

HJ 56

March 17, 2008

State of Connecticut
General Assembly
300 Capitol Ave.
Hartford, CT 06106

Re: File #20210, Claim of Christopher M. Santos

Dear Members of the State of CT General Assembly.

The Claimant(s) herewith files additional argument in favor of the claimant (s).

Pursuant to C.G.S. Sec. 4-159, the claimant claims that the issue of liability of the state for the injuries of the claimant is a question of law and fact and the claimant hereby requests permission from the General Assembly to bring suit against the state in federal or state court for the injuries sustained by the claimant while incarcerated at Northern Correctional Facility.

The Claimant(s) claim that on December 19, 2006, the State of Connecticut Claims Commissioner James R. Smith held a hearing on the issue of liability of the State of Connecticut and Northern correctional supervisor, Lieutenant Wayne Dumas. For the respondents, Lieutenant Dumas testified, a State of Connecticut Department of Corrections Clinical Director testified, and Correctional Officer Paul Barsileu. For the Claimant, Christopher Santos testified and his mother who is Legal Conservator of his Estate and Person also testified. The hearing was tape recorded by the Honorable Claims Commissioner James R. Smith and it was held between 9:30a.m.-11:30 a.m. on December 19, 2006.

Christopher Santos also testified at the hearing and claimed that he told Lieutenant Dumas not to put inmate, Jose Arzuaga in the cell with him on the morning of August 30, 2003 because he felt Jose Arzuaga was a threat to him. Lieutenant Dumas testified that he denied that Jose Arzuaga had any issues with Christopher Santos, and proceeded to place Jose Arzuaga in the cell with the Claimant Jose Arzuaga on August 30, 2003.

Christopher Santos testified at the hearing that once Jose Arzuaga was in the cell with Mr. Santos and the cell door was locked, while Mr. Santos was handcuffed behind the back, Lieutenant Dumas proceeded to take the handcuffs off of Jose Arzuaga through the cell door food slot and then Jose Arzuaga proceeded to beat and cause numerous injuries to Christopher Santos. Marty Calderon, the claimant's mother and legal conservator testified that in July and August of 2004, she witnessed a large bump on Mr. Christopher Santos head and wrote a letter to Warden Wayne Choinski regarding concerns Marty

Calderon had for her son, Christopher Santos.

The Claimant submitted several exhibits at the hearing, including a State of Connecticut police report of the incident, Northern Correctional incident reports and medical reports, excerpts from the Northern Correctional inmate manual, clinical report from Mr. Santos current treating physician at Norwalk Hospital that he is disabled and on several medications including Naproxen (pain killer), and a letter from Warden Wayne Choinski to the Claimant's mother and legal conservator, Marty Calderon, stating to Marty Calderon basically that he would notify Dr. Carson Wright at Northern Correctional Facility about the claimant's injuries and her concerns about Christopher Santos.

It clearly states in the Northern Correctional manuals that the Northern Correctional staff are responsible for keeping inmates safe.

Therefore, the claimant claims that the Northern Correctional staff is responsible for the safety of inmates. In that Mr. Santos apprised Lieutenant Dumas on the morning of August 30, 2003, that he did not want Lieutenant Dumas to place inmate Jose Arzuaga in the cell with him, the claimant claims that Lieutenant Dumas was indifferent deliberately to his safety concerns, which ended up being correct in that as soon as Jose Arzuaga's handcuffs were removed, he proceeded to inflict serious bodily injury to Mr. Santos of which he still retains scarring, back pain, migraine headaches, chipped teeth that have been medically treated.

At the hearing, Correctional Officer Paul Barsileu also testified that the words that were exchanged between Mr. Santos and inmate Jose Arzuaga were negative statements prior to securing Jose Arzuaga in cell #121 at 1West, at the time inmate Jose Arzuaga was being placed in his cell with Mr. Santos on August 30, 2003.

At the hearing, Lieutenant Dumas also stated that the prison was full when he placed inmate, Jose Arzuaga in the cell with Mr. Santos, indicating that the prison was overcrowded and there was no other place to put, Jose Arzuaga despite Mr. Santos' request that he not be placed in the cell with him. Christopher Santos' legal argument is that inmate Jose Arzuaga did not have to be placed in his cell on August 30, 2003. However, Lieutenant Dumas claimed the prison was full that day.

