UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, v. THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, and THE DIRECTOR OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, WILLIAM R. BYARS, JR., in his official capacity, Defendants.	)	Civil Action No. 3:13-cv-02664-CMC

Press Release

CONSENT DECREE

I. BACKGROUND

A. Introduction

1. This Consent Decree is agreed to by and between Plaintiff United States of America and Defendants South Carolina Department of Corrections and the Director of the South Carolina Department of Corrections, William R. Byars, Jr., in his official capacity. For purposes of this Consent Decree, the South Carolina Department of Corrections and the Director of the South Carolina Department of Corrections are collectively referred to as "SCDC," and the United States of America and SCDC are collectively referred to as the "Parties."

2. The United States Department of Justice ("Department" or "United States") brought this civil action on behalf of the United States, following an investigation, to enforce the provisions of Title II of the Americans with Disabilities Act of 1990, as amended ("Title II" and "ADA"), 42 U.S.C. §§ 12131-12134; the Department's regulation implementing Title II, 28 C.F.R. pt. 35 ("Title II regulation"); Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"), 29 U.S.C. § 794; and regulations implementing Section 504, 28 C.F.R pts. 41 and 42 subpt. G.

3. The United States alleges that SCDC has discriminated, and continues to discriminate, against inmates with Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (collectively, "HIV") in violation of Title II of the ADA and Section 504. The United States further alleges that SCDC denies inmates with HIV the opportunity to equally participate in and benefit from a variety of services, programs, and activities, and subjects inmates with HIV to segregation and unequal opportunities at correctional rehabilitation, including the following:

   a. SCDC routinely denies inmates with HIV from participating in a variety of services, programs, and activities available to other inmates, such as drug treatment (even where a condition of an inmate's sentence or necessary for parole), work release, pre-release preparation, hardship transfers, intermediate psychiatric care, and jobs.

   b. SCDC treats inmates with HIV unequally, differently, and separately in other services, programs, and activities, such as reception and orientation, visitation, and housing.

   c. SCDC requires that all inmates with HIV be housed in "HIV-only" dorms in two of SCDC's highest security facilities, regardless of an inmate's individual security classification or behavior. SCDC requires inmates at these facilities to wear clothing or identification that advertises their dorms, and the otherwise confidential HIV status of inmates with HIV is therefore affirmatively publicized to all staff, visitors, other inmates, and members of the public.

   d. SCDC categorically denies inmates with HIV from jobs in the cafeteria and canteen, without justification. Because inmates with HIV cannot participate in food service jobs, inmates with HIV are unable to benefit and learn from such jobs.

4. Nothing herein shall be deemed, construed, or interpreted as an admission of liability by Defendants. SCDC and the Director of SCDC represent that they have taken affirmative steps to address the conditions of confinement for inmates with HIV, including issuing a public announcement on July 10, 2013 about their commitment to fully integrate inmates with HIV into the SCDC general population; providing comprehensive HIV education and training to staff; and preparing for the full integration of inmates with HIV into the general population and any appropriate services, programs, and activities. SCDC and the Director enter into this Consent Decree to affirm their commitment to change the conditions of confinement of inmates with HIV.

B. Jurisdiction

5. Inmates with HIV are individuals with disabilities within the meaning of the ADA because HIV, a physical impairment, substantially limits one or more major life activities of such individuals, including, inter alia, the operation of the major bodily functions of the immune system and reproductive functions. 42 U.S.C. § 12102(2).

6. SCDC, an executive agency of the State of South Carolina, is a public entity within the meaning of Title II, 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104; is a recipient of federal financial assistance within the meaning of Section

504, 29 U.S.C. § 794; 28 C.F.R. §§ 41.3(e), 42.540(f); and is therefore subject to the requirements of Title II, Section 504, and their implementing regulations.

7. Defendant SCDC operates services, programs, and activities within the meaning of Title II and Section 504.

8. The Director of SCDC is vested with exclusive management and control of the South Carolina prison system, including the proper care, treatment, feeding, clothing, and management of prisoners. S.C. Code Ann. §§ 24-1-130, 24-1-140. The Director of SCDC is charged with appearing and defending any actions brought against SCDC. S.C. Code Ann. § 24-1-220.

C. Definitions

9. The term "inmate with HIV" or "inmates with HIV" means, for purposes of this Consent Decree, an individual under the jurisdiction, custody, or control of SCDC who has the virus (or viruses, and all subtypes) that infects specific cells of the immune system that may cause Acquired Immunodeficiency Syndrome, or AIDS, in an individual, and:

   a. Includes every stage of the condition, even when undetectable, episodic, in remission, active, or when it has progressed to AIDS;

   b. Shall be determined without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, equipment, appliances, use of assistive technology, or learned behavioral or adaptive neurological modifications; and

   c. Includes any inmate who actually has HIV, has a record of having HIV, such as testing positive for HIV or being medically treated for having HIV, or who is regarded as having HIV, 42 U.S.C. § 12102(1)-(4); 28 C.F.R. § 35.104.

