



January 6, 2016

VIA EMAIL

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Vanita.Gupta@usdoj.gov

Steven Rosenbaum
Chief, Special Litigation Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Steven.Rosenbaum@usdoj.gov

**RE: Complaint against the State of Hawai‘i concerning
unconstitutional prison conditions and overcrowding**

Dear Principal Deputy Assistant Attorney General Gupta and Section Chief Rosenbaum:

The American Civil Liberties Union of Hawai‘i Foundation (“ACLU”) submits this Complaint on behalf of the 3,924 inmates incarcerated in correctional facilities owned and operated by the State of Hawai‘i who are subject to unconstitutional prison conditions and overcrowding in violation of the Eighth and Fourteenth amendments to the United States Constitution and the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997a.

The ACLU respectfully requests that the Special Litigation Section commence an investigation into the State of Hawai‘i (“the State”), pursuant to 42 U.S.C. § 1997a(a), based on the “grievous harm” faced by institutionalized persons in Hawai‘i caused by “egregious or flagrant conditions which deprive [them] of [] rights, privileges, or immunities secured or

protected by the Constitution or laws of the United States” pursuant to the State’s “pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities.”

Part I of this Complaint provides data regarding persistent overcrowding in correctional facilities owned and operated by the State of Hawai‘i.

Part II of this Complaint describes prior litigation initiated by the ACLU to remedy prison overcrowding in Hawai‘i, including the issuance of a consent decree and the State’s lengthy delay in achieving substantial compliance.

Part III of this Complaint demonstrates that despite achieving substantial compliance with the aforementioned consent decree in 1999, correctional facilities owned and operated by the State of Hawai‘i have – once again – become overcrowded, unsanitary, and unsafe.¹

Part IV shows the indifference of State officials and legislators to these circumstances.

Part V of this Complaint establishes that the conditions in State correctional centers violate both the Eighth and Fourteenth amendments to the United States Constitution and explains the need for Department of Justice intervention.

Part I: Introduction

As of November 30, 2016, there were 3,924 inmates housed in correctional facilities owned and operated by the State of Hawaii’s Department of Public Safety (“DPS”).² In an attempt to address lack of bed space and overcrowding, DPS houses an additional 1,569 inmates in federal detention centers located in Hawai‘i and Arizona (among other states).³

¹ The ACLU of Hawaii’s findings regarding prison conditions in Hawaii’s correctional centers are based on materials provided by a wide variety of sources, including local and national news outlets, the Hawai‘i Department of Public Safety and its officials and employees, the state legislature, and the United States Department of Justice (among others). The ACLU of Hawai‘i has also based its findings on the vast amount of complaints received from Hawai‘i correctional center inmates through its legal intake process. In line with the ACLU of Hawaii’s confidentiality policy, the identities of individual inmates have been redacted. Should the Department of Justice desire further information regarding individual inmate testimonials cited to in this Complaint, please contact the ACLU of Hawai‘i.

² See Corrections Division, State of Hawai‘i Dep’t of Public Safety, “End of Month Population Reports – 11-30-2016,” (Nov. 30, 2016), available at <https://dps.hawaii.gov/wp-content/uploads/2016/12/Pop-Reports-EOM-2016-11-30.pdf>.

³ *Id.*

The State of Hawai‘i owns and operates a total of nine correctional facilities with a combined design bed capacity⁴ of 2,491 inmates.⁵ Table 1 shows that seven of these nine facilities are “overcrowded” in that their actual inmate count exceeds design bed capacity.

Table 1: Overcrowded Correctional Centers Owned and Operated by the State of Hawai‘i as of November 30, 2016			
Location	Design Bed Capacity	Head Count as of November 30, 2016	Percent Overcrowded
Hawai‘i Community Correctional Center (“HCCC”)	206	354	172%
Special Needs Facility (“SNF”)	90	116	129%
Halawa Medium Security Facility (“HMSF”)	496	915	184%
Kauai Community Correctional Center (“KCCC”)	110	207	188%
Maui Community Correctional Center (“MCCC”)	209	425	203%
Oahu Community Correctional Center (“OCCC”)	628	1109	177%
Women’s Community Correctional Center (“WCCC”)	258	312	121%

Data obtained from Corrections Division, State of Hawai‘i Dep’t of Public Safety, “End of Month Population Reports – 11-30-2016,” (Nov. 30, 2016), *available at* <https://dps.hawaii.gov/wp-content/uploads/2016/12/Pop-Reports-EOM-2016-11-30.pdf>.

One of the largest of these facilities is Oahu Community Correctional Center (“OCCC”), located in urban Honolulu. OCCC houses male and female pretrial detainees, as well as male offenders sentenced for felony convictions.⁶ Though OCCC is designed to house 628 inmates, it

⁴ DPS uses two different measures to assess the number of inmates housed at each facility: design bed capacity and the operational bed capacity. Design bed capacity is defined as “the number of inmates that a correctional facility was originally designed to house, or currently has a capacity to house as a result of subsequent modifications” and “does not include extraordinary arrangements to accommodate overcrowded conditions.” *See* Corrections Division, State of Hawai‘i Dep’t of Public Safety, “End of Month Population Reports – 12-31-2004,” (Dec. 30, 2004). Operational bed capacity, according to DPS, reflects the number of inmates that a correctional facility “can” house while conforming to “appropriate standards,” which “incorporate staff/inmate ratios and bed capacity.” *See id.* For consistency, this Complaint will utilize design bed capacity rather than operational bed capacity; under either measure, however, Hawai‘i’s correctional facilities are dangerously overcrowded.

⁵ *See* “End of Month Population Reports – 11-30-2016.”

⁶ *See* State of Hawai‘i Dep’t of Public Safety, *Annual Report 2014*, *available at* <http://dps.hawaii.gov/wp-content/uploads/2015/06/PSD-ANNUAL-REPORT-2014.pdf>.

currently holds 1,109 inmates – a 177% overflow. OCCC’s overcrowding is chronic, and the facility has oscillated between 176% and 202% capacity since at least 2011.⁷

DPS has identified several “major external trends” which account for OCCC’s chronic overcrowding: the “rising inmate pretrial population within the State of Hawai‘i” contributes to the facility’s overcrowding because “these detainees cannot be transferred off the island of their arrest[,]” which “reduces the available beds for the sentenced population.”⁸ “[t]he sentenced population continues to rise beyond the capacity that current facilities are able to house”⁹ and the cost of contracting beds in federal facilities increases yearly.¹⁰

OCCC is not, however, the only DPS facility that suffers from persistent overcrowding. Halawa Medium Security Facility (“HMSF”) was designed to hold only 496 inmates, for example, yet currently houses 915 individuals (amounting to 184% overcrowding). Since at least 2011, HMSF has consistently housed inmates at between 179% and 208% of its design bed capacity.¹¹ Maui Community Correctional Center (“MCCC”) is the most egregiously overcrowded facility in the State of Hawai‘i, presently at 203% capacity – housing over *double* the number of individuals it was designed to hold since the year 2014. To explain the chronic overcrowding of HMSF and MCCC, DPS once again cites to the “major external trends” of rising pretrial and sentenced populations and increasing costs of contracted beds.¹²

Part II: Prior Litigation on Hawai‘i Prison Overcrowding Results in Consent Decree

The present-day overcrowding of Hawaii’s correctional facilities mirrors the overcrowding and unsafe conditions of those same facilities in the 1980s. To address these conditions, the ACLU National Prison Project and the ACLU of Hawai‘i filed suit in September 1984 on behalf of inmates housed at OCCC and the Hawai‘i Women’s Correctional Facility

⁷ See generally State of Hawai‘i Dep’t of Public Safety, “Department of Public Safety Annual Reports,” (last viewed Aug. 8, 2016), available at <http://dps.hawaii.gov/publications/annual-reports/psd-annual-reports/>.

⁸ See State of Hawai‘i Dep’t of Public Safety, *Executive Biennium Budget, Fiscal Budget 2015 – 2017* at 1242, available at <http://budget.hawaii.gov/wp-content/uploads/2012/12/24.-Department-of-Public-Safety-FB15-17-PFP.pdf>.

⁹ *Id.* at 1243.

¹⁰ *Id.*

¹¹ See generally “Department of Public Safety Annual Reports,” (list of annual reports showing head counts for the various DPS facilities, including HMSF).

¹² See *Executive Biennium Budget, Fiscal Budget 2015 – 2017* at 1222, 1238-39.

