

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Lin Li Qu (a/k/a Michelle Ng) as surviving spouse)
of Hiu Lui Ng (a/k/a Jason Ng) individually and)
as guardian and next friend of their minor)
children and the beneficiaries of the Estate of)
Hiu Lui Ng, Raymond Ng and Johnny Ng)
Plaintiff,)

v.)

Central Falls Detention Facility Corporation;)
Wayne T. Salisbury, Jr.; Timothy E. Tapley;)
AVCORR Management, LLC; Anthony)
Ventetuolo, Jr.; Ben Candelaria, Jr.; Dean)
Mougenot; Maureen Medeiros; “John Doe”)
Benaducci; “John Doe” Sanchez; Frank J. Botelho;)
Patrick Levesque, MD; John Riedel, MD;)
Franklin County Jail; Franklin County Sheriff’s)
Office; Robert W. Norris; U.S. Immigration)
and Customs Enforcement; Unknown United)
States Immigration and Customs Enforcement)
Officials; Bruce Chadbourne; George Sullivan;)
Larry Smith; Unknown Wyatt Correctional)
Officers; Unknown Wyatt Administrators;)
Unknown Wyatt Medical Staff; and Unknown)
Franklin County Jail Staff)
Defendants.)

C.A. No. _____

TRIAL BY JURY

COMPLAINT

I. PRELIMINARY STATEMENT

Hiu Lui Ng was a former civil immigration detainee who received grossly inadequate medical care while in the custody of the United States Immigration and Customs Enforcement agency, the Franklin County Jail, and the Central Falls Detention Facility Corporation. Because of this lack of care, Mr. Ng experienced extreme and

unnecessary suffering and ultimately died. While in detention, not only did Donald W. Wyatt Detention Facility Staff ignore and ridicule his serious medical needs and excruciating pain, but they also subjected Mr. Ng to torture, brutality, and physical abuse that resulted in serious physical harm, exacerbated Mr. Ng's pain, and caused him and his family lasting injuries. Finally, officials of the United States government and Wyatt Staff denied Mr. Ng due process throughout his detention. He should not have been deprived of his liberty at all – at least certainly not without a review to document the appropriateness of continuing his detention.

II. PARTIES

1. Plaintiff Lin Li Qu (a/k/a/ Michelle Ng, “Mrs. Ng”) is the surviving spouse of Hiu Lui Ng (a/k/a Jason Ng, “Mr. Ng” or “Plaintiff”). Mrs. Ng is a naturalized American citizen. She and Mr. Ng were married on February 9, 2001. She brings this action individually and as guardian and next friend of their minor children and the beneficiaries of the Estate of Hiu Lui Ng, Raymond Ng and Johnny Ng. They are all citizens and residents of the State of New York.

2. Defendant Central Falls Detention Facility Corporation (“CFDFC”) is incorporated in the State of Rhode Island with its principal place of business in Rhode Island. It was created by an Act of the Rhode Island General Assembly entitled "An Act Creating Municipal Detention Facility Corporation," P.L. 1991, ch 421, and codified at Rhode Island General Laws §45-54-1. CFDFC owns and operates the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island (“Wyatt”). At times relevant to this

Complaint, it had a contract or agreement with the United States government to hold immigrant detainees at Wyatt.

3. Defendant Wayne T. Salisbury, Jr. (“Salisbury”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, Salisbury was the warden of Wyatt, where Mr. Ng was detained. Salisbury had legal custody of Mr. Ng. He had actual knowledge of violations of Mr. Ng’s constitutional rights and knew of the practices that led to them. He did not act to stop or curb them. He created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

4. Defendant Timothy E. Tapley (“Tapley”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he was employed at Wyatt as the associate warden. He had actual knowledge of violations of Mr. Ng’s constitutional rights and knew of the practices that led to them. He did not act to stop or curb them. He created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

5. Defendant AVCORR Management, LLC (“AVCORR”) is incorporated in the State of Rhode Island with its principal place of business in Rhode Island. During times relevant to this Complaint, AVCORR provided overall administrative oversight and contract monitoring and assumed the role of Chief Executive Officer for CFDFC. In its role as Chief Executive Officer, AVCORR reorganized the management and command structure and oversaw all organizational levels and functions at Wyatt. It had actual knowledge of violations of Mr. Ng’s constitutional rights and knew of the practices that led to them. It did not act to stop or curb them. It created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

6. Defendant Anthony Ventetuolo, Jr. (“Ventetuolo”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he was the president of AVCORR and had management and supervisory responsibilities at Wyatt. He served as Wyatt’s Executive Director. He had actual knowledge of violations of Mr. Ng’s constitutional rights and knew of the practices that led to them. He did not act to stop or curb them. He created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

7. Defendant Ben Candelaria, Jr. (“Candelaria”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he was employed at Wyatt as Director of Nursing. He was responsible for the direct provision of medical care to detainees at Wyatt, including Mr. Ng.

8. Defendant Dean Mougnot (“Mougnot”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he was employed at Wyatt as a correctional officer.

9. Defendant Maureen Medeiros (“Medeiros”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, she was employed at Wyatt in the medical department.

10. Defendant “John Doe” Benaducci (“Benaducci”) is believed to be a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he was employed at Wyatt as a correctional officer.

11. Defendant “John Doe” Sanchez (“Sanchez”) is believed to be a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he was employed at Wyatt as a correctional officer.

12. Defendant Frank J. Botelho (“Botelho”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he was employed at Wyatt as a correctional officer.

13. Defendant Patrick R. Levesque, M.D. (“Levesque”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he provided medical services at Wyatt, including to Mr. Ng.

14. Defendant John L. Riedel, M.D. (“Riedel”) is a citizen and resident of the State of Rhode Island. During times relevant to this Complaint, he provided medical services at Wyatt, including to Mr. Ng.

15. Defendant Franklin County Jail (“FCJ”) (a/k/a/ Franklin County Detention Facility) is in St. Albans, Vermont. The Franklin County Sheriff’s Office operates and manages the FCJ. It has a contract or agreement with the United States government to hold immigrant detainees at the FCJ.

16. Defendant Franklin County Sheriff’s Office (“FCSO”) is located in St. Albans, Vermont. The FCSO operates the FCJ.

17. Defendant Robert W. Norris (“Norris”) is a citizen and resident of the State of Vermont. During times relevant to this Complaint, he was the Sheriff of Franklin County. Mr. Ng was detained at the FCJ operated by the FCSO. As sheriff, he had legal custody of Mr. Ng and was in charge of his medical well-being and was responsible for policies and procedures related to medical care and the provision of direct patient care at the FCJ.

