IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

GLYNN R. SIMMONS,	)	
WADRESS METOYER, JR.	)	
CHERYL WILLIAMSON,	)	
DEBORAH FRANKS,	)	
CORY CARTER,	)	
JONATHAN DAVIS,	)	
DARRELL WIGGINS,	)	
WILBERT NUBINE,	)	
KIRBY JOHNSON,	)	
RICKY ROBERTSON,	)	
ROY BOWMAN,	)	
REGINALD GREEN,	)	
BILLY LAWRENCE,	)	
MARWIN BATTLES,	)	
STEFEN PETZOLD,	)	
DAVID COLEMAN,	)	
TAYLOR ELLEDGE,	)	
MARJORIE HANNAH,	)	
GWENDOLYN FIELDS,	)	
ALL IN ONE PROJECT,	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. CIV-17-908-D
	)	**JURY TRIAL DEMANDED**
MARY FALLIN, GOVERNOR;	)	
JENNIFER CHANCE,	)	
JOE ALLBAUGH,	)	
DELYNN FUDGE, EXECUTIVE DIRECTOR,	)	
TOM GILLERT, MEMBER,	)	
ROBERT "BRETT" MACY, MEMBER,	)	
WILLIAM "BILL" LATIMER, MEMBER,	)	
OKLAHOMA PARDON AND	)	
PAROLE BOARD;	)	
JOHN AND JANE DOES 1-5;	)	
CORRECTIONS CORPORATION	)	
OF AMERICA (CORECIVIC);	)	
GEO GROUP,	)	
Defendants.	)	

COMPLAINT
AND REQUEST FOR APPOINTMENT OF SPECIAL MASTERS

EXECUTIVE SUMMARY

1. Oklahoma has a unique history of inequitable and disproportionate sentencing of people of color and poor people. Oklahoma incarcerates more women than any other place in the world; it incarcerates African American men at a rate higher than any place in the world; it has the highest prison homicide rate in the country; and, as the FBI crime data showed a decrease in crime, the prison population inexplicably yet drastically increased.

2. Oklahoma earned the above reprehensible distinctions and others, such as ranking near dead last among the states in education spending, after the state engaged in contracting with for-profit prisons twenty years ago. Corrections spending has become a matter of great public interest because, as a consequence of spending on contracting with for-profit prison corporations, the state is now experiencing an unprecedented budget shortfall.

3. Defendant Governor Mary Fallin's administration of the Oklahoma Department of Corrections and the Oklahoma Pardon and Parole Board has by many experts been condemned as reckless and by some state legislators has been said to be counter to state budget priorities and, therefore, to the interests of Oklahoma citizens.

4. Plaintiffs urge that contracting with for-profit prisons in ways that guarantees 98% occupancy and targets citizens for the deprivation of freedom is blatantly corrupt.

5. For their cause of action, Plaintiffs allege that they are subject to unconstitutional and unsafe conditions of confinement that stem from overcrowding and understaffing Oklahoma prisons.

6. Plaintiffs allege that Defendant Fallin's 98% prison occupancy guarantee contracts with Defendants CCA and GEO are the proximate cause of and have perpetuated prison overcrowding and that said contracts are *per se* unconstitutional. Plaintiffs bring this litigation with four goals:

a. First, Plaintiffs seek remedy of the unconstitutional conditions of confinement that result from the profoundly dangerous overcrowding and understaffing of Oklahoma prisons;

b. Second, Plaintiffs seek to remedy the pattern and practice of arbitrary and capricious administration of the Oklahoma Pardon and Parole Board;

c. Third, Plaintiffs seek a declaration that the 98% occupancy and any other guarantees by the state to fill Oklahoma prison beds are *per se* unconstitutional; and

d. Fourth, Plaintiffs seek damages against Defendants CCA and GEO Group for conspiring to influence state criminal justice policy; obstructing

criminal justice reform efforts; targeting Oklahoma citizens for deprivation of liberty and incarceration; targeting African American males for deprivation of liberty, incarceration and deprivation of parole release; falsifying information concerning the operation of their facilities, i.e. inmate safety and inmate work programs and rehabilitation programs; and, influencing the blanket deprivation of release of parole-worthy prisoners, all for the purpose of profit.

7. As is their practice in other states, both Defendants CCA and GEO Group have financially incentivized Oklahoma governors and high ranking legislative leaders to engage in what amounts to an incarceration-for-profit scheme. This scheme involves deception of the public about violent crime rates in order to create fear and garner support for harsher sentencing laws and parole policies for the purpose of maximizing their profit.

8. Plaintiffs allege facts that demonstrate that the business practices of Defendants CCA and GEO Group in Oklahoma have gained them enormous wealth which is derived from taxpayer dollars.

9. Facts reveal that Defendants CCA and GEO are corporations that lobby for legislation that targets and/or disparately impacts African Americans.

10. Plaintiffs allege that 1) Defendants CCA and GEO's campaign contributions amount to constitutionally impermissible quid *pro quo* arrangements with state government officials; and 2) Oklahoma's history with federal litigation and knowledge

concerning the disparate impact of sentencing laws on African Americans renders Defendant Fallin's administration of the Oklahoma DOC intentionally discriminatory.

11. Plaintiffs allegation that CCA and GEO target African Americans is supported by the fact that CCA and GEO have financially nurtured relationships with state officials in historically racist states across the country and, as a result, those states now have 97% - 100% occupancy guarantee contracts and the highest rate of the incarceration rate of African American males in the United States.

