UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELET CHARLES,

Plaintiff,

v.

The UNITED STATES OF AMERICA,

Defendant.

Case No. 18-CV-00883

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Michelet Charles is a lawful permanent resident of the United States who suffers from serious, ongoing mental illnesses. He has lived in the United States for thirty-five years. He brings this tort action to challenge the dangerous and negligent acts of the United States Department of Homeland Security, Immigration and Customs Enforcement Agency ("ICE") and its employees to ensure the preparation or provision of a discharge plan to Mr. Charles when he was released from civil immigration detention. Discharge planning is an essential part of mental healthcare in institutional settings and consists of a plan created prior to release to ensure that upon discharge from a provider's care, people with mental illnesses do not relapse, and face hospitalization, increase risk of suicide, homelessness, and other related instability. When ICE confined Mr. Charles to immigration detention at Orange County Correctional Facility ("Orange County Detention Center"), a facility with which ICE contracts to house people while they await their immigration proceedings, it assumed a duty of care for Mr.

Charles' health and to provide adequate medical care. When Mr. Charles obtained immigration relief and was released from custody, ICE dumped Mr. Charles on the streets of lower Manhattan without providing him with discharge planning, even though they were aware of the severity of Mr. Charles' condition. Within two weeks of being discharged from Orange County Detention Center, Mr. Charles was hospitalized and required two months of intensive psychiatric care and he continues to suffer mental and emotional harm. ICE and its officials and employees' failure to provide discharge planning in accordance with widely-accepted medical standards was the substantial cause of Mr. Charles' decompensation and subsequent hospitalization.

2. In or around 1984, Mr. Charles was diagnosed with bipolar and schizoaffective disorders. For over twenty years prior to his confinement in immigration detention, Mr. Charles managed his illnesses through consistent mental healthcare. He worked in the restaurant industry, raised a family, and otherwise contributed to his community. In 2014, Mr. Charles was arrested and confined in civil immigration detention at Orange County Detention Center. Upon entering immigration detention, Mr. Charles underwent a routine mental health evaluation during which the detention facility personnel concluded that he suffers from bipolar disorder with psychotic features. This information was documented in his medical file. Mr. Charles was held in detention for almost a year, during which he was provided with psychiatric care and psychotropic medication. However, the care Mr. Charles received did not include discharge planning, which is a vital aspect of mental healthcare in institutional settings and is necessary to ensure individuals do not suffer severe mental decompensation shortly after their release due to an abrupt and unmitigated interruption in care.

3. On July 22, 2015, Mr. Charles was brought by ICE personnel from Orange County Detention Center to New York City for an appearance at the Varick Street Immigration

Court. Following success at his immigration hearing, Mr. Charles was released onto the streets of Lower Manhattan with nothing more than his identification. When ICE released Mr. Charles, it did not provide him with any plan for his continued mental healthcare, a single referral to a mental healthcare provider, or any interim medication, which ICE knew, or should reasonably have known, was necessary to keep Mr. Charles's mental health stable until he could gain access to new healthcare on his own. Instead, after his removal hearing, ICE dumped Mr. Charles on the street with no money or personal belongings and without any means to access mental healthcare. Mr. Charles and his daughter even returned to Orange County Detention Center the day after his release, traveling over sixty-five miles on the advice of his Deportation Officer. Yet, the individuals with whom Mr. Charles' daughter spoke at the Orange County Detention Center refused to provide him with an interim supply of his medication. As a result of ICE's negligent conduct, Mr. Charles was left without a plan or the resources necessary to obtain care and, as a result, his mental health quickly unraveled. After two weeks without his daily medication or any other treatment, Mr. Charles suffered total psychiatric decompensation. He was admitted—incoherent, hallucinating, delusional, and paranoid—to a hospital's psychiatric unit where he remained under inpatient care for almost two months. He still continues to suffer mental and emotional harm.

4. ICE knew, or should have known, that Mr. Charles would face a substantial risk of relapse, hospitalization, or worse without a discharge plan. Yet, ICE failed to provide this necessary aspect of adequate medical care.