18. Defendant U.S. Immigration and Customs Enforcement (“ICE”) is the agency within the Department of Homeland Security (“DHS”) that is responsible for non-

citizens detained and/or placed in removal proceedings, including Mr. Ng. ICE had legal custody over Mr. Ng. They had actual knowledge of violations of Mr. Ng's constitutional and statutory rights and knew of the practices that led to them. They did not act to stop or curb them. They created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

19. Defendant Unknown U.S. Immigration and Customs Enforcement Officials ("ICE Officials") are officials within the DHS whose identities are currently unknown, but who are responsible for non-citizens detained and/or placed in removal proceedings, including Mr. Ng. ICE had legal custody over Mr. Ng. They had actual knowledge of violations of Mr. Ng's constitutional rights and knew of the practices that led to them. They did not act to stop or curb them. They created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

20. Defendant Bruce Chadbourne ("Chadbourne") is the District Director for the Boston District of ICE, office of Detention and Removal Operations. The Hartford, Connecticut sub-office of ICE, which had day-to-day control over Mr. Ng's detention, falls within the territorial jurisdiction of the Boston District Office. He had actual knowledge of violations of Mr. Ng's constitutional rights and knew of the practices that led to them. He did not act to stop or curb them. He created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

21. Defendant George Sullivan ("Sullivan") is the Field Office Director and Officer in Charge of Detention and Removal Operations in the Hartford, Connecticut ICE office. He is charged by law with the implementation and enforcement of the immigration laws related to detention within his district, including custody reviews. The

Hartford, Connecticut ICE office had day-to-day control over Mr. Ng's detention. The Hartford ICE office is a sub-office under the control of the Boston District Office of ICE. Sullivan had actual knowledge of violations of Mr. Ng's constitutional rights and knew of the practices that led to them. He did not act to stop or curb them. He created, maintained, and implemented policies or customs allowing or encouraging these unlawful acts.

22. Defendant Larry Smith ("Smith") is an ICE officer assigned to the Hartford ICE facility. Smith knew of the serious medical condition of Mr. Ng when he saw him in Hartford yet he did nothing to provide adequate medical care and did nothing to stop the abuse or violation of the constitutional rights of Mr. Ng.

23. The "Unknown Wyatt Correctional Officers" (collectively with the Defendants listed in the following paragraph "Wyatt Staff") are wardens, superintendents, captains, sergeants, lieutenants, sheriffs, shift commanders, correctional officers and/or other employees at Wyatt and whose identities are currently unknown but who were employed at Wyatt and had interaction with Mr. Ng during his detention and participated in the violation of Mr. Ng's constitutional rights.

24. The "Unknown Wyatt Medical Staff" (collectively with the defendants listed in the preceding paragraph "Wyatt Staff") are medical personnel inclusive of but not limited to registered nurses, licensed practical nurses, physician assistants, physicians, psychologists, psychiatrists, and/or other medical staff who knew or should have known of Mr. Ng's serious medical needs, but who nevertheless provided inadequate medical care or failed to provide adequate medical care for Mr. Ng at Wyatt.

25. The “Unknown Wyatt Administrators” (“Wyatt Administrators”) are administrative workers at Wyatt with day-to-day administrative and supervisory duties who were responsible for the staffing, care, supervision, policy setting, and implementation, facility operations, filing reports, and safety of Mr. Ng under their authority. Their identities are currently unknown, but they were employed at Wyatt and/or AVCORR. The Wyatt Administrators developed, maintained, and knew of the practices and actions described herein, were on notice of the pattern of constitutional violations, and did not act to stop or curb it.

26. The “Unknown FCJ Staff” (“FCJ Staff”) are employees at the FCJ or FCSO with day-to-day administrative and supervisory duties who were responsible for the staffing, care, supervision, policy setting, facility operations, filing reports, and safety of Mr. Ng under their authority. Their identities are currently unknown, but they were employed at FCJ and/or FCSO. The FCJ Staff knew of the practices and actions described herein, were on notice of the pattern of constitutional violations, and did not act to stop or curb it.

III. JURISDICTION

27. Jurisdiction of this Honorable Court is proper under 28 U.S.C. §§1331, 1343, 1346, and 1367.

28. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) (2) in that a substantial part of the events or omissions giving rise to this claim occurred within the judicial district of Rhode Island. It is also proper in this district pursuant to 28 U.S.C.

§1391(e) in that one or more Defendants is an employee of the United States and one or more Defendants resides within the judicial district of Rhode Island.

29. This is an action for compensatory damages, punitive damages, attorneys fees, and costs arising from:

- a. civil rights and First, Fourth, Fifth, Sixth and/or Fourteenth Amendment constitutional violations pursuant to 42 U.S.C. §1983 and/or *Bivens* and/or federal and state common law;
- b. negligence, assault and battery, intentional infliction of emotional distress, medical neglect, inadequate medical care, fraudulent concealment and civil conspiracy pursuant to applicable Rhode Island and/or Vermont state law and the supplemental jurisdiction of this Honorable Court;
- c. violation of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12134) and the Rehabilitation Act (29 U.S.C. § 794); and
- d. the Rhode Island Wrongful Death Statute (R.I.G.L. § 10-7-1, et seq.) and Rhode Island Survival Statute (R.I.G.L. § 10-7-5 and 10-7-7) and other applicable federal and state statutes and common law.

IV. FACTUAL ALLEGATIONS

Background of Immigration Status

30. Hiu Lui Ng (“Mr. Ng”) was born in Wenzhou City, Zhejiang Province in the People’s Republic of China on August 3, 1974. He was a native of the People’s Republic of China and a citizen of Hong Kong, China.

31. On February 6, 1992, Mr. Ng, then a 17-year old minor, entered the United States at New York lawfully with his parents and minor sister on a B-2 visa.

32. Mr. Ng developed substantial connections within the United States. Mr. Ng had lived as a resident of New York City, New York for over 15 years prior to his detention. Mr. Ng graduated from Long Island City High School, Queens, New York. He worked his way through community technical college, passed Microsoft training courses, and became a Microsoft certified systems engineer.

33. Mr. Ng married Lin Li Qu (“Mrs. Ng”), a permanent legal resident of the United States, on February 9, 2001. Mr. and Mrs. Ng had two children, both of them born in the United States and therefore United States citizens; to wit, Raymond Ng born November 20, 2004 in New York City (currently 4 years old) and Johnny Ng born October 16, 2006 in New York City (currently 2 years old).

34. J&M Computer Consulting, Inc., a company owned solely by Mr. Ng, had gainfully employed him in the United States. Mr. Ng had a United States Social Security number.

35. Mr. and Mrs. Ng were the owners of their own home in New York, made mortgage payments, and maintained bank accounts in the United States.

36. Mr. Ng had never been arrested or convicted of a crime in the United States or elsewhere.

37. In an application dated December 28, 1994, Mr. Ng and his parents and his sister applied for asylum. The asylum application stated that Mr. Ng’s address was 1945 Eastchester Road #5A, Bronx, New York 10461.

38. A supervisory Asylum Officer of the Immigration and Naturalization Service (“INS”) issued an Order to Show Cause dated February 28, 1995. The order contained the same address as stated on Mr. Ng’s asylum application. The Order stated that Immigration and Naturalization Services (“INS”) had scheduled Mr. Ng’s deportation for June 15, 1995. However, the Order was never served on Mr. Ng and was never filed with the Immigration Court. At that time, Mr. Ng had no actual or constructive knowledge that the Order to Show Cause had been issued or that he had been scheduled for deportation.

39. On November 2, 2000, the INS issued a Notice to Appear, ordering Mr. Ng to appear at an immigration hearing on February 2, 2001. The Court mailed the notice to an incorrect address, 39 Bowery Street #882, New York, NY 10002. This address did not appear on any paper that Mr. Ng had filed. Mr. Ng never lived at that address and otherwise had no relationship whatsoever with this address.