10. The term "SCDC" shall include all of its correctional facilities; its Director; its officers, employees, contractors, successors, and assigns, including its wardens; deputy, assistant, or associate wardens; correctional officers; health care authority staff; mental health counselors and other mental health staff; administrative personnel; facility or maintenance personnel; its inmates; and any other person under the authority or control of SCDC.

11. The term "qualified inmate with HIV" means an inmate with HIV who, with or without reasonable modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

D. Consent of the Parties

12. The Parties agree that it is in their mutual interest, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the Parties agree to entry of this Consent Decree.

It is hereby ADJUDGED, ORDERED, and DECREED:

II. GENERAL NONDISCRIMINATION REQUIREMENTS

A. Title II of the ADA

13. SCDC, and all others in active concert or participation with SCDC, with respect to any inmate with HIV, agree as follows under Title II of the ADA and its implementing regulation:

a. SCDC shall not exclude from participation in or deny the benefits of SCDC's services, programs, or activities for which such inmate with HIV is otherwise qualified, such as drug treatment, pre-release, work release, food service jobs, intermediate psychiatric care, and hardship transfers, or otherwise subjecting inmates with HIV to discrimination, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), 35.130(b)(1)(i); 29 U.S.C. § 794(a), 28 C.F.R. § 42.503(a), 42.503(b)(1)(i);

b. SCDC shall not provide an unequal, different, or separate opportunity to participate in any service, program, or activity for which such inmate with HIV is otherwise qualified, such as classification, security, and visitation, 28 C.F.R. § 35.130(b)(1)(ii);

c. SCDC shall not provide benefits, aids, or services that are not as effective in affording equal opportunity for any otherwise qualified inmate with HIV to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to other inmates, such as housing at an appropriate classification level so as to participate in drug treatment rehabilitation, opportunities gained from work release and pre-release for post-incarceration transition and potential employment, and opportunities for greater work credits, 28 C.F.R. § 35.130(b)(1)(iii);

d. SCDC shall not provide different or separate benefits, aids, or services to qualified inmates with HIV than are provided to other inmates, such as work opportunities, intermediate psychiatric care, medical and disability-related confidentiality, where such action is not necessary to provide qualified inmates with HIV the benefits, aids, or services that are as effective as those provided to others, 28 C.F.R. § 35.130(b)(1)(iv);

e. SCDC shall not impose, directly or through other arrangements, eligibility criteria that screen out or tend to screen out otherwise qualified inmates with HIV from participating in or benefiting from services, programs, and activities, such as requiring inmates to not have HIV to be able to participate in or benefit from security classification policies, drug treatment, work release, pre-release, work opportunities, intermediate psychiatric care, and hardship transfers, 28 C.F.R. § 35.130(b)(8);

f. SCDC shall make reasonable modifications in policies, practices, or procedures to avoid discrimination on the basis of disability, such as ensuring that appropriate security classification and resources are afforded to qualified inmates with HIV, 28 C.F.R. § 35.130(b)(7);

g. SCDC shall administer its services, programs, and activities, such as drug treatment, work release, pre-release, work opportunities, intermediate psychiatric care, hardship transfers, and housing, in the most integrated setting appropriate to the needs of qualified inmates with HIV, 28 C.F.R. §35.130(d); 28 C.F.R. §35.152(b)(2);

h. SCDC shall not place otherwise qualified inmates with HIV in facilities that do not offer the same programs as the facilities where they would otherwise be housed based on legitimate, nondiscriminatory security and classification criteria, such as drug treatment, work release, pre-release, and intermediate psychiatric care, 28 C.F.R. § 35.152(b)(2)(iii);

i. SCDC shall not deprive otherwise qualified inmates with HIV of visitation with family members by placing such inmates in distant facilities where they would not otherwise be housed, 28 C.F.R. § 35.152(b)(2)(iv);

B. Section 504 of the Rehabilitation Act

14. SCDC, and all others in active concert or participation with SCDC, with respect to any inmate with HIV, agree as follows under Section 504 of the Rehabilitation Act and its implementing regulations:

a. SCDC shall not deny otherwise qualified inmates with HIV the opportunity accorded to other inmates to participate in any program or activity receiving federal financial assistance, 28 C.F.R. § 42.503(b)(1)(i);

b. SCDC shall not deny qualified inmates with HIV equal opportunity to achieve the same benefits that other inmates achieve in the program or activity receiving federal financial assistance, 28 C.F.R. § 42.503(b)(1)(ii);

c. SCDC shall not provide different or separate assistance to qualified inmates with HIV – such as work opportunities, psychiatric care, medical and disability-related confidentiality – than are provided to others where such action is unnecessary to provide such individuals or classes with assistance as effective as that provided to others, 28 C.F.R. § 42.503(b)(1)(iii);

d. SCDC shall not deny qualified inmates with HIV the opportunity to participate in integrated programs or activities receiving federal financial assistance on the ground that other specialized aids, benefits, or services for individuals with disabilities are available, 28 C.F.R. § 42.503(b)(2); and

e. SCDC shall administer programs or activities receiving federal financial assistance for qualified inmates with HIV in the most integrated setting appropriate to their needs, 28 C.F.R. § 42.503(d).