12. On February 8, 2017, the Attorney General of the State of Mississippi filed a lawsuit against the GEO Group, Cornell Companies, Inc., a subsidiary of GEO, Christopher B. Epps, the former Commissioner of the Mississippi Department of Corrections, and Cecil McCrory, a former consultant of GEO. The complaint alleges several statutory and common law claims, including violations of various public servant statutes, racketeering activity, antitrust law, civil conspiracy, unjust enrichment and fraud. The complaint seeks compensatory damages, punitive damages, forfeiture of all money received by the defendants, restitution, interest, and attorneys' fees. The complaint claims that between 2007 and 2014, GEO Group and Cornell Companies, Inc. received approximately $256 million in proceeds from public contracts paid for by the State of Mississippi.

13. CCA has also recently been sued by its own stockholders following the release of the August 18, 2016 Department of Justice memorandum. The lawsuit is brought on behalf of a class of shareholders who purchased or acquired securities

between February 27, 2012 and August 17, 2016. In general, the lawsuit alleges that, during this timeframe, CCA made public statements that were false and/or misleading regarding the purported operational, programming, and cost efficiency factors cited in the DOJ memorandum (and, as a result, their stock price was artificially inflated). The lawsuit alleges that the *publication of the DOJ memorandum on August 18, 2016, revealed the alleged fraud. Grae v. Corrections Corporation of America et al*., Case No. 3:16-cv-02267.[1]

14. Plaintiffs' allegations against CCA and GEO evince a pattern of unethical business practices and cultivation of relationships with Oklahoma state officials over a span of nearly 20 years.

15. Although publicly criticized, the conduct of Defendants CCA and GEO remains unchecked and these corporations have successful commodified human beings, most of whom are members of historically devalued and marginalized citizens---African Americans, other people of color, and poor people.

16. Defendants Keating and Fallin's violation of prisoners' constitutional rights is extraordinarily egregious when examined against the backdrop of nearly two decades of federal litigation in *Battles v. Anderson*[2].

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[1] 1. CCA is also plagued with federal suits alleging such atrocious behavior within its prisons as the collusion of CCA prison officials and officers with prison gang members in one of its Idaho prison to promote violence and gang control of the prisoners so that CCA can keep its costs down. Castillon v Corrections Corporation of America et al., Case No 1:12-CV-559-EJL, Federal District Court for Idaho.

[2] On April 24, 1972, Bobby Battle, an inmate at the Oklahoma State Penitentiary, filed a lawsuit pro se in the United States District Court for the Eastern District of Oklahoma under 42 U.S.C. § 1983 against Oklahoma corrections officials. On March 15, 1973, the district court granted the United States' motion to intervene pursuant to Title IX of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2. Battle was represented by the American Civil Liberties Union of Oklahoma and private counsel and the case was eventually certified as a class action. In 1973, before the case went to trial, a riot occurred at the Oklahoma State Penitentiary in McAlester.

17. *T*he Oklahoma Legislature took actions, prior to Keating taking office, designed to create equitable sentencing and prevent the severe violations condemned by the federal courts in *Battles,* and which Plaintiffs complain against herein.

18. Specifically, in 1988, the Oklahoma Legislature created the Sentencing and Release Policy Committee, the work of which evolved into the creation of the Truth in Sentencing Policy Advisory Commission in 1994, followed by the creation of the Oklahoma Sentencing Commission in 1997. The Commission created the Truth in Sentencing Act, which was enacted in 1994[3].

On May 30, 1974, the district court (Judge Luther L. Bohanon) found that several conditions in the prison violated the constitution. *Battle v. Anderson*, 376 F.Supp. 402 (E.D.Ok. 1974). These included racial segregation, the punishment of detainees prior to disciplinary hearings, conditions of confinement, use of chemical agents in punishment, medical care, denial of publications, and denial of opportunity to gather for religious services. Judge Bohanon issued an order addressing all of these areas. The order included provisions requiring defendants to cease using race in its classification system, to cease disciplining inmates by placing them in 72-hour solitary confinement, to cease the unjustified use of chemical agents, and to provide inmates opportunities to engage in group religious services.

In June of 1977, the district court ordered defendants to reduce populations at two state penal facilities, the facility at McAlester and the Oklahoma State Reformatory at Granite, by transferring inmates to other institutions. On appeal, the United States Court of Appeal for the Tenth Circuit (Judge James Emmett Barrett) affirmed. *Battle v. Anderson*, 564 F.2d 388 (10th Cir. 1977).

In December of 1981, the State of Oklahoma requested relief from a provision of a previous order that prohibited the double celling of inmates. On January 12, 1982, the district court entered an order permitting double celling at four facilities. On April 23, 1982, the district court vacated that order to allow double celling throughout the entire state, but noted that the order was not permanent. On October 12, 1982, the court entered an order requiring the state to submit a plan for returning to single celling conditions.

On appeal, the Tenth Circuit Court of Appeals affirmed the district court's orders and **held that the district court should maintain jurisdiction over the Oklahoma prison system until it can assure that there are no constitutional violations and that there is no expectation that further violations will occur.** *Battle v. Anderson*, 708 F.2d 1523 (10th Cir. 1983).

On December 30, 1983, the district court (Judge Frank Howell Seay) dismissed the case after determining that conditions were constitutional, **even though there were several areas of previous court orders where defendants were not in compliance**. These were access to courts, racial integration, and equal protection guarantees for women. On appeal, the Tenth Circuit Court of Appeals examined each of these subjects. *Battle v. Anderson*, 788 F.2d 1421 (10th Cir. 1986). It affirmed the dismissal regarding all issues **except racial discrimination**. The dismissal was vacated and remanded for further proceedings regarding that issue---over three decades later, the racial discrimination persists.

[3] The Department of Justice provided grant funds to Oklahoma as part of its Violent Offender Initiative/Truth in Sentencing Act.

