement. Officer G. Williams and Defendant Jonathan Session supervised this placement and Defendant Barbara Roberts, acting as the Superintendent's designee, approved it.

133. At the Courtline hearing, Defendant Wert ordered that O'Neill receive a sanction of one day isolation. The time he had already served in prehearing isolation was credited toward this sanction.

134. On October 29, 2009, Defendants placed O'Neill in prehearing isolation at JMSF for two days. O'Neill received no procedural due process before being placed in prehearing isolation. Officers SCO Sarno and Lt. Spierer ordered O'Neill into isolation. Defendant Sgt. Jonathan Session supervised it, and, acting as the Superintendent's designee, approved it.

135. At the Courtline hearing, Defendant Wert ordered that O'Neill receive a sanction of two days isolation, with one day of prehearing isolation credited toward this sanction.

136. On November 6, 2009, two residents entered O'Neill's cell and one repeatedly punched him in the face while the other held his legs. They also stole several personal items from O'Neill. O'Neill sustained scratches, abrasions, and bruising to the face and neck. Upon receiving medical treatment for his injuries, O'Neill voluntarily turned over a broken pencil and broken plastic spoon that he had kept in the isolation cell for his own protection, and asked to be placed in protective custody. Instead, Defendants placed him in prehearing isolation at JMSF for three days. O'Neill received no procedural due process before being placed in prehearing isolation. Officers SCO D. Scott and Lt. Whartenby placed O'Neill into prehearing isolation. Officer R. Fisher supervised the placement. Defendant Capt. Jeffrey Saville, acting as the Superintendent's designee, approved the placement.

137. At the Courtline hearing, Defendant Wert ordered that O'Neill receive a sanction of five days isolation. O'Neill's three days of prehearing isolation was credited toward this sanction.

138. On December 2, 2009, Defendants placed O'Neill in prehearing isolation for two days. O'Neill received no procedural due process before being placed in prehearing isolation. Officers Lt. Brunkow, M. Snow, and SCO B. McKnight placed O'Neill into prehearing isolation. Officer Sgt. S. Reiss supervised the placement. Defendant Capt. Chell, acting as the Superintendent's designee, approved it.

139. At the Courtline hearing, Defendant Wert ordered that O'Neill receive a sanction of two days isolation, with the time O'Neill already served on prehearing isolation credited toward this sanction.

140. On December 23, 2009, after O'Neill was again assaulted by other youth, Defendants placed him in prehearing isolation for five days, from 1:31 p.m. on December 23, 2009 until the Courtline hearing at 10:35 a.m. on December 28, 2009. O'Neill received no procedural due process before being placed in prehearing isolation. SCOs S. Pontichelli, E. Wacha, Cimmino, D. Onorati, and Abrams ordered O'Neill into isolation. Defendant Sgt. Jonathan Session and Sgt. G. Williams supervised it, and Defendant "John or Jane Doe # 10", Captain # 006, acting as the Superintendent's designee, approved it.

141. At the Courtline hearing, Defendant Raymond O'Neill ordered that O'Neill receive a sanction of five days isolation, with the five days O'Neill had already served on prehearing isolation credited toward this sanction.

142. On December 29, 2009, after O'Neill was again assaulted by other youth, Defendants placed O'Neill in prehearing isolation for one day, from 7:55 a.m. on December 29, 2009 until the Courtline hearing at 11:09 a.m. on December 30, 2009. O'Neill received criminal charges related to the incident, but those criminal charges were ultimately dismissed. O'Neill received no procedural due process before being placed in prehearing isolation. Officer J. Stahl supervised the placement. Defendant Jeffrey Saville, acting as the Superintendent's designee, approved it.

143. At the Courtline hearing, Defendant "John or Jane Doe # 13" ordered that O'Neill receive a sanction of four days isolation, with the time O'Neill already served on prehearing isolation credited toward this sanction.

144. On January 29, 2010, after O'Neill had again been assaulted by other youth, he was placed in prehearing isolation at JMSF for four days, from 3:40 p.m. on January 29, 2009 until the Courtline hearing at 10:50 a.m. on February 1, 2010. O'Neill received no procedural

due process before being placed in prehearing isolation. SCO M. Nagy put O'Neill into isolation. Sgt. Cannestro supervised the placement. Defendant "John or Jane Doe # 11", acting as Superintendent or her designee, approved it.

145. At the Courtline hearing, Defendant Raymond O'Neill ordered that Plaintiff O'Neill S. receive a sanction of five days isolation, and a concurrent sentence of another three days isolation, with the time O'Neill already served on prehearing isolation credited toward this sanction.

146. On March 5, 2010, attorney Simkins of the Children's Justice Clinic at Rutgers School of Law-Camden wrote to Defendant Linda Thomas, Superintendent of JMSF, complaining on behalf of O'Neill that JMSF employees were using isolation excessively and inappropriately. Veleria Lawson, Executive Director of the JJC, responded to Attorney Simkins, copying Defendant Felix Mickens, stating that she would look into the matter. However, Defendants have not since changed their isolation policies or practices.

147. On April 5, 2010, Defendants placed O'Neill in isolation at JMSF for two days after being assaulted by another resident. The other resident had repeatedly punched O'Neill in the head with closed fists, and fractured his jaw. O'Neill received no procedural due process before being placed in prehearing isolation. Officers D. Scott, T. Stathoplos and Lt. A. Morichetti placed O'Neill in prehearing isolation. Lt. Oswald was consulted about the placement, Officer Shearer supervised the placement, and Defendant Captain J. Saville, acting as the Superintendent's designee, approved it.

148. O'Neill's time in isolation exceeded the sanction ultimately recommended. At the Courtline hearing, Defendant "John or Jane Doe # 14" imposed a sanction of one day of

isolation, even though O'Neill was clearly the victim of an assault. The two days O'Neill had already spent in isolation were credited toward this sanction.

149. On April 9, 2010, after the April 5, 2010 assault on O'Neill by another youth at JMSF, UMDNJ medical personnel Ronald Epstein, Shannon Firstbrook, LPN, and Jennifer Wolgast, APN, treated O'Neill for a broken jaw and recommended that he be protected on "medical restricted status." Ronald Epstein, Shannon Firstbrook LPN, and Jennifer Wolgast, APN only discovered that O'Neill's jaw was broken after four days of O'Neill complaining of jaw pain and making two requests to be seen by medical staff at "sick call." Instead of housing O'Neill in an infirmary, hospital unit, or other less restrictive environment, Defendants again placed O'Neill in a small locked isolation cell for seven days; denied him access to any education; offered him no opportunities for recreation time outside of the isolation cell; only permitted him to exit his isolation cell once daily for a shower; and denied him access to his attorney for seven days, despite his repeated requests to speak with counsel.

150. Only after a legal intern from the Children's Justice Clinic Rutgers Law School-Camden intervened on O'Neill's behalf, after O'Neill had spent seven days in isolation, did Defendants move O'Neill into a less restrictive setting and permit him access to education and recreation.