III. ACTIONS TO REMEDY NONCOMPLIANCE WITH TITLE II AND SECTION 504

A. Written Policies, Practices, and Procedures

15. Immediately upon entry of this Consent Decree by the Court, the following shall occur:

a. Nondiscrimination Policies: The General Policy of Nondiscrimination on the Basis of Disability, attached as Exhibit A, and the Policy of Nondiscrimination on the Basis of HIV, attached as Exhibit B, to this Consent Decree, shall become effective for SCDC. SCDC shall maintain implementation of these policies for the term of this Consent Decree;

b. Housing Policies Affecting Inmates with HIV: Any and all provisions within SCDC written policies, practices, or procedures that separate or segregate inmates with HIV to specific institutions and/or housing, on the basis of HIV, and regardless of classification, shall be revoked, and institution and housing determinations shall be made according to an inmate's classification and SCDC's existing policies, without regard to HIV status, in compliance with the integration process set forth in Paragraphs 21-25 below;

c. Participation by Inmates with HIV in Services, Programs, and Activities: Any and all provisions within SCDC written policies, practices, or procedures that prohibit inmates with HIV from participating in any SCDC service, program, or activity (including, but not limited to, food services jobs in the cafeteria and canteen, drug treatment, work release, the Short Term Offender Program ("STOP"), youthful offender programs, reentry, etc.), shall be revoked, and any inmate with HIV that is otherwise qualified for any such service, program, or activity shall be immediately eligible for such service, program, or activity, subject to the integration process set forth in Paragraphs 21-25 below.

d. Reception and Evaluation of Inmates with HIV: Any and all provisions within SCDC written policies, practices, or procedures that separate or otherwise segregate inmates with HIV from inmates without HIV during the Reception and Evaluation intake process shall be revoked. In addition:

i. SCDC shall maintain confidentiality of personally identifiable health information consistent with, at minimum, the guidelines set forth at Section III: *Inmate Privacy and Confidentiality of HIV-Related Information in Correctional Settings, HIV Testing Implementation Guidance for Correctional Settings* (Jan. 2009) by the Centers for Disease Control, of the Department of Health and Human Services, at www.cdc.gov/hiv/topics/testing/resources/guidelines/correctional-settings/section3.htm ("CDC Guidelines for HIV Testing in Corrections") for any and all testing of inmates for HIV conducted during the Reception and Evaluation process, or at any other time during incarceration.

ii. Any and all inmates that test positive for HIV during the Reception and Evaluation intake process shall be assessed for classification according to SCDC policies, practices, and procedures without any regard to testing positive for or having HIV.

iii. Any and all counseling and evaluation of inmates who test positive for or have HIV during the Reception and Evaluation intake process, or at any other time during incarceration, shall be conducted privately and confidentially only with medical or mental health care staff, and shall be kept completely confidential from all other inmates, correctional officers, and SCDC personnel, and shall be consistent with, at minimum, the CDC Guidelines for HIV Testing in Corrections; provided that such information

may be disclosed by SCDC or the Director of SCDC if legally authorized and not inconsistent with federal, state, or local law. Defendants shall take all appropriate steps necessary to limit disclosure of personally identifiable information.

16. Legitimate Safety Requirements and Direct Threat: Notwithstanding the foregoing in Paragraph 15, SCDC may implement and maintain (a) legitimate safety requirements necessary for the safe operation of its services, programs, or activities; and (b) procedures to assign inmates to controlled housing or to exclude inmates from a particular service, program, or activity based upon a determination that the inmate poses a direct threat to the health or safety of others, which is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by SCDC's modification of policies, practices, or procedures, or the provision of auxiliary aids or services, 28 C.F.R. §§ 35.130(h), 35.139, provided that:

a. SCDC shall only implement legitimate safety requirements or make a direct threat determination on the basis of actual risks, and not on mere speculation, stereotypes, or generalizations about inmates with disabilities, including inmates with HIV;

b. In determining whether an inmate poses a direct threat to the health or safety of others, SCDC must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

i. The nature, duration, and severity of the risk;

ii. The probability that the potential injury will actually occur; and

iii. Whether reasonable modifications of policies, practices, or procedures, or the provision of auxiliary aids or services, will mitigate the risk;