(“HWCF,” presently named the Women’s Community Correctional Center or “WCCC”).¹³ The class action lawsuit was filed on behalf of the named plaintiffs and all other individuals who were or would be confined at OCCC and WCCC and alleged violations of the Eighth and Fourteenth amendments to the United States Constitution.¹⁴

When the ACLU filed suit in September 1984, OCCC “house[d] approximately 1,350 prisoners although it ha[d] a rated capacity of only 642,”¹⁵ totaling 210% capacity. WCCC’s 36-person design capacity main facility housed approximately 87 inmates, totaling 242% capacity.¹⁶ As noted by the ACLU in its complaint, these levels of overcrowding were “severe” and rendered prison conditions plainly deficient, “overtax[ing] virtually every constitutionally required support system and service and creat[ing] a harmful and intolerable environment.”¹⁷ The overpopulation “increase[ed] stress, tension, and violence among inmates and creat[ed] increased health risks, such as the likelihood of the spread of communicable diseases . . . result[ing] an adverse impact on the physical and mental well-being of the prisoners, causing unnecessary and unacceptable pain.”¹⁸

A consent decree was ordered in October 1985 as a result of the litigation, and the State of Hawai‘i was required to: reduce overcrowding at OCCC and WCCC; improve medical, dental and mental health services; remedy unsafe environmental conditions and food services; and host semi-annual inspections of OCCC and WCCC by a panel of mutually-agreed upon experts.¹⁹ Specifically, the State was required to reduce OCCC’s total population to 1,018 by December 1987 (approximately 158% capacity), which was further reduced to approximately 876 by a subsequent settlement agreement;²⁰ the required reduction of WCCC’s population was to be determined by a panel of corrections officials and experts.²¹ As a condition of the consent decree,

¹³ See Civil Rights Litigation Clearinghouse, University of Michigan Law School, “Case Profile: *Spear v. Waihee*,” (last visited August 2, 2016), available at <http://www.clearinghouse.net/detail.php?id=660>.

¹⁴ *Id.*

¹⁵ Appendix A, Complaint at 2, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Appendix B, Consent Decree at 3-13, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984).

²⁰ Appendix C, Settlement Agreement at 7, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984); see also Gregg K. Kakesako, *Feds May Keep Eye on State’s Prisons*, Honolulu Star-Advertiser (June 16, 1997) (noting that under the consent decree, OCCC was prohibited from holding more than 891 inmates), available at <http://archives.starbulletin.com/97/06/19/news/story1.html>.

²¹ Appendix B, Consent Decree at 7, 10, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984).

the State was prohibited from “requir[ing] [any inmate] to sleep on a mattress on the floor due to lack of space for a bunk in any housing unit” at OCCC.²²

Between 1985 and 1987, the consent decree was supplemented with additional duties and modifications, including a duty to continue attempts at reducing overcrowding through development of work furlough programs, renovation of existing structures, and requests to the legislature for funding of new facilities.²³ In 1987, the State finished construction of an additional correctional center (the Halawa Medium Security Facility (“HMSF”)), which was officially coupled with the pre-existing Special Needs Facility (“SNF”) building to comprise the Halawa Correctional Facility (“HCF”).²⁴ In 1995, the State began leasing prison beds from facilities in Texas in an attempt to maintain compliance with the consent decree’s population reduction requirements.²⁵ Nevertheless, the State continuously failed – both inadvertently and willfully – to achieve compliance with the consent decree.²⁶

In 1999 – after 14 years of mandated monitoring by experts and court-appointed observers – the State was deemed in at least “substantial compliance” with the consent decree.²⁷ At the time, OCCC’s population was numbered at 970 inmates.²⁸ Though the facilities would no longer be monitored, counsel for the ACLU warned that “without a long-term plan to manage Hawaii’s prison population growth, the state could revert to the 1984 conditions.”²⁹

Since 1999, Hawaii’s correctional facilities have indeed reverted to the unsafe, overcrowded, and unconstitutional 1984 conditions. An additional class action lawsuit was filed

²² Appendix B, Consent Decree at 9, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984).

²³ Appendix D, Supplemental Agreement at 14-15, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984); see generally Civil Rights Litigation Clearinghouse, “Case Profile: *Spear v. Waihee*”.

²⁴ See State of Hawai‘i Dep’t of Public Safety, *Annual Report 2014* at 29.

²⁵ See David T. Johnson and Janet T. Davidson, *Hawaii’s Imprisonment Policy and the Performance of Parolees Who Were Incarcerated In-State and on the Mainland*, Dep’t of Sociology, University of Hawai‘i at Manoa, 6 (Jan. 2011), available at <http://ag.hawaii.gov/cpja/files/2013/01/AH-UH-Mainland-Prison-Study-2011.pdf>.

²⁶ See generally David A. Ward and Norman A. Carlson, *Management Audit of the Department of Corrections of the State of Hawaii*, Legislative Auditor of the State of Hawai‘i, 13-18 (Feb. 1989) (describing monitoring and failed compliance with consent decree); Kakesako, *Feds May Keep Eye on State’s Prisons* (noting that under the consent decree, OCCC was prohibited from holding more than 891 inmates); Gregg K. Kakesako, *Inmates May Be Released to Ease Crowding* (Oct. 21, 1997), available at <http://archives.starbulletin.com/97/10/21/news/story1.html>.

²⁷ *14 Years Later, State Prison Monitoring in Hawaii to End*, American Civil Liberties Union (Sept. 16, 1999), available at <https://www.aclu.org/news/14-years-later-state-prison-monitoring-hawaii-end>; see also Civil Rights Litigation Clearinghouse, “Case Profile: *Spear v. Waihee*”.

²⁸ *14 Years Later, State Prison Monitoring in Hawaii to End*, American Civil Liberties Union.

²⁹ *Id.*

in 1998 alleging unconstitutional overcrowding at the Hawai‘i Community Correctional Center (“HCCC”); counsel for plaintiffs cited triple-bunking and unsanitary conditions, and the parties reached settlement in 2000.³⁰ HCCC, however, failed to reduce overcrowding, resulting in repeated jailbreaks and several fires in 2003 and 2004 – one of which injured seven inmates who had been forced to sleep in one room and were unable to reach safety.³¹ Legislation authorizing DPS to grant release to certain pre-trial offenders sunsetted, thus eliminating one of the State’s tools in addressing overcrowding.³² In 2005, the Department of Justice initiated a CRIPA investigation into woefully inadequate mental health services provided to inmates at OCCC, issuing a findings letter in 2007 pinpointing multiple violations of prisoners’ constitutional rights and reaching settlement with the State in 2008.³³ As described by one local reporter in 2006, the State was once again becoming “increasingly vulnerable to court challenges over conditions” in Hawaii’s correctional facilities.³⁴

Part III: Current Overcrowding and Unconstitutional Conditions

Overcrowding in Hawaii’s correctional facilities has continued unabated. State and local lawmakers and prison officials have repeatedly discussed the chronic overcrowding of the State’s correctional facilities, which local reporters have described as “bursting at the seams”³⁵ and “crumbling under the weight of overcrowding and neglect.”³⁶

As it did in 1984, overcrowding in Hawaii’s correctional facilities continues to “overtax[] virtually every constitutionally required support system and service and creates a harmful and

³⁰ Kevin Dayton, *Crowding Blamed for Rash of Hilo Jailbreaks*, Honoluluadvertiser.com (Sept. 5, 2006), available at <http://the.honoluluadvertiser.com/article/2006/Sep/05/In/FP609060331.html>.

³¹ *Id.*

³² Director Nolan P. Espinda, State of Hawai‘i Department of Public Safety, “Testimony on House Bill 2391 Relating to the Release of Certain Misdemeanants,” (Feb. 11, 2016), available at http://www.capitol.hawaii.gov/Session2016/Testimony/HB2391_TESTIMONY_PBS_02-11-16_PDF.

³³ See Oahu Comty. Corr. Ctr., Office for Civ. Rts. Ltr. of Finding (U.S. Dep’t of Justice [Mar. 14, 2007]), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/oahu_center_findlet_3-14-07.pdf; Settlement Agreement, *U.S. v. State of Hawai‘i*, Civ. No. 00585-JMS-KSC (D. Haw. 2008), available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/OCCC_settlement_12-30-08.pdf; see also Rob Perez, *Mentally ill prisoners receiving shoddy care*, Honoluluadvertiser.com (Jan. 14, 2007), available at <http://the.honoluluadvertiser.com/article/2007/Jan/14/In/FP701140362.html>.

³⁴ Dayton, *Crowding Blamed for Rash of Hilo Jailbreaks*.

³⁵ Allyson Blair, *Lawmakers Consider Early Releases to Ease Prison Overcrowding*, Hawaii News Now (Mar. 7, 2016), available at <http://www.hawaiinewsnow.com/story/31409846/proposed-law-would-release-some-inmates-to-ease-jail-overcrowding>.