151. On June 29, 2010, Defendants placed O'Neill in prehearing isolation at NJTS for four days for cursing. O'Neill received no procedural due process before being placed in prehearing isolation. Officers SCO W. Roberts, SCO Rooney, SCO Roberts, and Lt. D. Hazel placed O'Neill in isolation. Officer Page supervised the placement. Defendant Chief Stellman, acting as the Superintendent's designee, approved the placement.

152. Again, O'Neill's prehearing isolation exceeded the sanction ultimately recommended for him. At the Courtline hearing on or about July 2, 2010, Defendant "John or Jane Doe # 14" dismissed the cursing charge as unfounded, imposed a sanction of one day for a lesser charge of abusive language, and credited O'Neill's time served in isolation toward the sanction.

153. Between June 29, 2010 and July 2, 2010, while he was held in isolation, O'Neill asked to speak to a counselor but was told by an NJTS guard that counselors did not go to that part of the building. In a letter dated August 2, 2010 from Defendant Felix Mickens to O'Neill's attorney Sandra Simkins, Defendant Felix Mickens stated "[t]here is no affirmative record indicating that Resident [S.] was treated by Mental Health personnel during the four days he was assigned to UH-5. Even though JJC policy requires that residents on restricted status be seen regularly ... mental health records did not have any record of visiting him at the time in question."

154. During this same period of isolation, O'Neill was held for four days in extreme heat.

155. During this same period of isolation, O'Neill also asked to appeal the decision of the hearing officer. NJTS staff advised him that appealing the decision would only result in his being kept in isolation longer.

156. O'Neill nevertheless attempted to appeal this decision.

157. At all relevant times, pursuant to New Jersey Administrative Code § 13:101-7.5, the Superintendent of JMSF and NJTS, respectively, or his or her designee, had the responsibility, upon conclusion of review of an appeal by a juvenile inmate, to either rescind the

Hearing Officer's decision – with a new hearing or not – downgrade the sanctions, order a new hearing, or uphold the decision of the hearing officer with no change in the penalty.

158. The treatment team decided to uphold the decision, concluding that the “sanction [was] appropriate.” Defendant Assistant Superintendent Cleo Hendrix signed the decision of the treatment team.

159. On July 10, 2010, O'Neill was again placed in prehearing isolation for three days, from 9:55 a.m. on July 30, 2010 until his Courtline hearing at 12:34 p.m. on August 2, 2010. O'Neill received no procedural due process before being placed in prehearing isolation. Officers Lt. M. Whartenby, R. Companioni, W. Hill and R. Hulse placed O'Neill. Officer Rivera supervised this placement and Defendant Capt. Mitten, acting as the Superintendent's designee, approved it.

160. Again, O'Neill's time in prehearing room restriction exceeded the sanction ultimately recommended. At the Courtline hearing, Defendant “John or Jane Doe # 15” ordered that O'Neill receive a sanction of two days isolation, with the time O'Neill already served on prehearing isolation credited toward this sanction.

161. On August 25, 2010, O'Neill was placed in prehearing isolation at NJTS for a day and a half, from 8:17 p.m. on August 25, 2010 until his Courtline hearing at 12:05 p.m. on August 27, 2010 after he was assaulted by another resident after his work shift at the NJTS barbershop. O'Neill received no procedural due process before being placed in prehearing isolation. Officers SCO D. Rooney, SCO T. Trout, and Lt. D. Hazel placed him in prehearing isolation, Officer Page supervised it, and Defendant Chief Stellman, acting as the Superintendent's designee, approved it.

162. At the Courtline hearing, Defendant Dennis Wert ordered that O'Neill receive a sanction of two days isolation in room restriction, with the time O'Neill already served on prehearing isolation credited toward this sanction.

163. O'Neill again attempted to appeal the decision, but the treatment team decided to uphold the decision because the "sanction [was] appropriate." Per N.J.A.C. § 13:101-7.5, Defendant Assistant Superintendent Cleo Hendrix signed the decision of the treatment team.

164. In September, 2010 at NJTS, Defendants placed O'Neill in prehearing isolation for one day after he and another resident were joking around in the shower. O'Neill received no procedural due process before being placed in prehearing isolation. Defendant "John or Jane Doe # 12," acting as Superintendent or his designee, approved this placement.

165. During the Courtline hearing, Defendant "John or Jane Doe # 16" imposed a sanction of one day of isolation, with the time O'Neill already served in prehearing isolation credited toward this sanction.

166. At all relevant times, pursuant to N.J.A.C. § 13:101.8.1(a), Defendants Linda Thomas and Craig Farr, the Superintendents of the JMSF and NJTS, respectively, or their designees, were responsible for each order of prehearing isolation pending the actual hearing on the charges before a hearing officer.

167. At all above-enumerated times, pursuant to N.J.A.C. § 13:101.8.1(a), the JMSF Correctional Officers acted as designees of Superintendent Linda Thomas to approve the placement of O'Neill in pre-hearing room restriction at JMSF.

168. At all above-enumerated times, pursuant to N.J.A.C. § 13:101.8.1(a), the NJTS Correctional Officers acted as designees of Superintendent Craig Farr to approve the placement of O'Neill in pre-hearing room restriction at NJTS.



169. The conditions of O'Neill's isolation mirrored Troy's. He was placed in a cell approximately seven feet wide by seven feet long. O'Neill was required to eat every meal in the isolation cell; was only allowed out of the isolation cell for a shower; was denied access to education, including the special education services detailed in his IEP; he was denied all personal possessions in the isolation cell, including education materials, except for a book he requested a few times while in isolation at JMSF; was denied any opportunity for exercise or recreation outside the isolation cell; and had no access to any programming or activities to which the general population of JMSF and NJTS had access, including career services, library time, and vocational training such as his current job at the NJTS barbershop.

170. During his isolation at JMSF, O'Neill was visited by mental health clinicians making room restriction rounds; however, these rounds were not therapeutic; rather, personnel making these rounds merely considered whether O'Neill was stable or experiencing acute distress.

171. On days when O'Neill was not in isolation, the conditions of his confinement were significantly more rehabilitative and therapeutic, including the ability to leave his cell; to attend school; to receive mental health counseling; learn job skills; participate in activities and recreation with other youth; receive mail, phone calls, and visits from his family; retain personal possessions; and eat meals with other residents.

172. As described above, O'Neill was repeatedly assaulted by other residents at JMSF. Yet instead of taking steps to protect O'Neill from future harm, Defendants repeatedly and unjustifiably punished O'Neill by isolating him.

173. Prior to placing O'Neill in isolation, Defendants did not attempt any less restrictive alternatives to protect O'Neill from future harm.

174. While in isolation, O’Neill was not able to file a formal grievance regarding the reasons for his confinement and the conditions of his confinement either because there were no avenues available or, alternatively, his attempts to grieve his conditions were impeded by JJC staff. Specifically, O’Neill asked a JJC security officer how he could appeal the decision to place him in isolation and was threatened that appealing his sanction would only result in his prolonged isolation.