c. Sources for medical knowledge in imposing safety requirements and making a determination that an inmate poses a direct threat include knowledgeable and appropriate medical and mental health personnel and guidance from public health authorities, such as the Centers for Disease Control, the U.S. Public Health Service, the National Institutes of Health, and the National Commission on Correctional Health Care;

d. A determination that an inmate poses a direct threat to the health or safety of others shall be made by a Warden, Deputy Warden, or Associate Warden in consultation with appropriate headquarters personnel; provided that SCDC correctional officers may temporarily separate inmates or place an inmate in controlled housing status in circumstances presenting an immediate threat to the health or safety of others; and

e. Any direct threat determination made pursuant to this Paragraph shall be in writing; shall include the facts and circumstances the Warden, Deputy Warden, or Associate Warden believe justify the direct threat determination; shall be signed by the Warden, Deputy Warden, or Associate Warden; and shall be maintained. Any direct threat determinations made concerning HIV shall be reported to the United States for the term of this Consent Decree consistent with the reporting requirements identified in Paragraph 38 below

B. HIV and Integration Education

17. SCDC HIV Educational Program: As of the Effective Date of this Consent Decree, SCDC has already begun an educational program for its wardens, members of its Health Care Authority, mental health counselors, correctional officers, front line staff, and inmates concerning HIV, transmission, and SCDC's plans to integrate inmates with HIV into the general population. SCDC's educational program includes:

a. Publication of a statement that SCDC plans to amend its policies, practices, and procedures, and cease segregating inmates with HIV from the general population;

b. Retention of internal and external HIV specialists;

c. Meetings with the wardens of SCDC's 26 correctional institutions to discuss amendment and implementation of revised policies, practices, and procedures for and integration of inmates with HIV;

d. Half-day trainings at the University of South Carolina's Immunology Clinic for and meetings with members of SCDC's Health Care Authority and counselors on medical and mental health treatment for individuals with HIV;

e. Presentation of video(s) and statements, approved by the Department, on HIV, transmission, harassment, and discrimination for correctional officers, staff, and all inmates, and which shall include the opportunity immediately after viewing the video for questions by correctional officers, staff, and inmates to be answered by a member of SCDC's Health Care Authority, who is knowledgeable about HIV and methods of transmission, and a member of SCDC's security staff, who is knowledgeable about SCDC's revised policies, practices, and procedures as set forth in this Consent Decree.

18. Within thirty (30) days of the Effective Date of this Consent Decree, SCDC shall ensure that all training referenced in Paragraph 17 above has occurred.

19. HIV Education for New Employees and Contractors: For the term of this Consent Decree, during the orientation or on-boarding process for all new employees and for any contractors that provide medical or mental health care or security, and no later than fifteen (15) days after assuming duties at SCDC, SCDC shall ensure that such employees or contractors have viewed the video referenced in Paragraph 17.e above and have been provided an opportunity immediately after viewing the video to ask questions and obtain answers from members of SCDC's Health Care Authority and security staff.

20. HIV Education for Newly Processed Inmates at Reception and Evaluation: For the term of this Consent Decree, SCDC shall ensure that all inmates processed at Reception and Evaluation have viewed the video and have been provided an opportunity immediately after viewing the video to ask questions and obtain answers from members of SCDC's Health Care Authority and security staff, as referenced in Paragraph 17.e above.

C. Integration of Inmates with HIV

21. Reception and Evaluation: Following the completion of the training of staff and inmates referenced in Paragraph 17 above, but no later than November 15, 2013, SCDC shall ensure that each inmate with HIV entering the SCDC system is processed according to SCDC's classification system without regard to HIV status beginning at Reception and Evaluation and continuing into the general population or other appropriate housing status; provided that, SCDC may provide private and confidential evaluation, medical treatment, and counseling to any inmate with HIV in Reception and Evaluation as set forth in Paragraph 15.d above.

22. Counseling and Election of Inmates with HIV Housed at Broad River and Camille Griffin Graham Correctional Institutions to Integrate: Within thirty (30) days of the Effective Date of this Consent Decree, all male inmates with HIV housed at the Broad River Correctional Institution ("Broad River") and female inmates with HIV housed at the Camille Griffin Graham Correctional Institution ("Graham") shall be provided the opportunity to elect to integrate into the housing at any SCDC institution and participate in services, programs, and activities for which each inmate with HIV is otherwise qualified, subject to the following requirements:

a. *Initial Counseling and Election Sessions*: The initial election to integrate shall occur after the training required by Paragraph 17 and during a private counseling session with appropriate medical or mental health personnel addressing an inmate's options, questions, and concerns. Each inmate with HIV housed at Broad River or Graham shall be provided the opportunity to elect to integrate by completing a copy of the form attached at Exhibit C, with any assistance necessary by medical or mental health personnel;

b. *Peer Mentoring Program*: Subject to legitimate safety requirements and security considerations, SCDC shall establish a voluntary mentoring program whereby inmates with HIV who elect to integrate may opt to serve as peer mentors to discuss their experience with integration with those inmates with HIV who elect to remain clustered. Such conversations shall be confidential, provided that medical or mental health care staff may participate with the inmate's consent.