40. Because of the error by the INS and/or the Court, Mr. Ng did not receive the notice and did not appear before the Immigration Court. At the February 2, 2001 hearing, an immigration judge ordered Mr. Ng removed from the United States in absentia. Mr. Ng had no actual or constructive knowledge that the Court had ordered him removed from the United States at that time.

41. On April 20, 2001, shortly after they were married, Mrs. Ng, a legal permanent resident at the time, filed an I-130 Immigrant Petition (a Petition for Alien Relative) on behalf of her husband.

42. On December 13, 2006, Mrs. Ng re-submitted an I-130 to United States Citizenship and Immigration Services (“USCIS”) because over five years had passed

since she filed her first form and USCIS had not contacted the couple for approval. USCIS then scheduled an interview for adjustment of status on July 19, 2007 at 26 Federal Plaza, New York, NY.

43. On July 16, 2007, after finding out about the faulty Immigration Court order issued in absentia, Mr. Ng's attorney filed a motion to reopen his removal proceedings in the Immigration Court in New York.

Mr. Ng's Detention

44. On July 19, 2007, Mr. and Mrs. Ng appeared at the Immigration Court at 26 Federal Plaza in New York for an adjustment of status interview. Mrs. Ng's I-130 petition was approved.

45. Mr. Ng, however, was arrested on the spot and detained by DHS officers based on the faulty deportation order from six (6) years earlier.

46. ICE initially held Mr. Ng for one night at an ICE facility in New York. The following day, July 20, 2007, ICE transported Mr. Ng to Wyatt.

47. CFDFC had a contract with ICE to jail immigrant detainees at Wyatt. Wyatt Staff acted under the authority of ICE and imprisoned Mr. Ng under ICE federal authority.

48. Mr. Ng's attorneys immediately made many attempts to get him released.

49. Federal regulations require that ICE must conduct a custody review within 120 days to determine whether to release or continue to detain a person, or refer them to the Post-Order Detention Unit (8 C.F.R. §241.4(c)). Over 120 days had passed since Mr. Ng's detention began but no custody review by ICE Officials at the Detention and Removal Office had taken place as required by law.

50. Chadbourne, Sullivan, and other ICE Officials without due process of law, and in violation of his constitutional and statutory rights, subjected Mr. Ng to prolonged and arbitrary detention.

51. After spending 175 days at Wyatt, on January 10, 2008, ICE transferred Mr. Ng from Wyatt to the Franklin County House of Corrections in Greenfield, Massachusetts. ICE gave Mr. Ng no reason for the transfer.

52. In April 2008, Mr. Ng began to experience medical problems. He learned that he was being transferred to the FCJ and that it did not have medical facilities. He began to protest the transfer because of its lack of medical staff and requested placement at a facility that could provide him access to medical care.

53. On April 17, 2008, after spending 99 days at the detention facility in Greenfield, MA, ICE transferred Mr. Ng to the Franklin County Jail (“FCJ”) located in St. Albans, Vermont despite his request. The Franklin County Sheriff’s Office (“FCSO”) operates the FCJ. ICE gave Mr. Ng no reason for the transfer.

54. Around this time, Mr. Ng began to suffer from skin irritation and chronic back pain. He complained to officials at the FCJ of severe back pain and tiredness and specifically noted that something was medically wrong with his body. In order to alleviate his serious and untreated back pain, Mr. Ng often had to sleep on the floor, which provided some degree of comfort. At the FCJ, Mr. Ng lost large amounts of weight over a short period. He requested to see a doctor. FCJ Staff denied him a medical visit and failed to respond to written grievances complaining about his serious, but untreated, medical needs.

55. Mr. Ng's attorneys notified ICE Officials of the lack of adequate medical care that the FCJ was providing to Mr. Ng.

56. Due to the lack of available and adequate medical care at the FCJ, Mr. Ng requested that ICE transfer him to a facility that had medical services.

57. On July 3, 2008, after spending 78 days at the FCJ, ICE transferred Mr. Ng back to Wyatt.

58. Mr. Ng arrived back at Wyatt in obvious chronic and serious pain. He was in serious medical need. His medical condition significantly affected his daily life.

59. The cell assignments CFDFC and Wyatt Staff gave to Mr. Ng caused him to suffer needless and undue physical harm:

- a. Initially, Wyatt Staff assigned Mr. Ng to an overly restrictive and punitive assignment for three days in dark solitary confinement, known as the "Pit."
- b. After his time in the "Pit," Wyatt Staff assigned Mr. Ng to the top bunk of a cell on the first floor. Because of his medical condition and failing health, it was hard for Mr. Ng to get up to and down from the top bunk. He had to climb up and down for bed checks, food, and medicine. Mr. Ng was forced to suffer unreasonable and unnecessary pain because of this arrangement.
- c. Wyatt Staff then assigned Mr. Ng to a bottom bunk in a cell on the second floor. Because of his disability, he could not walk the stairs from his second floor cell to the first floor where Wyatt provided food and medicine.

- d. Finally, Wyatt Staff changed Mr. Ng's cell assignment to a bottom bunk in a cell on the first floor.
- e. Each time Mr. Ng's cell assignment was changed Wyatt Staff required him to carry his own mattress and personal belongings despite the pain it caused and his clear and obvious disability.

60. Mr. Ng's medical condition consistently worsened throughout his detention at Wyatt. His back pain became so severe that he could not stand up straight and remained in a permanently hunched position. He needed to take frequent rests when he walked. Because of his pain, he suffered from severe insomnia. His family became very concerned about his mental stability.

61. On July 5, 2008, Mr. Ng saw the Wyatt medical staff because of pain in his back and Wyatt Staff gave him Motrin. He received no diagnostic tests and Wyatt staff denied him access to basic medical services.

62. Despite numerous requests from Mr. Ng to Wyatt Staff after this, including on July 8, 2008 and July 10, 2008, Wyatt Staff did not medically treat him until about July 14, 2008, three days after Mr. Ng's brother-in-law, Brian Zhao ("Zhao"), wrote to Wyatt Warden Salisbury, on July 11, 2008 requesting medical intervention. Mr. Zhao wrote:

I'm Brian Zhao, a brother-in-law of one of your the detainees currently detain in your facility. His name is Hiu Lui Ng, aka, Jason, alien # [omitted]. Jason is currently detained due to immigration issue with ICE/DHS. He is not a criminal. His case is pending with BIA. Last week, 07/03/08, he relocated by ICE from Vermont detention facility to your facility. Unfortunately, before the transfer, he has already suffered serious back pain, hence the reason for his relocation and seeks reasonable medical cares with a better and more equipped facility. Vermont facility was out-dated and lack of proper medical staffs.

However, based on the today's phone calls with my in-law, since his arrival to your facility, he repeatedly asked for medical care for his health condition, primary his back pain. Until now, the supervisor/nurse that assigned to him didn't care much of his health and back pain, simply gave him some pain killer.

Jason hasn't able to get any sleeps due to his back pain since his arrival. In addition, the facility changed his PODS assignment couple of times within last week and Jason needed to perform the normal daily routine tasks, all these made his back pain a lot worst. On our last phone call, he sounded very weak and in extreme pain. At this point, he even has problem getting on his bed.

I'm writing this email to seek your immediate attention and provide help for my brother-in-law, Hiu Lui Ng, before any permanent damage to his back.

Your help and time are greatly appreciated. Thank you so much!!!

