

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES AND THE STATE OF HAWAII**

I. INTRODUCTION

1. On June 16, 2005, the United States notified the State of Hawaii officials of its intent to investigate conditions of mental health care provided to detainees at the Oahu Community Correctional Center ("OCCC"), a correctional facility in Honolulu, Hawaii, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.

2. In October 2005, the United States Department of Justice ("DOJ") toured OCCC with consultants in the field of correctional mental health services.

3. Throughout the course of the investigation, the DOJ received complete cooperation and access to OCCC and documents from the State of Hawaii.

4. On March 14, 2007, the DOJ issued a Findings Letter pursuant to CRIPA, 42 U.S.C. § 1997(a)(1), which concluded that certain conditions at OCCC violated the constitutional rights of detainees of the jail.

5. This Settlement Agreement resolves all claims asserted in United States v. State of Hawaii, et al., Civil No. 08-00585 (D. Hawaii) (hereafter "Lawsuit" or "Litigation"), which relates to DOJ's investigation of conditions of mental health care provided to detainees at the OCCC.

6. The Defendants in the Lawsuit were the State of Hawaii; Governor of Hawaii, Linda Lingle; the Department of Public Safety, Clayton Frank, Director; and the Oahu Community Correctional Center, Nolan Espinda, Warden; (collectively referred to as "the State").

7. The State shall take all actions necessary to substantially comply with the provisions of this Settlement Agreement.

8. This Settlement Agreement is not intended to have any preclusive effect. Should the issue of the preclusive effect of this Settlement Agreement be raised in any proceeding, the parties agree to certify that this Settlement Agreement was intended to have no such preclusive effect. Further, if the Settlement Agreement is introduced in a proceeding as between the United States and the State, evidence shall not be admitted as to the State's compliance or noncompliance with the Settlement Agreement and nothing in the Settlement Agreement shall be relevant to the required constitutional standards. The State does not concede that the terms in this Settlement Agreement are constitutionally mandated and reserves all rights in this regard.

9. This Settlement Agreement is not intended to impair, expand, or create a right of any person or organization to seek relief against the State, or its officials, employees, or agents for their conduct or the conduct of State employees; accordingly,

this Settlement Agreement does not alter legal standards governing any such claims, including those under Hawaii law.

10. Nothing in this Settlement Agreement shall prevent the State from modifying or closing OCCC or from developing alternative placements for the detainees currently at OCCC.

11. This Settlement Agreement resolves the CRIPA investigation conducted by the DOJ and addresses the corrective measures set forth by the DOJ in its March 14, 2007 Findings Letter to the State ("Findings Letter").

12. In conformity with CRIPA, this Settlement Agreement represents a voluntary effort by the State to address the alleged constitutional violations raised by the DOJ's investigation. See CRIPA, 42 U.S.C. §§ 1997b(a)(2)(B); 1997g.

13. This Settlement Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. No person or entity is intended to be a third party beneficiary of the provisions of this Settlement Agreement for purposes of any action whatsoever, including but not limited to civil, criminal, or administrative actions, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement Agreement in any action whatsoever. Similarly, this Settlement Agreement does not authorize, nor shall it be construed to authorize, access to

State documents by persons or entities not a party to this Settlement Agreement.

14. This Settlement Agreement shall constitute the entire integrated Settlement Agreement of the parties. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in this Litigation or in any other proceeding.

15. Since the DOJ initiated the investigation and issued the Findings Letter, the State has made progress in remedying several of the alleged constitutional violations. The parties agree that it is in their mutual interests to avoid litigation. The parties further agree that resolution of this matter pursuant to this Settlement Agreement is in the best interests of the parties and the detainees of OCCC.

16. All parties shall bear their own costs, including attorneys' fees, related to the DOJ's investigation of OCCC, the Lawsuit, and any subsequent related proceeding.

17. The signatures below of officials representing the DOJ and the State signify that these parties have given their final approval to this Settlement Agreement.

18. This Settlement Agreement shall take effect on the day the United States District Court for the District of Hawaii enters an Order granting the Joint Motion for Stipulated

Conditional Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1).