5. Because he was confined in civil immigration detention, Mr. Charles was forced to rely on ICE and its contractors to provide him with adequate medical care. Through its acts or omissions, ICE was negligent in its treatment of Mr. Charles. ICE's failure to provide discharge

planning created a substantial risk that Mr. Charles would relapse and suffer mental decompensation. As such, ICE's conduct failed to meet minimally acceptable standards of institutional mental healthcare. This is the opposite of how institutional discharge planning for persons with serious mental illnesses should work. Indeed, almost two decades ago, the jail at Rikers Island began to end its similar practice of discharging people with mental illness without any psychiatric medication or treatment referrals. Further, widely accepted standards of medical care establish that discharge planning is an essential component of adequate institutional medical care. ICE knew that discharge planning is an essential piece of adequate healthcare: the most recent guidance promulgated by ICE itself for treatment of people confined to immigration detention requires discharge planning. Despite the high stakes and consensus, including its own standards, that adequate mental healthcare must include discharge planning, ICE failed to provide it to Mr. Charles, causing him to experience extreme psychological, physical, and emotional distress and harm.

6. Upon information and belief, ICE officials and employees acting within the scope of their employment had access to Mr. Charles' detention medical records, which state that he suffers from schizoaffective and bipolar disorders that, when left untreated for even a short period of time, cause psychotic symptoms such as hallucinations and delusions as well as periods of mania and depression. Yet, in violation of and disregard for its own policies and widely held medical standards that stress the necessity of discharge planning, ICE failed to provide Mr. Charles with any form of discharge planning either prior to or at the time of his release, much less the "30 day supply of medication" that its own standards expressly require.

7. Because of the traumatic and egregious injuries Mr. Charles suffered as a result of ICE's failure to provide adequate medical care, on December 19, 2016, Mr. Charles served a

Claim for Damage, Injury, or Death (Form 95) on the U.S. Department of Homeland Security and ICE. On August 1, 2017, the U.S. Department of Homeland Security and ICE issued their decision in which they denied Mr. Charles' claim, thus expressly providing for Mr. Charles to file suit in an appropriate United States district court.

8. ICE's failure to provide discharge planning constitutes negligence with regard to Mr. Charles' mental healthcare and serious medical needs and is actionable under the Federal Tort Claims Act, 28 U.S.C. Pt. VI Ch. 171 and 28 U.S.C. § 1346(b) ("FTCA"). Mr. Charles seeks compensatory damages against ICE for its negligence and failure to meet the duty of care owed to him.

PARTIES

9. Plaintiff Michelet Charles is a lawful permanent resident of the United States, who was a resident of New York State before he was confined at Orange County Detention Center. He currently resides in Atlanta, Georgia. He was detained at Orange County Detention Center on July 25, 2014, and released on July 22, 2015.

10. Defendant United States of America is sued under the Federal Tort Claims Act (28 U.S.C. § 2674 and 28 U.S.C. § 1346(b)) for the tortious acts and omissions committed by officials and employees of the United States Immigration and Customs Enforcement Agency. ICE, a federal law enforcement agency operating under the Department of Homeland Security, is charged with the detention and removal of immigrants and promulgates mental health standards for people confined in civil immigration detention. ICE manages and oversees the nation's civil immigration detention system, detaining approximately 350,000 to 442,000 individuals per year. As stated in ICE's Performance-Based National Detention Standards ("ICE Detention Standards"), detaining individuals pending their immigration or removal proceedings is an

integral part of ICE's role. ICE is a signatory to an Inter-Governmental Services Agreement between ICE, Orange County, and the Orange County Sheriff's Office, pursuant to which people in civil immigration detention are confined at Orange County Detention Center.

RELEVANT NON-PARTIES

11. Orange County, New York is a municipality with which ICE contracts to house and manage the day-to-day care of people held in civil immigration detention, including Mr. Charles. Orange County operates Orange County Detention Center, where Mr. Charles was detained. As a contractor with ICE, Orange County is expected to provide people in civil immigration detention with adequate care, including but not limited to the provision of mental healthcare, of which discharge planning is a necessary part. Orange County facilitates the day-to-day management of individuals ICE detains and holds at the Orange County Detention Center. ICE maintains overall responsibility for all individuals detained pursuant to ICE's immigration detention program. According to ICE's October 2009 Immigration Detention Overview and Recommendations Memo, ICE employees, including liaisons and deportation officers, are regularly present in the Orange County Detention Center. Orange County is not named as a defendant in this complaint. A related case was filed against Orange County and certain of its affiliate entities and employees in the Southern District of New York on July 12, 2016. *Charles, et al. v. Orange County, New York, et al.*, No. 16-cv-5527 (NSR). That litigation is currently pending in the United States Court of Appeals for the Second Circuit. *Charles, et al. v. Orange County, New York*, *et al.*, No. 17-3506.