c. *Provisional Clustering*: Following the relevant counseling sessions required by Paragraphs 22a and 22d, and in consideration of individualized concerns that any particular inmate with HIV may have, such inmate may elect to provisionally remain clustered with other inmates with HIV in their current housing at Broad River (for male inmates) or Graham (for female inmates) for up to one (1) year from the Effective Date of this Consent Decree, provided that the dorms housing inmates with HIV at Broad River may be combined as the number of inmates with HIV housed in those dorms declines during the integration process;

d. *Quarterly Counseling and Election Sessions*: For each inmate with HIV that elects to remain in their current housing with other inmates with HIV at Broad River or Graham, appropriate medical or mental health personnel shall conduct a follow-up private counseling session addressing an inmate's options, questions, and concerns at least once every three (3) months and provide an opportunity to integrate, until each and every inmate with HIV has been integrated into the general population or housing that is otherwise appropriate for a particular inmate, as mandated by the inmate's classification;

e. *Election at any Time*: Notwithstanding the foregoing, after the initial counseling and election session, any inmate with HIV that elects to remain clustered at Broad River or Graham may at any time elect to integrate by contacting medical, mental health, or security staff; and

f. *Confidentiality of Completed Election Forms*: Any and all completed election forms shall be maintained confidentially by SCDC, and access to such forms shall be permitted only to medical or mental health staff, the ADA Coordinators, the ADA Compliance Officer, and SCDC personnel with a need to know the information to complete transfer of an inmate with HIV to an institution and/or housing appropriate to the inmate's age, gender, or classification.

23. SCDC Services, Programs, and Activities: SCDC shall ensure that inmates with HIV who elect to integrate, and inmates who complete processing at Reception and Evaluation, are provided the opportunity to participate in and benefit from all SCDC services, programs, and activities to which they are otherwise qualified. SCDC shall ensure that inmates who elect to remain clustered at Broad River (male inmates) or Graham (female inmates) are provided the opportunity to participate in and benefit from all services, programs, and activities provided at Broad River (for male inmates) or Graham (for female inmates) for which they would otherwise be qualified.

24. Discipline of Inmates and Staff for Discrimination on the Basis of HIV: Notwithstanding SCDC's obligations to maintain the confidentiality of an inmate's HIV status, SCDC shall take appropriate disciplinary action for inmates or staff who subject inmates with HIV to discrimination, retaliation, coercion, intimidation, harassment, threats, abuse, or interference with rights protected by the ADA, Section 504, or this Consent Decree, including confidentiality of HIV status.

25. Notwithstanding the foregoing, SCDC may isolate and place in controlled housing status an individual inmate, regardless of whether he or she has HIV, if such individual inmate poses a direct threat to the health or safety of others as set forth in Paragraph 16.b above.

D. Prioritization of the Opportunity of Inmates with HIV to Participate in and Benefit from Services, Programs, and Activities.

26. Within forty-five (45) days of the Effective Date of this Consent Decree, SCDC shall develop and provide to the United States a plan to remediate the effects of SCDC's policies separating inmates with HIV from the general population and denying inmates with HIV the opportunity to participate in and benefit from SCDC's services, programs, and activities. The plan shall include, among other things, prioritization of the eligibility of inmates with HIV to participate in and benefit from services, programs, and activities for which such inmates were not previously eligible (e.g., work release, drug treatment, jobs in the cafeteria and canteen, etc.), provided such individual inmate is otherwise qualified for a particular service, program, or activity. The United States shall review and provide comments to the plan. Within fifteen (15) days of receiving the comments, SCDC shall incorporate the United States' comments and provide the revised plan to the United States for approval. Within fifteen (15) days of

approval, SCDC shall implement the revised, approved plan. SCDC shall make available policies, records, and personnel to facilitate the United States' evaluation of the proposed plan.

E. Program Access for Inmates with HIV

27. Some inmates with HIV have other disabilities or their HIV manifests to require durable medical equipment, such as wheelchairs or walkers, physically accessible facilities, and/or assistance from medical staff or other designated "helper" inmates. Inmates with HIV who are transferred during the integration process to other institutions for which they are otherwise qualified, shall not be denied the benefits of the services, programs, or activities of the institution, or be subjected to discrimination, because the facility is inaccessible or unusable by inmates with disabilities.

28. SCDC shall operate each such service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by inmates with disabilities.