63. The pain was so awful that Mr. Ng would cry in his cell throughout the night.

64. On July 14, 2008, Mr. Ng's attorney wrote ICE Boston Field Office Director Chadbourne requesting emergency medical treatment for Mr. Ng, stating:

Dear Officer:

We are writing to request emergency medical treatment for Mr. Ng. Mr. Ng has been suffering from a very serious back pain, which is making every movement painful for him. He has repeatedly asked for medical diagnosis and treatment by a medical doctor. However, his request has been ignored – he was only seen by a nurse and given some painkiller, which does not improve his condition. He is also suffering from chronic insomnia and mental instability, which also requires professional evaluation. Mr. Ng, however, has been denied the right to proper medical treatment.

65. Mr. Ng's condition did not improve. He was in chronic and acute pain and lost all strength in one leg and most strength in the other leg so that he could barely walk. He regularly fell to the floor when he attempted to walk. He complained to Wyatt Staff

but they ignored his requests for help and made no effort to determine the cause of his excruciating pain or to provide diagnosis and treatment. Wyatt Staff met Mr. Ng's cries of pain with callous indifference and accusations that he was "faking" and "lying."

66. The actions and inactions of CFDFC and Wyatt Staff demonstrated deliberate indifference to Mr. Ng's serious medical condition and a depraved heart to his excruciating pain and suffering.

- a. Mr. Ng was required to walk to a counter and wait in line to obtain his medication. Because Mr. Ng could not stand up straight or walk for an extended period, he was not able to obtain his medication. Mr. Ng requested that Wyatt Staff deliver his medication to his cell; Wyatt Staff denied these requests.
- b. Fellow detainees would physically carry Mr. Ng to get his medication; Wyatt Staff would become irritated and annoyed and again falsely accuse Mr. Ng of "faking it."
- c. Mr. Ng was having difficulty walking to the telephone booth to call his family. For over two weeks, Mr. Ng had to rely on other detainees at Wyatt to call home on his behalf.
- d. Mr. Ng's condition had worsened to such a point where he was having problems using the bathroom, which was located within his cell, only feet away from his bed. He was forced to urinate in a soda bottle. He was unable to bathe himself.
- e. Mr. Ng was not able to walk to get his food.

67. On July 16, 2008, Mr. Ng's brother-in-law Zhao again emailed Salisbury, appealing for help. Mr. Zhao wrote:

*** According to Hiu Lui, he formally requested for medical care (twice) for the entire week because of the unbearable back pain, but neither the medical director or the nurse shown serious concerns. They gave him some pain killer and told him to wait for the doctor. Instead of hoping to seeing the doctor, he was re-assigned to a different PODS and he never saw any doctor for the entire week.

His wife and I visited him last Sunday and we spoke to him last couple of nights. I was really heart broken when I first saw him last Sunday. After almost 2 weeks of suffering with unbearable back pain and unable to get any sleeps, he was so weak and looked horrible, I didn't even recognized him for the first few seconds. He was limping and talked just like an 80 years old senior person. It was heart broken for the entire family.

I spoke to Hiu Lui last night as well over the phone. According to my in-law, a doctor did check him Monday morning. However, the treatment wasn't any difference, just pain killer as well, but stronger. The medicine did help him a little, he was able to get few hours of sleep yesterday. I asked him did the doctor find out what was the cause of his back pain. Sadly, the doctor didn't mention anything. Yesterday, the pain remained even after he took the medicine. As of yesterday, he told me he started experiencing problem standing up.

The family and myself are extremely concerned about his current health condition. My biggest concern is want to be sure he didn't suffer any spiral injury or fractures. If that is the case (certainly hope not), then he needs proper treatment ASAP. I really hope the facility is able to conduct a thorough diagnose (like X-ray) of his back to determine what happened to his back and what caused his back pain. I sincerely hope my in-law is getting adequate medical treatments for his current health condition and the facility can provide medical advices for my in-law to take cautious actions to prevent further damage to his body. I will be visiting him this coming Sunday, I certainly hope his condition will get better soon.

I'm really apologized for such a long story and ask for your understanding.

68. On July 18, 2008, Mr. Ng saw the Wyatt medical staff. They gave him Motrin and prescribed a cane for 2 weeks. No further diagnostic tests were conducted.

69. On July 20, 2008, Mr. Ng had x-rays of his hip and spine. The diagnosis was slight scoliosis, otherwise unremarkable.

70. On July 22, 2008, Zhao emailed Wyatt Director of Nursing Candelaria and Warden Salisbury begging for medical help for Mr. Ng. Candelaria, Salisbury, and Wyatt Staff were on notice of Mr. Ng's serious medical needs, yet failed to provide adequate medical care. Mr. Zhao wrote:

*** Below were few symptoms I witnessed and Ng told me as well (I'm not sure the doctor who treated Ng knows about them).

1. Last couple of days; he started experiencing difficulties getting up from his bed.
2. His right leg lost sensitivity and a portion of his right leg started swelling.
3. He experienced cold sweats and night sweats almost daily due to undetermined cause of extreme back pain and body injuries.
4. He had major difficulty walking even with the cane provided by the doctor. I told him to request for a wheel chair
5. He got very little sleep even under medication (forced awake due to extreme pain).

After couple weeks of observations, his health condition is getting worst everyday. The sole purpose of all my urgent emails was something very seriously happened to Ng couple weeks ago and his situation deserved special attention. Once again, I'm seeking sympathy from the facility and I'm begging the medical department to expedite the medical diagnostic procedure to determine the root cause of his pain and injuries before it is too late. Please HELP!!!

71. Family members called CFDFC and Wyatt Staff many times and requested a wheelchair for Mr. Ng. CFDFC and Wyatt Staff did not provide one.

72. On July 23, 2008, Mr. Ng went for medical treatment. A CT of his right hip and lumbar spine was ordered.

73. On July 26, 2008, Wyatt Staff denied Mr. Ng access to his attorney and assistance of counsel.

- a. Mr. Ng's attorney Andy Wong traveled to Wyatt with Mr. Ng's brother-in-law Brian Zhao to confer with Mr. Ng. Mr. Ng could not walk from his cell to the visitation area. He requested a wheelchair from Wyatt Staff, but they denied him a wheelchair or any other assistance. Wyatt Staff informed Mr. Ng that he was medically cleared to walk. CFDFC and Wyatt Staff insisted that Mr. Ng walk to the visitation area. Mr. Ng could not physically do so.
- b. The attorney requested that Wyatt Staff permit him to go to Mr. Ng's cell to talk to him; Wyatt Staff denied that request.
- c. The attorney requested to talk to Mr. Ng on the phone, with Mr. Ng using a telephone booth closer to his cell; Wyatt Staff denied that request.
- d. The attorney requested that a Wyatt Staff deliver some documents to Mr. Ng for his signature; Wyatt Staff denied that request.
- e. Since Mr. Ng could not walk to the visitation area, the meeting had to be called off. The attorney was unable to see or talk to Mr. Ng.

74. On Saturday, July 26, 2008, per order from a prison doctor 3 days earlier, Wyatt Staff finally transported Mr. Ng to Memorial Hospital at 8:45 pm to have an x-ray and MRI. A Memorial Hospital doctor told him that they could not perform the MRI because it was a Saturday. The doctor scheduled Mr. Ng for a MRI on Monday, July 28, 2008.

