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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 **ROBERT DANIELS,**

19 **Plaintiff,**

20 **vs.**

21 **MARICOPA COUNTY; ROBERT**
22 **ENGLAND, Director, Maricopa**
23 **County Department of Public Health,**
24 **in his individual and official**
25 **capacities; JAMES KENNEDY,**
26 **Medical Director of the Maricopa**
27 **Medical Center, in his individual and**
28 **official capacities; MARICELA P.**
MOFFITT, Chief Medical Officer,
Maricopa County Tuberculosis
Control, in her individual and official
capacities, and JOE ARPAIO,
Maricopa County Sheriff, in his
individual and official capacities,
Defendants.

Case No.:

COMPLAINT

42 U.S.C. § 1983 Civil Action

1 **I. Introduction**

2 1. Plaintiff, Robert Daniels, (hereinafter “Robert”) is a patient with
3 tuberculosis (“TB”) who was determined to require quarantine in July 2006.
4 There is no disagreement about the decision to quarantine. Defendants are
5 responsible for the manner, method, and conditions of this quarantine. This
6 lawsuit is necessary because of the failure of Defendants to carry out their
7 responsibilities in a professional, humane, and legal manner.
8

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10 2. Intervention of this court and injunctive relief are required to end the
11 degrading and punitive deprivations suffered by Robert. Damages are also
12 necessary to compensate him for the continuing harm resulting from
13 Defendant’s failure to provide acceptable medical conditions that comply
14 with Arizona state law and to punish Defendants for their deliberate
15 indifference to Robert’s need for a humane quarantine.
16

17 3. Plaintiff’s attorneys also submit this complaint as the first step to avoid
18 irreparable harm to Robert from the prolonged exposure and effects of the
19 nine-month and continuing quarantine and the punitive jail conditions of a
20 continuing nature by the Defendants.
21

22 **II. Nature of Action**

23
24 4. This action is brought pursuant to 42 U.S.C. § 1983 for violations of
25 Robert’s rights of substantive due process and equal protection under the
26 Fifth and Fourteenth Amendments to the United States Constitution, the
27
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1 Constitution of the State of Arizona, and under the Americans with
2 Disabilities Act (“ADA”) and the Tuberculosis Control Statutes, Title 36 of
3 the Arizona Revised Statutes (“A.R.S.”).
4

5 5. Interventions that deprive a person of liberty must be narrowly
6 implemented and targeted to achieve the public health objectives in the least
7 restrictive manner. Instead, Defendants have chosen the most restrictive and
8 punitive manner to carry out the quarantine, have treated, and continue to
9 treat Robert as if he were a criminal since August 2006.
10

11
12 **III. Parties**

13 6. Plaintiff Robert Daniels is a resident of Maricopa County and is
14 confined in the jail ward of the Maricopa Medical Center.
15

16 7. Defendant Maricopa County is a unit of local government organized
17 under the laws of the State of Arizona.
18

19 8. Defendant Robert England is responsible for the management and
20 operation of the Maricopa County Public Health Department including
21 decisions about the location and confinement of Robert Daniels.
22

23 9. Defendant James Kennedy is responsible for the management and
24 operation of the Maricopa Medical Center including decisions about the
25 location and confinement of Robert Daniels.
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1 10. Defendant Maricela P. Moffitt, M.D., is responsible for TB control
2 policies in Maricopa County including decisions about the location and
3 confinement of Robert Daniels.
4

5 11. Defendant Joe Arpaio is responsible for the management and operation
6 of the jail ward at the Maricopa Medical Center including decisions about the
7 confinement of Robert Daniels.
8

9 12. At all times relevant to this action, Defendants were acting under color
10 of state law in their individual and official capacities.
11

12 **IV. Jurisdiction and Venue**

13 13. Robert brings this action to enforce and protect rights conferred by the
14 Arizona Constitution and statutes and under the Constitution and laws of the
15 United States.
16

17 14. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, in that it
18 arises under the Constitution of the United States; under 28 U.S.C. §
19 1343(a)(3), in that it is brought to redress deprivations, under color of state
20 authority, of rights, privileges, and immunities secured by the United States
21 Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to secure
22 equitable relief under an act of Congress, specifically 42 U.S.C. § 1983,
23 which provides a cause of action for the protection of civil rights; under 28
24 U.S.C. § 2201(a), in that, one purpose of this action is to secure declaratory
25 relief; and under 28 U.S.C. § 2202, in that one purpose of this action is to
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1 secure preliminary and permanent injunctive relief.