29. SCDC may comply with these requirements through any of the following:

a. Redesign or acquisition of equipment;

b. Reassignment of services to accessible buildings;

c. Assignment of aides to beneficiaries, such as pushers for inmates who use wheelchair;

d. Delivery of services at alternate accessible sites;

e. Alteration of existing facilities and construction of new facilities; or

f. Any other methods that result in making services, programs, or activities readily accessible to and usable by inmates with disabilities.

30. SCDC is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. However, in choosing among available methods for meeting program access requirements, SCDC shall give priority to those methods that offer services, programs, and activities to qualified inmates with disabilities in the most integrated setting appropriate.

31. In making structural changes (alterations) to existing buildings, SCDC shall meet the accessibility requirements of 28 C.F.R. § 35.151.

F. ADA Compliance Officer and Coordinators

32. Following the completion of the training of staff and inmates referenced in Paragraph 17 above, but no later than November 15, 2013, SCDC will designate at least one employee in its headquarters to coordinate its efforts to comply with and carry out its responsibilities under Title II, Section 504, and this Consent Decree ("ADA Compliance Officer").

33. Similarly, following the completion of the training of staff and inmates referenced in Paragraph 17 above, but no later than November 15, 2013, SCDC will designate at least one employee in each of its 26 correctional institutions to coordinate the correctional institution's efforts to comply with and carry out the institution's responsibilities under Title II, Section 504, and this Consent Decree ("ADA Coordinators").

34. General Responsibilities: The ADA Compliance Officer and Coordinators shall be responsible for coordinating the integration of inmates with HIV; carrying out ADA responsibilities; ensuring that services, programs, and activities are readily accessible to and usable by inmates with disabilities; and investigating and assisting in the resolution of ADA complaints or grievances.

35. Program Access Responsibilities for Inmates with HIV: During the integration of inmates with HIV, the ADA Compliance Officer and Coordinators shall be responsible for coordinating and ensuring SCDC meets its program access obligations for inmates with HIV at facilities to which they will be or have been transferred as set forth in Paragraphs 21-25 above.

36. Complaints and Grievances by Inmates with HIV: No later than November 15, 2013, SCDC shall revise and provide the United States with a copy of its Inmate Grievance Process to prioritize complaints and grievances by inmates with HIV alleging discrimination on the basis of HIV or disability to ensure that complaints and grievances are promptly reported. The United States shall review and provide any comments within thirty (30) days of receiving the revised Inmate Grievance Process. Within fifteen (15) days of receiving the comments, SCDC shall incorporate the United States' comments and provide the revised Inmate Grievance Process to the United States for approval. Within fifteen (15) days of approval, SCDC shall implement the revised, approved Inmate Grievance Process. SCDC shall make available policies, records, and personnel to facilitate the United States' evaluation of the proposed Inmate Grievance Process. The ADA Coordinators and/or ADA Compliance Officer shall have authority to investigate and assist in the resolution of such grievances.

37. If an ADA Coordinator and/or the ADA Compliance Officer receives a complaint or grievance that a member of SCDC, including any correctional officer or inmate, has subjected any inmate with HIV to discrimination, harassment, intimidation, interference, or retaliation, the ADA Coordinator and/or ADA Compliance Officer shall have authority to investigate and assist in the resolution of such grievances, and SCDC shall take appropriate disciplinary action.

IV. REPORTING, MONITORING, ENFORCEMENT, AND OTHER MISCELLANEOUS PROVISIONS

38. Reporting: Beginning three (3) months after the Effective Date of this Consent Decree, and every three (3) months thereafter for the first year of this Consent Decree, SCDC shall submit written status reports to the United States, including supporting documentation, delineating all steps taken during the reporting period to comply with each substantive provision of this Consent Decree. Thereafter, for the duration of the Consent Decree, SCDC shall

submit a status report every six (6) months. In particular, each report shall include the following for the preceding reporting period:

a. A copy of each and every complaint or grievance by an inmate with HIV relating to HIV discrimination, harassment, or any other issue covered by this Consent Decree, and resolution, if any;

b. The location of each and every inmate with HIV within the SCDC system, by a unique identifier and dorm;

c. A list of all inmates who have elected to integrate, and a list of all inmates who have elected to remain at Broad River or Graham;

d. A copy of each and every direct threat determination made concerning an inmate with HIV;

e. Efforts to meet program access obligations for inmates with HIV during the integration process; and

f. Any discipline taken against any inmates or SCDC staff for discrimination or harassment against inmates with HIV.

39. Delivery of Reporting Materials: All materials sent to the United States pursuant to this Consent Decree shall be sent by e-mail or to the following address by common carrier Federal Express, delivery prepaid: Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue, N.W., Fourth Floor, Washington, D.C. 20005. The cover letter shall include a subject line referencing SCDC and DJ#s 204-67-144 and 204-67-145.