75. After Mr. Ng's return from the hospital, Wyatt Staff relocated him to an isolation cell within the Health Services Unit. Food was brought to the side of his bed,

but medication was brought only to the outside of his cell. The Wyatt Staff nurse told Mr. Ng to come out to get his medication but he could not walk so he could not get his medication. Wyatt Staff denied him his medication in a timely manner because the nurse insisted that Mr. Ng get up and get it himself. Because Mr. Ng was in isolation, fellow detainees could not assist him in obtaining medications and using the toilet as they did when he was in the general population. Mr. Ng urinated and defecated on himself, and Wyatt Staff had to clean him up.

76. On Monday, July 28, 2008, Wyatt Staff did not attempt to transport Mr. Ng to the hospital for his MRI, thus denying him access to necessary and requested medical care.

77. On July 29, 2008, Wyatt Staff told Mr. Ng they were going to take him to the hospital for a MRI scan but again refused to give Mr. Ng a wheelchair. Mr. Ng was physically unable to go to the hospital because of his severe pain, serious medical need, and disability. Wyatt Staff denied Mr. Ng the hospital visit and MRI scan ordered days earlier by the hospital doctor.

78. On July 29, 2008, Mr. Ng's attorney filed a petition for writ of habeas corpus in the U.S. District Court for the District of Rhode Island (C.A. No. 08-285-S) seeking Mr. Ng's release and specifically complaining about Wyatt's unwillingness to diagnose and treat Mr. Ng's serious medical need.

Gross Physical Abuse and Excessive Force

79. Despite his obvious severe and debilitating medical condition, and the actual notice it had received of his health condition, ICE Officials ordered that Mr. Ng on July 30, 2008 travel to Hartford, Connecticut from Central Falls, Rhode Island. Given his

serious and obvious medical condition, requiring Mr. Ng to make this trip represented cruel, inhumane, malicious and sadistic behavior on the part of ICE Officials. These actions represented calculated harassment unrelated to any legitimate or legal purpose.

80. On July 30, 2008, Wyatt Staff entered Mr. Ng's cell and ordered him to put on his shoes and exit the cell. Mr. Ng told the officers that he was unable to walk and requested a wheelchair. The officers refused Mr. Ng a wheelchair and repeatedly ordered him to put on his shoes and walk out of the cell. Mr. Ng began to cry and attempted to put on his shoes, but he had difficulty standing. The officers then forcefully put Mr. Ng's shoes on, purposely and maliciously inflicting severe and unnecessary pain on Mr. Ng.

81. Wyatt Staff then picked Mr. Ng up by the arms and forcibly dragged him out of his cell. Mr. Ng screamed loudly in excruciating pain. The Wyatt Staff's behavior so outraged Mr. Ng's fellow detainees that they screamed at the Wyatt Staff: "Stop treating him as if he were an animal!" The screams were in vain and the torturous conduct continued.

82. Mougnot and one other Wyatt Staff confronted Mr. Ng and yelled at him to "shut-up" and "stop lying about being hurt."

83. Wyatt Staff knowingly lied to Mr. Ng about having a court appearance in Hartford in an effort to induce him to leave his cell notwithstanding his severe pain and disability.

84. They brought him to the intake and discharge area of Wyatt. They shackled his hands, feet, and waist even though he could not move on his own.

85. Wyatt Staff, including Mougnot, Benaducci, and Sanchez lifted Mr. Ng up and with his legs dragging on the ground, carried him to the transport van. These actions by Wyatt Staff caused Mr. Ng unnecessary and excruciating pain. Wyatt Staff then put him in a van and transported him to Hartford.

86. At Hartford, ICE Officials, including Smith, attempted to pressure Mr. Ng to withdraw all pending appeals in his case and accept deportation.

87. Upon his return to Wyatt, several Wyatt Staff grabbed Mr. Ng, dragged him out of the van, and threw him to the ground while shackled. Mr. Ng screamed in agony.

88. Wyatt Staff then formed a semi-circle around Mr. Ng, laughed at him and taunted him. Two Wyatt Staff carried Mr. Ng by his arms and two other Wyatt Staff then grabbed Mr. Ng's ankles and lifted his feet. They carried Mr. Ng face down back into the jail. This caused unnecessary pain to Mr. Ng as he screamed loudly in pain.

89. Defendants videotaped Plaintiff's preparation for transport to and from Hartford. They purposely turned the camera on and off in order to prevent an accurate account of their treatment of Plaintiff from being recorded.

90. The brutality inflicted by Wyatt Staff on Mr. Ng caused bruising on both of his biceps, forearms, and axilla and multiple contusions on both legs. (See Exhibit A, attached photos taken at Rhode Island Hospital on August 3, 2008, a few days after Wyatt Staff brutalized him). The brutality also caused Mr. Ng's spine to fracture.

91. Wyatt Staff including Mougnot, Benaducci, Sanchez, and Botelho used excessive force, brutality, and malicious and sadistic behavior on Mr. Ng at Wyatt and in

transporting him to and from Hartford. Mr. Ng himself described it to family members as being “physically tortured” by Wyatt Staff.

92. On July 31, 2008, Judge William E. Smith of the U.S. District Court for the District of Rhode Island held a chambers conference concerning Mr. Ng’s Petition for a Writ of Habeas Corpus. The judge did not make a ruling but he required that Mr. Ng get the immediate medical care he needed.

93. On August 1, 2008, at 2:53 pm, Wyatt Staff transported Mr. Ng in shackles to Memorial Hospital where doctors quickly diagnosed him as having terminal liver cancer that had spread throughout his entire body, a fractured spine, and a small IVC clot. Mr. Ng’s medical records indicate that he had multiple bruises that occurred when Wyatt Staff dragged him from his cell at Wyatt. Mr. Ng was in such serious medical condition that Memorial Hospital had to transfer him to Rhode Island Hospital.

94. On August 5, 2008, Mr. Ng was visited by Mrs. Ng; his two sons; his sister Wendy Zhao and her husband Brian Zhao; and Mrs. Ng’s parents. They arrived at the hospital around 2:30 pm.

95. That night, on August 6, 2008 at 1:22 am, Mr. Ng died still being watched by Wyatt correctional officers. R.I. Hospital staff notified his family of Mr. Ng’s death at 4:00 am.

96. An autopsy revealed that Mr. Ng’s body was ravaged with cancer that arose from his liver and spread throughout his body. It also found that his spine had been fractured.

V. LEGAL CLAIMS

FIRST CAUSE OF ACTION

42 U.S.C. § 1983 Claim – Unconstitutional Medical Care

(State Defendants: CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Candelaria; Mougnot; Medeiros; Benaducci; Sanchez; Botelho; Levesque; Riedel; FCJ; FCSO, Norris; Unknown Wyatt Correctional Officer; Unknown Wyatt Medical Staff; Unknown Wyatt Administrator; Unknown FCJ Staff)

97. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

98. At all times relevant herein, each of the State Defendants was acting under color of state law by exercising power made possible because the State Defendants were clothed with the authority of state law.