175. Furthermore, when O’Neill attempted to address his conditions of confinement in juvenile court, including challenges to JJC’s excessive use of isolation and failure to protect him from harm, the juvenile court refused to hear his motion. On May 4, 2010, the Children’s Justice Clinic at the Rutgers School of Law-Camden filed a motion before Judge Charles Dortch, Superior Court of New Jersey, Camden County, to conduct a recall hearing on O’Neill’s behalf and re-evaluate O’Neill’s juvenile placement based on his conditions of confinement. On June 10, 2010, Judge Dortch heard and denied the motion, finding that the court had no jurisdiction to consider allegations against the JJC.

176. N.J.S.A. § 2A:4A-45 clearly states, “The court shall retain jurisdiction over any case in which it has entered a disposition... and may at any time for the duration of that disposition, if... it finds violation of the conditions of the order of disposition, substitute any other disposition which it might have made originally.” N.J. Court Rule 5:24-6 clearly states “[T]he court may correct, change or modify an order of disposition at any time pursuant to law and may entertain an application for post-disposition relief.” There appears to be no limitation on the court’s jurisdiction to hear post-disposition matters. Thus the court’s reasoning for refusing to find jurisdiction remains unclear.

177. O’Neill’s access to the courts was also limited by lack of post-disposition counsel. Prior to the involvement of the Rutgers Children’s Justice Clinic, O’Neill had no access to any post-disposition advocate, despite repeated periods of isolation and despite ongoing assaults against him by other residents.

178. When a juvenile court in New Jersey orders placement in JJC custody, it imposes a ceiling on the length of confinement. Aside from this, however, the court does not determine the child’s tentative or actual release date. This administrative review of disposition occurs behind closed doors, and a youth is not allowed to have an attorney present. Counsel is not present to ensure the availability and provision of appropriate treatment and services. Nor is counsel present to prevent arbitrary extensions of secure confinement.

179. Because of their developmental characteristics, juveniles as a class are ill-equipped to represent themselves and protect their rights during parole proceedings. Without counsel, juveniles have no one to remind the court of its rehabilitative purpose and ensure that the juvenile's release occurs in a timely and appropriate manner.

180. The lack of post-dispositional advocacy and relief in New Jersey and the corresponding lack of any opportunity for review of a youth’s placement by the juvenile court has left O’Neill with no place to turn. Under current New Jersey practices, he has no access to a tribunal that can grant him relief for the repeated violations of his rights or protect him from misuse of power by an agency whose actions are hidden from public view.

### **Relevant New Jersey Regulations Governing JJC Facilities**

#### *General Care*

181. The JJC has the obligation under N.J.S.A. § 2A:4A-21:

- a) to “provide for the care, protection, and wholesome mental and physical

development of juveniles” in their custody, N.J.S.A. § 2A:4A-21(a); and

- b) “when [the juvenile] is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents,” *id.* at -21(b); and
- c) “to ensure that juveniles who are wards of the State receive the protection of the State.” *Id.* at -21(e).

182. Defendants are required, under N.J.A.C. § 13:101-3.1, to treat juveniles in JJC care respectfully, impartially and fairly; and to provide nutritious meals; a wide range of reading material; proper bedding and clothing; and the opportunity to participate in counseling, education, vocational training and employment.

183. Defendants must, pursuant to N.J.A.C. §§ 13:101-3.1 and 13:101-8.12, provide Troy and O’Neill with regular opportunities for recreation and exercise, even while they are placed in isolation.

184. In addition, Defendants must, under N.J.A.C. §§ 13:101-3.1 and 13:101-8.4, provide juveniles in their care with access to reading and writing materials, whether or not they are in isolation.

185. Defendants repeatedly denied Troy and O’Neill reading and writing material and access to education, recreation, and exercise while they were held in isolation. Defendants also repeatedly denied Troy proper bedding and clothing, and an opportunity to participate in counseling.

#### *Mental Health Care*

186. Defendants had a duty under N.J.A.C. §§ 13:95-8.9, 13:101-3.1 to provide Troy with counseling services and other mental health care.

187. Juveniles in JJC custody have the right to participate in counseling. N.J.A.C. § 13:101-3.1(a)(4), (b)(8).

188. Defendants on multiple occasions denied Troy access to counseling and other mental health care despite his direct requests and his observable emotional and mental state of distress.

*Suicide Prevention and Special Observation Status*

189. The New Jersey Administrative Code subchapter on “suicide prevention” sets forth as its purpose “to establish guidelines for the identification, placement and monitoring of juveniles who are deemed to be at risk for suicide.” N.J.A.C. § 13:95-16.1. While the primary policy objectives of the chapter are to “prevent suicides among the juveniles under its care and to identify and manage juveniles who pose a suicide risk,” N.J.A.C. § 13:95-16.3(a), the chapter makes no reference to the provision of mental health treatment or the establishment of a therapeutic environment for suicidal youth. No New Jersey regulations direct staff to intervene therapeutically to treat, rehabilitate or protect suicidal youth in JJC custody.

190. A staff member or volunteer who “suspects that a juvenile may be at risk for suicidal behavior, shall immediately convey this information to the highest ranking custody supervisor on duty or a designated professional person.” N.J.A.C. § 13:95-16.3(b). Juveniles who appear to be suicide risks are then placed on “special observation status” (SOS). N.J.A.C. § 13:95-16.4.

191. Once on SOS, the regulations direct that a psychologist, psychiatrist or advanced practice nurse interview the juvenile within 24 hours, and complete a Monitoring Report. N.J.A.C. § 13:95-16.6. They also allow the practitioner to change the level of supervision to close or constant watch, N.J.A.C. § 13:95-16.8, or to release the juvenile from SOS, N.J.A.C. §

13:95-16.11. Again, the focus is exclusively on monitoring, not treating, the suicidal youth.

192. The regulations similarly direct custody staff to fill in monitoring reports and to submit the reports to supervisory officials and place it in the medical records. N.J.A.C § 13:95-16.9. They also require the development of written post orders and management procedures for youth on SOS. N.J.A.C. § 13:95-16.14. Again, they do not provide any direction regarding addressing the youth’s mental health needs.

193. The regulations direct staff to “take action” only when a juvenile is “attempting to commit suicide or apparently has already committed suicide.” N.J.A.C. § 13:95-16.12. At this point, Center Control “shall advise the custody staff member or other staff person on actions to take and shall send such additional supervisory, emergency, medical or other staff as are deemed necessary.” N.J.A.C. § 13:95-16.12(b). After that, “custody staff member shall enter the room to take action necessary and appropriate to preventing a suicide or injury to a juvenile, provided that doing so does not pose an undue risk to his or her own safety or to the safety of others,” N.J.A.C. § 13:95-16.12(b).

194. The only other measures the regulations prescribe include: (1) determining which personal property a youth can have with him or her, N.J.A.C. § 13:95-16.10, and (2) designating a “cutting tool” to be “available to a custody staff officer for purposes of cutting down a hanging juvenile.” N.J.A.C. § 13:95-16.13.