19. The Truth in Sentencing Act[4] created a sentencing Matrix to ensure both parity in sentencing of similarly situated offenders and proportionality of sentence length to offense severity.

20. In 1998, (then Governor) Defendant Keating created a consulting position for Defendant Quinlin---who was employed as an executive for Defendant CCA at the time---to spearhead Keating's "criminal justice overhaul. to the outrage of many Legislators.[5]

21. On August 4, 1999**,** Senator Frank Shurden pointedly observed that

> "…**Governor Keating took money out of our school classrooms and turned it over to a private prison company instead of helping our kids get an education**…Governor Keating tapped Quinlan to conduct an "independent" study of Oklahoma's prison system. Among other things, the CCA executive recommended the expansion of medium security space…**I think it's pretty ironic that we are leasing a bunch of medium security beds from a friend of the Governor---the same guy who told us we needed more of those beds when he was supposedly conducting an impartial, unbiased review of our prison system**…When we started down this road to private prisons, a lot of us warned people like Governor Keating that we shouldn't become too reliant on them because it might come back and bite us. Now we've got a situation where the Governor and his appointees have agreed to spend an additional $8 million on private prisons without even bothering to get the approval of the Legislature first…**With that action, Governor Keating has said he wants the first $8 million of any new money to go directly to the private prison industry---not to education, roads or any**

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[4] See Exhibit 1, Truth in Sentencing Act Summary

[5] *See* Exhibit 2, Keating Press Release on Criminal Justice Overhaul

> **other pressing state need**." See Exhibit 3, *Keating Prison Action Robs Money from Education, Commits Funds to Private Prisons without Legislative Approval*. Oklahoma State Senate press release, August 4, 1999.

22. Defendant Keating announced what can in hindsight be recognized as an artificial public safety crisis. Keating's repeal of the TIS Matrix without replacing the same with some measure that remedied the arbitrary sentencing practices was a knowing and willful reinstitution of racially discrimination in sentencing and incarceration.

23. Defendant Keating's propensity for reckless disregard for the constitutional rights of prisoners and related abuses of his office is evident from his attempt to encourage the Oklahoma DOC to contract with a pharmaceutical company after being paid $250,000 by an interested party.

24. Jack Dreyfus, founder of Dreyfus Mutual Funds, paid Keating to convince Oklahoma prison officials to use Dilantin (a seizure medication) supposedly to control violent prisoners. After receiving the $250,000 from Dreyfus, Keating arranged meetings between Dreyfus and then-Oklahoma DOC Director Larry Fields in an attempt to persuade Fields to authorize experimental use of Dilantin on prisoners.

25. It was not until Defendant Keating was a potential United States vice-presidential nominee on the ticket with George Bush that Keating returned the money to

Dreyfus "so there would be no appearance of impropriety." *Keating Gives Back Cash Gift, Governor Wants to End Ethics Doubt*, NewsOk Article, February 10, 2001[6].

26. Despite the revelation of that particular quid *pro quo* relationship, Keating was not prosecuted.

27. The Plaintiffs and citizens of Oklahoma require federal investigation and intervention on their behalf to investigate the breadth of the violations and enforce their First, Eighth and Fourteenth Amendment rights.

JURISDICTION AND VENUE

28. This Court has jurisdiction over the claims brought under federal law pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over the claims brought under Oklahoma law pursuant to 28 U.S.C. § 1367. Plaintiffs seek declaratory and injunctive relief against all Defendants under 28 U.S.C. §§ 1343, 2201, and 2202, 29 U.S.C. § 794a, 42 U.S.C. §§ 1983 and 12117(a). Plaintiffs seek actual and punitive damages against Defendants Quinlan, CCA and GEO Group under 42 U.S.C.§§1983. Venue is proper in the Western District of Oklahoma pursuant to Title 28 U.S.C. § 1391 (b)(1), as Plaintiffs' claims for relief arose in this District and one or all of the Defendants reside in this District.

CAUSE OF ACTION

[6] http://newsok.com/article/2729866

29. Defendants Keating, Quinlan, Fallin, CCA and GEO Group at various times conspired to continually influence criminal justice policy for the purpose of increasing the prison population each for their own personal and/or political financial enrichment.

30. This conspiracy resulted in criminal justice policies that overcrowded Oklahoma state prisons in order to justify use and then 98% occupancy guarantees to Defendants CCA and GEO.

31. Prison overcrowding and understaffing has resulted in profoundly dangerous conditions of confinement and is being perpetuated by Defendant Fallin's failing to cure the overcrowding and understaffing.

32. The conditions complained against violate Plaintiffs' First, Eighth and Fourteenth Amendment rights under the United States Constitution.

33. Plaintiffs will demonstrate, with the aid of the Court, that the data and facts do not support incarceration at the rates and for the durations that the state has imprisoned them and that the true objective of denying parole release serves the purpose of fulfilling Defendant Fallin's 98% occupancy guarantees with CCA and GEO and is an otherwise unconstitutional violation of their right to Equal Protection under the Fourteenth Amendment

34. Plaintiffs move the Court to appoint two or more Special Masters to:

a. Formulate and enforce prison capacity limits;

b. Investigate and remedy unconstitutional conditions of confinement;

c. Investigate financial gifts from Defendants CCA and GEO Group to all Oklahoma state officials and the correlation in time of said gifts

and the repeal or enactment of various criminal justice policy measures from 1997 – present;

d. Investigate and remedy the violation of Plaintiffs' substantive and procedural due process rights by the Oklahoma Pardon and Parole Board;

e. Enjoin Defendants Fudge, Gillert, Macy and Latimer (and Does 1-5, Members of the Oklahoma Pardon and Parole Board[7]) from conducting parole hearings in violation of the applicable provisions of the Oklahoma Constitution, Oklahoma Statutes Titles 22, Section 1514, 57 Section 332.7, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment;

f. Declare that 98% prison occupancy guarantee contracts are *per se* unconstitutional;

g. Set the case for jury trial against Defendants Quinlin, CCA, GEO Group and Does 1-10 for jury trial.