³⁶ Grube, *Prison Builders*.

intolerable environment,”³⁷ rendering prison officials incapable of providing inmates with adequate shelter, sanitation, medical and mental health care, food services, and protection from harm.

a. *Shelter*

Shelter is woefully inadequate in DPS facilities, and the conditions in which inmates are housed present both safety and sanitation risks. OCCC in particular “is falling apart,” and its “infrastructure is crumbling[] and overcrowding is endemic.”³⁸ Media describe that “some cells are the size of closets, paint hides rusted bars, and inmates who should be held in isolation are double-bunked.”³⁹

Despite a prior court order prohibiting DPS from requiring inmates to sleep on cellblock floors,⁴⁰ overcrowding has forced many inmates to sleep on the floor for prolonged periods of time. After local reporters toured OCCC in December 2015, for instance, one media outlet wrote that “[i]n some modules, three inmates sleep in small cells with two bunk beds, a sink and a toilet,” while “a third inmate has to sleep on the floor.”⁴¹ Similar conditions persist at Maui Community Correctional Center (“MCCC”), where “[d]ouble-bunk cells designed to hold two people are now used to house three or four,” in which “at least one or two inmates are sleeping on the floor of every cell.”⁴² Eyewitnesses report that “it’s not uncommon for an inmate to sleep with his head underneath a toilet because there is nowhere else to put a mattress.”⁴³ The ACLU of Hawai‘i has received identical reports from inmates at Hawai‘i Community Correctional Center (“HCCC”); one complainant described that upon arrival at HCCC and pending assignment to cells, 10 to 12 inmates are often housed in a dayroom or visiting room and made to

³⁷ Appendix A, Complaint at 2, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984).

³⁸ Rui Kaneya, *Jailhouse Rock: Moving OCCC is a Priority For Gov Ige*, Honolulu Civil Beat (Jan. 22, 2016), available at <http://www.civilbeat.org/2016/01/jailhouse-rock-moving-occc-is-a-priority-for-gov-ige/>.

³⁹ Grube, *Prison Builders*.

⁴⁰ See Appendix B, Consent Decree at 9, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984) (prohibiting the State from “requir[ing] [any inmate] to sleep on a mattress on the floor due to lack of space for a bunk in any housing unit” at OCCC.).

⁴¹ Keoki Kerr, *OCCC Gets Help From Feds to Ease Overcrowding*, Hawaii News Now (Dec. 18, 2016), available at <http://www.hawaiinewsnow.com/story/30789983/occc-gets-help-from-feds-to-ease-overcrowding>; see also Keoki Kerr, *Prisons Officials Seek Private Partnership for New Jail*, Hawaii News Now (Jan. 28, 2016) (describing that “some cells regularly house three inmates, with one of them sleeping on the floor”), available at <http://www.hawaiinewsnow.com/story/31086652/prisons-officials-seek-private-partnership-for-new-jail>.

⁴² Eileen Chao, *Maui’s Only Jail Severely Overcrowded*, Hawaii Public Radio (Aug. 10, 2015), available at <http://hpr2.org/post/mauis-only-jail-severely-overcrowded>.

⁴³ *Id.*

sleep “elbow to elbow” on a dirty floor.⁴⁴ The complainant reported that once he was assigned to a cell, he was forced to sleep on the floor with up to three additional men, with his head inches away from the cell’s communal toilet.⁴⁵

Being forced to sleep on the cellblock floor due to overcrowding is an issue which has predominated complaints received by the ACLU of Hawai‘i from DPS inmates:

- At OCCC, it is a “common practice” to house three women in cells designed to hold only two.⁴⁶
- At Halawa Correctional Facility (“HCF”), three inmates are often “crammed” into two person cells.⁴⁷
- At MCCC, one inmate reports that “four inmates (sometimes five) are being packed into each 12’ x 4’ cell designed for only two, with the result that two must sleep on the floor with cockroaches, centipedes, and ants, only inches from the toilet.”⁴⁸ This inmate sleeps in one of the cell’s coveted beds because he suffers a disability that requires him to walk with the assistance of a cane; due to his disability, however, he often “trip[s] over the inmates that sleep on the floor.”⁴⁹ Another inmate at MCCC reported that he was forced to sleep on the floor for approximately 55 days “with 3 or 4 other men in a cell that was meant to house 2 men.”⁵⁰
- An inmate at HCCC confirmed that when inmates are first in-processed, they are often required to sleep on the floor in large day rooms; this inmate, for instance, was required to sleep on the floor of a dayroom immediately adjacent to a shower stall, and water often seeped into his sleeping space.⁵¹

⁴⁴ Complaint of R.D. (received by ACLU of Hawai‘i July 7, 2016).

⁴⁵ *Id.*

⁴⁶ Complaint of C.S. (received by ACLU of Hawai‘i Mar. 18, 2016).

⁴⁷ Complaint of D.R. (received by ACLU of Hawai‘i Feb. 1, 2016).

⁴⁸ Complaint of G.F. (received by ACLU of Hawai‘i Aug. 13, 2015).

⁴⁹ Complaint of G.F. (received by ACLU of Hawai‘i July 25, 2016).

⁵⁰ Complaint of T.Y. (received by ACLU of Hawai‘i May 9, 2014); Complaint of T.Y. (received by ACLU of Hawai‘i June 6, 2014).

⁵¹ Complaint of J.L. (received by ACLU of Hawai‘i July 21, 2016).

In addition to lacking adequate beds and sleeping spaces, the correctional centers themselves are plagued with cockroaches, centipedes, ants, and other vermin. OCCC in particular has dealt with repeated infestations of bedbugs; treatment of the bedbug outbreaks has required relocation of inmates to adjoining cellblocks, placing further pressure on already-overcrowded cells.⁵²

These conditions are exacerbated by the oppressively hot temperatures of many of the facilities' living quarters. In July 2016, for example, OCCC experienced a facility-wide power outage which rendered the facility's air conditioning system inoperable.⁵³ Because the air conditioning system was not hooked up to the facility's back-up generators, OCCC officials were forced to "get creative to keep cool," which included giving inmates additional outdoor recreation time during Hawaii's hot summer months.⁵⁴ Inmates went without air conditioning from Friday afternoon until Monday evening, when an additional generator was brought in to the facility to power the air conditioning system.⁵⁵ One inmate's family member described to local media that "the walls [were] literally sweating . . . [there was] just so much heat . . . and everybody [was] just breathing in each other's breath."⁵⁶ She elaborated that "[t]he only real ventilation that [the inmates] have is a crack at the bottom of their cell door" and that there were "no windows, no fans, nothing."⁵⁷

The problem is worse at HCCC, however, where air conditioning is not used throughout the facility. An inmate at HCCC reported that prison officials occasionally bring in large, industrial fans in an attempt to cool the facility, but that the fans are used with long, haphazardly-placed extension cords – despite the fact that stickers on the fans themselves warn of fire hazards if used with such cords.⁵⁸ One inmate reported that "sometimes[,] [they] can smell the cord[s] burning," and upon inspection, the cords are "all burnt up."⁵⁹ At WCCC's Kaala dormitory, one

⁵² Rui Kaneya, *Bedbugs Infest Oahu Jail — Again*, Honolulu Civil Beat (Nov. 6, 2015), available at <http://www.civilbeat.org/2015/11/bedbugs-infest-oahu-jail-again/>.

⁵³ *State briefs for July 13: Electricity restored to most of Oahu jail*, Hawaii Tribune-Herald (July 13, 2016), available at <http://hawaiitribune-herald.com/news/state/state-briefs-july-13>.

⁵⁴ Chelsea Davis, *Power Fully Restored at OCCC After Days-long Outage That Some Called "Inhumane,"* Hawaii News Now (July 12, 2016), available at <http://www.hawaiinewsnow.com/story/32419485/occc-days-without-power-prisoner-rights-advocates-call-conditions-inhumane>.

⁵⁵ *State briefs for July 13: Electricity Restored to Most of Oahu Jail*, Hawaii Tribune-Herald (July 13, 2016), available at <http://hawaiitribune-herald.com/news/state/state-briefs-july-13>.

⁵⁶ Davis, *Power Fully Restored at OCCC After Days-long Outage That Some Called "Inhumane."*

⁵⁷ *Id.*

⁵⁸ Complaint of R.D. (received by ACLU of Hawai'i May 20, 2016).

⁵⁹ Complaint of R.D. (received by ACLU of Hawai'i July 7, 2016).

inmate reported that the facility's air conditioning system has been broken for months and that Plexiglas windows block any access to the outside breeze.⁶⁰ Inmates at HCF have similarly reported that cell modules have very little airflow or none at all;⁶¹ at MCCC, another inmate states that "[t]he air conditioner and air circulation units [] are so outdated that at times it is very difficult to breathe."⁶² The unabated temperatures of the facilities, in turn, encourage the growth of mold,⁶³ bacteria, and other contaminants in living quarters and elsewhere.