JURISDICTION AND VENUE

12. Mr. Charles' claim against the United States is brought under the FTCA to redress injury caused by tortious acts and omissions committed by officials and employees of ICE acting within the scope of their employment.

13. On December 19, 2016, Mr. Charles timely served a Claim for Damage, Injury, or Death (Form 95) on the U.S. Department of Homeland Security, 245 Murray Lane SW, Washington, D.C. 20528, and on U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, D.C. 20024.

14. On August 1, 2017, the U.S. Department of Homeland Security and ICE issued their decision in which they denied Mr. Charles' claim, thus expressly providing for Mr. Charles to file suit in an appropriate United States district court within six months.

15. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts of civil actions arising under the Constitution, laws, or treaties of the United States; 28 U.S.C. § 1343(a)(3) and (4), which provide for jurisdiction in the United States district courts of civil actions to redress deprivation of rights secured by the Constitution and States of the United States; and 28 U.S.C. § 1346(b), which provides for jurisdiction in the United States district courts of civil actions brought under the Federal Tort Claims Act.

16. Venue lies properly with this district pursuant to 28 U.S.C. §§ 1391(b)(2), 1402(b) because a substantial part of the events, acts, and omissions giving rise to the claims in this Complaint occurred in this district.

FACTS

17. Pursuant to an Inter-Governmental Services Agreement between the United States Department of Homeland Security, ICE, Orange County, and the Orange County Sheriff's Office, ICE and Orange County confine hundreds of people at Orange County Detention Center every year in civil immigration detention. Operating under the Department of Homeland Security, ICE is the federal law enforcement agency charged with the detention and removal of immigrants. ICE "manages and oversees the nation's civil immigration detention system" and also "processes and monitors detained and non-detained [individuals] as they move through immigration court proceedings to conclusion." U.S. Immigration and Customs Enforcement, *Detention Management*, http://www.ice.gov/detention-management (last visited Jan. 31, 2018). In addition, ICE promulgates Performance-Based National Detention Standards that its contracted facilities must meet, and ICE by its own admission is responsible for "ensur[ing] its facilities follow ICE's National Detention Standards." *Id.*

18. People held in civil immigration detention for whom ICE is responsible, including Mr. Charles, are subjected to jail-like conditions while they await the outcome of their civil immigration removal and deportation cases. They experience complete restriction of their freedom while confined. On information and belief, the majority of people who were confined at Orange County Detention Center at the same time as Mr. Charles were lawful permanent residents or visa holders who were convicted of crimes that, either in the first instance or after a series of convictions, the federal government deemed to be a possible cause for removal. People who are confined to immigration detention may have completed a criminal sentence prior to their confinement, or they may not have been required to serve any sentence at all.

19. Pursuant to the agreement between ICE and Orange County, people confined in civil immigration detention are held in custody to assure their presence throughout the administrative hearing process and for court appearances related to their removal proceedings. People confined to civil immigration detention are not charged with criminal violations. Nevertheless, they are housed in similar conditions to people who are criminally incarcerated with similar limitations imposed on their freedom to act on their own behalf.

I. Relationship between ICE and Orange County Detention Center

20. In 2008, ICE entered into a contract with Orange County Detention Center to house people in civil immigration detention pending their immigration hearings at Varick Street Immigration Court.

21. Orange County Detention Center is run and operated by Orange County, New York, in conjunction with the County of Orange Sheriff's Department and the Orange County Department of Mental Health. The County of Orange Sheriff's Department is a signatory to the contract between ICE and Orange County, and the Orange County Department of Mental Health is responsible for providing mental health services to people confined at Orange County Detention Center.

22. ICE "manages and oversees the nation's civil immigration detention system" and "actively manage[s]" the caseload for all non-U.S. citizens who are apprehended and placed in detention facilities. U.S. Immigration and Customs Enforcement, *Detention Management*, http://www.ice.gov/detention-management (last visited Jan. 31, 2018). Although ICE contracts with various government entities to share responsibility for the day-to-day care provided to detainees, ICE remains responsible for "ensur[ing] its facilities follow ICE's National Detention

Standards." *Id.* At the time of Mr. Charles' detention, ICE was required to follow and ensure compliance with the guidelines set out in the 2011 ICE Detention Standards.