99. Each of the State Defendants violated Plaintiff's clearly established constitutional right to adequate medical care during the course of his detention. Each of the State Defendants knew or should have known that Plaintiff had serious medical needs, as evidenced by, inter alia, his extreme pain, his inability to stand or walk without assistance, and the regular requests for medical care submitted by Mr. Ng, his family, and his attorneys. Notwithstanding the obviousness of Mr. Ng's serious need for proper medical care, each of the State Defendants denied Mr. Ng access to appropriate medical care by, inter alia, ignoring numerous grievances and requests for medical care, failing to order, perform, or transport Mr. Ng to the hospital to receive previously ordered diagnostic tests, and refusing to provide him prescribed medications because he was physically unable to walk to the Wyatt Staff member dispensing such medications.

100. State Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ Staff failed properly to supervise their subordinates, which resulted in unconstitutional medical care to Plaintiff.

101. State Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ Staff knew of the violations of Plaintiff's constitutional rights and refused to do anything to rectify the violations.

102. State Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ Staff created, implemented and maintained a policy or custom of allowing or encouraging these unlawful acts.

103. State Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ Staff were grossly negligent in the medical care provided to Plaintiff.

104. Each of the State Defendants acted with deliberate indifference to the rights, health, safety, and welfare of the Plaintiff.

105. As a direct and proximate result of the State Defendants' actions and inactions as described herein, Plaintiff incurred tremendous pain and suffering, mental anguish, and ultimately died.

106. As a direct and proximate result of the State Defendants' actions and inactions as described herein, Plaintiff's spouse incurred mental anguish and lost the consortium and companionship of her husband.

107. As a direct and proximate result of the State Defendants' actions and inactions as described herein, Plaintiff's two children, Raymond and Johnny, lost the companionship, care, guidance and society of their father.

108. The conduct of each of the State Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

SECOND CAUSE OF ACTION

42 U.S.C. § 1983 Claim – Excessive Force and Brutality

(State Defendants: CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Mougnot; Benaducci; Sanchez; Botelho; Unknown Wyatt Correctional Officers; Unknown Wyatt Administrators)

109. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

110. At all times relevant herein, each of the State Defendants was acting under color of state law by exercising power made possible because the State Defendants were clothed with the authority of state law.

111. Each of the State Defendants violated Plaintiff's clearly established constitutional right to be free from excessive force and brutality during the course of his detention by torturing, beating, assaulting, abusing, treating sadistically, harassing, using excessive force, and physically injuring Plaintiff. Each of the State Defendants acted maliciously and sadistically for the purpose of causing harm, with no legitimate facility management purpose or good faith belief that such harm was necessary, and out of proportion to whatever force, if any, may have been needed.

112. Each of the State Defendants acted with deliberate indifference to the rights, health, safety, and welfare of the Plaintiff.

113. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators failed to properly supervise their subordinates in order to stop their use of excessive force and brutality.

114. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators knew of the violations of Plaintiff's constitutional rights and refused to do anything to rectify the violations.

115. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators created, maintained and implemented a policy or custom of allowing or encouraging these unlawful acts.

116. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators were grossly negligent.

117. As a direct and proximate result of the State Defendants' actions as described herein, Plaintiff incurred tremendous pain and suffering, mental anguish, and ultimately died.

118. As a direct and proximate result of the State Defendants' actions and inactions as described herein, Plaintiff's spouse incurred mental anguish and lost the consortium and companionship of her husband.

119. As a direct and proximate result of the State Defendants' actions and inactions as described herein, Plaintiff's two children, Raymond and Johnny, lost the companionship, care, guidance and society of their father.

120. The conduct of each of the State Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983 Claim – Access to Counsel and the Courts

(State Defendants: *CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Unknown Wyatt Correctional Officers; Unknown Wyatt Administrators*)

121. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

122. At all times relevant herein, each of the State Defendants was acting under color of state law by exercising power made possible because the State Defendants were clothed with the authority of state law.

123. Each of the State Defendants violated Plaintiff's clearly established constitutional right to access to his counsel and to the Courts during the course of his detention by failing to allow him access to his lawyer or making other reasonable alternatives for the plaintiff to consult with his attorney as outlined above.

124. Each of the State Defendants acted with deliberate indifference to the rights of the Plaintiff.

125. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators failed to properly supervise their subordinates, resulting in the denial of Plaintiff's access to counsel and the courts.

126. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators knew of the violations of Plaintiff's constitutional rights and refused to do anything to rectify the violations.

127. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators created, maintained and implemented a policy or custom of allowing or encouraging these unlawful acts.

128. State Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators were grossly negligent.

129. As a direct and proximate result of the State Defendants' actions and inactions as described herein, Plaintiff was denied access to his counsel, unable to sign legal papers, had his right to confer with his counsel frustrated and impeded and his access to justice delayed, increasing his pain and suffering. Plaintiff's legal rights were actually injured.

130. The conduct of each of the State Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

FOURTH CAUSE OF ACTION

Bivens Claim for Unconstitutional Medical Care

(Federal Individual Defendants: *Chadbourne; Sullivan; Smith; Salisbury; Tapley; Ventetuolo; Candelaria; Mougnot; Medeiros; Benaducci; Sanchez; Botelho; Levesque; Riedel; Norris; Unknown Wyatt Correctional Officers; Unknown Wyatt Medical Staff; Unknown Wyatt Administrators; Unknown FCJ Staff*)

131. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

132. Each of these Federal Individual Defendants had a duty to provide adequate medical care to the Plaintiff.

133. Plaintiff's medical need was extremely serious. These factors were conveyed to the Federal Individual Defendants when:

- a. Mr. Ng complained of something wrong with his body;
- b. He made constant requests for medical care;
- c. He lost large amounts of weight over a short period of time;
- d. He became unable to walk; and

e. Fellow detainees warned Federal Individual Defendants.

134. Each of these Federal Individual Defendants acted with deliberate indifference to the Plaintiff's health and safety.

135. Plaintiff's medical need was so obvious that even a layperson would easily recognize the necessity for medical intervention.

136. Despite all of this, these Federal Individual Defendants failed to provide adequate medical care to the Plaintiff.

137. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ Staff failed properly to supervise their subordinates resulting in unconstitutional medical care to the Plaintiff.

138. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ knew of the violations of Plaintiff's constitutional rights and refused to do anything to rectify the violations.

139. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ created, implemented and maintained a policy or custom of allowing or encouraging these unlawful acts.

140. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, Norris, Wyatt Administrators, and FCJ were grossly negligent.

141. As a direct and proximate result of these Federal Individual Defendants' constitutional violations of Plaintiff's rights, Plaintiff sustained injuries and non-economic damages consisting of past physical and mental pain and suffering, mental anguish, emotional stress and the loss of enjoyment of a full and complete life.

142. The conduct of each of the Federal Individual Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

FIFTH CAUSE OF ACTION

Bivens Claim for Brutality and Excessive Force

(Federal Individual Defendants: *Salisbury; Tapley; Ventetuolo; Mougnot; Benaducci; Sanchez; Botelho; Unknown Wyatt Correctional Officers; Unknown Wyatt Administrators*)

143. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

144. Each of these Federal Individual Defendants brutalized the Plaintiff and/or used excessive force on him in violation of his constitutionally protected due process rights.

145. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators failed properly to supervise their subordinates in order to stop their use of excessive force and brutality.

146. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators knew of the violations of Plaintiff's constitutional rights and refused to do anything to rectify the violations.

147. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators created, maintained and implemented a policy or custom of allowing or encouraging these unlawful acts.

148. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators were grossly negligent.