2 15. This Court also has supplemental jurisdiction over any state statutory
3 claim asserted by the Plaintiff pursuant 28 U.S.C. § 1367, in that, the state
4 and federal claims are derived from a common nucleus of operative facts.
5

6 16. This Court has venue under 28 U.S.C. § 1391(b)(1) in that all of the
7 Defendants are situated within the State of Arizona and each of them reside
8 within the District of Arizona, and under 28 U.S.C. § 1391(b)(2) in that all of
9 the events described herein have and will transpire (absent judicial relief)
10 within this judicial district.
11

12 17. All acts mentioned herein occurred in the City of Phoenix, County of
13 Maricopa, State of Arizona.
14

15 **V. Common Facts to All Claims and Relief**
16

17 18. Robert was diagnosed with a drug resistant strain of tuberculosis (TB).
18

19 19. Robert's illness will probably remain for many years, and perhaps for
20 Robert's entire life, even if he becomes non-contagious.

21 20. After an Arizona civil court proceeding, Robert was involuntarily
22 committed to the jurisdiction of the Maricopa County Public Health
23 Department for quarantine.
24

25 21. The individual Defendants personally requested, approved and
26 acquiesced in placing Robert in the jail ward of the Maricopa Medical
27 Center.
28

1 22. In August 2006, Defendants placed Robert in the jail ward and he
2 remains housed in that location.

3
4 23. For years, Defendants have used the jail ward for long-term
5 quarantines.

6 24. Defendants followed this pattern and practice in deciding to quarantine
7 Robert in this jail ward.

8
9 25. Defendants have used the jail ward at the Maricopa Medical Center to
10 house non-criminal persons in long-term quarantine.

11
12 26. Defendants were aware that persons housed in the jail ward are treated
13 in the same manner as jail inmates, and that Robert was not a jail inmate and
14 had not been charged with any crime at the time of his placement into the jail
15 ward.

16
17 27. Defendant Arpaio publicly stated that he would treat any person
18 housed in the jail ward in the same manner as all other jail inmates. As jail
19 inmates, such persons suffer many deprivations and losses of opportunities
20 that are not suffered by persons housed in other areas of the hospital, or in
21 another facility, even if involuntarily quarantined.

22
23
24 28. Robert's substantial deprivations and losses of opportunity include:
25 i. Armed guards;
26 ii. Exposure to the outside for fresh air only once in nine months;
27 iii. Shackled hands and feet when taken outside for fresh air;
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- iv. Solitary confinement;
- v. Lights remain on 24 hours every day;
- vi. No privacy with video cameras recording every activity in his locked room 24 hours every day;
- vii. No external view outside due to frosted glass windows and metal bars;
- viii. No showers for the first nine months of his quarantine;
- ix. No TV or phone for most of the nine months;
- x. No exercise or walking outside of the room;
- xi. No ability to attend church services even by electronic means;
- xii. No ability to travel for the purpose of seeking other medical care;
- xiii. No meaningful activities, such as job assignments, vocational training, or classroom instruction, even by electronic means;
- xiv. No social and recreational activities, such as internet and online access to friends, family and others;
- xv. Significant restriction on ability to associate with others;
- xvi. Interception, opening and reading of mail;
- xvii. Involuntary searches of room and person by jail security personnel, and
- xviii. Denial of visitors by jail security personnel.

1 29. Defendant Arpaio allegedly imposes the above-described
2 deprivations and losses of opportunities as a security matter.

3
4 30. Robert has and continues to suffer these deprivations and losses; these
5 conditions are not required by nor are related to his illness or medical
6 treatment.

7
8 31. Robert has and continues to suffer severe mental distress and anxiety
9 from the punitive and isolating conditions of his confinement, further
10 psychological and physical deterioration, and significant mood swings.

11
12 32. Defendants failed to provide Robert with an explanation of the jail
13 ward and facility rules or procedures.