II. DEFINITIONS

19. "OCCC" shall refer to the Oahu Community Correctional Center, a state-owned and operated correctional facility, as well as to any facility that is built, leased, or otherwise used, to replace any portion of the Oahu Community Correctional Center.

20. "DOJ" shall refer to the United States Department of Justice, which represents the United States in this matter.

21. "Effective date" shall mean the date that the United States District Court for the District of Hawaii enters an Order granting the Joint Motion for Stipulated Conditional Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1).

22. "Detainee" shall be construed broadly to refer to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at either OCCC or any facility that is built or used to replace OCCC or any part of OCCC.

23. "Consistent with generally accepted professional correctional standards of care" shall refer to action undertaken by a qualified professional that is substantially aligned with contemporary, accepted professional judgment, practice, or standards of a correctional facility.

24. "Adequate" shall mean that level of service required for compliance with the Constitution.

25. "Quality Assurance" means a system of self-audit and improvement to assess the implementation and effectiveness of remedies instituted pursuant to this Settlement Agreement, to identify deficits that may exist, and to effectuate new measures to cure deficits identified.

26. "Qualified Mental Health Professional" shall mean an appropriately qualified physician, psychiatrist, psychologist, counselor, therapist, social worker, or nurse who is competent, whether by education, training, licensure, or experience, to make the particular decision, or deliver the particular service, at issue.

27. "Therapeutic lockdown" means the use of long-term seclusion as an alternative to generally accepted professional correctional standards of mental health care and treatment, in which a detainee is isolated in his or her cell and denied any staff interaction, including contact with mental health staff.

28. A detainee is "seriously mentally ill" if the detainee is objectively suffering from a mental illness which significantly impairs the detainee's mental health functioning.

29. When the term "individualized" is used to modify seclusion, it means the seclusion of a particular detainee, as opposed to the seclusion of a group of detainees or the lockdown of a module for security purposes.

30. "Suicide Watch" means any level of precaution,

observation, or measures to prevent self-inflicted serious bodily harm.

31. "Substantial Compliance" shall mean a level of compliance that does not significantly deviate from the terms of this Settlement Agreement, provided that any deviation poses no significant risk to detainee health or safety. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

III. SUBSTANTIVE REMEDIAL MEASURES

The State shall implement the following measures at OCCC:

32. Seriously mentally ill detainees at OCCC shall not be placed in isolation or individualized seclusion in a manner that would pose an undue risk to the detainee's health and safety. Accordingly, with respect to seriously mentally ill detainees, the State shall:

- a. cease the use of "therapeutic lockdown" as the practice was employed in October 2005;
- b. develop policy and procedures that comport with generally accepted professional correctional standards regarding the use of individualized seclusion or restraint;

- c. have a qualified mental health professional review disciplinary charges against detainees with serious mental illness who have been placed in individualized seclusion to determine the extent to which the charge may have been related to serious mental illness, and to determine whether a detainee's serious mental illness should be considered by the State as a mitigating factor when punishment is imposed upon detainees with a serious mental illness. This review shall be conducted prior to the imposition of punishment and when appropriate, shall include a clinical interview of the detainee.
- d. use individualized seclusion only in accordance with generally accepted professional correctional standards of practice; use individualized seclusion only when such use is justified, and documented as such; monitor and assess the detainees in individualized seclusion; and not use individualized seclusion for convenience of staff, or in lieu of adequate staff;
- e. as part of the requirements of Paragraph 32(d), provide that for seriously mentally ill detainees placed into individualized seclusion:
 - 1. a qualified mental health professional ("QMHP") shall conduct a face-to-face assessment of the

detainee within four hours after the detainee is placed into individualized seclusion; if the QMHP is not a physician or a psychologist, the QMHP shall consult a physician or psychologist within the same four-hour period;

2. a QMHP shall conduct another face-to-face assessment of the detainee at least once during the next 12 hours; if the QMHP is not a physician or a psychologist, the QMHP shall consult a physician or psychologist within that same 12-hour period;
3. a qualified physician or psychologist shall conduct a face-to-face assessment at least once every 24 hours while the detainee remains in individualized seclusion; a brief period of release will not constitute a break of the 24-hour period; if a physician or a psychologist conducts an assessment under subsection 1., or 2., above, a redundant assessment is not necessary within the same 24 hour period;
4. a physician (or psychiatrist) must assess a detainee at least once every 72 hours while the detainee remains in individualized seclusion; if a physician (or psychiatrist) conducts an assessment

under subsections 1., 2., or 3., above, a redundant assessment is not necessary within the same 72 hours; and