PARTIES

PLAINTIFFS

35. The All In One Project ("AllInOne") is a grassroots membership organization dedicated to advocating for individuals serving long-term prison sentences, to ensure they are treated fairly within the system and receive meaningful opportunities for rehabilitation and release.

[7] The Oklahoma Pardon and Parole Board (hereinafter "PPB") consists of five members. All members are political appointees. Defendants Fudge, Macy, Gillert and Latimer are named as they are the current executive director and members. These members have all been appointed within the year prior to filing this action. However, the chief complaint is against the pattern and practice of arbitrary policies and practices that has persisted under Defendant Fallin's administration spanning over the course of almost 8 years.

36. All In One Project was founded by Diniki Burks, Gwendolyn Fields, Wadress Metoyer, Ben Jones, and Omar Muhammad. The organization's membership consists of individuals impacted by the criminal justice system, including, among others, individuals serving life sentences, family members of these individuals, "lifers groups" made up of individuals serving life sentences at various Oklahoma prisons, and individuals serving the parole terms equivalent to life sentences.

37. The AllInOne Project has advocated on behalf of its membership with a focus on changing the policies and practices that deny its lifer members a meaningful opportunity for release, and educating the public about the ways in which the state's contracting with for-profit corporations to execute or in any way participate in the state's corrections system in ways that harm its members. AllInOne Project sues for declaratory and injunctive relief on behalf of its members, who are subjected to the unconstitutional policies and practices described herein. AllInOne members have been injured by the acts and policies of the defendants in the manner set forth below.

38. All individually named Plaintiffs are Oklahoma prisoners who are subject to the unconstitutional conditions complained against herein.

39. All named Plaintiffs are Oklahoma prisoners, and they bring this action on behalf of themselves and all those similarly situated[8].

DEFENDANTS

40. Defendant Mary Fallin, in her individual capacity and in her official capacity as Governor of the State of Oklahoma.

41. Defendant Joe Allbaugh in his individual capacity and in his official capacity as Director of the Oklahoma Department of Corrections

42. Defendant Jennifer Chance in her individual capacity and in her official capacity as Assistant General Counsel to the Governor of Oklahoma

43. Defendant Delynn Fudge in her individual capacity and in her official capacity as Executive Director of the Oklahoma Pardon and Parole Board

44. Defendant Tom Gillert in his individual capacity and in his official capacity as Chairman of the Oklahoma Pardon and Parole Board.

45. Defendant Robert Macy in his individual capacity and in his official capacity as Member of the Oklahoma Pardon and Parole Board

46. Defendant William Latimer in his individual capacity and in his official capacity as Member of the Oklahoma Pardon and Parole Board.

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[8] As this is a matter of public interest and the actions and inactions alleged herein impact a large percentage of the Oklahoma citizenry, Plaintiffs have filed a Motion for Appointment of Counsel and Certification as a Class Action contemporaneously herewith.

47. Defendant Frank Keating in his individual capacity and in his official capacity as Governor of the state of Oklahoma.

48. Defendant Corrections Corporation of America is a for-profit business incorporated under the laws of Maryland and is contracting with the state of Oklahoma for prison services.

49. Defendant GEO Group is a for-profit business incorporated under the laws of Florida and is contracting with the state of Oklahoma for prison services.

FACTUAL ALLEGATIONS

COUNT I

DEFENDANT FALLIN KNOWINGLY CREATED AND PURPOSEFULLY FAILED TO CORRECT PRISON OVERCROWDING BY GUARANTEEING DEFENDANTS CCA AND GEO 98% OCCUPANCY AND REFUSING TO ADOPT SOUND REFORM MEASURES

50. Defendant Fallin, CCA and GEO made headlines after her gubernatorial elections because of the corporate prisons contributions. Fallin was paid $38,250 from Defendant CCA during the last election cycle and made the following contributions to other high-ranking legislators during that same cycle:

House Speaker T.W. Shannon: $35,950
Sen. Clark Jolley: $29,301
Treasurer Ken Miller: $17,500
Lt. Gov. Todd Lamb: $14,500
Sen. Rob Johnson: $11,250
Sen. Don Barrington: $9,635
Sen. Dan Newberry: $8,750
Rep. Todd Thomsen: $8,400

51. Money contributed to public officials amounts to bribery when there is the existence of a *quid pro quo* arrangement. Campaign contributions by private corporations for the purpose of influencing the state's decisions concerning the deprivation of freedom of its citizens is repugnant to the ever-evolving standards of decency within our society and is an outright disregard of the constitutional rights of people of color and poor people.

52. Defendants CCA and GEO to Defendant Fallin and the above named legislative leaders caused Defendant Fallin to grant, and CCA and GEO to gain, substantial and continuing influence over Oklahoma's criminal justice policy. It is this influence that resulted in Fallin's drastic reduction of parole release.

53. The impact of this influence is also evident from Defendant Fallin's otherwise unjustifiable obstruction of reform efforts of the Counsel on State Government's Justice Reinvestment Initiative in the 2012 Legislative Session.[9]

54. Plaintiffs allege that the 98% occupancy capacity guarantee contracts are the proximate cause of prison overcrowding, as they require Fallin to deprive a predictable number of Oklahoma citizens of liberty or pay for unoccupied prison beds, when such deprivation does not and has never directly correlated with factors relevant to the projection of incarceration rates in the state.[10] In fact, at all times material to this

[9] *See* Exhibit 3Oklahoma Watch report on Justice Reinvestment

[10] *See* Exhibit 5, OSBI crime index 2010-2016

Complaint, there has been an inverse relationship between the rate of crime and the rate of incarceration in Oklahoma---as the rate of crime was decreasing the state's prison population was drastically increasing.

