

<p>AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND, RHODE ISLAND CENTER FOR JUSTICE, RICHARD PAIVA AND WILLIE WASHINGTON</p> <p>PLAINTIFFS,</p> <p>v.</p> <p>WAYNE SALISBURY, in his official capacity as Director of the RHODE ISLAND DEPARTMENT OF CORRECTIONS, and the RHODE ISLAND DEPARTMENT OF CORRECTIONS</p> <p>DEFENDANTS.</p>	<p>PC-2024-</p>
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**VERIFIED COMPLAINT**

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action under the First, Sixth Amendments and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, as well as the Constitution and laws of the State of Rhode Island, including Art. I, §§ 2, 5, 10, and 21 of the Rhode Island Constitution and the Administrative Procedures Act of the State of Rhode Island, R.I.G.L. chapter 42-35 (“APA”). Plaintiffs seek declaratory and injunctive relief to secure the rights of Plaintiffs to communicate, as members of the public, licensed attorneys, and individuals incarcerated at the Adult Correctional Institutions of the State of Rhode Island (“ACI”), with each other in accordance with constitutional and statutory mandates governing the in-person and mail delivery of legal or privileged documents to and from persons incarcerated at the ACI. Plaintiffs further seek declaratory and injunctive relief to address Defendants’ arbitrary, capricious and unregulated actions in handling such privileged communications, as well as social visits, in violation of their own promulgated policies and minimum constitutional requirements.

2. Defendants' actions are a deviation from their own promulgated policies and procedures that have caused the Plaintiffs substantial, irreparable harm, warranting interim injunctive relief as well as permanent injunctive and declaratory relief.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction to hear actions for declaratory judgment, R.I.G.L. §9-30-1, §42-35-7, and equitable relief, R.I.G.L. §8-2-13, and concurrent jurisdiction to hear actions for violation of 42 U.S.C. §1983. *See, e.g., Haywood v. Drown*, 556 U.S. 729 (2009).

4. Venue is proper in Providence County as the county of some or all of the parties and pursuant to R.I.G.L. §42-35-7.

### **Parties**

5. Plaintiffs are:

a. The American Civil Liberties Union of Rhode Island ("ACLU of RI"). ACLU of RI is a nonprofit organization incorporated within the State of Rhode Island having more than twenty-five members, and, as such, entitled to request and obtain a hearing and public participation under the APA, R.I.G.L. §42-35-2.8(c), on proposed rule-making by an agency subject to the APA.

b. Rhode Island Center for Justice ("RICFJ") is a nonprofit public interest law center incorporated within the State of Rhode Island which provides legal representation in a number of areas, including representation of persons incarcerated at the ACI.

c. Richard Paiva who at all times material hereto has been incarcerated at the ACI, Maximum Security facility.

d. Willie Washington who at all times material hereto has been incarcerated at the ACI, Medium Security facility.

6. Defendants are Wayne Salisbury and the Rhode Island Department of Corrections.

a. The Rhode Island Department of Corrections is a department of State government established in the executive branch, headed by a Director of Corrections, pursuant to R.I.G.L. §42-56-2.

b. The Director Wayne Salisbury is invested with the management, supervision and control of the ACI, pursuant to R.I.G.L. §§42-56-6 and 42-56-10, and is responsible for making and promulgating “necessary rules and regulations ... regarding ... communication, and visiting privileges.” Defendant Salisbury is sued in his official capacity as Director of the Rhode Island Department of Corrections. With respect to the matters complained of herein, the Director acts under color of state law within the meaning of 42 U.S.C. §1983.

c. Defendant Rhode Island Department of Corrections is an “agency” within the meaning of the Administrative Procedures Act, R.I.G.L. §42-35-1 *et seq.* With respect to the matters complained of herein, the Rhode Island Department of Corrections is required to comply with the provisions of the APA governing the promulgation of and adherence to agency rules and procedures.

d. The Defendants are referred to collectively as “RIDOC.”