5. consultation by a psychiatrist shall be obtained, when feasible, for instances when a detainee is in individualized seclusion for over 48 hours.
- f. use restraints only in accordance with generally accepted standards of professional practice; use restraints only when justified, and documented as such; assess and monitor detainees in restraint; not use restraint as punishment for psychosis-related behavior, for convenience of staff, or in lieu of treatment or therapy, or in lieu of adequate staff.
- g. develop policies and procedures that comport with generally accepted professional correctional standards regarding the practice of "suicide watch;"
- h. adequately assess and monitor detainees placed on suicide watch; adequately assess and monitor the detainees' health and safety while on suicide watch; release detainees from suicide watch as their clinical condition indicates according to generally accepted professional correctional standards of care; and
- i. use individualized seclusion or restraints only in a physical environment and by methods that do not pose

undue risks to a detainee's mental and physical health.

33. Psychotropic medications shall be used only in accordance with generally accepted professional correctional standards; psychotropic medication shall not be used in lieu of more appropriate lesser-intrusive therapies, for the convenience of staff, as a substitute for adequate staff, nor as punishment. Accordingly:

- a. the State shall develop policies, protocols and procedures such that the use of psychotropic medication comports with generally accepted professional correctional standards; and,
- b. A psychiatrist shall review orders for psychotropic medication on a regular, timely basis for appropriateness or adjustment.

34. Detainees shall be assessed adequately for mental health needs and provided, where consistent with legitimate security concerns, an appropriate, confidential environment for assessment and counseling. Accordingly:

- a. the State shall develop and implement policies and practices to appropriately assess detainees with mental illness, and evaluate each detainee's mental health needs;

- b. the intake evaluation process shall include a mental health screening, which shall be incorporated into the detainee's medical records;
- c. OCCC shall provide timely access to a qualified mental health professional when a detainee's symptoms of mental illness require such care;
- d. practices and procedures used in the intake and evaluation process shall be sufficient to allow a complete assessment of the detainee;
- e. the mental health screening process shall include at a minimum inquiries of the detainee regarding:
 - 1. past suicidal ideation and/or attempts,
 - 2. current suicidal ideation, threat, or plan,
 - 3. prior mental health treatment,
 - 4. recent significant loss, such as the death of a family member or close friend,
 - 5. history of suicidal behavior by family members and close friends, and,
 - 6. suicide issues during any prior confinement;
- f. the mental health screening process shall further include any observations which may be provided by the transporting officer, court, transferring agency, or similar individuals regarding the detainee's potential suicide risk.

35. The State shall develop and implement mental health services and programs that address the serious mental health needs of detainees. The State shall develop policies, procedures, and protocols that define and describe how OCCC shall develop and deliver mental health programs and services that comport with generally accepted professional correctional standards. Accordingly, the State shall:

- a. develop and implement individualized treatment plans that adequately address each detainee's serious mental health needs;
- b. develop and implement an adequate range of mental health services to address the serious mental health needs of detainees; and,
- c. transfer in a timely manner any detainee requiring an intensity of mental health treatment not available at OCCC, to a facility adequate to meet the detainee's needs.

36. The State shall employ an adequate number of mental health professionals, including psychiatrists, psychologists, nurses, psychiatric social workers, and counselors to meet adequately the needs of detainees at OCCC with serious mental illness. The details of this provision are discussed and agreed to in a letter between the parties.

37. The State shall employ the clinical leadership to direct and supervise the provision of mental health services for seriously mentally ill detainees at OCCC to comport with generally accepted professional correctional standards of practice, as follows:

- a. One on-site Director; and,
- b. One Assistant Director (QMHP).

38. The State shall employ an adequate number of correctional staff on duty so that mental health services for seriously mentally ill detainees are not negatively impacted by the lack of correctional staff to provide security and supervision of seriously mentally ill detainees.