23. As part of the contract with ICE, Orange County Detention Center must provide persons confined in civil immigration detention with safekeeping, housing, subsistence, medical, and other services. These services must be provided in compliance with all applicable laws, regulations, fire and safety codes, and policies and procedures. ICE is responsible for ensuring that these services are provided appropriately and adequately. Upon information and belief, ICE employees, including liaisons and deportation officers, are regularly present at Orange County Detention Center.

24. Orange County Detention Center houses both civil immigrant detainees and criminal detainees at its facility in Goshen, NY. They are in segregated units but live under similar conditions.

25. Orange County failed to prepare and provide discharge planning to civil immigrant detainees under its care, including Mr. Charles, and engaged in a persistent, widespread custom and unofficial policy of failing to provide discharge planning. Because of its supervisory responsibilities over the Orange County Detention Center, ICE knew or should have known about Orange County's widespread custom and unofficial policy of failing to provide discharge planning. ICE did nothing to mitigate or remedy the failure to provide discharge planning. ICE failed to provide discharge planning or ensure that individuals detained through its own immigration detention program received any form of discharge planning consistent with 2011 ICE's Detention Standards and widely accepted mental healthcare standards.

II. Plaintiff Michelet Charles

A. Michelet Charles' Life before Immigration Detention

26. Plaintiff Michelet Charles is a 58-year-old lawful permanent resident who has lived in the United States for 35 years.

27. In or around 1984, when Mr. Charles was 25 years old, he was diagnosed with schizoaffective and bipolar disorders. Unless treated, these illnesses cause Mr. Charles to suffer from psychotic symptoms such as hallucinations and delusions as well as periods of mania and depression. Persons in a manic state, which may occur if schizoaffective and bipolar disorders are left untreated, are likely to be irritable and unpredictable, with their behavior and judgment impaired. Additionally, persons suffering from these disorders often experience depression, which interferes with their ability to lead productive and sociable lives, and suicide is an ever-present danger.

28. Immediately before he was detained at Orange County Detention Center, Mr. Charles received psychiatric care for his mental illnesses, including prescriptions for daily use of Risperdal and Depakote, from the outpatient facility at Pederson-Krag Center of Long Island ("Pederson-Krag Center"). Risperdal is an anti-psychotic medication that helps to improve thinking and mood behavior. It is a daily medication that is part of a long-term course of treatment for bipolar disorder and should not be stopped without consulting a doctor. Missing a dose increases the risk that the person to whom it is prescribed will experience a relapse of symptoms. Depakote is also a mood stabilizer and helps treat symptoms of bipolar disorder, including both mania and depression. Mr. Charles was highly functional when he adhered to taking his medication.

29. Suddenly stopping these anti-psychotic medications may lead a patient to relapse or experience other worsening of symptoms. Other potentially dangerous side effects are possible.

30. For 21 years, Mr. Charles worked in the restaurant industry and supported his family while managing his mental illnesses through psychiatric care, including a prescription medication regimen. Since the onset of his mental illness in his mid-twenties, Mr. Charles received regular psychiatric care and took different combinations of medication to treat his mental illnesses. On three occasions, in 1996, 2001, and 2004, Mr. Charles went without his medication, either because he could not afford the medication or because he experienced extreme side effects, and was hospitalized. He would hear voices, experience visual and tactile hallucinations, and feel scared and nervous. Each time this happened, Mr. Charles was stabilized and returned to his community and continued his care regimen.

31. Mr. Charles has four adult daughters and maintains a strong relationship with them.

B. ICE's Custody and Medical Treatment for Mr. Charles

32. On or about July 25, 2014, ICE officials arrested Mr. Charles and confined him at Orange County Detention Center pending the outcome of his removal proceeding. He was confined in civil immigration detention for 363 days, from July 25, 2014 until July 22, 2015.

33. It is well-established that a special relationship exists between the State and those it takes into its custody as prisoners or detainees. This special relationship creates a duty of care.

34. ICE owed Mr. Charles a duty of care because he was a detainee involuntarily held in ICE's custody at Orange County Detention Center. By detaining Mr. Charles, ICE deprived him of the liberty to care for himself.