195. Although the suicide prevention chapter of the New Jersey Administrative Code does not address placing such youth in isolation, there is no regulation that prohibits a JJC facility from secluding a youth on SOS in isolation. Indeed, this is precisely what occurred in Troy’s case – while on SOS he was held in isolation for approximately six months. Youth on SOS held in isolation are at the greatest risk of harm, given the alarming data demonstrating that

isolation exacerbates mental health problems, including suicidal ideation.

196. The SOS regulations do not provide any direction for how to work with youth on SOS in isolation to address their pressing mental health needs.

197. The JJC and its staff have an important and legitimate duty to take necessary steps to protect youth from harming themselves or committing suicide. However, monitoring alone, without treatment, places youth at risk of great harm. This is particularly true for youth like Troy who remain in isolation while they are on SOS.

*Isolation –  
Room Restriction and Prehearing Room Restriction*

198. The JJC is responsible for promulgating and enforcing various regulations which govern prehearing room restriction (prehearing isolation) and general room restriction (isolation).

199. In the New Jersey juvenile justice system, “room restriction” means confining a juvenile to the room where he usually sleeps, or in a segregated room that is isolated from the general population. N.J.A.C. § 13:101-1.3.

200. Room restriction is recognized as a form of punishment. N.J.A.C. § 13:101-6.16.

201. Under New Jersey law, there are three circumstances in which a juvenile may be confined to room restriction:

- a) before his or her hearing on charges of a disciplinary violation (“prehearing room restriction”), pursuant to N.J.A.C. § 13:101-8.1;
- b) as a sanction for a disciplinary violation, pursuant to N.J.A.C. § 13:101-6.1(b)(2); or
- c) to “eliminate an immediate threat to the safety of either the juvenile, staff or other juveniles, or to the orderly operation of the facility,” pursuant to

N.J.A.C. § 13:101-6.17(e).

202. New Jersey regulations do proscribe certain standards and limitations to reduce arbitrary and abusive use of prehearing room restriction and room restriction as a sanction for disciplinary actions. However, these regulations do not secure constitutionally-sufficient procedural and substantive due process for juveniles in JJC care.

203. N.J.A.C. § 13:101-8.1(c) provides factors that “*may* be considered” in deciding whether to impose prehearing room restriction on a juvenile.

204. New Jersey purports to establish limits on the duration and frequency of room restriction used both as a sanction for disciplinary violation and for prehearing room restriction, under N.J.A.C. § 13:101-6.17. These limits include:

a) A juvenile may not be subjected to room restriction for more than ten days in any 30 day period.

b) A juvenile may not be subjected to room restriction for more than five days for any disciplinary violation.

c) A juvenile must be afforded at least two consecutive days outside room restriction following any five-day period of room restriction.

205. However, N.J.A.C. § 13:101-6.17 concludes with an expansive “catch-all” provision that effectively provides for unlimited isolation. The “catch-all” broadly states, “Nothing in this section shall prevent the placement of a juvenile in room restriction for the minimum time necessary to eliminate an immediate threat to the safety of either the juvenile, staff or other juveniles, or to the orderly operation of the facility.” N.J.A.C. § 13:101-6.17(e).

206. Given the expansive “catch-all,” N.J.A.C. § 13:101-6.17(e) permits JJC officials to seclude a minor in isolation for an indefinite, and unconstitutionally long, period of time.



207. As applied to Troy, the “catch-all” provision of N.J.A.C. § 13:101-6.17(e) permitted Defendants to isolate Troy for approximately 178 to 188 days.

208. Further, under N.J.A.C. § 13:101-8.4(b), JJC staff must provide juveniles in isolation personal items, including reading and writing materials, to the same extent such items are provided to juveniles in the general population.

209. Even when the unit supervisor believes a juvenile may damage one of those items or may use the item to hurt himself or others, and denies such items, the unit supervisor must make every effort to supply a substitute for the item or to permit the juvenile to use the item under the supervision of a staff member, and must restore the item or activity as soon as safety allows. N.J.A.C. § 13:101-8.5.

210. Juveniles may never be deprived of items or activities for purposes of punishment or discipline. *Id.*

211. Pursuant to N.J.A.C. § 13:101-8.2(a), ventilation and a reasonable temperature must be maintained on a 24-hour basis while a juvenile is in room restriction.

212. Defendants repeatedly deprived Troy and O’Neill of personal items. Defendants also exposed Troy to extreme cold on multiple occasions and exposed O’Neill to extreme heat without air conditioning for a period of four days while in isolation.

#### *Procedure for Room Restriction*

213. New Jersey recognizes in its regulations that a juvenile is entitled to a hearing before room restriction can be imposed as a sanction for a disciplinary violation. Further, regulations provide that the juvenile is entitled to be present throughout the hearing, N.J.A.C. § 13:101-6.9, and has the right to compel the appearance of and cross examine witnesses. N.J.A.C. §§ 13:101-6.12, -6.13.

214. Under N.J.A.C. § 13:101-6.14, before room restriction may be imposed as a sanction for a disciplinary violation, there must be substantial evidence that a juvenile has committed a disciplinary violation.

215. Defendants have a duty, under N.J.A.C. § 13:101-1.1, to establish administrative due process safeguards in the disciplinary process and implement impartial and fair disciplinary procedures.

216. New Jersey fails to provide for representation by counsel for juveniles at disciplinary proceedings.

217. A “counsel substitute,” which may be present at disciplinary hearings, is defined as a “juvenile paralegal, teacher or social worker.” N.J.A.C. § 13:101-1.3. “Juvenile paralegals” are other youth detained in JJC secure facilities who have been approved to act as informal advocates for their peers in disciplinary hearings. *See* N.J.A.C. § 13:95-1.3.

218. A juvenile confined to room restriction as a sanction for a disciplinary violation has the right to appeal the decision, and the right to seek a stay of room restriction pending the appeal, pursuant to N.J.A.C. § 13:101-7.1 – 7.7 (“Appeals of Disciplinary Decisions”).

219. Defendants have an obligation to provide Troy and O’Neill with meaningful access to the courts or other post-disposition review, and the assistance of counsel. N.J.A.C. §§ 13:95-15.1(a), 13:101-3.1.

220. Contrary to Defendants’ obligations and in violation of juveniles’ rights, the “catch-all” provision, N.J.A.C. § 13:101-6.17(e), permits JJC officials to punish a juvenile without providing any due process of law.

221. A youth held in isolation pursuant to the “catch-all” provision, N.J.A.C. § 13:101-6.17(e), is afforded no right to appeal because the placement is not based on a “disciplinary

decision” that would trigger the rights outlined in N.J.A.C. §§ 13:101-7.1 – 7.7. As applied to Troy, the absence of a right to appeal the imposition of room restriction ordered under N.J.A.C. § 13:101-6.17(e) resulted in Troy unconstitutionally enduring approximately six months in isolation without legal recourse, as the vast majority of the days he languished in isolation were not the result of a disciplinary proceeding or decision.