Many of the facilities' cells are also open to the elements, and inmates report pervasive dust contamination and water leaks.⁶⁴ Chronic water leaks often fill light fixtures and their electric wiring with water, which then drips onto the inmates below; as a result, inmates are "scared to put [the] light on [because] it's full of water."⁶⁵ Mattresses used in the cells are ripped and in poor condition; one inmate described that "most of the filling is gone" from the mattresses, such that inmates who receive a mattress to sleep on the cellblock floor are "pretty much sleeping on the hard concrete."⁶⁶

b. Sanitation

Overcrowding has taxed the aging plumbing and infrastructure of several of Hawaii's correctional facilities, which has presented acute health risks for inmates required to sleep on the floor underneath or near leaking toilets. Inmates have also reported that DPS has restricted use of toilets in an attempt to mitigate overuse caused by overcrowding. For example, a female inmate at OCCC reported to the ACLU of Hawai'i in March 2016 that the three women in her two-bed cell were only permitted two flushes in the toilet per hour;⁶⁷ a male inmate at OCCC similarly reported in July 2016 that he and his cellmates are prohibited from flushing their communal toilet more than twice per hour.

⁶⁰ Complaint of T.T. (received by ACLU of Hawai'i June 18, 2016).

⁶¹ Complaint of D.R. (received by ACLU of Hawai'i July 21, 2016).

⁶² Complaint of G.F. (received by ACLU of Hawai'i July 25, 2016).

⁶³ Complaint of D.D. (received by ACLU of Hawai'i July 25, 2015).

⁶⁴ Complaint of R.D. (received by ACLU of Hawai'i July 7, 2016); *see also* Complaint of Q.J.D. (received by ACLU of Hawai'i July 21, 2016).

⁶⁵ Complaint of R.D. (received by ACLU of Hawai'i July 7, 2016).

⁶⁶ *Id.*

⁶⁷ Complaint of C.S. (received by ACLU of Hawai'i Mar. 18, 2016).

Conditions are particularly egregious at Halawa Correctional Facility (“HCF”), where toilets are “constantly back[ing]up” due to “antiquated” and “rotted out” plumbing exacerbated by overuse.⁶⁸ One inmate described to the ACLU of Hawai‘i in July 2016 that the 43 men in his housing unit share four sinks, two toilets, and two showers.⁶⁹ According to his complaint, one toilet and one shower are often broken, such that the 43 men must share one single toilet and one single shower.⁷⁰ Another inmate at HCF elaborated on his cell’s poor plumbing and the facility’s attempts to address overuse, noting that toilet valves have been installed limiting him and his cellmates to a total of one flush every five minutes.⁷¹ The cell’s toilet, however, suffers from such low water pressure that feces cannot be flushed properly and remain in the toilet bowl; this, in turn, causes the cell to smell of feces and urine. If the inmate attempts to re-flush the toilet to properly dispose of the waste, the toilet will not flush due to the toilet valve control, resulting in a persistent “horrible odor.”⁷²

Local media have reported that as a result of HCF’s poor plumbing, sewage regularly leaks into the facility’s living spaces.⁷³ Individual cells are routinely evacuated due to these sewage leaks, adding to overcrowding in adjacent cells; though cells at the Halawa Medium Security Facility were originally designed to house just one inmate, “they all have double that now and every night some cells have three men in them with one sleeping on the floor.”⁷⁴ HCF Warden Francis Sequeira described futile attempts to keep inmates safe in these conditions, remarking that “[w]e try to keep them off the floor . . . [j]ust think of that scenario when your head is next to the toilet, it’s not a pretty scene.”⁷⁵

Antiquated plumbing at HCCC presents similar health risks for the facility’s female inmates. The Hale Nani Makai facility at HCCC was constructed in the early 1990s to house

⁶⁸ Keoki Kerr, *State's Largest Prison Over Capacity, With Plumbing and Cell Lock Problems*, Hawaii News Now (Dec. 18, 2015), available at <http://www.hawaiinewsnow.com/story/30781777/states-largest-prison-over-capacity-with-plumbing-and-cell-lock-problems>.

⁶⁹ Complaint of R.D. (received by ACLU of Hawai‘i July 7, 2016).

⁷⁰ *Id.*

⁷¹ Complaint of D.M. (received by ACLU of Hawai‘i July 21, 2016).

⁷² Complaint of D.M. (received by ACLU of Hawai‘i July 21, 2016).

⁷³ Kerr, *State's Largest Prison Over Capacity, With Plumbing and Cell Lock Problems*.

⁷⁴ *Id.*; see also Grube, *Prison Builders* (describing Halawa Correctional Facility as “bursting at the seams” and quoting prison officials who remarked that the facility “can operate at its current population level, but it’s a struggle”).

⁷⁵ Kerr, *State's Largest Prison Over Capacity, With Plumbing and Cell Lock Problems*.

male inmates; accordingly, the facility's bathroom was constructed with urinals.⁷⁶ Now, however, the facility's female inmates are housed in the Hale Nani Makai two-room dormitory – but modifications to the bathroom have not been made.⁷⁷ As a result, approximately 64 women and the staff members at the Hale Nani Makai facility are required to share three toilets, three urinals, four showers, and five sinks.⁷⁸ One inmate reported, however, that “[d]ue to the aging of the building our latrine has been going out of commission many times, leaving 1-2 toilets open (and) 3 to 4 sinks running.”⁷⁹ When toilets break down, the bathroom is often flooded with sewage water.⁸⁰ The inmate reported that none of the urinals function and that one is cracked, resulting in a possible “biohazard.”⁸¹ The disrepair of HCCC's plumbing and facilities is not confined to the Hale Nani Makai facility; one inmate reports that in the men's shower stalls, shower drains are often “backed up with excess stuff” such that “the water is ankle deep with gunk” while inmates attempt to bathe themselves.⁸²

Hygiene items at the various facilities are also in short supply, exacerbating unsanitary conditions. At HCCC, a shortage of uniforms and towels has resulted in inmates having “to use an old torn uniform to dry themselves after showers.”⁸³ The ACLU of Hawai'i has received complaints that at HCF, inmates are only given one roll of toilet paper every seven days and one small bar of soap every 15 days.⁸⁴ An inmate at MCCC reported similar shortage of supplies at that facility in 2015, writing to the ACLU of Hawai'i that the bathrooms frequently ran out of toilet paper and that individuals had resorted to cleaning floors with shampoo due to lack of cleaning supplies.⁸⁵ Another inmate at MCCC described in July 2016 that “toilet paper is a commodity that [inmates] practically have to beg for” and that inmates are often forced to use “less practical measures” when using the bathroom.⁸⁶ Cleaning supplies are also scarce at

⁷⁶ John Burnett, *Female Inmates Protest Condition of Lavatories at HCCC*, West Hawaii Today (June 20, 2014), available at <http://westhawaii.com/news/local-news/female-inmates-protest-condition-lavatories-hccc>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Burnett, *Female Inmates Protest Condition of Lavatories at HCCC*.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Complaint of J.L. (received by ACLU of Hawai'i July 21, 2016).

⁸³ Complaint of R.D. (received by ACLU of Hawai'i May 20, 2016).

⁸⁴ Complaint of Q.J.D. (received by ACLU of Hawai'i July 14, 2016).

⁸⁵ Complaint of D.D. (received by ACLU of Hawai'i July 27, 2015).

⁸⁶ Complaint of G.F. (received by ACLU of Hawai'i July 25, 2016).

OCCC, where one inmate speculated that inmates' inability to properly clean their living spaces accounts for the "roaches and sometimes mice" that inhabit the desks and wall units.⁸⁷

c. Medical Care

Medical and mental health treatment in all of Hawaii's correctional centers is inadequate, and inmates frequently find it impossible to receive treatment from a doctor or other licensed medical professional. In July 2015, for example, OCCC was reported as suffering from a "severe doctor shortage" in its medical unit, having only one full-time physician to care for the facility's approximately 1,200 inmates.⁸⁸ A DPS spokeswoman "admitted many of the situations are far from ideal at OCCC, [but that] it's very difficult to fill vacant medical positions behind bars because of low pay and [because] few people want to work in a prison environment."⁸⁹ The ACLU of Hawai'i has gathered substantial evidence suggesting that medical care in DPS facilities is either negligently provided or denied altogether.

i. Evidence provided by former DPS Medical Director

Shortages in staffing and deficiencies in quality of care were detailed by the previous Medical Director ("Director") of DPS's Healthcare Division, the entity responsible for coordinating and administering medical and psychiatric care in DPS-operated correctional centers.⁹⁰ In the last few years, the former Director conducted a needs-based analysis and concluded that in order to provide sufficient medical care to inmates in DPS custody, DPS needed to employ (state-wide) 11 to 14 full-time primary care physicians and Advanced Practice Registered Nurses ("APRNs") and 10 to 13 full-time psychiatrists, for a total of 21 to 27 licensed medical professionals. Instead, the former Director reported that during the Director's tenure at DPS, DPS's entire state-wide staff of medical professionals (including primary care physicians, APRNs, and psychiatrists) oscillated between 8 and 11 full-time individuals – less than *half* of the staff needed to provide adequate care to Hawaii's inmates.

The former Director reported to the ACLU of Hawai'i that these staffing shortages translate into extremely poor quality of care for Hawaii's inmates. The former Director described that generally, when an inmate seeks medical care from a facility's infirmary, he or she is triaged

⁸⁷ Complaint of D.R. (received by ACLU of Hawai'i July 21, 2016).