35. When Mr. Charles entered Orange County Detention Center, medical personnel at the facility evaluated him pursuant to ICE's Detention Standards, and diagnosed him with bipolar disorder with psychotic features. A person experiencing a psychotic episode loses contact with reality; their thoughts and perceptions become disturbed, and they have difficulty distinguishing between what is real and what is not. Psychosis can also cause delusions and hallucinations and can lead to incoherent or nonsensical speech. Mr. Charles' intake form states that he was not showing any psychotic problems at intake.

36. During the year he was confined at Orange County Detention Center, ICE provided, or caused to be provided, Mr. Charles with certain medically necessary treatment and prescription medicine for his mental illnesses as required by the Inter-Governmental Services Agreement, to which ICE, Orange County, and the Orange County Sheriff's Office are signatories, as well as the 2011 ICE Detention Standards.

37. Mr. Charles' treatment included, every three weeks, meeting briefly with a psychiatrist at Orange County Detention Center to monitor his condition. Medical employees who, upon information and belief, worked for Orange County pursuant to the Inter-Governmental Services Agreement with ICE, prescribed Risperdal and Zyprexa to Mr. Charles and administered them to him on a daily basis. Risperdal and Zyprexa are both anti-psychotic medications that balance dopamine and serotonin to improve thinking, mood, and behavior. They are used to treat acute agitation, manic episodes, and depression.

38. Mr. Charles' daily prescription regimen is necessary to manage his mental illnesses.

39. Medical records state that Mr. Charles reported to his medical providers that his medical regimen was "therapeutic," meaning it alleviated his symptoms. The medical records

also note that Mr. Charles was psychiatrically stable for most of the time he was being confined and treated at the Orange County Detention Center. He remained psychiatrically stable on the date of his release.

40. A discharge plan is an essential medical component of a complete mental health treatment plan. It includes the provisioning of interim medication and medical records to a patient and referrals to government resources, such as local mental health agencies, for continued care and prescription medication renewals. Discharge planning is a straightforward and basic process that is meant to begin at the outset of a patient's treatment and culminate with the provision of a discharge plan prior to his release from a hospital or other institutional setting. ICE made no effort to prepare, provide, or ensure the provision of a discharge plan or any of its necessary elements.

41. Failing to prepare or provide a discharge plan is contrary to widely accepted medical standards and ICE's own policies (*see infra* ¶¶ 76–104). In failing to act as a reasonably prudent individual would or in accordance with its own policies and widely accepted medical standards, ICE breached its duty of care owed to Mr. Charles and was negligent in its failure to provide adequate medical care.

42. A decision of the United States District Court for the Southern District of New York, in deciding a related case brought against Orange County and other entities and individuals, found that allegations arising out of the same set of facts and circumstances, if true, demonstrate a breach of the duty of care and protection. *See Charles et al. v. County of Orange, New York et al.*, No. 16-CV-5527 (NSR), Opinion & Order at 19, 21, Dkt. No. 68 (Sept. 29, 2017).

C. ICE Failed to Provide Discharge Planning to Mr. Charles

43. Mr. Charles' immigration merits hearing was scheduled to occur on July 22, 2015 at Varick Street Immigration Court at 201 Varick Street, New York, NY 10014 ("Varick Street Immigration Court").

44. As a matter of law, and as would be known to ICE as a matter of common practice, if Mr. Charles prevailed at his hearing, he could have been released from custody that day at Varick Street Immigration Court.

45. Prior to July 22, 2015, neither ICE nor the employees at Orange County Detention Center, with whom ICE contracts, provided or ensured the provision of discharge planning to Mr. Charles, including but not limited to providing him with information about his prescriptions or an interim supply of medication. Additionally, ICE did not discuss any other details of Mr. Charles' release with him or his immigration attorney.

46. Upon information and belief, ICE officials transported Mr. Charles to Varick Street Immigration Court for his immigration hearing on July 22, 2015.

47. On that date, ICE officials did not provide Mr. Charles or his immigration attorney with a written discharge plan, his belongings (clothing), money he had in commissary, interim medication, his medical records, or any assistance with respect to his known medical condition. Nor did ICE officials ensure that he was provided any of these items by anyone else, such as by any individuals working in connection with the Orange County Detention Center.

48. At his immigration hearing on July 22, 2015, Mr. Charles obtained immigration relief and was consequently released from civil immigration detention.

49. After the hearing, Mr. Charles' immigration attorney discussed Mr. Charles' release with ICE Deportation Officer Jaime Rodriguez.