39. The State shall implement and document a continuous quality assurance program for mental health services at OCCC.

IV. IMPLEMENTATION OF THE SETTLEMENT AGREEMENT

40. Except where otherwise specifically indicated, the State shall substantially comply with each and every provision of this Settlement Agreement within thirty (30) months of its effective date.

41. For the purposes of this Settlement Agreement, "provision" shall be defined as each complete Paragraph of Section III of the Settlement Agreement (e.g., Section III.(32) (subparagraphs a-I)). Sub-paragraphs are not severable.

42. Within one (1) month of the effective date of this Settlement Agreement, the State shall communicate to OCCC employees, and any independent contractors involved in providing detainees treatment, of the requirements set forth in this Settlement Agreement that are applicable to their respective job duties.

43. Within two (2) months from the effective date of this Settlement Agreement the State shall prepare and submit to the DOJ a comprehensive action plan ("Action Plan") specifying the measures the State intends to take in order to bring OCCC into compliance with the substantive requirements of Section III of this Settlement Agreement, including anticipated timeframes for completion of each measure.

44. The parties have jointly selected Russell Van Vleet to serve as the monitor ("Monitor") for this Settlement Agreement. Should the position become vacant and the parties cannot agree on a replacement, the parties shall recommend candidates to the Court, and the Court will select the Monitor. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by the State. The State will apply to the Chief Procurement Officer for an exemption from the state procurement code to retain the Monitor. The Monitor may be terminated only

for good cause, unrelated to the Monitor's findings or recommendations, and only with prior notice to and approval of both parties or by Court order. Should either party develop concerns that the Monitor is not adequately performing his responsibilities set forth in this Agreement, the parties agree to engage in good-faith discussions toward resolution of any such concerns. Should the parties decide that it is appropriate to replace the Monitor, the parties will mutually select a new Monitor, and work together in good faith to reach a satisfactory contract with the replacement Monitor.

45. The State shall pay the salary, costs, and expenses associated with the Monitor, and, if needed, shall provide sufficient funds to permit the Monitor to hire staff and consultants to assist in carrying out the Monitor's duties and responsibilities under the Settlement Agreement. The DOJ does not object to the State imposing a definitive fee structure for payments associated with the Monitor.

- a. The Monitor shall serve as the liaison between OCCC, the State, and the DOJ regarding compliance with this Settlement Agreement. The Monitor's exclusive duties are to oversee and promote implementation of the provisions of the Settlement Agreement.
- b. Specifically, the Monitor's duties shall include, but not be limited to:

1. Monitoring and facilitating the State's compliance with each of the provisions in this Settlement Agreement;
 2. Preparing reports every four (4) months for the parties regarding compliance with each provision of the Settlement Agreement;
 3. Facilitating meetings between the parties on a regular and periodic basis to update the parties regarding compliance with the Settlement Agreement, including areas of improvement and areas of concern; and,
 4. Providing to the parties any relevant information known, or available to the Monitor, under any provision of the Settlement Agreement upon reasonable request.
- c. The Monitor shall be permitted to initiate and receive ex parte communications with the parties regarding any matter related to this Settlement Agreement.

46. The Monitor shall have full and complete access to the OCCC facilities, records, staff, and detainees. The State shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner.

47. Except as required or authorized by the terms of this Settlement Agreement or the parties acting together, the Monitor shall not: make any public statements (at a conference or otherwise); issue findings with regard to any act or omission of the State or its agents, representatives or employees; or disclose non-public information provided to the Monitor pursuant to this Agreement. Any press statement made by the Monitor regarding his employment must first be approved by the parties.

48. Other than this Lawsuit as between the United States and the State, the Monitor shall not testify in any litigation or proceeding with regard to any act or omission of the State, OCCO or any of their agents, representatives, or employees, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Settlement Agreement. In this Lawsuit as between the United States and the State, either party may call the Monitor as a witness. Neither party will call the Monitor as their own expert or designate the Monitor as their own expert pursuant to the federal rules of civil procedure. The scope and purpose of the Monitor's testimony shall be left to the discretion of the Court.