14 33. Defendants have quarantined other persons confined for TB in hospital
15 room and areas that were not in the control of Defendant Arpaio, and were
16 not subject to the punitive jail ward conditions.

17
18 34. Defendant Moffitt stated that the jail ward was used for Robert's
19 placement because of the reduced cost to Maricopa County.

20
21 35. Defendants were and have been aware of the need for a quarantine area
22 or hospital room that does not subject persons, who have been quarantined
23 after a civil proceeding, to harsh and admittedly punitive conditions in the
24 jail ward.

25
26 36. Defendants did not act to house Robert in the least restrictive manner
27 consistent with his civil quarantine even if a locked room was required, nor
28

1 in a manner most conducive to the successful treatment of his illness, and
2 failed to adequately explore or utilize alternative placements even within the
3 Maricopa Medical Center.
4

5 37. Defendants' quarantine procedures failed to follow professional
6 standards and protocol for drug resistant TB patients.
7

8 38. Unless preliminarily and permanently enjoined, the Defendants, and
9 each of them, will continue to quarantine Robert in an unlawful and
10 inhumane manner that has and will continue to violate Robert's constitutional
11 rights.
12

13 **V. CLAIMS FOR RELIEF**

14 **COUNT 1 – Declaratory Relief of Punitive Conditions**

15 39. Plaintiff repeats and incorporates herein by reference the allegations in
16 the preceding paragraphs of this complaint.
17

18 40. Plaintiff contends that the jail ward conditions are punitive, excessive,
19 inhumane, and not required for the treatment of TB, and do not provide the
20 least restrictive environment for the quarantine. Defendants, on the other
21 hand, believe punitive jail ward conditions are necessary and appropriate to
22 protect the public from infection.
23

24 41. Thus, there is a real and actual controversy between Plaintiff and
25 Defendants regarding whether the jail ward conditions violate state and
26 federal laws.
27
28

1 42. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201
2 and Federal Rule of Civil Procedure 57 for the purpose of determining and
3 adjudicating questions of actual controversy.
4

5 43. Plaintiff will seek a preliminary injunction pursuant to FRCP 65 for
6 protection from overly restrictive punitive conditions and continuing
7 violations of his civil liberties.
8

9 **COUNT 2 – Substantive Due Process Violations**

10 53. Plaintiff repeats and incorporates herein by reference the allegations in
11 the preceding paragraphs of this complaint.
12

13 54. Defendants have violated Plaintiff's rights under the Fifth and
14 Fourteenth Amendment to the United States Constitution, and have
15 substantially deprived him of his fundamental rights to liberty, travel,
16 association, and privacy.
17

18 55. The jail ward conditions are punitive, excessive, inhumane and far
19 from the least restrictive manner of quarantine.
20

21 56. Defendants did not take adequate steps to consider and utilize less
22 restrictive areas or rooms for the confinement of Plaintiff.
23

24 57. The aforementioned actions and failures of Defendants violate the Due
25 Process Clause to the United States Constitution and Art. II, § 4 of the
26 Arizona Constitution.
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COUNT 3 – Equal Protection Violations

49. Plaintiff repeats and incorporates herein by reference the allegations in the preceding paragraphs of this complaint.

50. Defendants denied Plaintiff the right to be treated in a humane fashion and as other quarantined persons in facilities and areas not under Defendant Arpaio’s control.

51. Defendants denied Plaintiff the fundamental right to travel from state to state for medical care and significantly restricted Plaintiff’s ability to associate with others.

52. The aforementioned actions and failures of Defendants violate the Equal Protection Clause to the United States Constitution and Art. II § 13 to the Arizona State Constitution.

COUNT 4 – Americans with Disabilities Act Violation

53. Plaintiff repeats and incorporates herein by reference the allegations in the preceding paragraphs of this complaint.

54. Plaintiff asserts that Defendants violated his rights under the Americans with Disabilities Act of 1990 (“ADA”).¹ The Maricopa County

¹ The ADA extends its protection to individuals with a “disability,” which is defined in the statute to mean (1) “a physical or mental impairment that substantially limits one or more of the major life activities of such individual”; or (2) “a record of such an impairment [that substantially limits one or more of the major life activities]”; or (3) “being regarded as having such an impairment.” 42 U.S.C. § 12102(2).