⁸⁸ Keoki Kerr, *EXCLUSIVE: Doctor Shortage, Sickout By Psychiatric Staff Hit State's Largest Jail*, Hawaii News Now (July 2, 2015), available at <http://www.hawaiinewsnow.com/story/29467665/exclusive-doctor-shortage-sickout-by-psychiatric-staff-hit-states-largest-jail>.

⁸⁹ *Id.*

⁹⁰ The former Director has requested to remain anonymous and that the documents submitted to the ACLU of Hawai'i remain confidential. Should the Department of Justice wish to view these documents, please contact the ACLU of Hawai'i.

by a nurse (APRN). Due to staffing shortages, APRNs often suggest that the inmate “sleep it off” or “wait and see,” and may give the inmate antibiotics or ibuprofen. There are often no primary care physicians or psychiatrists at the facilities; as a result, if the inmate is seriously ill, the APRN contacts via telephone the on-call physician. However, the on-call physician can neither physically observe nor interact with the patient, nor can he or she access the inmate’s medical records from outside the facility. The physician is thus required to diagnose and treat the inmate based on the observations related by the nurse over the phone. As a result, nurses at DPS facilities – rather than licensed physicians – often act outside their scope of practice by attempting to diagnose and treat inmates’ medical ailments. The former Director relayed the following two examples, which she found representative of the APRNs’ treatment of DPS inmates:

- An on-call DPS physician received a phone call from an APRN, who described an inmate’s rash as a harmless skin irritation. The physician could not personally observe the patient, and was required to rely on the APRN’s diagnosis. Hours later, however, the same physician received a phone call from a different APRN, who correctly diagnosed the rash as shingles. This diagnosis triggered infectious disease protocol that would have otherwise been ignored.⁹¹
- Because of the inability of DPS physicians to personally observe inmates complaining of chest pain, physicians regularly instructed APRNs to send all inmates complaining of chest pain to the local emergency room in case of heart attack or other cardiac issues. In one case, however, an on-call physician received a phone call from an APRN who had already “diagnosed” an inmate complaining of chest pain with pneumonia, rather than immediately sending him to the emergency room in case of cardiac distress.

The former Director noted that these scenarios were common, and that when inmates request to see a licensed physician in-person, it can often take weeks between the inmate’s request(s) and the in-person examination. In fact, the inmate would often be discharged before his or her request to see a DPS-physician was addressed.

Inmates also receive poor quality of care with respect to prescription medications. The former Director described that inmates often seek medical attention at the facilities’ infirmaries to modify existing prescription dosages or to seek prescription medications for new illnesses. Due to the lack of on-site physicians, however, APRNs often contact the on-call physician to relay the inmate’s complaint and ask whether the prescription (or modification) is warranted. The

⁹¹ Misdiagnoses of this nature often lead to non-compliance with common infectious disease protocol. One inmate, for example, reported that break-outs of scabies and chicken pox are common in DPS facilities, but that infected inmates are not quarantined and are left in the respective facility’s general population. *See* Complaint of R.D. (received by ACLU of Hawai‘i July 7, 2016).

physician, in turn, is required to begin, modify, or terminate the inmate's prescription based on the APRN's observations, and the physician may not hold an in-person appointment to observe the patient until weeks later. As a result, the physician is unable to conduct a timely physical examination to ensure the dosage is correct and to observe and address any resulting side effects. The former Director also reports that APRNs have, in the past, declined to consult the on-call physician (or were unable to do so due to staffing shortages) and simply ordered the prescription under the name of one of DPS's prescribing physicians who was not, in fact, treating or observing the inmate in question.

ii. Evidence provided by DPS inmates to the ACLU of Hawai'i

Inability to receive adequate care from medical professionals is one of the most common complaints of inmates that the ACLU of Hawai'i receives regarding DPS correctional facilities:

- P.V. was an inmate at HCF and suffered from difficulties in urinating. Between April 16, 2015, and November 1, 2015 – a period spanning 199 days – P.V. submitted a total of 12 medical requests to receive care from a qualified doctor. Instead, P.V. was dismissed and offered vague assurances that he would eventually be seen by a doctor. After being transferred out of the Hawai'i state prison system, P.V. was seen by a doctor, who performed P.V.'s first rectal exam. The exam revealed an inflamed prostate, which was likely the cause of P.V.'s inability to urinate.⁹²
- J.P. was an inmate at HCCC. J.P. alleges that only one out of every two medical requests is answered, and that nurses routinely diagnose medical ailments. J.P. also described that inmates who had already undergone medical pre-screening were routinely placed with inmates who had not undergone such screening, increasing risks of contagion of infectious diseases.⁹³
- G.F. is an inmate at MCCC. He alleges that urgently needed medical and dental care are frequently postponed for months or denied altogether.⁹⁴ G.F. also describes that MCCC routinely fails to follow its infectious disease protocol with respect to tuberculosis, which requires that arriving inmates who test positive by skin test be quarantined until cleared by the medical department. Instead,

⁹² Complaint of P.V. (received by ACLU of Hawai'i Nov. 30, 2015).

⁹³ Complaint J.P. (received by ACLU of Hawai'i Sept. 18, 2015); Complaint of J.P. (received by ACLU of Hawai'i Jan. 20, 2016).

⁹⁴ Complaint of G.F. (received by ACLU of Hawai'i July 25, 2016).

however, individuals who test positive for tuberculosis by skin test are routinely required to remain in MCCC's general population for up to one week.⁹⁵

- R.D. was an inmate at HCCC. R.D. reports that after an existing filling fell out of his tooth, he was in intense pain. He sought dental care from HCCC's medical clinic, but was told by prison officials that "they don't do fillings." Officials informed R.D. that he would need to wait to be transferred to HCF to get his filling fixed. R.D. was in such intense pain that he asked prison officials at HCCC if they could at least remove the affected tooth entirely – which they promptly did. R.D. writes that "[he] lost a perfectly good tooth 'cause they don't do fillings."⁹⁶
- Q.J.D. is an inmate at HCF. Q.J.D. was previously diagnosed with deteriorating spinal disks and takes medication for his condition. Q.J.D.'s DPS-treating physician increased Q.J.D.'s medication despite consistent negative side effects (including blurred vision and slurred speech), and was unavailable to do in-person check-ups to monitor Q.J.D.'s new dosage.⁹⁷
- K.K. H. is an inmate at OCCC. He sustained an injury to his arm on July 5, 2016 and submitted a medical request to OCCC authorities that same day. Though K.K.H. indicated that he was in severe pain and submitted a second request for care, he was not seen by an OCCC medical professional until 23 days after his initial request. The examining physician prescribed ibuprofen for K.K.H.'s pain and stated that his arm should heal in approximately eight weeks. K.K.H. contacted a local hospital to seek a second opinion, and was told by a hospital physician that surgery may be necessary to avoid long-term permanent damage. As of August 7, 2016, K.K.H. has still not received meaningful care for his injured arm.⁹⁸

d. Mental Health Services

Due to staffing shortages, mental health services are also woefully lacking and mentally ill inmates often find it impossible to get the care that they need.

⁹⁵ *Id.*

⁹⁶ Complaint of R.D. (received by ACLU of Hawai'i July 7, 2016).

⁹⁷ Complaint of Q.J.D. (received by ACLU of Hawai'i July 14, 2016).

⁹⁸ Complaint of K.K.H. (received by ACLU of Hawai'i Aug. 12, 2016).

Though mental health services are deficient system-wide,⁹⁹ certain DPS facilities are notorious for their inability to treat and protect mentally ill inmates. As mentioned in Part I of this Complaint, for instance, OCCC’s mental health services were deemed constitutionally deficient by the U.S. Department of Justice in 2007, and the facility’s mental health unit was not released from federal oversight until mid-2015.¹⁰⁰ Just “days” after the release, four mental health staffers at OCCC staged a “sick-out” to protest the “lack of staffing and resources” at the facility’s mental health unit. The staffers also raised concerns about “a lack of qualified, licensed employees in the mental health department,” which had approximately six vacancies at the time.¹⁰¹ One local attorney familiar with the issue described the problem as an “inability and unwillingness of the state to allocate sufficient funds.”¹⁰²

OCCC’s sister facilities are faring no better. HCCC in particular has been described by corrections officers as “bursting at the seams with mentally ill inmates.”¹⁰³ The module at HCCC to which mentally ill inmates are assigned was designed to safely house 44 inmates; as of November 2015, the facility was housing over double that number (100 inmates) – of which 60 were deemed to have “serious mental illnesses.”¹⁰⁴ HCCC Warden Peter Cabrerros described that the mentally ill “live in conditions that have been described as ‘unimaginable’ [and] ‘very crowded’” and that “[t]hese inmates struggle to maintain their personal hygiene on a daily basis.”¹⁰⁵ Warden Cabrerros lamented that the facility was not “properly equipped” to deal with the large numbers of mentally ill individuals and remarked that it is a “struggle for security staff and health care staff to manage [them].”¹⁰⁶

HCF also suffers from woefully inadequate psychiatric care. The former Director of DPS’s Healthcare Division estimated that based on HCF’s high concentration of mentally ill inmates, the facility needed two to three full-time psychiatrists to provide adequate care.¹⁰⁷

⁹⁹ For example, the former Director of DPS’s Healthcare Division reports that inmates at risk of suicide are not adequately monitored or protected due to mental health personnel staffing shortages.