40. Monitoring: The Department shall have full and complete access to facilities, facility records, inmate records, inmate medical records, staff, and inmates, and shall have the right to conduct confidential interviews with inmates.

41. Enforcement: The Department may review compliance with this Consent Decree at any time. If the Department believes that Defendants have failed to comply in a timely manner with any requirement of this Consent Decree, or if any requirement has been violated, the Department will notify Defendants in writing and will attempt to resolve the issue in good faith. If the Department is unable to reach a satisfactory resolution of the issue within thirty (30) days of the date it notifies Defendants, the Department may file a motion to enforce this Consent Decree or may seek any other appropriate relief.

42. Non-Waiver: Failure by the United States to enforce any provisions or deadlines in this Consent Decree shall not be construed as a waiver of the right of the United States to enforce other deadlines and provisions of this Consent Decree.

43. Effective Date: The Effective Date of this Consent Decree ("Effective Date") is the date of entry by the Court after the signatures of all Parties have been obtained.

44. Limitation: This Consent Decree is limited to resolving claims under Title II of the ADA and Section 504 of the Rehabilitation Act related to the facts specifically set forth in Paragraph 3 above concerning policies, practices, and procedures impacting inmates with HIV. Nothing in this Consent Decree relates to Title I of the ADA or affects SCDC's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities.

45. Without Prejudice: Upon entry of this Consent Decree by the Court, the United States' Complaint shall be dismissed without prejudice to the right of the United States to petition the Court, at any time during the duration of this Consent Decree, to reopen the case for the purposes of enforcing the Consent Decree or seeking other appropriate relief. The Parties to this Consent Decree shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution.

46. Extensions: Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the Parties.

47. Fees and Costs: Each of the Parties to this litigation will bear its own costs and attorney's fees associated with this litigation.

48. Successor Liability: This Consent Decree is final and binding on SCDC as defined herein, including any successor Director of SCDC.

49. Authority: The individuals signing this Consent Decree represent that they are authorized to do so on behalf of the respective entity for which they have signed.

50. Term: This Consent Decree shall remain in effect for a term of five (5) years from its Effective Date. The term of this Consent Decree may be extended by mutual written agreement of the Parties.

51. Prison Litigation Reform Act: The Parties stipulate that this Consent Decree complies in all respects with the Prison Litigation Reform Act, 18 U.S.C. § 3626(a). The Parties further stipulate and the Court finds that the prospective relief in this Consent Decree is narrowly drawn, extends no further than necessary to correct the violations of federal rights as alleged by the United States in its Complaint, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the Parties represent, and this Court finds, that the Consent Decree complies in all respects with 18 U.S.C. § 3626(a).

52. Preclusive Effect: The Parties do not intend for this Consent Decree to have any preclusive effect except between the Parties. Should the issue of preclusive effect of this Agreement be raised, the Parties agree to certify that they intended for this Consent Decree to have no such preclusive effect.

SO ORDERED this 1st day of October 2013.

S/ Cameron McGowan Currie

CAMERON McGOWAN CURRIE

UNITED STATES DISTRICT JUDGE

/s/ Willam N. Nettles
WILLIAM N. NETTLES
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In his Official Capacity and as the Director of the South Carolina Department of Corrections:

/s/ William R. Byars, Jr.

WILLIAM R. BYARS, JR.

Director

South Carolina Department of Corrections

4444 Broad River Road

Columbia, South Carolina 29221

EXHIBIT A

GENERAL POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

It is the policy of the South Carolina Department of Corrections, its officers, employees, agents, and contractors (collectively, "SCDC"), that qualified inmates with disabilities must not be excluded from participation in or be denied the benefits of SCDC's services, programs, or activities, or otherwise be subjected to discrimination, because of their disabilities. Individuals with disabilities can include, for example, individuals who are blind, deaf, have substantial difficulty walking, have HIV, learning impairment, or psychiatric condition.

In order for inmates with disabilities to participate in SCDC services, programs, and activities, SCDC may need to make reasonable changes (modifications) in policies, practices, and procedures; to provide auxiliary aids and services needed for effective communication (e.g., large print materials for someone with a visual disability, interpreter for someone who is deaf); and to relocate programs, alter facilities, and provide different means of access. It is SCDC's policy to provide services, programs, and activities to inmates with disabilities in the most integrated setting appropriate for them.

SCDC prohibits retaliation, coercion, intimidation, threats, harassment, or interference with the rights of inmates with disabilities, including the rights to request modifications in policies, practices, and procedures or auxiliary aids and services; to request to participate in services, programs, and activities; to file grievances, complaints, and lawsuits and to participate in investigation and resolution of complaints. Failure to comply with this policy may result in disciplinary action.