55. According to the Oklahoma DOC FY 2015 Audit Report, "The increased use of contract prison beds…resulted in expenditure growth beyond the agency's appropriated resources. To meet this cost growth, numerous facility infrastructure, technology, vehicle replacements, programmatic and staffing needs have been chronically deferred, reduced in scope or reallocated."

COUNT II

VIOLATION OF PLAINTIFFS' EIGHTH AMENDMENT PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT

56. Plaintiffs hereby incorporate by reference paragraphs 1 through 55 as if fully restated and realleged herein.

57. In the Oklahoma Department of Corrections monthly audit report, Defendant Fallin alleges that Oklahoma prisons are populated at 109% capacity. Plaintiffs argue that Fallin has understated the percentage over capacity is understated because the current capacity calculation does not include beds that are placed in areas within the prison that were not designated as prison bed space, as in cases where beds are placed in prison spaces that were designated for other purposes such as the Faith and Character program space at Dick Connors Correctional Facility in Hominy, Oklahoma.

58. Oklahoma prisons are so dangerous and overcrowded that any term of imprisonment is a potential death sentence. According to the Bureau of Justice Statistics,

Oklahoma has the highest prisoner homicide rate in the United States, with prisoners being murdered at a rate three times the national average.[11]

59. A November 2016, news interview of Defendant Allbaugh summed up his observations on the prison crisis as follows:

> "Oklahoma's criminal justice system needs a massive overhaul…We have a mentality, much like Texas, lock em up and throw away the key," Allbaugh said. He pointedly stated that "the overcrowding is bad for several reasons. First, there are not enough correctional officers, so prisoners join gangs for safety, which creates hardened criminals. Second, the corrections officers, who are only armed with self-defense training and pepper spray, are in danger…Every minute of every day they're behind the wall, their life is at risk."

60. In April 2017, there were at least two homicides, a suicide, and seven inmates hospitalized after a gang war at the CCA Northfork Correctional Facility in Sayre, Oklahoma.

61. Plaintiffs Metoyer, Wiggins, Nubine, Jonathan Davis, Robertson, Bowman, Green, Jackson, Butts, Anthony Davis are confined in CCA Sayer and are subject to violence, terror of violence, frequent lockdown, deprivation of rehabilitative programs and recreation all due to overcrowding[12].

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[11] http://newsok.com/article/5394135

[12] See Count IV, Plaintiffs denied the right to meaningful parole review and denied parole as a result of arbitrary and capricious practices of the Oklahoma Pardon and Parole Board.

62. Overcrowding and understaffing, rampant serious violence and homicides, admitted safety risks, and Plaintiffs having to live in constant fear for their lives and safety constitute cruel and unusual punishment in violation of the Eighth Amendment.

COUNT III

PLAINTIFFS HAVE BEEN DENIED THE RIGHT TO FAIR AND IMPARTIAL PAROLE CONSIDERATION IN VIOLATION OF THEIR FOURTEENTH AMENDMENT RIGHTS TO EQUAL PROTECTION

A. Pre-1998 Plaintiffs

63. Plaintiffs reallege and incorporate herein the allegations in paragraphs 1 through 62 as if fully set forth herein.

64. Plaintiffs Simmons, Metoyer, Williams, Wiggins, Jonathan Davis, Richard Green, Reginald Green, Lawrence, and Bowman ("Pre-1998 Plaintiffs" when referred to collectively) are prisoners sentenced prior to July 1, 1998, who allege violation of their right to meaningful parole consideration as guaranteed under the Oklahoma Constitution, Oklahoma Statutes Title 57 Section 332.7, and Oklahoma Statutes Title 22 Section 1514.

Defendant Fallin's Failure to Administer the PPB Consistently with the Oklahoma Constitution and Statues

65. By operating a scheme in which the only opportunity for release is unreviewable, devoid of standards, and operated by political appointees, it is nearly impossible to actually obtain release regardless of individual merit, as applied to

individuals serving life sentences (or the functional equivalent of a term of life), which subjects them to unconstitutionally disproportionate punishment in violation of the Eighth Amendment.

66. Plaintiffs are prisoners who are not under sentences of life without parole or death. Accordingly, Oklahoma law requires that Defendant Fallin take all steps to properly assess their rehabilitative needs, avail them of programs to address those needs, and facilitate the orderly progression through the state correctional system to release on parole.

67. Specifically, Oklahoma Statutes 22, Title 1514, provides in pertinent part that:

> It is the goal of the Department of Corrections to …to provide a fair and orderly progression through custody levels, and…[a]s an inmate demonstrates that he is no longer a threat to society, that the punishment has been effective and that a program of rehabilitation is showing progress, the inmate's level of custody may be ***commensurately reduced in an orderly progression through custody levels to parole and release from supervision***. (Emphasis added)

68. The process for parole release is to be carried out by the Oklahoma Pardon and Parole Board pursuant to Oklahoma Constitution, Article VI § 10, which provides:

> There is hereby created a Pardon and Parole Board to be ***composed of five members***; three to be appointed by the Governor; one by the Chief Justice of the Supreme Court; one by the Presiding Judge of the Criminal Court of Appeals or its successor…. The appointed members shall hold their offices coterminous with that of the Governor …. It shall be the duty of the Board to make an impartial investigation and study of applicants for commutations, pardons or paroles, and by a majority vote make its recommendations to the Governor of all deemed worthy of clemency….