50. Deportation Officer Rodriguez stated that ICE did not have a supply of medication for Mr. Charles, and that Mr. Charles should return to Orange County Detention Center, over sixty-five miles away, if he needed to obtain a supply of his prescription medication and his other belongings.

51. Mr. Charles' immigration paperwork expressly noted that he should be referred to Pederson-Krag Center upon release from detention. ICE did not refer Mr. Charles to Pederson-Krag Center at any point during, prior to, or at the time of his release.

52. By failing to provide or ensure the provision to Mr. Charles of a discharge plan, ICE breached its duty of care and failed to act as a reasonably prudent individual would or in accordance with widely accepted medical standards.

53. ICE was negligent in its failure to provide Mr. Charles with any form of discharge planning prior to or upon his release.

D. ICE Refused to Provide Mr. Charles with a Post-Release Supply of Medication

54. On July 23, 2015, in accordance with ICE Deportation Officer Rodriguez's instructions, Mr. Charles and his daughter, Michelle Charles, traveled over two hours from her home in Long Island, New York to ICE's contractor, the Orange County Detention Center, to try to obtain Mr. Charles' prescription psychiatric medication, his belongings, and his money from commissary.

55. When Michelle Charles asked an employee at the front desk at Orange County Detention Center for her father's medication, the employee refused to provide it. The Orange County employee stated that the ICE employee who had transported Mr. Charles to Varick Street Immigration Court was responsible for providing a continuing supply of medication.

56. The Orange County employee also stated, that as a matter of institutional policy, after a person is released from custody Orange County Detention Center can no longer provide medication.

57. After the Orange County employee declined to provide medication to Mr. Charles, Mr. Charles' immigration attorney contacted Deportation Officer Rodriguez and requested that a supply be provided to Mr. Charles. Deportation Officer Rodriguez ignored her inquiry.

58. According to Mr. Charles' medical file from Orange County Detention Center, on July 23, 2015, the day *after* Mr. Charles' release, a Clinical Social Worker signed a document entitled "Continuing Care Plan/Discharge Summary" ("Discharge Summary").

59. The Discharge Summary explicitly anticipated that Mr. Charles would have projected financial, mental health, social support, and housing needs. The Discharge Summary states that "Medication," "Psychiatric Treatment," and "Substance Abuse Treatment," would be among Mr. Charles' "Projected Mental Health Needs." However, ICE provided no "discharge" services to Mr. Charles consistent with this post-release document.

60. A copy of this Discharge Summary document was never provided to Mr. Charles or his immigration attorney.

61. ICE failed to arrange for the provision of any medication to Mr. Charles prior to his release, at the time of his release, or thereafter.

E. Mr. Charles Decompensates and Relapses Because ICE Failed to Provide Discharge Planning

62. After his release without an interim supply of his necessary medications or referrals to healthcare providers, Mr. Charles soon began psychologically decompensating. For

example, he exhibited bizarre behavior and was disorganized and mumbled when he spoke. His family reported that he was manic, anxious, and paranoid.

63. By August 4, 2015, Mr. Charles was experiencing extreme symptoms of psychosis; his thoughts and emotions were so impaired that he lost contact with reality.

64. On August 4, 2015, Mr. Charles' family called 911 for emergency medical assistance. When the police responded, they transported him to the Emergency Room at Good Samaritan Hospital in West Islip, New York.

65. On August 5, 2015, Mr. Charles was hospitalized in an inpatient psychiatric unit of North Shore LIJ South Oaks Hospital ("South Oaks Hospital"), in Amityville, New York.

66. Medical records state that when Mr. Charles was admitted to South Oaks Hospital he had worsening aggressive, disorganized, and bizarre behavior and was preoccupied with paranoia upon admission. After a family event in which he exhibited concerning symptoms, Mr. Charles was admitted to the hospital. The records state that when he arrived at the hospital, Mr. Charles exhibited paranoid symptoms. He shouted in people's faces saying that he was not trying to fight them and stated that the devil was trying to hurt him. A few days later his intermittent aggression and disorganized behavior persisted. He continued to report hearing voices and feeling paranoid. Mr. Charles' medical records show that it was not until over a week after he was admitted that he had some improvement in his thought organization and aggression, although the paranoia, hallucinations, and delusions continued. Only after an additional several days did his hallucinations begin to subside.