EXHIBIT B

POLICY OF NONDISCRIMINATION ON THE BASIS OF HIV

It is the policy of the South Carolina Department of Corrections, its employees, agents, and contractors (collectively, "SCDC"), that qualified inmates with HIV must not be excluded from participation in or be denied the benefits of the services, programs, or activities of SCDC and its Correctional Institutions, or otherwise be subjected to discrimination, because of their HIV. SCDC provides inmates with HIV:

- Housing according to age, gender, and custody classification, which shall be made without regard to HIV status, unless medically indicated;
- Privacy and confidentiality of HIV status and personally identifiable health information, including, but not limited to, testing, diagnosis, treatment, transportation for medical appointments, and counseling;
- The opportunity to participate in any service, program, or activity for which they are qualified, once housing at a particular institution is established. To afford the opportunity for inmates with HIV to participate in services, programs, and activities, SCDC may be required to, among other things:
    - Reasonably modify policies, practices, and procedures when needed to avoid discrimination on the basis of disability;
    - Provide auxiliary aids and services (such as large print materials, interpreters, etc.) when needed for effective communication;

- Reassign programs to accessible facilities, assign aides to inmates, and/or make alterations to facilities.

- Access to quality medical treatment, including continuity of care between general correctional practitioners and specialists, antiretroviral therapy, and counseling; and

- Education on HIV, transmission, nondiscrimination on the basis of HIV, and policies impacting inmates with HIV for SCDC staff, and inmates with and without HIV.

SCDC policy prohibits discrimination, harassment, intimidation, interference, and retaliation against inmates with HIV.

Notwithstanding the foregoing, SCDC may implement and maintain legitimate safety requirements necessary for the safe operation of services, programs, or activities. SCDC may implement and maintain procedures to assign inmates to controlled housing or to exclude an inmate from a particular service, program, or activity based upon a determination that the inmate poses a direct threat to the health or safety of others. A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by SCDC's modification of policies, practices, or procedures. SCDC will only implement legitimate safety requirements or make a direct threat determination on the basis of actual risks, and not on mere speculation, stereotypes, or generalizations about inmates with disabilities, including inmates with HIV. In determining whether an inmate poses a direct threat to the health or safety of others, SCDC will make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of the risk; the probability that injury will actually occur; and whether reasonable modifications to policies, practices, or procedures will mitigate the risk. SCDC will only make such a determination after consulting with medical and mental health personnel and after reviewing guidance from public health authorities.

Failure to comply with this policy may result in disciplinary action.

EXHIBIT C

ELECTION TO JOIN GENERAL POPULATION OR TEMPORARILY REMAIN IN HOUSING WITH OTHER INMATES WITH HIV

As you know, the South Carolina Department of Corrections ("SCDC") will soon stop housing inmates with HIV separately from the general population. This form provides information about your options and helps you make decisions about where you would like to be housed and when. If you have questions or need help filling out this form, ask the medical or mental health professional providing you a copy. This information will be kept confidential, but may be read by medical, mental health, and other staff that need to know this information.

Background

SCDC has already changed its policies, trained staff and inmates, and changed medical and mental health care services and privacy. Generally, HIV will not be considered for decisions related to housing or participation in programs. Under these changes, you will be housed according to your security classification,

like inmates who do not have HIV. This also means that you may be eligible for programs, even if at a different prison, if you meet the requirements for the program.

You have two options:

(1) Join the general population according to your classification; or

(2) Temporarily remain in your current housing with other inmates with HIV for up to approximately one year.

If you choose to temporarily stay in housing with other inmates with HIV, you will have a similar meeting and will be given this form every three months. You may also be able to talk to an inmate with HIV who has already moved to tell you about their experience. You may ask medical, mental health, or security staff to move at any time. Within one year, you will be required to move to general population according to your security classification.

Election

I, _____(Inmate Name)_____, inmate no. _____:

Request to leave my current dorm and would like to be housed in general population, subject to my security classification and other SCDC requirements.

Request a hardship transfer::

_____

Would like to participate in the following programs, and believe that I am eligible:

_____

Would like to TEMPORARILY remain with other inmates with HIV in my current institution and housing.

Would like to talk to an inmate with HIV who has transferred to the general population to learn about their experience. I understand that SCDC medical or mental health staff may participate in these conversations.

If I have chosen to temporarily stay with other inmates with HIV, I understand that I will be able to change my decision at any time, and that I will have a similar meeting every three months over the next year. I also understand that there is no guarantee that I will be able to move to a particular prison or participate in a particular program.

_____/_____ _____

Inmate Printed Name Signature Date

_____/_____ _____

Witness Printed Name Signature Date

Inmate was Counseled but Refused to Sign

Cases & Matters by ADA Title Coverage | Legal Documents by Type & Date | ADA Home Page