At the hearing, Marty Calderon, Mr. Santos Legal Conservator of his estate and person, requested that the claims commissioner authorize the claimant to sue in federal and/or state court in that the damages from the

personal injuries sustained by Mr. Santos on August 30, 2003 are in excess of \$7,500.00.

According to Berry v. City of Mskogee, 900 F.2nd. 1489, 1496 (10th circuit 1990), a disregard of a known and obvious risk very likely to result in a violation of civil rights is actionable. In Farmers v. Brennan, 511 U.S. 825 (1994), the Supreme Court defined a deliberate indifference to a prisoners rights according to the U.S. Constitution 8th Amendment as 1) a state official is aware of facts from which an inference could be drawn that a substantial risk of harm exists, 2) the state actor draws the inference, and 3)and the state actor nevertheless disregards the risk to the inmates health or safety.

In Whitrack v. Douglas County, 16 f.3d. 954 (8th circuit 1994) governs a detainee's conditions of confinement.

In Cantu v. Jones, 293 F.3d. 839 (5th circuit 2002), the court upheld a judgment for the prisoner plaintiff where the jury found the defendant officials essentially orchestrated the attack on the plaintiff by a fellow prisoner and the defendant officials were not protected by qualified immunity.

In Pavlick v. Muffin, 90F.3d. 205, (7th circuit 1996), the court ruled for the plaintiff where the prison guard opened the plaintiff's prisoner's cell door while he was sleeping, allowing other inmates to enter and attack him.

In Gibbs v. Franklin, 49 F.3d. 1206, (7th circuit), the court ruled that the district court did not err in instructing the jury that it could infer that a guard acted with deliberate indifference if the guard had actual knowledge of the impending injury from the attack and that the injury was readily preventable.

The claimant claims that double celling according to the U.S. Supreme Court and federal law pursuant to 42 U.S.C. Sec. 1983, U.S. Constitution 14th and 8th Amendment (cruel and unusual punishment), is illegal and deliberately indifferent to an inmate needs when the double celling causes an unreasonable risk of harm and injury to the inmate. In Mr. Santos case, obviously placing Jose Arzuaga in Mr. Santos cell on the morning of August 30, 2003 was deliberately indifferent to the safety needs of Mr. Santos to be free from harm, because immediatley when Jose Arzuaga was placed in the cell with Mr. Santos he proceeded to inflict bodily injury on Mr. Santos and no correctional officer in the vicinity intervened to stop the inmate Jose Arzuaga from assaulting Mr. Santos until Mr. Santos was already seriously injured and bleeding profusely from head trauma and laceration.

In Mr. Santos case, in that according to Lieutenant Dumas testimony at the December 19, 2006 hearing, Northern Correctional Facility was full, Mr. Santos claims that the double celling of him with Jose Arzuaga was deliberately indifferent to his safety needs to be alone and away from violent inmates.

In Rollie v. Keman, 124 Fed. Appx. 471 (8th Cir. 2005), state inmates allegations that prison officials knew of assaults caused by double celling of maximum security prisoners with other prisoners and yet did nothing but falsify reports to cover up unauthorized double celling was sufficient to state a U.S. Constitution 8th Amendment failure to protect claim against the correctional officers. Northern Correctional Facility is a maximum security facility and the claimant claims that double celling him with a dangerous inmate Jose Arzuaga was deliberately indifferent to his safety needs.

The U.S. Constitution 8th Amendment requires prison officials to take reasonable measures to guarantee the safety of inmates in their custody. Prison officials have constitutional duty to act reasonably to ensure a safe environment for a prisoner when they are aware that there is a significant risk of serious injury to that prisoner. Heisler v. Kralik, 981 F.Supp. 830, 837 (1997).

Double celling has also been held to be unconstitutional in several federal jurisdictions. Palmigiano v. Ganaby, 639 F.Supp. 244 (1986), Hutchings v. Corum, 501 F.Supp. 1276, (1980).

The claimant also claims that inadequate staffing to insure inmate safety when double celling, and double celling in cells up to 50-75 square feet violates the U.S. Constitutional 8th Amendment. Mitchell v. Antreiner, 421 F.Supp. 886 (1976). Cody v. Hillard, 700 F.2d. 447 (1986). Burks v. Walsh, 461 F.Supp. 454 (1978). Toussaint v. Yockey, 722 F.2d. 1490 (1984). Balla v. Board of Corrections, 656 F.Supp. 1108, (1987). Balla v. Board of Corrections, 656 F.Supp. 1108. French v. Owens, 777 F.2d. 1250 (1985).