1 Medical Center and Defendants are subject to the ADA rules and provisions.

2 55. Plaintiff has contagious and drug resistant TB, a serious and long-term
3 physical impairment.
4

5 56. Plaintiff is a disabled person within the meaning of the ADA.

6 57. Plaintiff's impairment substantially limits his ability to interact with
7 others and to work.
8

9 58. Plaintiff is entitled to "reasonable accommodations" at the county jail
10 ward and the *least restrictive* means necessary to achieve defined public
11 health goal and the underlying reason for the quarantine. Americans with
12 Disabilities Act of 1990, § 101(3), 42 U.S.C. § 12111(3).

13 59. The aforementioned actions and failures of Defendants violate the
14 Americans with Disabilities Act and the Arizona Civil Rights Act, A.R.S. §
15 41-1463.
16

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18 **Count 5 – Tuberculosis Control Statute Violations**

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20 60. Plaintiff repeats and incorporates herein by reference the allegations in
21 the preceding paragraphs of this complaint.
22

23 61. To comply with state law, Defendants must provide for the isolation or
24 quarantine of any person *by the least restrictive* means necessary to protect
25 the public health. *See generally*, A.R.S. §§ 36-726(B)(5), 36-726(O), 36-
26 727(F), 36-728(C), 36-788(A), 36-788(B)(2).
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28

1 62. Plaintiff has not been placed in the least restrictive environment.

2 63. Defendants have failed to comply and have not adequately considered
3 or implemented the least restrictive quarantine conditions or areas.
4

5 **VI. DAMAGES**

6 64. Because of Defendants' intentional conduct as described above,
7 Plaintiff has suffered and continues to suffer psychological damages and
8 emotional distress, and physical harm.
9

10 65. Because of Defendants' callous attitudes, reckless acts, deliberate
11 indifference and discriminatory behaviors, as described above, Plaintiff is
12 entitled to punitive damages.
13

14 **VII. RELIEF**

15 Wherefore, Robert respectfully requests that the Court:
16

17 66. Issue a judgment declaring that the acts of the Defendants described
18 herein violate the United States Constitution and the Constitution of the State
19 of Arizona;
20

21 67. Issue an injunction ordering Defendants to stop engaging in such
22 unconstitutional and unlawful acts, and to develop policies and procedures
23 for preventing the recurrence of any such unconstitutional and unlawful acts,
24 including, but not limited to the following:
25

- 26 a. Require Defendants to adopt policies with specific guidelines for
27 implementing the least restrictive environment for contagious persons;
28

- 1 b. Require Defendants to provide annual sensitivity disability training;
- 2
- 3 c. Require Defendants to comply with state law and provide an
- 4 appropriate environment for the quarantine of persons;

5 68. Award compensatory and consequential damages to compensate
6 Robert for the nature, extent, and duration of the injuries, and the pain,
7 discomfort, suffering, anxiety and loss of enjoyment in the past, present and
8 future;

9 69. Award exemplary and punitive damages;

10 70. Award reasonable attorney fees, interests, and the costs incurred in the
11 prosecution of this action, and

12 71. Award such further relief, as the Court deems justifiable and proper.

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16 **VIII. CONCLUSION**

17 72. Robert Daniels is entitled to injunctive and declaratory relief that will
18 protect Robert from further harm, to be treated in the least restrictive manner as
19 required by law for medical quarantine, and to preserve his rights to privacy. There
20 is more than a negligible likelihood that Robert will prevail on the merits; Robert
21 will suffer irreparable harm from physical and psychological deterioration if he
22 continues to be quarantined under the existing restrictions and punitive
23 deprivations. The public has a substantial interest in ensuring that Defendants
24 adhere to providing humane and non-punitive conditions for persons that are
25 quarantined involuntarily. Plaintiff is entitled to a preliminary injunctive relief and
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an expedited hearing and trial on the merits of his claims.

DATED this 30th day of May 2007.

s/R. Linda Cosme
Cooperating Attorney,
ACLU Foundation of Arizona

s/Daniel Joseph Pochoda
Legal Director
ACLU Foundation of Arizona

Attorneys for Plaintiff

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