> The Governor shall have the power to grant, after conviction and ***after favorable recommendation by a majority vote*** of the said Board, commutations, pardons and paroles for all offenses.

69. On its face, the Oklahoma Constitution mandates 1) fair and impartial review 2) by a board of five members and 3) on majority vote, the applicant is granted a parole recommendation.

70. Defendants Fallin and Fudge routinely conduct parole board hearings without a complete five-member panel but nevertheless require the applicant to secure three votes to meet the Constitutionally required "majority" for a favorable result. Even in the frequent cases where there are only three parole board members hearing a case, three favorable votes are still required for the parole recommendation.

71. As discussed *infra* all parole hearings whereby the decision to deny parole was made by less than the five voting members required under the Oklahoma constitution is unconstitutional. In the alternative, the Oklahoma Constitutional provisions for parole are *per se* unconstitutional.

72. Plaintiffs have been subject to parole hearings without five PPB members sitting in their review, but Defendants Fallin and Fudge have misapprehended the Oklahoma Constitutional requirement that the applicant garner a "majority" vote to mean the applicant must secure three votes, no matter how many PPB members are voting. Therefore, on a three-member panel, the applicant is required to secure 100% of the voting members yea votes, rather than the 60% which constitutes the majority of the required five-member board

73. Defendants Gillert, Macy And Latimer denied Plaintiff Simmons' parole applications on two consecutive occasions by operation of three and four-member board on March 23, 2017 and on March 2014, respectively. Plaintiff Simmons has been in prison for 43 years.

74. In addition to the lack of five members on the board in his case, Simmons' bid for parole demonstrates the arbitrary manner in which these applications are decided. Specifically, Bob Mildfelt, the state prosecutor who tried Simmons, wrote a letter to the PPB two decades ago explaining that he did not believe Simmons was afforded a fair trial. Despite Mildfelt's 1997 letter and that Simmons has been eligible for parole since before the letter, he has been denied parole at every appearance for over 20 years.

75. Simmons had an impressive group of supporters, which included the former prosecutor, victim's sister, and overwhelming media support for his release. Simmons' co-defendant, who was charged with the exact same offense and sentenced to the same sentence, and who did not have the support Simmons had, was released on parole over a decade ago. Defendant Fallin has provided no explanation for such an arbitrary result.

76. Simmons' March 2017, denial was by operation of the Board consisting of only three members, Defendants Macy, Gillert and Latimer. All three-voted no to Simmons' eligibility for a personal appearance without explanation or justification.

77. Simmons was afforded a personal appearance three-year prior, in the hearing held in 2014, and no fact about the case or his conduct changed between the 2014

hearing and the 2017 hearing. The 2014 hearing was conducted by a four-member Board. Of the four members, Simmons garnered two favorable votes. Defendant Fallin's administration of the PPB does not and perhaps cannot provide an alternate to split such ties. This split decision in Simmons' case, as with all others, is considered to be an "No" vote. Despite advocacy groups requesting that the PPB and/or Governor's office afford Simmons a rehearing the following month, both refused13.

78. From the plain language of Article II § 10, the only way that Defendant Fallin could maintain a five-person board that would not routinely result in less than five voting members is to not appoint former prosecutors, criminal defense attorneys or law enforcement officials---these categories of people would inevitably have to recuse from cases during their tenure.14

Constitutionality of Plea Bargaining when the Parole Process is Defective

79. Plaintiff Jonathan Davis entered a guilty plea in 1984, and relied on the statutory promise of a first fair and impartial review upon serving 15 years in prison and annual review every year thereafter. Davis has also been denied parole release for two

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[13] In this hearing, Vanessa Price was the newly appointed fifth PPB member. However, she did not vote in Simmons' hearing. Price could have voted in a subsequent hearing the following month.

[14] Given the political nature of the parole process and construing Article II § 10 as is, there is no way to appoint only five members unless these members are citizens not involved in the criminal justice process.

decades. Over the last decade, Davis was considered for parole by four members rather than the fair and impartial review by a five-member Board.

80. During his 33 years of incarceration, Davis has demonstrated extraordinary rehabilitation efforts. Davis earned a bachelor's degree and tutored other prisoners. Notably, Davis contributed to the design of a computer program that monitors kitchen meals and expenditures, which was featured both in the local and national media. Despite the fact that Davis is rehabilitated, has a sturdy family network, and has been a model prisoner, he has been denied parole release for the last 15 years without explanation.

81. The cases of Simmons and Davis evidence the arbitrary and unstructured nature of PPB operation when compared to cases of parole granted to far less parole-worthy prisoners who were also convicted of murder.

Application of the Matrix to Parole Consideration

82. The Legislature that crafted Title 57 Section 332.7, intended on prisoners to gain the benefit of the Matrix setting a sentencing range as a guide for parole and a definite end to incarceration.

83. Plaintiffs/prisoners who were charged with crimes committed prior to July 1, 1998. Their parole release is governed by Title 57 Section 332.7, which provides that

> "A. For a crime committed prior to July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole at the earliest of the following dates:
> Has completed serving one-third (1/3) of the sentence;

> Has reached at least sixty (60) years of age and also has served at least fifty percent (50%) of the time of imprisonment that would have been imposed for that offense pursuant to the applicable Truth in Sentencing matrix….
> Has reached eighty-five percent (85%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of Section 6, Chapter 133, O.S.L. 1997, pursuant to the applicable matrix; …. or
> Has reached seventy-five percent (75%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in any other schedule, pursuant to the applicable matrix…
> ….
> E. Any person in the custody of the Department of Corrections for a crime committed prior to July 1, 1998, who has been considered for parole on a docket created for a type of parole consideration that has been abolished by the Legislature shall not be considered for parole except in accordance with this section.
> F. The Pardon and Parole Board shall promulgate rules for the implementation of subsections A, B and C of this section. The rules shall include, but not be limited to, procedures for reconsideration of persons denied parole under this section and procedure for determining what sentence a person eligible for parole consideration pursuant to subsection A of this section would have received under the applicable matrix. (Emphasis added)

84. At the time the Legislature Enacted Section 332.7, prisoners were afforded paroles review annually and the state was releasing an average of 40% of parole eligible prisoners.