The Claimant claims that the test of whether Lieutenant Dumas violated Mr. Santos U.S. Constitutional 8th Amendment rights to be free from harm from other inmates, is whether a reasonable person knowing that Jose Arzuaga was dangerous and dangerous to Mr. Santos, would have still placed Jose Arzuaga in the cell with Mr. Santos.

According to the Farmer court:

“the question of whether a prison official had the requisite knowledge of a

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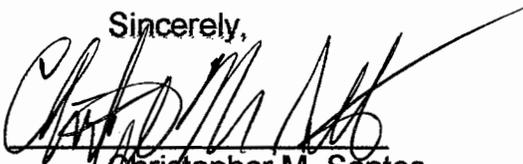
substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.”

In El Tabech v. Gunter, 922 F.Supp. 244 (Neb. 1996), the lower court certified the case to the United States court of appeals for the Eight Circuit in that the Defendants failed to properly use a classification system to double cell inmates that could have predicted inmate compatibility, and that the Defendants knew of violence in double celling and the fact that it poses a substantial risk to the inmates.

In addition, the claimant maintains that it is a factual issue for trial whether the respondent, Lieutenant Wayne Dumas was notified by the claimant that Jose Arzuaga was a danger to him and he requested that he not be housed with him. In Carter v. Hecht, NO. 02-cv-1015-DRH (S.D. Ill. 2006) the court refused to grant summary judgment to the Plaintiff, claiming that it is a material fact for trial whether the Defendant was made aware of a threat posed by the fellow inmate prior to being placed in the cell.

The claimant therefore claims that the respondents are liable for the personal injuries the claimant suffered due to the deliberate indifference of the respondent(s) when placing Jose Arzuaga in the cell with Mr. Santos and by allowing Mr. Santos to be severely injured by same inmate before coming to his aid.

Sincerely,



Christopher M. Santos
P.O. Box 359
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STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

Dear Friends:

We are pleased to inform you that we have reached a settlement in OPA v. Choinski. This is the case brought by the Office of Protection and Advocacy along with the ACLU National Prison Project and the Connecticut Civil Liberties Union challenging the treatment of prisoners with mental illness at Northern and Garner Correctional Institutions. The purpose of this letter is to let you know when you can expect to begin to see the implementation of the agreement and to explain some of the terms of the agreement. We have also included a copy of the agreement with this letter so you may become familiar with all the terms.

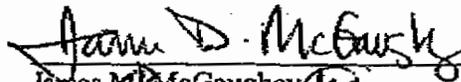
We signed the agreement in March, and the state legislature approved it on April 30. The parties and their experts are now working on how to implement the agreement. The next step is that the expert consultants for both sides must draft an "audit instrument," the document the experts will use to assure that DOC is in compliance with the agreement. Next, there is one issue that the two sides could not agree upon that the court must decide. Finally, when everything else is done, the court must enter the agreement as an order of the court. We cannot give you a precise date when all this will be done, but it will not be immediate.

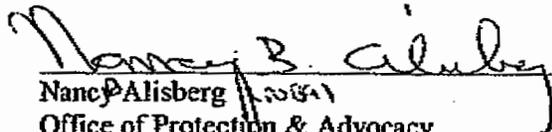
Once the agreement becomes effective, the first provision that will be implemented is the removal of prisoners with serious mental illness from Northern Correctional Institution. The decision as to who should be moved will be made after a comprehensive evaluation that will be conducted by a team from the Department of Mental Health and Addiction Services. The term "serious mental illness" is defined in Appendix A of the agreement, and is very specific. Appendix A of the agreement also specifies who will be evaluated under this provision.

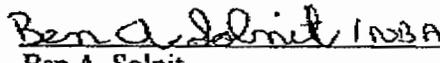
There are additional provisions in the agreement regarding the transfer of prisoners to the administrative segregation program at Northern that will require a prisoner to receive an evaluation before he can be moved. This is a different evaluation process than the one that current prisoners at Northern will receive. Prisoners who are transferred to or remain at the administrative segregation program at Northern will receive an evaluation at least every 90 days. There are some exceptions, but the general rule is that prisoners with serious mental illness will not be kept at or sent to the administrative segregation program at Northern.