149. As a direct and proximate result of these Federal Individual Defendants' constitutional violations of Plaintiff's rights, Plaintiff sustained injuries and non-economic damages consisting of physical and mental pain and suffering, mental anguish, emotional stress and the loss of enjoyment of a full and complete life.

150. The conduct of each of the Federal Individual Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

SIXTH CAUSE OF ACTION

Bivens Claim for Access to Counsel and the Courts **(Federal Individual Defendants: *Salisbury; Tapley; Ventetuolo; Unknown Wyatt Correctional Officers; Unknown Wyatt Administrators*)**

151. Each of the Federal Individual Defendants violated Plaintiff's clearly established constitutional right to access to his counsel and to the Courts during the course of his detention by failing to allow him access to his lawyer or making other reasonable alternatives for the plaintiff to consult with his attorney as outlined above.

152. Each of the Federal Individual Defendants acted with deliberate indifference to the rights of the Plaintiff.

153. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators failed properly to supervise their subordinates resulting in the denial of Plaintiff's access to counsel and the courts.

154. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators knew of the violations of Plaintiff's constitutional rights and refused to do anything to rectify the violations.

155. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators created, maintained and implemented a policy or custom of allowing or encouraging these unlawful acts.

156. Federal Individual Defendants Salisbury, Tapley, Ventetuolo, and Wyatt Administrators were grossly negligent.

157. As a direct and proximate result of the Federal Individual Defendants' actions and inactions as described herein, Plaintiff was denied access to his counsel, unable to sign legal papers, had his right to confer with his counsel frustrated and impeded and his access to justice delayed, increasing his pain and suffering. Plaintiff's legal rights were actually injured.

158. The conduct of each of the Federal Individual Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

SEVENTH CAUSE OF ACTION

***Bivens Claim for Unlawful Detention and Due Process and Liberty Violation* (Federal Individual Defendants: *Chadbourne; Sullivan; Smith; Unknown ICE Officials*)**

159. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

160. By detaining Plaintiff as outlined above, each of these Federal Individual Defendants, acting under color of law and their authority as federal officers, intentionally or recklessly engaged in the following conduct in violation of Plaintiff's due process rights under the Fifth Amendment to the United States Constitution:

- a. Failing to release Mr. Ng because of the defective notice that resulted in the February 2, 2001 deportation order;
- b. Failing to review his status in a timely fashion and conducting a timely custody review; and
- c. Failing to release Mr. Ng after detaining him in excess of 120 days in violation of his rights under Zadvydas.

161. The Plaintiff's detention was unconstitutional because removal was not reasonably foreseeable. His prolonged and arbitrary detention degraded the Plaintiff's constitutional due process and liberty protections.

162. By detaining Plaintiff unlawfully, each of these Federal Individual Defendants intentionally or recklessly deprived Plaintiff of his clearly established constitutionally protected right to liberty and due process of law.

163. Each of the Federal Individual Defendants acted with deliberate indifference to Plaintiff's known constitutional rights.

164. The conduct of each of the Federal Individual Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

EIGHTH CAUSE OF ACTION

Bivens Claim for Inappropriate Placement

(Federal Individual Defendants: *Chadbourne; Sullivan; Smith; Unknown ICE Officials*)

165. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

166. Federal Individual Defendants Chadbourne, Sullivan, Smith, and ICE Officials had a duty to provide appropriate, safe and adequate placement for immigrant detainees, including Plaintiff (8 U.S.C. §1252(c)).

167. Federal Individual Defendants Chadbourne, Sullivan, Smith, and ICE Officials knew or should have known that the Plaintiff's placement at the FCJ and Wyatt was not appropriate, safe or adequate and proceeded with deliberate indifference toward the Plaintiff in violation of his rights to equal protection and due process under the Constitution.

168. The conduct of each of these Federal Individual Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional right to equal protection.

NINTH CAUSE OF ACTION

Violation of the Americans with Disabilities Act and the Rehabilitation Act
(Defendants: *CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Candelaria; Mougnot; Medeiros; Benaducci; Sanchez; Botelho; United States Immigration and Customs Enforcement ; Unknown United States Immigration and Customs Enforcement Officials; Chadbourne; Sullivan; Unknown Wyatt Correctional Officers; Unknown Wyatt Medical Staff; Unknown Wyatt Administrators*)

169. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

170. Defendants to this count have been and are recipients of federal funds, and are all covered by the mandate of Section 504 of the 1973 Rehabilitation Act (29 U.S.C. § 794). Section 504 requires that persons with disabilities be reasonably accommodated in their facilities, program activities, and services and that recipients reasonably modify such facilities, services, and programs to accomplish this purpose.

171. Further, Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-12134) applies to Defendants to this count and has essentially the same mandate as that expressed in § 504.

172. At all times relevant to this Complaint, Plaintiff was a qualified individual with a disability, as defined by Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 and Section 504 of the Rehabilitation Act of 1973.

173. Defendants, and each of them, violated the ADA, 42 U.S.C. §§ 12131-12165 by excluding Plaintiff from participating in, or denying the benefits of a public entity's medical services, programs, or activities as a result of his disability. The Defendants, and each of them, denied Plaintiff access to medical care, services and programs at the Wyatt facility as required by his obvious physical disabilities, including, but not limited to:

- a. Denying access to appropriate diagnostic medical care for his disability;
- b. Denying access to prescription and non-prescription medications to treat his disability; and
- c. Denying access to a physician upon request.

174. Defendants, and each of them, violated the ADA, 42 U.S.C. §§ 12131-12165, by failing to provide Plaintiff reasonable accommodations for his disabilities, including, but not limited to:

- a. Refusing to provide Plaintiff with a wheelchair when he was unable to walk as a result of his disability;

- b. Refusing to provide Plaintiff with a lower berth bunk when he was unable to climb to an upper bunk as a result of his disability;
- c. Refusing to provide Plaintiff with a cell on the lower level when he was unable to climb stairs because of his disability;
- d. Refusing to provide him with an area to meet with his attorney when he was unable to walk to the attorney-client meeting rooms because of his disability.

175. Defendants discriminated against the Plaintiff by torturing, assaulting, taunting, ridiculing, and through other conduct detailed in this complaint because of Mr. Ng.'s disability.

176. Defendants' unlawful actions were intentional, willful, malicious, and/or done with reckless disregard to the right of Plaintiff to be free from discrimination based on disability.

177. As a direct and proximate result of the Defendants' actions and inactions as described herein, Plaintiff incurred tremendous pain and suffering, mental anguish, and ultimately died.

178. As a direct and proximate result of the Defendants' actions and inactions as described herein, Plaintiff's spouse incurred mental anguish and lost the consortium and companionship of her husband.

179. As a direct and proximate result of the Defendants' actions and inactions as described herein, Plaintiff's two children, Raymond and Johnny, lost the companionship, care, guidance and society of their father.

TENTH CAUSE OF ACTION

Negligence

(Defendants: *CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Candelaria; Mougnot; Medeiros; Benaducci; Sanchez; Botelho; Levesque; Riedel; FCJ; FCSO; Norris; Unknown Wyatt Correctional Officers; Unknown Wyatt Medical Staff; Unknown Wyatt Administrator; Unknown FCJ Staff*)

180. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

181. Each of the Defendants negligently treated Plaintiff while in their care, custody and control, causing excruciating pain because of the denial of treatment and care of his serious medical condition.