### **Statement of Facts**

#### **The APA imposes strict compliance requirements to adopt and enforce valid policies and procedures.**

7. The APA requires all agencies of the State of Rhode Island subject to its terms to conduct rule-making in strict compliance with its terms. These terms include:

a. At least thirty days before adopting (or modifying or repealing) a rule, the agency shall publish the notice of proposed rulemaking on the agency’s website and file a notice with the Secretary of State. R.I.G.L. §42-35-2.7.

b. Prior to adoption of a rule, the agency shall provide a period of at least thirty days after publication for public comment, R.I.G.L. §42-35-2.8(a), and is required to hold a hearing on the proposed rule if a request for a hearing is received from 25 persons, a government agency, or by an association having at least 25 members, within ten days of the posting of the notice. R.I.G.L. §42-35-2.8(c).

c. The agency must prepare a regulatory analysis for a proposed rule prior to publication of the notice of proposed rulemaking, R.I.G.L. §42-35-2.9. A summary of such regulatory analysis must be published and made available for public inspection. R.I.G.L. §42-35-2.2.

d. The agency may promulgate an emergency rule under the strict circumstances set forth in R.I.G.L. §42-35-2.10. Any rule so promulgated may be effective for no longer than 120 days, and is renewable once for up to an additional 60 days.

e. A rule “shall not be effective or enforceable until properly submitted and accepted by the secretary of state.” R.I.G.L. §42-35-4(e)(4). “An action taken under this chapter is not valid unless taken in substantial compliance with this chapter.” R.I.G.L. §42-35-6.2.

f. All agency rules subject to the APA shall be compiled and published in a code of state regulations administered by the Secretary of State. At all times material hereto and since December 31, 2018, rules that are not published in the code of state regulations “shall not be enforceable until the rule appears in the code of state regulations.” R.I.G.L. §42-35-5(b).

**The APA applies to RIDOC rules and procedures governing communications between prisoners and their legal representatives and to visits by attorneys and members of the public.**

8. RIDOC is an agency subject to the APA with respect to its rules, policies, and regulations that govern interactions with the public. *L’Heureux v. State of Rhode Island Department of*

*Corrections*, 708 A.2d 549 (R.I. 1998); *Jefferson v. Moran*, 479 A.2d 734, 736 n. 2 (R.I. 1984) (“Although all of the memoranda set out in the appendix do relate to the internal management of the Department of Corrections, as respondent contends, certain ones among them appear to affect ‘private rights or procedures available to the public.’ These memoranda would not therefore be exempt from the statutory definition of the term ‘rule’ under § 42–35–1(g).”).

9. Rules and procedures of RIDOC which govern communications between prisoners and members of the public, including but not limited to oral and written communications between prisoners and their legal representatives, affect private rights and procedures available to the public and are subject to the requirements of the APA.

10. Rules and procedures of RIDOC which govern visits between prisoners and their legal representatives, and between prisoners and social visitors, affect private rights and procedures available to the public and are subject to the requirements of the APA.

11. In 1985, RIDOC and Plaintiff ACLU of RI (then called “American Civil Liberties Union-Rhode Island Affiliate”) entered a Consent Decree in *Jefferson et al. v. Moran*, PC-85-5003, in which RIDOC acknowledged that it is an agency subject to the APA and that policies and rules relating to visitation and mail, among other things, are not exempt from the APA and agreed, as resolution, that it would promulgate such rules in accordance with the APA. A copy of the aforesaid Consent Decree is attached hereto as Exhibit A and incorporated herein.

**Communications between prisoners and their legal representatives are presumptively confidential and protected from mandatory disclosure by state and federal constitutional, statutory and ethical requirements.**

12. Oral and written communications between prisoners and their legal representatives are presumptively confidential and, with limited exceptions, protected from mandatory disclosure or review by representatives of the State, including but not limited to RIDOC custodial staff, by

operation of the First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, as well as by the Rhode Island Constitution, Article I §§2, 5, 10, and 21. *See also Boudreau v. Central Falls Det. Facility Corp.*, Docket No. 20-324-JJM-LDA, 2020 U.S. Dist. LEXIS 190740, at \*9 (D.R.I. Oct. 14, 2020) (“Moreover, legal mail to and from a detainee’s attorney carries special protections under the First and Sixth Amendments—pointedly that officials cannot read legal mail and cannot open it unless the detainee is present. *See Wolff v. McDonnell* [citation omitted].”)