85. The parole release rate under Fallin's administration is approximately 10% of eligible violent offenders, which is the lowest rate of parole release since the creation of the Oklahoma Pardon Parole Board.

86. Fallin's administration of parole works to impose de facto life without parole sentences and causes psychological trauma that occurs when prisoners work to

rehabilitate themselves, expect favorable consideration of their good conduct and, at the very least, an expected end to imprisonment.

Decades of Deprivation of Liberty without Cause

87. All Plaintiffs' substantive and procedural due process rights have been violated because there is no justifiable or even discernable reason for parole-worthy prisoners to have been blanketly denied release for decades.

88. Plaintiff Simmons is a 60-year-old prisoner who has served 42 years in prison and has been denied fair and impartial parole review and/or parole release without cause or explanation.

89. Plaintiff Nubine is a 65-year-old prisoner who has served 41 years in prison and has been denied fair and impartial parole review and/or parole release without cause or explanation

90. Plaintiff Metoyer is a 67-year-old prisoner who has served 34 years in prison and has been denied fair and impartial parole review and/or parole release without cause or explanation.

91. Plaintiff Wiggins is a 49-year-old prisoner who has served 29 years in prison and has been denied fair and impartial parole review and/or parole release without cause or explanation.

92. Plaintiff Billy Lawrence is 51-year-old prisoner who has served 28 years in prison and has been denied fair and impartial parole review and/or parole release without cause or explanation.

93. Plaintiff Reginald Green is a 65 years old prisoner who has served 29 years in prison and has been denied fair and impartial parole review and/or parole release without cause or explanation.

94. Plaintiff Kirby Johnson is a 47-year-old prisoner who has served 30 years in prison and has been denied fair and impartial parole review and/or parole release without cause or explanation.

95. Plaintiff Marwin Battles is a 48-year old prisoner who has served 25 years in prison and has been denied

96. The Legislature that crafted Title 57 Section 332.7, clearly did so to offset the predicable overcrowding that would result from Keating's repeal of the Truth in Sentencing Act and to maintain the type of parity the provisions of the applicable Matrices would achieve.

97. It is incomprehensible that the Legislature that crafted this law intended that the PPB would consider these Plaintiffs "under the applicable provisions of the Matrix" and yet deny parole-worthy Plaintiffs release on parole for decades after they became eligible.

98. All facts and history considered, the low rate of parole release correlates strongly with and on knowledge and belief is designed to fulfill the 98% guarantees and is contrary to evidence based parole and recidivism data.

Ex Post Facto Application of Policy that Reduced Review Frequency

99. Plaintiffs right to be free from ex post facto application of laws has been violated by the reduction of the frequency of parole consideration from annual review to review once every three to five years.

100. A claim on this particular violation of the Ex Post Facto Clause was raised in *Henderson v. Scott*, 260 F.3d 1213, 1216 (10th Cir. 2001). The Henderson Court did not dispute that Oklahoma created a law that it retroactively applied. It observed that "the controlling inquiry" in evaluating an inmate's Ex Post Facto Clause claim "is not whether the law is retroactive, but 'whether it produces a sufficient risk of increasing the measure of punishment attached to the covered crimes.'" *Id* at 1216 (10th Cir. 2001).

101. The practice of arbitrary and unjustified denial of parole combined with the reduction of hearing frequency----which triples the years between hearings---demonstrates that Plaintiffs have indeed been subjected to significant increases in their duration of their imprisonment.

Improper Involvement of Defendants Chance and Fallin in Parole Proceedings Further Undermine the Reliability of Parole Outcomes

102. The recent conduct of Defendant Jennifer Chance in the parole case of Robert Bates further undermines any presumption of fairness in the parole review process. On March 8, 2017, Defendant Chance, then general counsel to Fallin, resigned

after being exposed for referring Robert Bates, an affluent prisoner serving 4 years for a high-profile homicide, to her husband, attorney Dereck Chance. Dereck Chance reportedly charged Bates and other clients referred to him by Jennifer Chance fees of $25,000 or more for representation in what would at most be a three-minute parole hearing.

103. Shortly after the media exposed the circumstances surrounding Jennifer Chance's resignation, news of Defendant Fallin's email communications emerged revealing that Fallin communicated with Jennifer Chance about Bates' particular case and was aware that Jennifer referred the case to Derek, despite Governor Fallin having previously denied knowledge or involvement. The communications to Fallin about Bates' parole was made through one of Bates' family members, who emailed Fallin's sister, who then forwarded the communication to Fallin's private email.

104. Defendants Fallin and Chance's conduct evidences that the PPB is subject to outside influence in violation of all Plaintiffs' Fourteenth Amendment rights and calls into question all decisions made on parole applications over the course of Fallin's tenure.