222. JJC officials retain unrestricted, excessive and arbitrary discretion to make decisions about the purpose, duration, frequency and conditions of a juvenile’s placement in isolation.

*Procedure for Prehearing Room Restriction*

223. N.J.A.C. § 13:101-8.1(a) provides: A juvenile may be placed in room restriction pending the hearing of disciplinary charges by a Disciplinary Hearing Officer, provided, however, that such prehearing room restriction shall be served only in a secure facility with an assigned Disciplinary Hearing Officer, and, shall be limited to instances where the Superintendent or designee determines that prehearing room restriction is necessary for the safety of the juvenile, staff or other juveniles, or for the orderly operation of the facility.

224. If a juvenile is held in prehearing room restriction under N.J.A.C. § 13-101-8.1(a), the facility must provide “a hearing within three days, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.” N.J.A.C. § 13:101-6.6.

225. On their face, N.J.A.C. §§ 13:101-8.1(a) and 13:101-6.6(c) permit JJC officials to hold a juvenile in isolation for days at a time without an independent review of this punishment.

226. As applied to O’Neill, N.J.A.C. §§ 13:101-8.1(a) and 13:101-6.6(c) allowed for

the unbridled abuse of discretion by JJC officials who secluded O’Neill in “prehearing” isolation for days at a time without an independent review of charges – many of which were ultimately declared unfounded – including minor disciplinary violations for fights that he was not involved in, and fights in which he was the victim or in which he was acting in self defense.

227. On their face, N.J.A.C. §§ 13:101-8.1(a) and 13:101-6.6(c) permit JJC officials to hold a juvenile in isolation without constitutionally-sufficient procedural due process.

228. As applied to O’Neill, N.J.A.C. §§ 13:101-8.1(a) and 13:101-6.6(c) permitted Defendants to repeatedly hold O’Neill in isolation for days at a time without any procedural due process. When the charges against O’Neill were finally reviewed by a hearing officer, the officer on multiple occasions found that O’Neill had been held in isolation for days longer than was justified by his conduct.

229. Time spent by a juvenile in prehearing room restriction must be credited against any sanction of room restriction imposed on that juvenile for a disciplinary violation. N.J.A.C. § 13:101-8.1(d).

230. As applied to O’Neill, this provision allowed him to be repeatedly held in an isolation cell with no one independently reviewing the justification or duration of the punishment until several days later. Often the amount of time he spent isolated under prehearing room restriction was longer than the sanction ultimately approved by the hearing officer. In those instances, O’Neill received no compensation for the days of isolation endured without cause and in violation of his right to procedural and substantive due process.

**National and International Standards Proscribe the Isolation of Juveniles Under the Circumstances Described Herein**

231. National standards governing corrections and juvenile justice uniformly condemn the use of isolation in juvenile facilities and provide that where isolation is necessary in certain

acutely dangerous situations, any isolation should be as brief as possible.

232. The United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention Standards for the Administration of Juvenile Justice (“JJJPA Standards”) provide that *no juvenile should be placed in room confinement for more than twenty-four hours*. Standards for the Admin. of Juvenile Justice § 4.52 (Nat’l Advisory Committee for Juvenile Justice and Delinquency Prevention 1980).

233. While the American Bar Association (ABA) Juvenile Justice Standards Relating to Corrections Administration permit the isolation of juveniles for up to ten days for major infractions and five days for minor infractions, these Standards recommend that isolation be accomplished in the juvenile's own room or, if specially designated rooms are used, that those rooms resemble the ordinary rooms of the facility as nearly as possible. Juvenile Justice Standards Relating to Corr. Admin. §§ 7.11(H)(4-5), 8.7 (1980). Recognizing the severity of isolation as a sanction, the ABA Standards condemn the use of special dietary restrictions or extraordinary sensory or physical deprivations during isolation beyond the confinement itself, *id.* at § 7.11(H)(7); require access to reading materials; one hour of recreation in every twenty-four hour period of isolation; and visits at least hourly by a specially designated and trained staff person. *Id.* at § 7.11(H)(7-8). A staff member should remain with the juvenile unless safety considerations make it impossible for the staff member to remain, in which case the staff member should maintain constant observation of the juvenile. *Id.* at § 7.11(H)(8).

234. Performance-based Standards published by the Council of Juvenile Correctional Administrators (“CJCA Performance-based Standards”) provide that isolation should not be used punitively, but rather to neutralize out-of-control behavior and redirect it into positive behavior. Performance-based Standards 9 (Order Process (OP) 13) (Oct. 2010). The standards require that

facility staff record each time a youth is held in isolation and that each incident is reviewed to see if isolation was appropriate and if it could have been avoided or shortened. *Id.* at Order Standard Expected Practice (OEP) 14-16.

235. With respect to access to mental health services, JJDP Standards state that “[t]raining schools should provide programs designed to protect and promote the... mental well-being of juveniles placed therein, to discover those in need of short-term and long-term medical and dental treatment, and to contribute to their rehabilitation by appropriate diagnosis and treatment.” Standards for the Admin. of Juvenile Justice § 4.217 (Nat’l Advisory Comm. for Juvenile Justice and Delinquency Prevention 1980).

236. The National Commission on Correctional Health Care’s Standards for Health Services in Juvenile Detention and Confinement Facilities state that mental health services must be available for all juveniles who require them. Standards for Health Services in Juvenile Detention and Confinement Facilities § Y-G-04 (Nat’l Comm’n on Corr. Health Care 2004). The standard specifically notes that “[m]ental health treatment is more than prescribing psychotropic medications” and “intends that all juveniles with mental health problems are able to maintain their best level of functioning.” *Id.*

237. The American Academy of Pediatrics recognizes the high prevalence of mental health problems among youth in the juvenile justice system, and states that children and adolescents confined in correctional facilities should be provided with health care services at least equivalent to those accepted as standards of care in the community. Am. Acad. of Pediatrics Comm. on Adolescence, *Health Care for Children and Adolescents in the Juvenile Correctional Care System*, 107 *Pediatrics* 799, 800-803 (2001).

238. CJCA Performance-based Standards state that one of the primary goals in juvenile

correctional facilities should be “to identify and effectively respond to youths’ health, mental health and related behavioral problems throughout the course of confinement through the use of professionally-appropriate diagnostic, treatment and prevention tools.” Performance-based Standards 13 (Health and Mental Health Goal) (2010). To serve this goal, the recommended practices include: thorough intake screenings completed within one hour of admission to the facility; mental health assessments for all youths within seven days of admission; the availability of trained and qualified staff to conduct and interpret screenings and assessments; prompt and appropriate referrals for youth whose screenings or assessments indicate mental illness; and the creation of a treatment plan for each youth that is based on various assessments and is continually documented and updated based on the youth’s individual needs. *Id.* at 13-18 (HEP 1-26).

239. National and state standards and guidelines recognize that it is essential for youth confined in juvenile justice facilities to have a meaningful opportunity to exercise every day.