13. Legal representatives of prisoners held at the ACI must maintain and ensure the confidentiality of the communications, both oral and written, with their clients unless waived by the client, as a matter of statutory, regulatory, and ethical requirements attendant to the license to practice law in Rhode Island. *See, e.g.*, Rule 1.6 of Article V of the Rules of the RI Supreme Court (Rules of Professional Conduct) (“A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.” Commentary [1]). *See also* R.I.G.L. §8-1-2 (“The supreme court ... shall by general or special rules regulate the admission of attorneys to practice in all the courts of the state.”); §11-27-5 (“No person, except a duly admitted member of the bar of this state, whose authority as a member to practice law is in full force and effect, shall practice law in this state.”)

**RIDOC has promulgated rules and procedures governing communications between prisoners and their legal representatives in accordance with the APA.**

14. RIDOC has, in compliance with the APA, formally adopted rules, policies, and regulations that govern communications, oral and in writing, between prisoners and persons and entities identified as their legal representatives or otherwise holding “privileged” status.

15. RIDOC promulgated 240-RICR-10-00-1, a copy of which is attached hereto and incorporated herein as Exhibit B, governing, among other things, “Inmate Mail” and “Privileged Mail.” The policy was adopted pursuant to the APA and is posted by the Secretary of State as part of the code of regulations, effective January 4, 2022. The policy is hereinafter referred to as “the promulgated RIDOC Mail Policy.”

16. Under the regulations governing “Privileged Mail,” “privileged mail” includes written communications sent from or delivered to prisoners at the ACI utilizing the United States Postal Service between prisoners and attorneys, between prisoners and the ACLU, between prisoners and the Public Defender, between prisoners and court officials, and between prisoners and elected officials of the United States and of the State of Rhode Island. The promulgated RIDOC Mail Policy at 1.4.2A.2.

17. “Privileged mail, whether it is incoming or outgoing, cannot be read by RIDOC staff.” The promulgated RIDOC Mail Policy at 1.4.2A.1.

18. “Incoming privileged mail may be opened and inspected in the presence of the inmate addressee. RIDOC staff is prohibited from reading privileged incoming mail.” The promulgated RIDOC Mail Policy at 1.4.2B.

19. “Outgoing privileged mail may only be inspected if a reasonable belief exists that the security of the institution is at risk. In such cases, it may be inspected for contraband only in the presence of the inmate. RIDOC staff is prohibited from reading outgoing privileged mail.” The promulgated RIDOC Mail Policy at 1.4.2C.

20. RIDOC has promulgated 240-RICR-20-00-3, “Access to Inmates and/or RIDOC Facilities,” “Part 3 – Access to Institutional Facilities by Attorneys and Their Agents,” a copy of which is attached hereto and incorporated herein as Exhibit C, “[t]o establish procedures governing

access to institutional facilities by attorneys and their agents for conducting legal business with their incarcerated clients.” The policy has been adopted pursuant to the APA and is posted by the Secretary of State as part of the code of regulations, effective January 4, 2022. The policy is hereinafter referred to as “the promulgated RIDOC Attorney Visits Policy.”

21. Papers/Documents - “Attorneys and agents are permitted to leave legal papers or documents with their incarcerated clients.” “Such documents are subject to inspection for contraband following the visit. Sealed envelopes will be opened for inspection. However, their contents will not be read or copied by correctional staff.” The Promulgated RIDOC Attorney Visits Policy at 3.4D.12.

22. Upon information and belief, the Promulgated RIDOC Attorney Visits Policy contains no other restriction or procedures governing the presentation and discussion of written communications by and between attorneys and their clients during attorney visits.

a. Prior to the matters complained of herein, attorneys regularly brought and presented written materials to their incarcerated clients for confidential discussion. If retained by the incarcerated client, the materials were subject to inspection under the promulgated policy quoted above. If retained by the attorney, no further inspection occurred or was permitted under the promulgated policy.

b. Prior to the matters complained of herein, prisoners were permitted to present written materials already in their possession to their attorneys for confidential discussion. If retained by the incarcerated client, they were subject to inspection under the promulgated policy quoted above. If retained by the attorney, no further inspection occurred or was permitted under the promulgated policy.