49. Other than this Lawsuit as between the United States and the State, reports issued by the Monitor shall not be admissible against the State in any proceeding for any reason. In this Lawsuit as between the United States and the State, the

admissibility into evidence of the Monitor's reports, or portions thereof, shall be governed by the federal rules of evidence, and the parties reserve all rights to either seek admissibility or object to admissibility of those reports. The Monitor is not a state or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. In the event of a proceeding before a court, in which the court needs to determine whether or not the Monitor has performed any contracts or subcontracts for monitoring this Settlement Agreement, such testimony as is necessary for the determination of such issue(s) may be allowed, in the discretion of the court, notwithstanding this paragraph.

50. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Settlement Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the State or its departments, officers, agents or employees. Nothing in this Settlement Agreement shall prohibit the DOJ from employing the Monitor in matters not involving the State of Hawaii.

51. The Monitor shall provide the parties with reports describing the steps taken by the State to implement this Settlement Agreement and evaluate the extent to which the State has complied with each substantive provision of the Settlement Agreement. The Monitor shall issue reports every four (4) months, unless the parties agree otherwise. The Monitor shall provide reports to the parties in draft form for comment at least two (2) weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of detainees and staff and the interest of the State in protecting against disclosure of non-public information. The Monitor's reports, which shall not be filed with the Court, may be made public by the State or United States. The Monitor may keep confidential any personally-identifiable information, or any information in the interest of privacy or public safety.

52. The Monitor shall provide the State with necessary technical assistance toward compliance with the Settlement Agreement as requested by the State.

53. The DOJ and its expert consultants and agents may tour OCCC to assess compliance with this Settlement Agreement. The DOJ will conduct a tour of OCCC approximately six (6) months after the effective date of the Settlement Agreement to determine the status of the State's compliance with the terms of this Settlement Agreement.

54. Prior to any tour, the DOJ shall provide reasonable notice to the State. Within a reasonable time in advance of the tour, the DOJ shall identify any expert consultants it plans to use on the tour.

55. Regarding topics addressed in this Settlement Agreement, the DOJ and its attorneys, expert consultants, and agents shall have full and complete access to the facility, facility records, detainee records, staff records, State records relating to this Settlement Agreement, detainees, and employees of the State and OCCC upon reasonable notice to the State for the purpose of ascertaining compliance with this Settlement Agreement. The DOJ shall have the right to conduct confidential interviews with detainees. Such access shall continue until this Settlement Agreement is terminated. State attorneys may be present at interviews of staff and tours of facilities.

56. The State shall respond to any written questions from the DOJ concerning the State's compliance with this Settlement Agreement, within thirty (30) days of receipt of such written questions. The State shall provide the DOJ with access to any requested documents regarding the State's compliance with the requirements of this Settlement Agreement.

57. The State shall maintain sufficient records to document its compliance with all of the requirements of this Settlement Agreement, for the duration of the Settlement Agreement.

58. This Agreement shall not be deemed to waive the attorney/client, attorney work product, deliberative process, victim/counselor, or executive privileges. The State shall not assert physician/patient or psychotherapist/patient privileges with respect to the monitoring of this Settlement Agreement.

59. The State shall designate a single point of contact (a Compliance Coordinator), for the duration of the Settlement Agreement, to coordinate and oversee this Settlement Agreement.

60. The parties agree to defend the provisions of this Settlement Agreement. The parties shall notify each other of any court challenge to this Settlement Agreement. In the event any provision of this Settlement Agreement is challenged in any local or state court, removal to a federal court shall be sought.

61. This Settlement Agreement shall be binding on all successors, assignees, employees, agents, and all those working for or on behalf of the State.

62. In the event any provision of this Settlement Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Settlement Agreement.

63. Throughout the duration of the Settlement Agreement, the DOJ and its expert consultants and agents shall maintain the confidentiality of all information provided pursuant to this Settlement Agreement consistent with state and federal law and consistent with the law enforcement responsibilities of the DOJ.

In addition, throughout the duration of this Settlement Agreement, letters between counsel for the DOJ and counsel for the State shall be confidential.