240. The OJJDP Standards state that secure juvenile facilities should provide opportunities for exercise and constructive and entertaining leisure time activity, with at least two hours of recreation available on school days and three hours on weekend days. Standards for the Admin. of Juvenile Justice § 4.218 (Nat’l Advisory Comm. for Juvenile Justice and Delinquency Prevention 1980). The standards further provide that juveniles placed in room confinement for more than twelve hours should be allowed at least thirty minutes of exercise and recreation outside the room in which they are confined. *Id.* at § 4.52.

241. The National Commission on Correctional Health Care’s Standards for Health Services in Juvenile Detention and Confinement Facilities require that all juveniles be offered the health benefits of exercise. Standards for Health Services in Juvenile Detention and

Confinement Facilities § Y-F-03 (Nat'l Comm'n on Corr. Health Care 2004). The report highlights the importance of this principle for youth with mental health issues, noting that “[h]igh-energy activities also help alleviate stress that may build up among adolescents. *Id.*”

242. A “choice of recreational activities” is included as part of the “safe, human, caring environment” guaranteed under the ABA standards. ABA Juvenile Justice Standards Relating to Corr. Admin. § 4.9 (1980). Even in secure facilities, juveniles should be provided with access to a choice of individual and group recreational activities for at least two hours each day. *Id.* at § 7.11(E)(3). The standards require that such activities “provide opportunities for strenuous physical exercise.” *Id.*

243. The CJCA Performance-based Standards recommend at least one hour of large muscle exercise each weekday and two hours each day on weekends for confined youth. Performance-based Standards 19 (HEP 27-30) (Council of Juvenile Corr. Admin. 2010). Such activities can include running, jogging, basketball, weight lifting, or aerobics. *Id.*

244. The U.S. Department of Agriculture and the U.S. Department of Health and Human Services recommend that children and adolescents engage in at least sixty minutes of physical activity on most, preferably all, days of the week. *Dietary Guidelines for Americans, supra* at 20.

245. The international community has condemned the isolation of juveniles. International law prohibits the use of isolation as a disciplinary tool. Specifically, the United Nation’s Rules for the Protection of Juveniles Deprived of their Liberty declare that “all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the



juvenile concerned.” United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, Annex ¶ 67 (Dec. 14, 1990).

246. Furthermore, long-term solitary confinement can be a form of psychological torture, which international law strictly prohibits. *See, e.g.*, United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (Dec. 10, 1984). *See also* Atul Gawande, *Hellhole*, *The New Yorker*, Mar. 30, 2009.

### CLAIMS

247. Each of the preceding paragraphs is incorporated herein.

248. At all relevant times, Defendants acted under color of state law.

249. Throughout the periods during which Troy and O’Neill were involuntarily in the custody of the JJC, they were dependent upon Defendants to protect them from harm and to provide for their basic needs.

250. The extended isolation and conditions of confinement suffered by O’Neill and Troy, and the policies, procedures, and practices enacted and carried out by the Defendants are not rationally related to a legitimate, non-punitive governmental purpose and are excessive in relation to any purpose that Defendants claim.

251. Defendants’ excessive confinement of Troy and O’Neill and the inhumane conditions of confinement imposed on them were arbitrary, improper, shock the conscience, offend notions of fairness, are offensive to human dignity, and constitute cruel and unusual punishment.

252. Defendants were deliberately indifferent to: (a) Troy’s rights to be free from excessive isolation and the risk of irreparable harm from continuously secluding him in isolation for approximately six months; (b) Troy’s serious mental health and medical needs and the risk of

irreparable harm from not providing him mental health care, including individual therapy and an appropriate therapeutic placement; (c) Troy's health, safety, and liberty interest in bodily integrity while in state custody; (d) Troy's right to have his basic needs provided for while in state custody; and (e) Troy's right to procedural due process.

253. Defendants were deliberately indifferent to: (a) O'Neill's rights to be free from excessive isolation and the risk of irreparable harm from secluding him in isolation for approximately 50 days; (b) O'Neill's right to have his basic needs provided for while he was secluded in isolation while in state custody; (c) O'Neill's health, safety, and liberty interest in bodily integrity while in state custody; and (d) O'Neill's right to procedural due process.

254. As a direct and proximate result of Defendants' acts and omissions as described herein, Troy and O'Neill suffered and continue to suffer physical, psychological, and emotional harm.

**FIRST COUNT**  
**(Claims Under 42 U.S.C. § 1983 – Violations of  
Substantive Due Process for Excessive and Arbitrary Use of Isolation; Inhumane  
Conditions of Confinement; Lack of Mental Health Care; and Failure to Protect from  
Harm)**

Asserted by Plaintiff Troy against Defendants JJC-JCC, JMSF-ICC, Administrators, Shift Commanders, Mental Health Providers, and OSIS Staff, in their individual capacities

255. Each of the preceding paragraphs is incorporated herein.

256. Defendants confined Troy in isolation continuously for approximately six months. During this time, Defendants deprived Troy of education; access to educational materials; other programming; mental health treatment; opportunity for exercise or recreation; personal possessions; proper nutrition; clothing and bedding; and opportunities to interact with other youth. These cruel living conditions constituted an objectively serious deprivation of life's minimum necessities.

257. Defendants failed to provide Troy with specific mental health treatment, therapy, and counseling recommended by mental health care professionals, despite Troy's repeated pleas and obvious symptoms of mental health problems.

258. Defendants had an affirmative duty under the United States Constitution, the New Jersey Constitution, and New Jersey statutes and regulations to ensure the safety and wellbeing of Troy and protect him from harm, including self-inflicted harm, while in their custody.

259. Defendants breached these duties. As a result, Troy was incarcerated under conditions posing a substantial risk of serious harm to him.

260. Defendants' acts and omissions enumerated above shock the conscience and subjected Troy to the deprivation of his substantive due process rights under the Fourteenth Amendment of the U.S. Constitution.

### **SECOND COUNT**

#### **(Claims Under New Jersey Civil Rights Act – Violations of Substantive Due Process for Excessive and Arbitrary Use of Isolation; Inhumane Conditions of Confinement; Lack of Mental Health Care; and Failure to Protect from Harm)**

Asserted by Plaintiff Troy against Defendants JJC-JCC, JMSF-ICC, Administrators, Shift Commanders, Mental Health Providers, and OSIS Staff, in their individual capacities

261. Each of the preceding paragraphs is incorporated herein.

262. The New Jersey Civil Rights Act, N.J.S.A. § 10:6-2 creates a private state law cause of action for deprivation of substantive due process rights under the Federal and State Constitutions.

263. The New Jersey Constitution provides substantive due process protections analogous or superior to those provided under the United States Constitution.

264. Defendants' acts and omissions enumerated above subjected Troy to the deprivation of his substantive due process rights under the Fourteenth Amendment of the U.S. Constitution and Article 1, Paragraph 1 of the New Jersey Constitution.