**RIDOC has developed “new” ever-changing protocols governing communications between prisoners and their legal representatives which do not conform to the policies which it promulgated under the APA and which violate ethical and constitutional rights of the Plaintiffs.**

23. Commencing in or about 2023 and continuing to the present, RIDOC has instituted new protocols or practices governing the handling of written communications between prisoners and their legal representatives which do not conform to the APA-promulgated policies quoted above.

24. Upon information and belief, under the new protocols and practices, RIDOC mail room and custodial staff have repeatedly taken custody of written communications between prisoners and their legal representatives and subjected them to inspection and copying out of the presence of the prisoner and/or the legal representative.

25. The new protocols and practices are not uniform, are not consistently applied by RIDOC correctional staff, and fail to accord prisoners and their legal representatives, including but not limited to Plaintiffs, the protections of the APA-promulgated policies quoted above.

26. In addition, the new protocols and practices deny prisoners and their legal representatives, including but not limited to Plaintiffs, constitutional and statutory rights to the confidentiality of attorney-client communications, and interfere with the statutory and ethical obligations of attorneys, including but not limited to Plaintiffs Paiva and Washington, to preserve the confidentiality of client communications in the absence of a client waiver.

27. In or about February 2024, David Morales, a member of the General Assembly House of Representatives, mailed letters to prisoners at the Maximum Security facility, including Plaintiff Paiva. A copy of the envelope from Rep. Morales to Plaintiff Paiva, postmarked February 12, 2024, is attached hereto as Exhibit D and incorporated herein. The envelope clearly identified the sender as a member of the General Assembly, such that under the promulgated RIDOC Mail Policy, the mail was “privileged.”

28. Upon information and belief, the mail to Maximum Security inmates included a request that the addressee complete and return a survey relating to the RIDOC “Solitary Confinement Policy.” A copy of a document bearing Rep. Morales’ name and government committee memberships, and bearing a signature indicating it was sent by him, is attached hereto as Exhibit E and incorporated herein. *The document contains the following statement: “This letter is considered privileged mail meaning it cannot be read or restricted by the DOC.”* (emphasis added).

29. Notwithstanding the foregoing, upon information and belief, RIDOC intercepted all such correspondence and inspected it outside of the presence of the intended addressees, including Plaintiff Paiva. To the extent that RIDOC had questions concerning the authenticity of the sender and the status as privileged mail, RIDOC had an established protocol under the promulgated RIDOC Mail Policy, which was to open and inspect the mail in the presence of the prisoner to whom it was addressed.

30. Upon information and belief, RIDOC did not follow the promulgated RIDOC Mail Policy but instead withheld the aforesaid envelopes and their contents from the intended addressees, including Plaintiff Paiva, until on or about March 6, 2024, a delay of at least two weeks, without any notice to the intended addressees, including Plaintiff Paiva, at which time the previously opened envelopes and materials purporting to be the contents of the envelopes were provided to the addressees.

31. Plaintiff Paiva filed and exhausted RIDOC’s grievance procedure before filing suit.

32. Plaintiff Willie Washington is a prisoner incarcerated at the Medium Security Facility of the ACI. On or about March 8, 2024, an attorney representing Plaintiff Washington in a post-conviction relief proceeding pending in the Superior Court of the State of Rhode Island came to

the Facility to discuss the pending matter, and brought privileged written materials for Plaintiff Washington's review and possible signature in connection with an upcoming hearing. However, correctional staff would not allow Washington's counsel to bring written materials to the attorney-client visit.

33. Plaintiff Washington filed and exhausted RIDOC's grievance procedure before filing suit. In rejecting Plaintiff Washington's grievance, RIDOC advised that it had adopted "updated" its policy relating to attorney visits. A copy of RIDOC's grievance response is attached hereto as Exhibit F and incorporated herein. No such "updated" policy has been promulgated in accordance with the APA.

34. John Karwashan is an attorney licensed to practice law in the State of Rhode Island. He is a staff attorney employed by Plaintiff Rhode Island Center for Justice ("RICFJ"), a nonprofit law firm. Attorneys at RICEFJ, including but not limited to Karwashan, represent prisoners incarcerated at the ACI in legal matters, including but not limited to court proceedings.