64. Within a reasonable period of time after the conclusion of any tour, the DOJ shall make available to OCCC any post-tour reports prepared by its expert consultants.

V. TERMINATION

65. The purpose of this Settlement Agreement is that the State will be able to achieve desired outcomes for and provide the necessary mental health services to OCCC detainees.

66. This Settlement Agreement shall terminate and the Court will dismiss the Complaint with prejudice forty-two (42) months after the effective date of the Settlement Agreement. The Settlement Agreement may terminate prior to the forty-two (42)-month-date if the parties agree that the State is in substantial compliance with each of the provisions of this Settlement Agreement and that the State has maintained substantial compliance for twelve (12) months. If the parties agree that the State has maintained such compliance, the parties shall file a joint stipulation for dismissal with prejudice in the Lawsuit. The burden will be on the State to demonstrate substantial compliance.

VI. ENFORCEMENT OF THE SETTLEMENT AGREEMENT

67. This Settlement Agreement is enforceable only by the parties and is binding upon the parties, by and through their officials, agents, employees, assigns, and successors.

68. Upon execution of this Settlement Agreement, the DOJ shall file a Complaint in the United States District Court for the District of Hawaii, and file contemporaneously a Joint Motion for Stipulated Conditional Dismissal of the Complaint pursuant to Federal Rule of Civil Procedure 41(a)(1). A copy of this Settlement Agreement shall be attached to the Joint Motion for Stipulated Conditional Dismissal and that motion shall:

- (1) request that the Court conditionally dismiss the Complaint in accordance with the terms of this Settlement Agreement;
- (2) request that the Court place the case on its inactive docket;
- and (3) request that the Court retain jurisdiction over the case until final dismissal with prejudice in accordance with the terms of this Settlement Agreement.

69. At fifteen (15) months from the effective date of the Settlement Agreement, if the Monitor makes a specific written determination that the State has not made material progress toward substantial compliance with Section III of the Settlement Agreement, the DOJ may, but is not required to, seek reinstatement of the Complaint. However, before the DOJ may seek to reinstate the Complaint, the DOJ shall give notice to the

State of its intent to seek reinstatement of the Complaint, and the parties shall engage in good-faith discussions to resolve the dispute. The parties shall attempt in good faith to mediate the dispute with the Monitor for a minimum of thirty (30) days prior to the DOJ seeking the reinstatement of the Complaint. The terms of this Settlement Agreement are not subject to state or federal court enforcement other than the reinstatement of the Complaint. The DOJ shall have no action or remedy available for the State's breach of this Settlement Agreement other than the reinstatement of the Complaint. The DOJ commits to work in good faith with the State to avoid enforcement actions. In case of an emergency posing an immediate threat to the health or safety of a detainee, however, the DOJ may omit the notice and cure requirements herein before seeking reinstatement of the Complaint.

70. After thirty (30) months from the effective date of this Settlement Agreement, if the DOJ believes that the State has failed to substantially comply with any obligation under this Settlement Agreement, the DOJ will give the State written notice of the State's failure prior to reinstating the Complaint in the Lawsuit. The parties shall engage in good-faith discussions to resolve the dispute. The parties shall attempt in good faith to mediate the dispute with the Monitor for a minimum of thirty (30) days prior to the DOJ seeking the reinstatement of the Complaint. The terms of this Settlement Agreement are not subject to state

or federal court enforcement other than the reinstatement of the Complaint. The DOJ shall have no action or remedy available for the State's alleged breach of this Settlement Agreement other than the reinstatement of the Complaint. The DOJ commits to work in good faith with the State to avoid enforcement actions. In case of an emergency posing an immediate threat to the health or safety of a detainee, however, the DOJ may omit the notice and cure requirements herein before seeking reinstatement of the Complaint.

71. Failure by any party to enforce this entire Settlement Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Settlement Agreement.

VII. MODIFICATION OF THE SETTLEMENT AGREEMENT

72. If, at any time, any party to this Settlement Agreement desires to modify the Settlement Agreement for any reason, that party will notify the other party in writing of the proposed modification and the reasons therefore. No modification will occur unless there is written agreement by the parties.

AGREED TO:

FOR THE UNITED STATES:

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