¹⁰⁰ Kerr, *EXCLUSIVE: Doctor Shortage, Sickout by Psychiatric Staff Hit State’s Largest Jail*.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Nancy Cook Lauer, *County Seeks Alternatives to Jailing Mentally Ill*, Hawaii Tribune-Herald (Nov. 5, 2015), available at <http://hawaiitribune-herald.com/news/local-news/county-seeks-alternatives-jailing-mentally-ill>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *See supra* n. 90.

Instead, the former Director reports that during the Director's tenure, HCF had gone months without having a single full-time psychiatrist on staff; at one point in 2014, for example, there was only one part-time psychiatrist serving the 440 inmates at HCF on psychotropic medications. As a result of chronic staffing shortages at HCF, patients on existing psychotropic medications go unmonitored. Inmates presenting with new psychological illnesses are often prescribed medications under another DPS physician's name without being observed for complications and dangerous side effects.

The ACLU of Hawai'i has received complaints that inmates are withheld mental health care, even after repeated requests:

- B.N.P. is an inmate at HCF. B.N.P. is diagnosed as schizophrenic and requested to see the facility's psychologist on a regular basis for several months. He has repeatedly asked a facility social worker when he will be able to see the psychologist. At the time of his complaint submitted December 4, 2015, B.N.P. had still not received his requested mental health care.¹⁰⁸
- G.F. is an inmate at MCCC who reports that "[t]here is no real psychiatric staff [at MCCC] and necessary medications are almost impossible to acquire in any reasonable amount of time"; as a result, mentally ill individuals at MCCC are "[left to] fend for themselves in an already volatile situation with three other cell-mates that really don't care about his or her predicament."¹⁰⁹

e. Food Services

Inmates have repeatedly reported to the ACLU of Hawai'i that overcrowding at DPS facilities causes both food shortages and unsafe conditions in the kitchen and dining areas.

At OCCC, for example, one inmate reports that the dining hall is "infested with roaches."¹¹⁰ Though some inmates at OCCC receive a food delivery service to their individual cells, food safety remains a concern: the food carts are often left unattended outside the cell for extended periods of time, and as a result, the carts are often "littered with roaches" by the time the carts' meals are served to inmates.¹¹¹

¹⁰⁸ Complaint of B.N.P. (received by ACLU of Hawai'i Dec. 4, 2015).

¹⁰⁹ Complaint of G.F. (received by ACLU of Hawai'i July 25, 2016).

¹¹⁰ Complaint of D.R. (received by ACLU of Hawai'i July 21, 2016).

¹¹¹ Complaint of D.R. (received by ACLU of Hawai'i July 21, 2016).

The ACLU of Hawai‘i has received similar reports regarding food safety and preparation at HCF. One inmate reported in July 2016, for example, that the facility’s Food Service Unit prepares food well in advance of mealtimes; the prepared foods are then left in non-functioning food warmers and served after being kept at lukewarm temperatures, thus increasing the risk of foodborne illness.¹¹² Further, the large portable coolers from which drinks are dispensed are not sanitized; as a result, mold grows on and around the stems and spigot of the dispensing system, which then contaminates the dispensed drinks.¹¹³ The same inmate has observed that hot water is often lacking in the kitchen due to a malfunctioning boiler system. Due to lack of hot water, kitchen staff are often unable to properly wash dishes; when this occurs, Styrofoam is used to serve food, but unwashed cups and silverware (often containing dried food particles) continue to be used.¹¹⁴ These unsanitary and unsafe conditions endanger the health of inmates, and in fact, this inmate described that he himself suffered a particularly serious bout of food poisoning which required intravenous fluids.¹¹⁵

f. Safety, Security, and Protection from Harm

Overcrowding and lack of adequate shelter, food, and health care services exacerbates tension, stress, and competition for resources among inmates. The chronically understaffed Hawai‘i correctional facilities have been incapable of protecting inmates from harm in this environment, resulting in inmate assaults, deaths, and prison breaks.

At OCCC and MCCC in particular, understaffing is chronic. A former OCCC inmate reported in 2014 that “because of understaffing, there were often just two guards to keep track of nearly 70 inmates in [his] module.”¹¹⁶ As a result, the guards “simply kept all cells locked for hours at a time,” often resulting in three men being locked to a cell for 10-hour periods.¹¹⁷ The inmate further reported that the guards that were on duty often slept on the job, leaving inmates unsupervised and unprotected.¹¹⁸ Another inmate at OCCC similarly reported in July 2016 that there is only one video camera, one guard, and one sergeant to oversee, protect, and maintain the

¹¹² Complaint of D.M. (received by ACLU of Hawai‘i July 21, 2016); *see also* Complaint of G.F. (received by ACLU of Hawai‘i July 25, 2016) (reporting that food is often served at “cold temperatures” at MCCC).

¹¹³ Complaint of D.M. (received by ACLU of Hawai‘i July 21, 2016).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Keoki Kerr, *EXCLUSIVE: Former OCCC Inmate Says Guards Sold Drugs, Cigarettes to Inmates; Slept on Job*, Hawaii News Now (July 9, 2014), available at <http://www.hawaiinewsnow.com/story/25982440/exclusive-former-occc-inmate-says-guards-sold-drugs-cigarettes-to-inmates-slept-on-job>.

¹¹⁷ *Id.*

¹¹⁸ Kerr, *EXCLUSIVE: Former OCCC Inmate Says Guards Sold Drugs, Cigarettes to Inmates; Slept on Job*.

safety of at least 72 inmates; as a result, “[m]any attacks on inmates go unnoticed” and thefts of food by “group force” are common.¹¹⁹

Understaffing and overcrowding often result in unmanageable prison riots and escapes. In February 2016, for example, OCCC was placed on lockdown for nearly seven hours after a riot “involv[ing] 15 inmates in the prison’s overcrowded second-floor, single-cell holding unit who flooded some cells and attempted to start fires.”¹²⁰ In 2014, a medium-security inmate at OCCC escaped the facility because – due to overcrowding – he had been placed in a module designed for lower-risk work furlough inmates.¹²¹ Overcrowding had “forced” DPS to place the medium-security inmates in the module with weaker walls; then-Director of DPS remarked of the incident that he “wish[ed] he could put them in a more secure building[.]”¹²² Overcrowded conditions were also at least partly to blame for an 11-hour lockdown at MCCC in April 2015, after inmates “caused a ‘disturbance’ during their breakfast at a module that housed 81 inmates but was built for only 48 inmates.”¹²³ Staffing shortages also result in unique threats to female inmates; at WCCC, employees have described that there are “so few women guards and so many staff shortages that sometimes male guards are used in what are supposed to be female-only guard posts with direct views of the showers and toilet areas.”¹²⁴

Risk of physical harm to inmates is particularly acute in facilities with broken locks and security equipment. In particular, HCF’s entire lock and door system is in disrepair, and the system broke down in 2014.¹²⁵ Replacement of the lock system will cost approximately \$10 million, and repairs have been postponed.¹²⁶ Overcrowding and faulty locks are particularly dangerous at this facility due to its unique population, consisting of what HCF Warden

¹¹⁹ Complaint of D.R. (received by ACLU of Hawaii July 21, 2016).

¹²⁰ *State to Investigate OCCC Inmate Disturbance*, Honolulu Star-Advertiser (Feb. 17, 2016), available at <http://www.staradvertiser.com/breaking-news/state-to-investigate-occc-inmate-disturbance/>.

¹²¹ Lynn Kawano, *Two Escapes in One Week From the Oahu Community Correctional Center*, Hawaii News Now (2014), available at <http://www.hawaiinewsnow.com/story/25788718/breaking-oahu-community-correctional-center-on-lockdown>.

¹²² *Id.*

¹²³ *11-hour Lockdown at MCCC Highlights Overcrowded Prison conditions*, Hawaii News Now (Apr. 30, 2015), available at <http://www.hawaiinewsnow.com/story/28942500/11-hour-lockdown-at-mccc-highlights-overcrowded-prison-conditions>.

¹²⁴ Keoki Kerr, *EXCLUSIVE: Visitor to Women's Prison Beat Up Inmates When Guard Left Post*, Hawaii News Now (Apr. 4, 2016), available at <http://www.hawaiinewsnow.com/story/31642256/exclusive-guard-leaves-post-at-womens-prison-for-smoke-break-and-visitor-starts-fight-with-2-inmates>.

¹²⁵ Kerr, *State's Largest Prison Over Capacity, With Plumbing and Cell Lock Problems*.