35. Karwashan and RICEFJ represent Joseph Shepard, a prisoner incarcerated at the ACI, in a civil rights action brought against officials of RIDOC both individually and in their official capacity (including Defendant Salisbury in his official capacity) pending in the United States District Court, docketed as *Shepard v. Diniz, et al.*, 21-cv-00453-WES-PAS.

36. Upon information and belief, in June 2024, Shepard was escorted by RIDOC custodial staff to the Medium Security mail room. At that time, a correctional officer opened legal mail addressed to Shepard from Shepard's attorney, John Karwashan of Plaintiff RICEFJ, made copies of the contents and advised Shepard that the originals would be retained by the "Special Investigations Unit" of RIDOC. Shepard objected to the procedure and declined to take a copy of the documents.

37. Upon information and belief, RIDOC has also implemented one or more practices or a

“protocol” that prevent attorneys and agents of attorneys visiting their prisoner-clients from bringing written communications unless the written communications have first been taken into the custody of and inspected by RIDOC staff *outside* the presence of the attorney or the prisoner.

38. Upon information and belief, the practice or protocol has been implemented inconsistently within and among the RIDOC facilities, sometimes preventing return of the written materials to the providing counsel and sometimes resulting in extended delay before any materials are made available to the prisoner-client.

39. On or about October 3, 2024, in connection with preparation of the within law suit, counsel representing Plaintiffs Paiva and Washington conducted attorney visits to discuss the law suit, and to present a preliminary draft of the complaint as well as retainer agreements for their review and signature. Custodial staff in Maximum Security required counsel to release the legal documents to their custody (out of the presence of either the attorney or Plaintiff Paiva) before returning them to the attorney for the attorney-client visit. Custodial staff in Medium Security did not require access to the legal documents before the attorney-client visit.

40. Upon information and belief, RIDOC acknowledged that it had instituted “new protocols for all legal documents entering all RIDOC facilities” by letter to Plaintiff Paiva dated April 22, 2024. A copy of the aforesaid letter is attached hereto as Exhibit G and incorporated herein. Said “new protocols” have not been promulgated in accordance with the APA.

41. Upon information and belief, a written description of the “Process for all Legal Mail/Paperwork Entering Facilities” has been provided by RIDOC in response to a request under the Access to Public Records Act, R.I.G.L. chapter 38-2, as of August 2, 2024. A copy of the APRA response and of the document entitled “Process for all Legal Mail/Paperwork Entering Facilities” are attached hereto as Exhibit H and incorporated herein. Said “Process” has not been

promulgated in accordance with the APA.

42. Attorneys and agents of attorneys, including but not limited to staff attorneys of Plaintiff RICFJ, have an ethical and legal obligation to their prisoner-clients to maintain the confidentiality of written communications that they intend to present to or discuss with their clients in face-to-face visits. Only the client can waive the confidentiality of such written communications. None of the Plaintiffs have waived such privilege with respect to the matters discussed herein.

43. Requiring compliance with a policy or practice that requires the attorney to deliver such written communications to the custody of correctional staff for inspection and which does not ensure (a) that the communications are not inspected or copied and (b) that they are returned intact to the provider contravenes the ethical and legal obligations of legal counsel and violates the First, Sixth and Fourteenth Amendment rights of the prisoner-clients.

44. Such policy is further contrary to the promulgated RIDOC Attorney Visits Policy, has not been promulgated in accordance with the APA and is void and unenforceable.

45. Plaintiffs have no adequate remedy at law and are suffering and will continue to suffer irreparable harm in the absence of injunctive and equitable relief from the Court.

**RIDOC has promulgated rules and procedures governing social visits between prisoners and families and others in accordance with the APA.**

46. RIDOC has, in compliance with the APA, formally adopted rules, policies, and regulations that govern social visits between prisoners and their families and significant others.