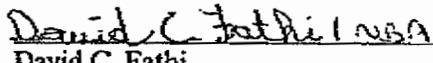
Additionally, prisoners at Northern and Garner may not have their psychotropic medications changed, started or stopped without a private, face-to-face interview with a psychiatrist or an APRN unless there are exigent circumstances or unless the prisoner refuses such an interview. There will be no more cell-front interviews with mental health staff, unless the prisoner refuses to exit his cell. Prisoners will be seen in a location that provides audio privacy. Prior to a planned use of force at either a designated housing unit for the mentally ill at Garner or in the observation unit at Northern, a mental health professional will be required to attempt to verbally counsel the prisoner and attempt to persuade him to cease the behavior that led to the planned use of force.

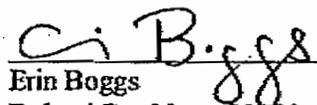
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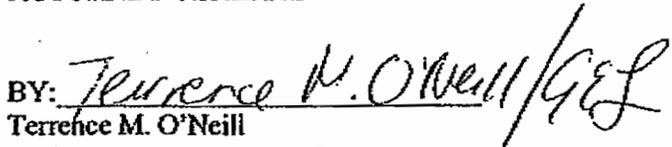

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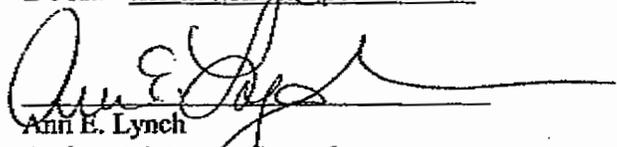

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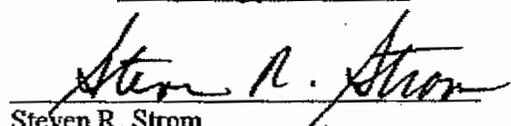
DEFENDANTS,
Wayne Choinski, et al.


Theresa C. Lantz
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DIRECTIVE NO	EFFECTIVE DATE	PAGE OF
9.5	February 16, 1998	2 19
TITLE		
Code of Penal Discipline		

- G. Deferred Prosecution. Deferral of the prosecution of a Disciplinary Report for a specific period of time.
- H. Possess. Having physical possession or exercising control over an object.
- I. Privilege. A benefit bestowed upon an individual to which a person has no right or legal entitlement.
- J. Responsibility. An individual's personal obligation or accountability for performance.
- K. Security Risk Group. A group of inmates, specifically designated by the Commissioner, which poses a threat to the safety of staff, the unit or other inmates.
- L. Self Defense. Protection of oneself from an unprovoked attack which cannot be avoided.
- M. Serious Physical Injury. Any injury which requires the individual to receive immediate medical treatment by a health care professional before the individual can continue normal activity.
- N. Suspended Sentence. The postponement of a disciplinary sentence for a specified period of time.

4. Notification. This Code shall be disseminated as specified below. The Code shall be published in English and Spanish.

- A. Employees. Each direct contact employee shall receive a copy of the Code. Direct contact employees shall receive instruction on the Code during pre-service orientation training.
- B. Inmates. Each newly admitted inmate shall receive a copy of the Code and instruction on the Code within two (2) weeks of admission to the Department of Correction. Each inmate shall acknowledge receipt of the Code by signing a receipt which shall be placed in the inmate's file. Unit Directives shall provide a process to provide information about the Code to any inmate who is illiterate, impaired, handicapped or does not speak English or Spanish.

5. General Provisions. All privileges must be earned. Each inmate shall be responsible to follow all rules, policies, staff direction, and satisfactorily comply with all work and program requirements to earn access to available privileges. Access to any privilege with limited admission shall be offered to inmates who have maintained positive behavior and obedience to rules, regulations and staff direction. Each facility shall develop a list of privileges available to inmates in general population. The type of privileges available shall be based on a facility's security level and shall be authorized subject to the joint approval of the Deputy Commissioner of Programs and the Deputy Commissioner of Operations.

6. Access to Privileges.

- A. Newly Admitted Inmates. Upon admission, an inmate may be afforded access to all privileges available at the admitting facility, contingent upon conformity with institutional rules and staff direction.
- B. Restrictive Status Inmates. Inmates placed on a restrictive status or in a close monitoring unit shall lose access to