¹²⁶ Kerr, *State's Largest Prison Over Capacity, With Plumbing and Cell Lock Problems*.

Sequeira described as “the most difficult inmates in Hawaii [. . .] including those with medical problems, the mentally ill, and inmates serving life terms who don’t behave.”¹²⁷ “Keeping control” over these “incorrigible” inmates was described by Warden Sequeira as the facility’s “biggest challenge.”¹²⁸

Not only are Hawaii’s correctional facilities unable to secure the safety of inmates from threats within the facilities, staffing shortages have also resulted in harm to inmates from the outside. In April 2016, for example, a visitor was able to walk into an unsecured module at WCCC and attack two inmates inside.¹²⁹ During weekend visitation at the understaffed facility, a guard had left his post unattended for a “smoke break,” “leaving two dorms in the Kaala unit (of WCCC) unsupervised with their doors jammed open.”¹³⁰ The visitor then walked into the Kaala unit and began beating up two inmates, where “no guards [were] around to intercede.”¹³¹

Part IV: Officials and Lawmakers Acknowledge Constitutionally-Deficient Prison Conditions

State lawmakers have largely failed to respond to repeated pleas for improved prison conditions. Though officials have discussed proposals to build new correctional centers in all four of the State’s counties, the hefty price tag for construction of even one single facility has rendered efforts futile.¹³² Estimates in 2016 placed the cost of replacing OCCC at roughly \$650 million,¹³³ and legislative measures to appropriate the funding have routinely died in committee.¹³⁴ To defray costs, the Governor of Hawai‘i has proposed a public-private partnership in which a private prison company would construct the facility and then lease it back to the State for operation.¹³⁵ However, local unions representing correctional officers, prisoners’

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Kerr, *EXCLUSIVE: Visitor to Women’s Prison Beat Up Inmates When Guard Left Post.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Kaneya, *Jailhouse Rock.*

¹³³ Rui Kaneya, *Hawaii Prison-Reform Efforts Look To Be On Conflicting Paths*, Honolulu Civil Beat (Sep. 14, 2016), available at <http://www.civilbeat.org/2016/09/hawaii-prison-reform-efforts-look-to-be-on-conflicting-paths/>.

¹³⁴ Rui Kaneya, *Lawmakers Fail To Cut A Deal To Rebuild Hawaii’s Oldest Jail*, Honolulu Civil Beat (Apr. 29, 2016), available at <http://www.civilbeat.org/2016/04/lawmakers-fail-to-cut-a-deal-to-rebuild-hawaiis-oldest-jail/>; Kaneya, *Jailhouse Rock.*

¹³⁵ Kaneya, *Jailhouse Rock*; see also Grube, *Prison Builders* (quoting Senator Will Espero, Chair of the Public Safety Committee, as remarking that “it could take decades for the state to build all the facilities needed to reduce its overcrowding problem unless there’s a public-private partnership that can act as a catalyst.”).

rights advocates, and environmental groups (among others) have come out in strong opposition to this proposal and many others with respect to OCCC’s relocation.¹³⁶ Though the 2016 legislative session did result in limited funding to address conditions at MCCC, HCCC, and Kauai Community Correctional Facility, proposals to relocate and/or improve OCCC died unceremoniously in committee.¹³⁷

Despite unsuccessful attempts to fund OCCC’s relocation or renovation, lawmakers were able to pass legislation during the 2016 session addressing overcrowding through an early release program. The legislation allows the early release of certain misdemeanants from DPS custody “solely for the purpose of managing the population of the community correctional centers” and was specifically designed to address overcrowding.¹³⁸ The law will apply only to individuals who are sentenced on or after July 1, 2016, and there are broad categories of ineligible misdemeanants.¹³⁹ Director Nolan Espinda of DPS testified in support of the measure as a “methodology for addressing jail overcrowding when it hits the critical point (current situation)[.]”¹⁴⁰

Nevertheless, overcrowding persists – and state officials have repeatedly acknowledged the correctional centers’ unconstitutionally unsafe conditions and the possibility of future litigation:

- “I don’t see any other rational way to address [overcrowding] at this point. Eventually we’re going to get sued.” - State Representative Karl Rhoads, Chair of the House Committee on Judiciary (regarding early release legislation).¹⁴¹
- “Maui Community Correctional Center is a lawsuit waiting to happen.” – State Senator Roz Baker, Chair of the Senate Commerce, Consumer Protection, and Health Committee.

¹³⁶ Kaneya, *Jailhouse Rock*; Kaneya, *Lawmakers Fail To Cut A Deal To Rebuild Hawaii’s Oldest Jail*; Rui Kaneya, *OCCC Relocation Could Be Almost A Half-Billion-Dollar Proposition*, Honolulu Civil Beat (Jan. 28, 2016), available at <http://www.civilbeat.org/2016/01/occc-relocation-could/>.

¹³⁷ Kaneya, *Lawmakers Fail To Cut A Deal To Rebuild Hawaii’s Oldest Jail*.

¹³⁸ H.B. 2391, 28th Leg. (Haw. 2016), available at http://www.capitol.hawaii.gov/session2016/bills/HB2391_CD1_.pdf.

¹³⁹ *Id.*

¹⁴⁰ Espinda, “Testimony on House Bill 2391 Relating to the Release of Certain Misdemeanants.”

¹⁴¹ Blair, *Lawmakers Consider Early Releases to Ease Prison Overcrowding*.

- “Conditions created by overcrowding place the citizens and elected officials of Hawaii under a cloud of liability that could threaten the continued autonomous control and supervision of jails throughout the state.” – DPS Director Nolan Espinda.¹⁴²
- “We’re overcrowded, our facilities are old and they’re poorly designed [. . .] This is a problem that’s been pushed back for decades now [. . .] We’ve never really approached this issue in a real comprehensive way. We’ve made efforts, but they all got stalled. Nothing has been built for years.” – former DPS Director Ted Sakai.¹⁴³
- “It’s no secret that all of our jails are grossly overcrowded and have been overcrowded for several years.” – DPS Public Information Officer Toni Schwartz.¹⁴⁴
- Asked to identify OCCC’s biggest problem, OCCC Chief of Security Denise Johnston answered “overcrowding,” which she remarked “has been an issue for her entire 31-year career at OCCC.”¹⁴⁵

Part V: The State’s Pattern or Practice of Violating the United States Constitution

As demonstrated above, the State has a pattern or practice of subjecting incarcerated individuals in DPS custody to “egregious or flagrant conditions” which cause such individuals “grievous harm” in violation of the Eighth and Fourteenth amendments.¹⁴⁶

a. Violations of the Eighth Amendment

The Eighth Amendment’s prohibition on cruel and unusual punishment “protects prisoners not only from inhumane methods of punishment but also from inhumane conditions of confinement.”¹⁴⁷ Despite decades of failed efforts to deal with prison overcrowding, the Hawai‘i Department of Public Safety continues to subject Hawaii’s inmates to inhumane conditions and refuses to provide them with basic life necessities.

¹⁴² Kerr, *Prisons Officials seek Private Partnership For New Jail*.

¹⁴³ Grube, *Prison Builders*.

¹⁴⁴ Chao, *Maui’s Only Jail Severely Overcrowded*.

¹⁴⁵ Kerr, *OCCC Gets Help From Feds to Ease Overcrowding*.

¹⁴⁶ 42 U.S.C. 1997a(a).

¹⁴⁷ *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006), *opinion amended on reh’g*, No. 04-35608, 2006 WL 3437344 (9th Cir. Nov. 30, 2006).

The Eighth Amendment to the United States Constitution requires that prison officials “ensure that inmates receive adequate food, clothing, shelter, and medical care” and “take reasonable measures” to guarantee their safety.¹⁴⁸ Inhumane prison conditions violate the Eighth Amendment where: (1) inmates are deprived of the “minimal civilized measure of life’s necessities”¹⁴⁹ in a manner that is “objectively, sufficiently serious”;¹⁵⁰ and where (2) prison officials act with deliberate indifference to inmates’ safety in allowing the deprivation to take place.¹⁵¹ A finding of deliberate indifference requires that the officials “know of and disregard an excessive risk to inmate health and safety” and that officials “both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists [and] also draw the inference.”¹⁵²

Conditions of confinement must be analyzed in context, and courts must “consider the effect of each condition in the context of the prison environment, especially when the ill-effects of particular conditions are exacerbated by other related conditions.”¹⁵³ The United States Supreme Court has elaborated on cases involving multiple challenged conditions, noting that “[s]ome conditions of confinement may establish an Eighth Amendment violation ‘in combination’ when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise – for example, a low cell temperature at night combined with a failure to issue blankets.”¹⁵⁴ Significantly, lack of state funding or resources is not a defense to an Eighth Amendment claim that seeks prospective relief.¹⁵⁵

Due to chronic and widespread overcrowding, DPS deprives Hawaii’s inmates the basic necessities of life, including, but not limited to, safe shelter, protection from harm, and adequate sanitation, food, and medical and mental health care. As described in detail above, inmates are regularly denied access to medical and mental health care at DPS facilities due to persistent and

¹⁴⁸ *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (internal quotations omitted).