**THIRD COUNT**  
**(Claims Under 42 U.S.C. § 1983 - N.J.A.C. § 13:101-6.7(e) Unconstitutional on its Face for Violating Substantive Due Process)**

Asserted by Plaintiff Troy against Defendant Veleria Lawson in her official capacity

265. Each of the preceding paragraphs is incorporated herein.

266. An actual and substantial controversy exists between Troy and Defendant.

267. Veleria Lawson is the Executive Director of the JJC, which promulgated and is responsible for enforcing N.J.A.C. § 13:101-6.17(e).

268. N.J.A.C. § 13:101-6.17(e) on its face impermissibly permits a juvenile to be secluded in isolation for an indefinite period of time, in violation of substantive due process rights under the Fourteenth Amendment of the United States Constitution.

**FOURTH COUNT**  
**(Claims Under 42 U.S.C. § 1983 – Violations of Procedural Due Process)**

Asserted by Plaintiff Troy against Defendants JJC-JCC, JMSF-ICC, Administrators, Shift Commanders, Mental Health Providers, and OSIS Staff, in their individual capacities

269. Each of the preceding paragraphs is incorporated herein.

270. Defendants continuously secluded Troy in isolation for approximately six months without providing Troy any procedural due process. Defendants held meetings to determine Troy's continued isolation in room restriction without notifying Troy's father, his attorney, or any other advocate of the meeting or permitting any of these individuals to participate on Troy's behalf. Defendants denied Troy an opportunity to consult with counsel, an opportunity to be

heard, or any opportunity to appeal the decision to confine him under these unconstitutional conditions.

271. There is no legitimate government purpose for failing to provide procedural due process before isolating a juvenile for approximately six months, or, in the alternative, the measure is excessive in light of any legitimate government purpose.

272. Defendants' acts and omissions enumerated above subjected Troy to the deprivation of his procedural due process rights under the Fourteenth Amendment of the U.S. Constitution.

**FIFTH COUNT**  
**(Claims Under Article 1, Paragraph 1 of the New Jersey Constitution**  
**– Violations of Procedural Due Process)**

Asserted by Plaintiff Troy against Defendants JJC-JCC, JMSF-ICC, Administrators, Shift Commanders, Mental Health Providers, and OSIS Staff, in their individual capacities

273. Each of the preceding paragraphs is incorporated herein.

274. The New Jersey Constitution itself provides a remedy for violations of its provisions, even in the absence of implementing legislation.

275. The New Jersey Constitution provides broader procedural due process protections than the United States Constitution.

276. Defendants were deliberately indifferent to Troy's right to procedural due process rights under Article 1, Paragraph 1 of the New Jersey Constitution.

277. Defendants' acts and omissions enumerated above subjected Troy to the deprivation of his procedural due process rights under the Fourteenth Amendment of the U.S. Constitution and Article 1, Paragraph 1 of the New Jersey Constitution.

**SIXTH COUNT**  
**(Negligence Claims)**

Asserted by Plaintiff Troy against Defendants JJC-JCC, JMSF-ICC, Administrators, Shift Commanders, Mental Health Providers, and OSIS Staff, in their individual capacities

278. Each of the preceding paragraphs is incorporated herein.

279. Defendants owed Troy a duty of care under common law and under several New Jersey statutes and regulations, including N.J.S.A. § 2A:4A-21, and N.J.A.C. §§ 13:95-8.9, 13:95-15.1(a), 13:101-1.1, 13:101-3.1, 13:101-8.4, and 13:101-8.12.

280. Defendants breached those duties by their acts and omissions.

281. Defendants' breach of duty proximately caused Troy to suffer physical and emotional injuries.

**SEVENTH COUNT**  
**(Claims Under 42 U.S.C. § 1983 – Violations of  
Substantive Due Process for Excessive and Arbitrary Use of Isolation; Inhumane  
Conditions of Confinement; and Failure to Protect from Harm)**

Failure to protect claims asserted by Plaintiff O'Neill against only Defendant Linda Thomas and Defendant William Howard in their individual capacities

Other substantive due process claims asserted by Plaintiff O'Neill against Defendants Administrators except Gregory Ackles, JMSF Correctional Officers, NJTS Correctional Officers, and Courtline Hearing Officers, in their individual capacities

282. Each of the preceding paragraphs is incorporated herein.

283. Defendants confined O'Neill in isolation in room restriction excessively and abusively. Defendants confined O'Neill for approximately 50 days for minor disciplinary infractions. He was confined in shocking conditions, without education, other programming, opportunities for exercise or recreation, opportunities to interact with other youth, and, on most occasions, without any personal possessions or educational materials. These cruel living conditions constituted an objectively serious deprivation of life's minimum necessities.

284. Defendants had an affirmative duty under the United States Constitution, the New Jersey Constitution, and New Jersey statutes and regulations to ensure O'Neill's safety and wellbeing and protect him from harm inflicted by others while in their custody.

285. Defendants breached these duties. As a result, O'Neill was incarcerated under conditions posing a substantial risk of serious harm to him.

286. Defendants' acts and omissions enumerated above shock the conscience and subjected O'Neill to the deprivation of his substantive due process rights under the Fourteenth Amendment of the U.S. Constitution.

**EIGHTH COUNT**  
**(Claims Under New Jersey Civil Rights Act – Violations of  
Substantive Due Process)**

Asserted by Plaintiff O'Neill against Defendants Administrators except Gregory Ackles,  
JMSF Correctional Officers, NJTS Correctional Officers, and Courtline Hearing Officers, in  
their individual capacities

287. Each of the preceding paragraphs is incorporated herein.

288. The New Jersey Civil Rights Act, N.J.S.A. § 10:6-2 creates a private state law cause of action for deprivation of substantive due process rights under the Federal and State Constitutions.

289. The New Jersey Constitution provides substantive due process protections analogous or superior to those provided under the United States Constitution.

290. Defendants' acts and omissions enumerated above subjected O'Neill to the deprivation of his substantive due process rights under the Fourteenth Amendment of the U.S. Constitution and Article 1, Paragraph 1 of the New Jersey Constitution.

**NINTH COUNT**

**(Claims Under 42 U.S.C. § 1983 – Lack of Procedural Due Process before Extended Isolation)**

Asserted by Plaintiff O’Neill against Defendants Administrators except Gregory Ackles, JMSF Correctional Officers, NJTS Correctional Officers, and Courtline Hearing Officers, in their individual capacities

291. O’Neill was confined to isolation arbitrarily, excessively, and without the safeguard of any of the pre-confinement and post-confinement procedures, standards, and limitations required by procedural due process.

292. Not only did Defendants continually seclude O’Neill in isolation, in shocking conditions, but they did so without providing O’Neill any meaningful procedural due process. Under the guise of “prehearing room restriction,” Defendants denied O’Neill any opportunity to consult with counsel, a meaningful opportunity to be heard, and the ability to appeal the decision, before repeatedly placing him in isolation for multiple days for minor and often unsubstantiated infractions. Any procedural safeguards that were in place were constitutionally deficient.