182. At all times and places mentioned herein, each of the Defendants carelessly and negligently cared for and treated Plaintiff in light of his above-described medical condition and each of these Defendants conducted themselves in the course of their duties in a careless and negligent manner. Each of these Defendants carelessly and negligently treated, managed, monitored, and supervised Plaintiff's condition during his detention by CFDFC and FCJ, which, among other things, directly and proximately resulted in injuries, mental and emotional pain and suffering to Plaintiff and causing his death.

183. Each of these Defendants knew or should have reasonably known that their conduct toward Plaintiff would exacerbate his serious medical condition.

184. Each of these Defendants owed a duty to Plaintiff to care for him in the course of their employment.

185. Each of these Defendants breached their duty to him by ignoring his requests for medical attention and care, causing him intense pain, suffering and mental anguish.

186. As a direct and proximate result of the duty breached, Plaintiff suffered physical bruising, pain to his body, mental and emotional pain, and ultimately his death.

187. The conduct of each of the Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

ELEVENTH CAUSE OF ACTION

Assault and Battery

(Defendants: *Mougenot; Benaducci; Sanchez; Botelho; Unknown Wyatt Correctional Officers*)

188. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

189. Defendants' action as described above intended to place Plaintiff in fear of imminent bodily harm.

190. Defendants intended to cause, and did cause offensive bodily contact with the body of the Plaintiff.

191. As a direct and proximate result of the assault and battery by the Defendants, Plaintiff suffered serious bodily harm, extreme pain and suffering, and ultimately died.

192. The conduct of each of the Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

TWELFTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(Defendants: *CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Candelaria; Mougenot; Medeiros; Benaducci; Sanchez; Botelho; Levesque; Riedel; FCJ; FCSO; Norris; Unknown Wyatt Correctional Officers; Unknown Wyatt Medical Staff; Unknown Wyatt Administrator; Unknown FCJ Staff*)

193. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

194. The Defendants' conduct was intentional and/or in reckless disregard of the probability of causing Plaintiff and his wife and family emotional distress.

195. The Defendants' conduct was extreme and outrageous.

196. There is a causal connection between Defendants' conduct and the emotional distress suffered by Plaintiff, his wife and family.

197. The emotional distress suffered by Plaintiff, his wife, and family was severe.

198. As a direct and proximate result of the intentional infliction of emotional distress by the Defendants, Plaintiff, his wife and family suffered serious bodily harm, extreme pain and suffering, and mental anguish.

199. The conduct of each of the Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

THIRTEENTH CAUSE OF ACTION

Fraudulent Misrepresentation and Concealment

(Defendants: *CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Mougnot; Benaducci; Sanchez; Botelho; Unknown Wyatt Correctional Officers; Unknown Wyatt Administrators*)

200. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

201. Defendants who videotaped Plaintiff's transport to Hartford, Connecticut, purposely turned the camera on and off in order to prevent an accurate account of their negligent treatment of Plaintiff from being recorded.

202. At all times herein mentioned, each of these Defendants were agents, servants and employees of CFDFC and/or AVCORR, and at all material times were acting within the course and scope of their agency, service and employment.

203. At all times and places mentioned herein, each of the Defendants negligently and/or purposefully operated the video camera during Plaintiff's transport to Hartford so as to provide a false and misleading account of the material facts as they occurred that day. Each of these Defendants conducted themselves in the course of their duties in a negligent and/or purposeful manner.

204. Each of these Defendants knew that the resulting video tape of the events would prove false and misleading to subsequent viewers and in fact, such calculated manipulation of the video recording was intended to deceive subsequent viewers.

205. Others relied upon the video recording made because of this conspiratorial and fraudulent conduct as a record of Plaintiff's transport, causing a further delay in Plaintiff's treatment and diagnosis, resulting in injuries, mental and emotional pain and suffering to Plaintiff and causing his premature death.

206. Each of these Defendants owed a duty to Plaintiff while he was in their care, custody and control to speak, through their actions as well as words, and reveal the truth as witnesses and perpetrators of the events surrounding Plaintiff's transport to Hartford while he was in their custody in the course of their employment.

207. Each of these Defendants breached their duty to him by making and submitting a false and misleading account of Plaintiff's treatment en route to Hartford, which was relied upon by others.

208. As a direct and proximate result of the duty breached, Plaintiff suffered physical bruising and pain to his body and mental and emotional pain.

209. The conduct of each of the Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

FOURTEENTH CAUSE OF ACTION

Civil Conspiracy

(Defendants: *CFDFC; Salisbury; Tapley; AVCORR; Ventetuolo; Candelaria; Mougnot; Medeiros; Benaducci; Sanchez; Botelho; Levesque; Riedel; Norris; Unknown Wyatt Correctional Officers; Unknown Wyatt Medical Staff; Unknown Wyatt Administrators*)

210. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

211. Defendants knowingly, willingly and wantonly combined and agreed with one another to conceal the reality of the events that occurred when Plaintiff was transported to Hartford.

212. Defendants conspired to accomplish the unlawful objective of deceiving others as to the abuse and neglect that occurred when Plaintiff was transported to Hartford. It is evident that each Defendant agreed that the chosen course of action was to conceal the abuse by turning the video camera off and on at crucial moments.

213. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered and his family will continue to suffer substantial injuries and damages as described herein.

214. The conduct of each of the Defendants constitutes a reckless and callous disregard of Plaintiff's constitutional rights, entitling Plaintiff to punitive damages.

VI. PRAYER FOR RELIEF

As a direct and proximate result of the actions and inactions by each of the Defendants, individually and in conspiracy with one another, as set forth above,

- a. Hiu Lui Ng:
 1. had his constitutional rights violated;
 2. suffered extreme pain and suffering and mental anguish;
 3. lost income;
 4. died; and
 5. was otherwise damaged.
- b. The Estate of Hiu Lui Ng:
 1. lost future income and services; and
 2. was otherwise damaged.
- c. Lin Li Qu lost the consortium of her husband and minors Raymond Ng and Johnny Ng lost the companionship and guidance of their father, and they were otherwise damaged.

WHEREFORE, Plaintiff prays that, after due proceedings, judgment be entered in favor of Plaintiff and against all Defendants, jointly and severally, and that this Honorable Court:

- a. Award Plaintiff all reasonable compensatory damages, including for physical pain and suffering, mental anguish and emotional distress, loss of enjoyment of life, wrongful death damages, survival damages, and any other compensatory damages, for each count alleged in the Complaint;
- b. Award Plaintiff punitive damages against all Defendants for each count alleged in the Complaint;
- c. Award Plaintiff reasonable attorneys' fees, expert fees and court costs under 42 U.S.C. §1988 for the prosecution of his 42 U.S.C. §1983 claims;
- d. Award Plaintiff reasonable attorneys' fees and court costs pursuant to federal and state law;
- e. Award Plaintiff legal interest and costs; and
- f. Award such other and further relief as this Honorable Court deems right and just.

VII. JURY TRIAL

Plaintiff demands a jury trial to resolve all applicable claims brought herein.

Dated:

Respectfully submitted,

John J. McConnell, Jr. (#3016)
Robert J. McConnell (#3888)
Fidelma L. Fitzpatrick (#5417)
Aileen L. Sprague (#6507)
Motley Rice LLC
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(Cooperating attorneys, R.I. Affiliate,
American Civil Liberties Union)

EXHIBIT A