47. RIDOC promulgated 240-RICR-20-00-1, “Access to Inmates and/or RIDOC Facilities,” “Part 1 – Visits,” a copy of which is attached hereto and incorporated herein as Exhibit I, “[t]o establish procedures governing visits at the Adult Correctional Institutions (ACI)...” The policy has been adopted pursuant to the APA and is posted by the Secretary of State as part of the code

of regulations, effective January 4, 2022. The policy is hereinafter referred to as “the promulgated RIDOC Social Visits Policy.”

48. With respect to the matters complained of herein, the promulgated RIDOC Social Visits Policy, among other things, contains standards for determining approved visitors and for visitor registration at each visit. Each visitor is required to “present proper photo identification” and to “submit to a BCI/NCIC check to determine whether the visitor has a criminal record and/or outstanding warrant.” (§1.10) All visitors “must show proper photo identification (ID) upon request.” §1.6(K.6)

**RIDOC has imposed new requirements for social visitors that do not conform to the policies which it promulgated under the APA.**

49. On April 22, 2024, RIDOC announced that effective June 3, 2024, no adult otherwise approved for social visits would be admitted for a visit unless they submitted to periodic photographs which would be retained by RIDOC in its visitor database (hereinafter “photo requirement for social visits”). A copy of the announcement is attached hereto as Exhibit J and incorporated herein.

50. Upon information and belief, RIDOC implemented the aforesaid photo requirement on June 3, 2024 and continues to impose it for all social visitors.

51. Said photo requirement for social visits has not been promulgated in accordance with the APA.

52. Said photo requirement for social visits imposes a condition upon members of the public beyond those promulgated in accordance with the APA.

**First Cause of Action—Violation of the APA (against all Defendants)**

53. Plaintiffs incorporate the allegations contained in paragraphs 1 through 52 of the Complaint as if fully set forth herein.

54. Defendant RIDOC has implemented mail and attorney visitor rules relating to written legal communications delivered by mail or in person to prisoners that do not conform to and depart from the provisions of the promulgated RIDOC Attorney Visits Policy and the promulgated RIDOC Mail Policy.

55. Defendant RIDOC, in implementing the aforesaid non-compliant mail and attorney visitor rules relating to written legal communications delivered by mail or in person, has not complied with the APA.

56. Defendant RIDOC has implemented social visit rules with respect to photographing social visitors that do not conform to and depart from the provisions of the promulgated RIDOC Social Visits Policy and failed to adopt said social visits rules in accordance with the APA.

57. As a direct result whereof, Plaintiffs are entitled to a declaration that the non-compliant mail and attorney visitor rules relating to written legal communications delivered by mail or in person are void and unenforceable and to corresponding equitable relief.

58. As a direct result whereof, Plaintiffs are entitled to a declaration that the non-compliant social visits rules relating to photographing of social visitors is void and unenforceable and to corresponding equitable relief.

**Second Cause of Action—Violation of 42 U.S.C. §1983 (against Defendant Salisbury)**

59. Plaintiffs incorporate the allegations contained in paragraphs 1 through 52 of the Complaint as if fully set forth herein.

60. Defendant Salisbury, in his official capacity, has implemented mail and attorney visitor rules relating to written legal communications delivered by mail or in person that deny attorneys, including Plaintiff RICFJ of rights protected by the First, Sixth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §1983.

61. Defendant Salisbury, in his official capacity, has implemented mail and attorney visitor rules relating to written legal communications delivered by mail or in person that deny prisoners, including Plaintiffs Paiva and Washington, rights protected by the First, Sixth, and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §1983.

62. As a direct result whereof, Plaintiffs are entitled to a declaration that the non-compliant mail and attorney visitor rules relating to written legal communications delivered by mail or in person are void and unenforceable as violative of the First, Sixth, and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §1983 and to corresponding equitable relief.

**Third Cause of Action—Breach of Contract  
(asserted by Plaintiff ACLU of RI against all Defendants)**

63. Plaintiffs incorporate the allegations contained in paragraphs 1 through 52 of the Complaint as if fully set forth herein.

64. On December 12, 1985, Defendant RIDOC and Plaintiff ACLU of RI entered into a Consent Decree, Exhibit A hereto, and approved by the Superior Court, whereby RIDOC agreed to comply with the APA “with respect to the adoption, amendment or repeal of any rule not specifically exempted under” the APA. The Consent Decree specifically referenced as governed by its terms policies relating to “the areas of visitation, mail...”