293. There is no legitimate government purpose for failing to provide procedural due process before isolating a juvenile for multiple days, or, in the alternative, the measure is excessive in light of any legitimate government purpose.

294. Defendants’ acts and omissions enumerated above subjected O’Neill to the deprivation of his procedural due process rights under the Fourteenth Amendment of the U.S. Constitution.

**TENTH COUNT**

**(Claims Under Article 1, Paragraph 1 of the New Jersey Constitution – Violations of Procedural Due Process)**

Asserted by Plaintiff O’Neill against Defendants Administrators except Gregory Ackles, JMSF Correctional Officers, NJTS Correctional Officers, and Courtline Hearing Officers, in their individual capacities



295. Each of the preceding paragraphs is incorporated herein.

296. The New Jersey Constitution itself provides a remedy for violations of its provisions, even in the absence of implementing legislation.

297. The New Jersey Constitution provides broader procedural due process protections than the United States Constitution.

298. Defendants' acts and omissions enumerated above subjected O'Neill to the deprivation of his procedural due process rights under the Fourteenth Amendment of the U.S. Constitution and Article 1, Paragraph 1 of the New Jersey Constitution.

#### **ELEVENTH COUNT**

#### **(Claims under 42 U.S.C. § 1983 - N.J.A.C. §§ 13:101-6.6(c) and 13:101-8.1(a) Unconstitutional on their Face for Violating Procedural Due Process)**

Asserted by Plaintiff O'Neill against Veleria Lawson in her official capacity

299. Each of the preceding paragraphs is incorporated herein.

300. An actual and substantial controversy exists between O'Neill and Defendant.

301. Defendant Veleria Lawson is Executive Director of the JJC, which promulgated and is responsible for enforcing N.J.A.C. §§ 13:101-6.6(c) and 13:101-8.1(a).

302. N.J.A.C. §§ 13:101-6.6(c) and 13:101-8.1(a) permit JJC to seclude a juvenile in prehearing room restriction for up to three days, or, if the third day falls on a weekend or holiday, until the following Monday, without any procedural due process, including the ability to consult with counsel, the right to a meaningful opportunity to be heard, and the right to appeal the decision, in violation of procedural due process rights under the Fourteenth Amendment of the United States Constitution.

303. Remedies available at law, such as monetary damages, are inadequate to compensate O'Neill fully for injuries sustained as a result of continued enforcement of these unconstitutional regulations.

304. The hardship to O'Neill of Defendant's continued enforcement of N.J.A.C. §§ 13:101-6.16(b)(2) and 13:101-8.1(a) outweighs any hardship to Defendant that an injunction would cause.

305. The public interest would be served by a permanent injunction against Defendant from enforcing N.J.A.C. §§ 13:101-6.16(b)(2) and 13:101-8.1(a).

#### **TWELFTH COUNT**

#### **(Claims under 42 U.S.C. § 1983 - Policy Denying Access to Counsel at Parole Board Hearings Unconstitutional on its Face for Violating Procedural Due Process)**

Asserted by Plaintiff O'Neill against James Plousis in his official capacity

306. Each of the preceding paragraphs is incorporated herein.

307. An actual and substantial controversy exists between O'Neill and Defendant.

308. James Plousis is Chairman of the New Jersey Parole Board, which in 2005, promulgated a policy, which it continues to enforce, that prohibits attorneys from being present at initial, quarterly, or annual review hearings. This policy, found in section B2 of The Parole Book, violates a juvenile's constitutional right to counsel at all critical stages of representation under the Due Process Clause of the Fourteenth Amendment.

309. Because of their developmental characteristics and unique status, juveniles as a class are ill-equipped to conduct their own representation and protect their own rights during parole proceedings.

310. Remedies available at law, such as monetary damages, are inadequate to compensate O'Neill fully for injuries sustained as a result of continued enforcement of this unconstitutional policy.

311. The hardship to O'Neill of Defendant's continued enforcement of section B2 of The Parole Book outweighs any hardship to Defendant that an injunction would cause.

312. The public interest would be served by a permanent injunction against Defendant from enforcing section B2 of The Parole Book.

**THIRTEENTH COUNT**  
**(Negligence Claims)**

Asserted by Plaintiff O'Neill against Defendants Administrators except Gregory Ackles, JMSF Correctional Officers, NJTS Correctional Officers, and Courtline Hearing Officers, in their individual capacities

313. Each of the preceding paragraphs is incorporated herein.

314. Defendants owed Plaintiff O'Neill a duty of care under common law and under several New Jersey statutes and regulations, including N.J.S.A. § 2A:4A-21, and N.J.A.C. §§ 13:95-15.1(a), 13:101-1.1, 13:101-3.1, 13:101-8.1, 13:101-8.2, 13:101-8.4, and 13:101-8.12.

315. Defendants breached these duties by their acts and omissions.

316. Defendants' breach of duty proximately caused O'Neill to suffer physical and emotional injuries.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs Troy and O'Neill respectfully demand judgment as follows:

A) award to Troy and O'Neill compensatory damages against the Individual Defendants, in their individual capacities;

B) award to Troy and O'Neill punitive damages against the Individual Defendants, in their individual capacities;

C) impose on the Individual Defendants, in their individual capacities, a civil penalty for each violation of Troy's and O'Neill's rights, in an appropriate amount to be determined by the jury, pursuant to N.J.S.A. § 10:6-2(e);

D) enter a declaratory judgment against Defendant Veleria Lawson, in her official capacity, that N.J.A.C. §§ 13:101-6.17(e), 13:101-6.6(c), and 13:101-8.1(a) are unconstitutional on their face;

E) enter a declaratory judgment against Defendant James Plousis, in his official capacity, that Section B2 of The Parole Book is unconstitutional on its face;

F) permanently enjoin Defendant Veleria Lawson, in her official capacity, from enforcing N.J.A.C. §§ 13:101-6.6(c) and 13:101-8.1(a) against O'Neill;

G) permanently enjoin Defendant James Plousis, in his official capacity, from enforcing Section B2 of The Parole Book against O'Neill;

H) award to Troy and O'Neill reasonable attorneys' fees against the Individual Defendants, in their individual capacities;

I) award to Troy and O'Neill the costs of suit; and

J) award to Troy and O'Neill such additional relief as this Court deems just, proper, and equitable.

Respectfully submitted,

/s/ Bruce W. Clark

Bruce W. Clark (BC7351)  
Richard L. Berkman\*  
Kristina A. Moon\*\*  
DECHERT LLP  
Suite 500  
902 Carnegie Center  
Princeton, NJ 08540-6531  
(609) 955-3254

Marsha L. Levick\*  
Lourdes M. Rosado\*  
Jessica Feierman\*  
Monique N. Luse\*\*  
JUVENILE LAW CENTER  
1315 Walnut Street, Suite 400  
Philadelphia, PA 19107  
(215) 625-0551

\**pro hac vice* motions granted on Oct. 5, 2010

\*\**pro hac vice* motions granted on Sept. 20, 2011

DATED: December 14, 2011