67. Mr. Charles spent over two months at South Oaks Hospital in order to stabilize his condition. During that time, he was separated from his family and community while he underwent intense medical treatment. While he was hospitalized, the doctors prescribed various

medication regimens, as well as daily group and individual therapy. Medical providers carried out a daily analysis of his treatment plan and responses to treatment.

68. Medical records indicate that it took fifty-six days in South Oaks Hospital for Mr. Charles to "rebound to his baseline, though [he] still had [a] fixed delusion," meaning that he returned to a psychiatrically stabilized state where he was more cooperative, steady and with no overt psychosis.

69. Mr. Charles was discharged from South Oaks Hospital on October 9, 2015.

70. Mr. Charles continues to suffer mental and emotional harm, causing challenges as he seeks to maintain his mental healthcare.

71. Mr. Charles' mental and psychological decompensation was a direct and proximate result of ICE's failure to prepare, provide, or ensure the provision of a discharge plan for Mr. Charles at any point during his detention, prior to his release, or at the time of his release. ICE's negligent inaction caused Mr. Charles to be without medication for nearly two continuous weeks, which is an unacceptable circumstance for an individual whose mental illness requires daily treatment. ICE knew of, or should have known of, Mr. Charles' serious medical condition, his need for regular and consistent medical treatment, the importance of providing discharge planning, and the timing of his potential release from detention. Furthermore, as indicated in his medical records, ICE was aware of the risk of severe psychological, physical, and emotional harm Mr. Charles faced due to an abrupt interruption in his medical care. Nonetheless, ICE failed to take any steps to prepare or ensure the provision of a discharge plan for Mr. Charles, thus causing his mental decompensation and related injuries.

72. ICE's conduct and failure to ensure the provision of discharge planning unreasonably endangered Mr. Charles' physical safety. The symptoms of Mr. Charles' schizoaffective and bipolar disorders were both psychologically and physically harmful.

73. Due to ICE's negligent conduct toward Mr. Charles' serious medical needs, Mr. Charles suffered severe injury and mental decompensation.

74. Before, during, and after his hospitalization and up until the present, Mr. Charles suffered and continues to suffer extreme emotional distress because of ICE's negligence as to his serious medical needs; specifically, ICE's negligence in failing to provide or ensure the provision of discharge planning to Mr. Charles for a period of time reasonably necessary for him to obtain treatment on his own.

75. ICE's failure to provide discharge planning in accordance with widely accepted medical standards and its own policies was the substantial cause of Mr. Charles' injuries. The sudden and abrupt termination of ongoing care, with no provisions to prevent Mr. Charles from lapsing upon his release from immigration detention, resulted in his psychological decompensation and injuries.

III. The Standard of Care for People in Civil Immigration Detention Includes Discharge Planning

76. A broad array of professional mental health and medical associations, as well as ICE's own detention standards, agree that the standard of reasonable and adequate medical care for people incarcerated or detained includes discharge planning, a basic and straightforward aspect of medical care for persons with mental illnesses. Adequate discharge planning includes providing a patient with a supply of interim medication and summary of medical records; exchanging a patient's medical records with local mental health agencies; renewing or evaluating

for renewal any prescribed medications; and a continuity of care plan including referrals to community-based mental health providers.

A. The American Psychiatric Association Recommends Discharge Planning

77. The American Psychiatric Association is the primary professional association of psychiatrists in the United States and the largest psychiatric organization in the world.

78. The American Psychiatric Association is responsible for publishing the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM"), the leading authority of the codification of psychiatric conditions that is used by clinicians worldwide to diagnose mental illness. Courts are regularly guided by the American Psychiatric Association's conclusions on mental health, as published in the DSM, and look to the American Psychiatric Association to establish definitions and standards as they apply to mental health. *See, e.g.*, *Farmer v. Brennan*, 511 U.S. 825, 829 (1994); *Hall v. Florida*, 134 S. Ct. 1986, 1990 (2014).

79. The American Psychiatric Association also publishes *Psychiatric Services in Correctional Facilities*, which includes guidelines for mental healthcare in correctional facilities.

80. In that publication, the American Psychiatric Association recognizes that "[t]imely and effective discharge planning is essential to continuity of care and an integral part of adequate mental health treatment." According to the American Psychiatric Association, discharge planning includes "a sufficient supply of current psychotropic medications to last until the patient can be seen by a community healthcare provider; scheduling appointments with mental health agencies for patients with serious mental illness, especially those receiving psychotropic medication; and arranging with local mental health agencies to share records, as appropriate, and to have prescriptions renewed or evaluated for renewal."