65. The Consent Decree is a contract by and between Plaintiff ACLU of RI and Defendant RIDOC. “[T]he contractual nature of a consent judgment is beyond dispute.” *Andrews v. Lombardi*, 231 A.3d 1108, 1119 (R.I. 2020). The Consent Decree has no termination date. The conditions under which it was adopted have not changed and there has been no superseding amendment to the APA which would render compliance impossible or impracticable.

66. Defendant RIDOC’s adoption of rules or practices relating to the areas of visitation and mail as set forth herein, without compliance with the requirements of the APA or according

Plaintiff ACLU of RI a right to be heard at public hearing, constitute a breach of contract.

67. As a direct result whereof, Plaintiff ACLU of RI is entitled to a declaration that RIDOC has breached the contractual obligations of the Consent Decree in in *Jefferson et al. v. Moran*, PC-85-5003, and that the non-compliant mail, attorney, and social visits rules are void and unenforceable.

### **REQUEST FOR RELIEF**

Wherefore, the Plaintiffs request that the Court:

- A. Assume jurisdiction of this matter;
- B. Declare that Defendants' mail and attorney visitor rules relating to written legal communications delivered by mail or in person:
  - a. do not conform to and depart from the provisions of the promulgated RIDOC Attorney Visits Policy and the promulgated RIDOC Mail Policy, and do not comply with the requirements of the Administrative Procedures Act and are therefore void and unenforceable;
  - b. deny Plaintiffs their rights protected by the First, Sixth, and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. §1983;
- C. Declare that Defendants' social visitor rule relating to photographing of all adult visitors does not conform to and departs from the provisions of the promulgated RIDOC Social Visits Policy and does not comply with the requirements of the Administrative Procedures Act and is therefore void and unenforceable.
- D. Declare that Defendants have breached the contract with Plaintiff ACLU of RI by implementing mail, attorney visits, and social visitor rules that do not conform to and depart from the provisions of the promulgated RIDOC Policies and do not comply with the

requirements of the Administrative Procedures Act and are therefore void and unenforceable.

- E. Temporarily and preliminarily enjoin Defendants from enforcing mail and attorney visitor rules relating to written legal communications delivered by mail or in person that do not conform to the promulgated RIDOC Attorney Visits Policy and the promulgated RIDOC Mail Policy as promulgated in accordance with the APA.
- F. After hearing on the merits, permanently enjoin Defendants from enforcing mail and attorney visitor rules relating to written legal communications delivered by mail or in person and from requiring photographs of adult social visitors that do not conform to the promulgated RIDOC Attorney Visits Policy, the promulgated RIDOC Mail Policy, or the promulgated RIDOC Social Visits Policy as promulgated in accordance with the APA.
- G. Award the Plaintiffs their reasonable attorneys' fees and litigation costs and expenses pursuant to 42 U.S.C. § 1988.
- H. Grant such other and further relief as the Court deems necessary and proper.

Plaintiffs,  
By their attorneys

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<p>AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND, RHODE ISLAND CENTER FOR JUSTICE, RICHARD PAIVA AND WILLIE WASHINGTON</p> <p>PLAINTIFFS,</p> <p>v.</p> <p>WAYNE SALISBURY, in his official capacity as Director of the RHODE ISLAND DEPARTMENT OF CORRECTIONS, and the RHODE ISLAND DEPARTMENT OF CORRECTIONS</p> <p>DEFENDANTS.</p>	
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**VERIFICATION OF COMPLAINT**

I, STEVEN BROWN, first being duly sworn, do hereby state under penalties of perjury as follows:

1. I am the Executive Director of the American Civil Liberties Union of Rhode Island (“ACLU of RI”), one of the named plaintiffs in the above-captioned action.
2. ACLU of RI has authorized me to review and sign the within Verification of the Complaint on its behalf.
3. I have read the foregoing complaint and it is true and correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
Steven Brown

Subscribed and sworn to before me this \_\_\_\_\_ day of October 2024.

\_\_\_\_\_  
Notary Public