The Most Constitutionally Sound Way to Reduce the Prison Population is by Depopulation Order that Plaintiffs and Similarly Situated Prisoners be Afforded Immediate Meaningful Parole Hearings

105. The prison overcrowding situation has to be solved. When a federal court is faced with a bona fide prison conditions case, the court is required to exercise the least intrusive means to correct the violation of a Federal right. Even using the least intrusive means standard, in Brown v. Plata, 563 U.S. 493 (2011), the U.S. Supreme Court held that

a court-mandated population limit was necessary to remedy a violation of prisoners' Eighth Amendment constitutional rights and ordered California to reduce its prison population within two years.

106. After this Court establishes the number of prisoners the state can safely house, indeed while the Court makes the inquisition, the state's most efficient less intrusive means of reducing its population is through effective operation of the state's parole board.

107. The United States Department of Justice, Bureau of Justice Statistics and countless other think-tanks of all political persuasions have concluded that aging prisoners who have served more than twenty years in prison are a low public safety risk.

108. Plaintiffs and similarly situated prisoners----men and women who have spent the last two decades or more in prison----have "paid their debt to society" while continually being denied meaningful review for parole release as described in Oklahoma's own Constitution.

109. Plaintiffs urge that the Court to Order that any person who has served 35 years or more in prison be considered administratively for parole and released or be provided with a substantive explanation, which the court will review, setting out specific reasons for that prisoners' denial.

110. Plaintiffs urge that prisoners who have served 20 years or more should be docketed for a personal appearance parole hearing and afforded meaningful consideration.

COUNT IV

DELIBERATE INDIFFERENCE TO PLAINTIFF METOYER AND NUBINE'S SERIOUS MEDICAL NEEDS VIOLATES THEIR EIGHTH AMENDMENT RIGHTS

111. Plaintiff Metoyer alleges that Defendant Allbaugh has unconstitutionally denied him treatment with Sovaldi or Harvoni for his chronic Hepatitis C. Both medications have a cure rate of 95 percent and have been approved for use by many states' corrections departments. Metoyer is a 67-year man for whom deprivation of the lifesaving drugs amounts to an impending sentence of death, cruel and unusual punishment in violation of the Eighth Amendment.

112. Plaintiff Nubine alleges Defendant Allbaugh has an unconstitutional policy that denies him and other similarly situated prisoner dentures, which amounts to deliberate indifference to their serious medical needs.

113. Plaintiff Bowman alleges that Defendant Allbaugh has an unconstitional policy which denies treatment and monitoring of his tuberculosis. Specifically, all Oklahoma prisoners who test positive for tuberculosis are never again tested nor are they treated.

COUNT V

DEFENDANTS CCA AND GEO GROUP WERE AFFORDED INFLUENCE OVER CRIMINAL JUSTICE POLICY MAKING AND ARE CIVILLY LIABLE TO PLAINTIFFS AND OKLAHOMA CITIZENS FOR PROMOTING POLICIES THAT UNJUSTIFIABLY INCREASED IMPRISONMENT AND THEREBY DIMINISHED FUNDING TO OTHER VITAL STATE AGENCIES

114. Plaintiffs hereby incorporate by reference paragraphs 1 through 113 as if fully restated and realleged herein.

115. Defendants CCA and GEO Group are guilty of influencing policy for the purpose of depriving citizens of liberty for their personal enrichment.

116. For 2016, CCA's 2015 reported $1.9 billion in revenue and made more than $221 million in net income—more than $3,300 for each prisoner in its care--- 100 percent of which came from taxpayers via government contracts.

117. Defendants CCA And Geo Group are guilty of the type of reprehensible abuses condemned in the lawsuits against the four leading tobacco companies, which were litigated in 14 states. The allegations in common in all lawsuits were that the tobacco companies executed a "conspiracy in concealing and misrepresenting the … harmful nature of [the products they sell,] . . . industry control and manipulation of nicotine to foster addiction and thus profits [,] . . . and "targeting African Americans." [15]

118. All Plaintiffs allege CCA and GEO Group conducted a conspiracy to

[15] This litigation resulted in a Master Settlement Agreement of $206 billion dollars to be disbursed annually and in perpetuity for the purpose of making the victims whole.

financially incentive state criminal justice policy makers, spanning the course of at least 20 years, to increase incarceration rates. CCA and GEO knew or should have known that the impact of the resulting policies would target and/or disparately impact African Americans, and members of other protected classes.

119. CCA and GEO promoted extended deprivation of liberty, unethically acquired legislative influence for the purpose of industry control, willfully and negligently breached the special duty to provide constitutional conditions of confinement and progressive, accurate security classification; fraudulent misrepresented the safety of their facilities, fraudulent concealment of facts relating to gang violence and their involvement/acquiescence in the same.

RELIEF REQUESTED

120. Order appointment of a Special Master for the calculation of the appropriate prison capacity in the Oklahoma prison system based on all relevant factors, i.e. the actual Oklahoma state prison bed space, the number of people currently incarcerated; the rate of actual violent crime in the state, the number of prisoners in county jails waiting for prison beds, prisoners currently serving disproportionate sentences non-violent offenses, and other factors the court deems relevant.

121. Order that Defendant Fallin ensure that all PPB hearings are conducted five days per week, four weeks per month, until every statutorily eligible prisoner is paroled or provided with a substantive report to this Court that justifies denial and explains what actions can be taken to gain favorable recommendation.

122. Order a Special Master to oversee and provide monthly reports on all operations of the PPB during the pendency of this litigation until such time that the prison population is below capacity.

123. Declare that the 98% occupancy guarantee contracts with Defendants CCA and GEO Group are unconstitutional and Order that they be dissolved.

124. Set Plaintiffs' claims for actual and punitive damages against Defendants CCA and GEO Group for jury trial

125. Order the award of reasonable attorney's fees and costs of litigation.

126. Order any other relief that it believes to be just and proper.

Date: August 23, 2017

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