¹⁴⁹ *Grenning v. Miller-Stout*, 739 F.3d 1235, 1238 (9th Cir. 2014).

¹⁵⁰ *Morgan*, 465 F.3d at 1045.

¹⁵¹ *Id.*

¹⁵² *Anderson v. County of Kern*, 45 F.3d 1310, 1312-13 (9th Cir. 1995), *opinion amended on denial of reh'g*, 75 F.3d 448 (9th Cir. 1995).

¹⁵³ *Wright v. Rushen*, 642 F.2d 1129, 1133 (9th Cir. 1981).

¹⁵⁴ *Wilson v. Seiter*, 501 U.S. 294, 304 (1991); see also *Brown v. Plata*, 563 U.S. 493, 539 (2011) (affirming decision holding that, in order to provide constitutionally adequate medical and mental health care, population of California’s prisons should be capped at 137.5% of design capacity).

¹⁵⁵ *Peralta v. Dillar*, 744 F.3d 1076, 1083 (9th Cir. 2014), *cert. denied*, 135 S.Ct. 946, 190 L.Ed.2d 829 (2015).

severe staffing shortages; if inmates are able to see a medical professional, the care provided often only further endangers that inmate's health and well-being.¹⁵⁶ Inmates are also frequently forced to sleep on the cellblock floor for extended periods of time with ants, centipedes, and cockroaches; hot temperatures and exposure to the elements further exacerbate the growth of bacteria, mold, and other organisms in both the sleeping and communal spaces.¹⁵⁷ Plumbing in the facilities is antiquated and often non-functional, forcing mass amounts of individuals to share a dangerously small and unsanitary number of toilets and showers.¹⁵⁸

As contemplated by the Ninth Circuit and the United States Supreme Court, these dangerous conditions have a mutually reinforcing effect.¹⁵⁹ For example, overcrowding forces inmates to sleep on contaminated cellblock floors with their heads beneath communal toilets; prevents those same inmates from having regular access to bathing facilities and hygiene items; and renders impossible the ability to seek and receive medical care for resulting illnesses and infectious diseases.¹⁶⁰ Overcrowding also causes tension, stress, and competition for already scarce resources (such as bed space, food, and hygiene items), yet renders prison officials incapable of monitoring and protecting inmates and maintaining security systems.¹⁶¹ Though each deficiency considered in isolation may not rise to the level of a constitutional violation, the myriad of unsafe conditions in DPS's facilities operate together to render inmates effectively deprived of shelter, sanitation, medical and mental health care, food, and protection from harm.¹⁶²

Government officials themselves have acknowledged that conditions at DPS facilities are "objectively, sufficiently serious," thus also demonstrating prison officials' knowledge of and deliberate indifference to the deprivation of inmates' basic necessities and safety.¹⁶³ As recounted above, numerous high-ranking officials and facility managers within DPS have recognized the "excessive risk[s] to inmate health and safety"¹⁶⁴ caused by chronic overcrowding

¹⁵⁶ See *supra* at 13-17.

¹⁵⁷ See *supra* at 8-11.

¹⁵⁸ See *supra* at 11-13.

¹⁵⁹ *Wilson*, 501 U.S. at 304.

¹⁶⁰ See *supra* at 8-13.

¹⁶¹ See *supra* at 19-21.

¹⁶² See *Wright*, 642 F.2d at 1133; *Wilson*, 501 U.S. at 304.

¹⁶³ See *Morgan*, 465 F.3d at 1045.

¹⁶⁴ *Anderson*, 45 F.3d at 1312-13 (9th Cir. 1995).

within Hawaii’s correctional centers.¹⁶⁵ Members of the legislature have likewise acknowledged that overcrowding is likely the root cause of constitutionally deficient conditions.¹⁶⁶ Yet, efforts at the legislature to address overcrowding and improve conditions have for years overwhelmingly failed.¹⁶⁷ As a result, the entire prison system in Hawai‘i finds itself in an intractable dilemma: the statewide inmate population continues to grow,¹⁶⁸ the legislature is unable to summon the political willpower to address overcrowding or increase funding to DPS, and conditions within the facilities continue to worsen.

b. Violations of the Fourteenth Amendment

Just as the unsafe conditions at DPS facilities violate inmates’ Eighth Amendment rights, so too do they violate pretrial detainees’ Fourteenth Amendment rights.

Though allegations of unconstitutional conditions brought by convicted inmates are properly brought under the Eighth Amendment Cruel and Unusual Punishment Clause, prison conditions claims brought by pretrial detainees arise under the Fourteenth Amendment Due Process Clause.¹⁶⁹ Despite the differing constitutional bases, however, pretrial detainees are entitled to at least the same conditions of confinement as convicted prisoners.¹⁷⁰

As described in detail above, the conditions in DPS facilities deprive all individuals held in Hawaii’s correctional centers – both convicted inmates and pretrial detainees alike – basic life necessities such as safe shelter, protection from harm, and adequate sanitation, food, and medical and mental health care.¹⁷¹ Some of the most egregious conditions can in fact be found at OCCC, which also houses a significant population of both male and female pretrial detainees.¹⁷² State and prison officials have demonstrated deliberate indifference to these conditions and have

¹⁶⁵ See *supra* at 21-23.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ See generally State of Hawai‘i Dep’t of Public Safety, “Department of Public Safety Annual Reports,”; State of Hawai‘i Dep’t of Public Safety, “Corrections Division,” (last viewed Aug. 2, 2016) (listing monthly population reports), available at <http://dps.hawaii.gov/about/divisions/corrections/>.

¹⁶⁹ *Anderson*, 45 F.3d at 1312-13.

¹⁷⁰ *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070-73 (9th Cir. 2016) (*en banc*) (holding that objective deliberate indifference standard applies to detainee’s failure-to-protect claim under Fourteenth Amendment) (*citing Kingsley v. Hendrickson*, 135 S.Ct. 2466 (2015) (suggesting that pretrial detainees need not satisfy deliberate indifference standard and holding that in excessive force claim brought by pretrial detainee, detainee need not prove deliberate indifference; objective evidence that governmental action was not rationally related to a legitimate governmental objective (or that it is excessive in relation to that objective) is sufficient)).

¹⁷¹ See *supra* at 24-26, 8-21.

¹⁷² See *supra* at Part I (describing populations at OCCC and other DPS facilities).

recognized the excessive safety and health risks posed by overcrowding.¹⁷³ For example, OCCC's own Chief of Security described overcrowding as the facility's most pressing problem and stated that overcrowding "has been an issue for [the Chief's] entire 31-year career at OCCC."¹⁷⁴ As a result, just as DPS violates the Eighth Amendment rights of convicted inmates, so too does it violate the Fourteenth Amendment rights of pretrial detainees.

Conclusion

The ACLU of Hawai'i seeks to remedy the unconstitutional and unsafe conditions in the State of Hawaii's correctional system and to vindicate the Eighth and Fourteenth amendment rights of its inmates. The ACLU is aware that the Department of Justice and its Special Litigation Section work "to protect the rights of people who are in prisons and jails run by state or local governments" whenever "a state or local government systematically deprives people in these facilities of their rights."¹⁷⁵ The practices described in this complaint constitute a systemic pattern causing harm to institutionalized persons in Hawai'i. The ACLU acknowledges and appreciates that the Department of Justice has in the past investigated, commenced legal action, and settled a case concerning the woefully inadequate mental health services provided to inmates at OCCC.¹⁷⁶ Unfortunately, these and other conditions have not improved since the Department of Justice's last enforcement action. Therefore, the ACLU respectfully requests that the Department of Justice investigate the claims in this Complaint, order the State of Hawai'i to cease its unconstitutional policies and practices, and if necessary, take appropriate legal action.

Respectfully submitted:



Mateo Caballero

Legal Director

ACLU of Hawai'i Foundation

Hawai'i Bar #100081

P.O. Box 3410

Honolulu, Hawai'i 96801

Telephone: (808) 522-5908

Facsimile: (808) 522-5909

Email: mcaballero@acluhawaii.org

¹⁷³ See *Morgan*, 465 F.3d at 1045; *supra* at 21-23.

¹⁷⁴ Kerr, *OCCC Gets Help From Feds to Ease Overcrowding*.

¹⁷⁵ *Rights of Persons Confined to Jails and Prisons*, Department of Justice, available at <https://www.justice.gov/crt/rights-persons-confined-jails-and-prisons>.

¹⁷⁶ See *supra* n. 33.

APPENDICES

- A** Complaint, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 14, 1984).
- B** Consent Decree, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 4, 1984).
- C** Settlement Agreement, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 4, 1984).
- D** Supplement Agreement, *Spear v. Waihee*, Civ. No. 84-1104 (D. Haw. Sept. 4, 1984).