81. ICE failed to provide Mr. Charles with discharge planning that comports with the American Psychiatric Association's standards as set forth above.

B. The American Psychological Association Requires That Psychiatrists Conduct Discharge Planning

82. The American Psychological Association is the largest scientific and professional association of psychologists in the United States.

83. The American Psychological Association publishes *Ethical Principles of Psychologists and Code of Conduct*, which consists of guidance as well as enforceable standards of professional conduct for psychologists.

84. *Ethical Principles of Psychologists and Code of Conduct* includes as part of its enforceable standards of conduct a requirement that psychologists "make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted . . . by the [patient's] relocation . . . [and to] make reasonable efforts to provide for orderly and appropriate resolution of responsibility for . . . patient care in the event the [psychologist-patient] relationship ends, with paramount consideration given to the welfare of the . . . patient."

85. ICE failed to provide Mr. Charles with discharge planning that comports with the American Psychological Association's standards as set forth above.

C. The American Medical Association Recommends Discharge Planning

86. The American Medical Association ("AMA") is one of the largest organizations of physicians in the United States that promotes legislative and regulatory policies aimed at improving healthcare quality and accessibility.

87. AMA adopts policies reflecting its views on appropriate standards of care for persons in institutional settings. Its *Standards of Care for Inmates of Correctional Facilities* (H-430.997) policy states its view that "prevailing community standards" for adequate healthcare in

correctional and detention facilities include "appropriate referrals for ongoing care upon release from the correctional facility."

88. AMA's *Health Care While Incarcerated* (H-430.986) policy recognizes the importance of "comprehensive physical and behavioral health care services . . . throughout the incarceration process from intake to re-entry into the community." It supports "information sharing between correctional systems, community health systems and state insurance programs to provide access to a continuum of health care services."

89. Recognizing the critical role that pre-release measures such as discharge planning play in the provision of adequate health care, AMA stresses the importance of individuals in correctional and detention facilities having "health care, care coordination activities and linkages to care delivered to patients up to 30 days before the anticipated release from correctional facilities in order to help establish coverage effective upon release, assist with transition to care in the community, and help reduce recidivism." *Health Care While Incarcerated* (H-430.986).

90. AMA "encourage[s] all correctional systems to support NCCHC accreditation" and supports NCCHC's *Standards* framework, which seeks to "improve the quality of health care services, including mental health services, delivered to the nation's correctional facilities." *Support for Health Care Services to Incarcerated Persons* (D-430.997).

91. ICE failed to provide Mr. Charles with discharge planning that comports with AMA's policies as set forth above.

D. The National Commission on Correctional Health Care Recommends Discharge Planning

92. The National Commission on Correctional Health Care ("NCCHC") is a non-governmental organization dedicated to improving the quality of correctional health and mental

health services, and to helping correctional facilities provide effective and efficient care. NCCHC provides accreditation to correctional facilities nationwide.

93. NCCHC publishes *Standards*, a nationally recognized framework for evaluating healthcare in correctional settings. As part of *Standards*, NCCHC has created *Standards for Mental Health Services in Correctional Facilities*, a set of requirements for mental healthcare in correctional facilities.

94. Compliance with NCCHC's *Standards* is a key qualification in the NCCHC accreditation process.

95. Orange County Detention Center, with which ICE contracted to house detainees including Mr. Charles, sought and obtained accreditation from NCCHC.

96. *Standards for Mental Health Services* requires that "discharge planning [be] provided for inmates with serious mental health needs whose release is imminent." NCCHC defines discharge planning as "the process of providing sufficient medications for short-term continuity upon release and arranging for necessary follow-up mental health services before the inmate's release to the community."

97. *Standards for Mental Health Services* designates each requirement with a level of importance. Whereas some requirements are designated merely "important," discharge planning is designated "essential," NCCHC's highest designation of importance.

98. ICE failed to provide Mr. Charles with discharge planning that comports with the NCCHC's standards as set forth above.

E. The American Association of Community Psychiatrists Recommends Discharge Planning

99. The American Association of Community Psychiatrists ("AACP") is an organization of psychiatrists whose mission is to promote health, recovery, and resilience in people, families, and communities.

100. AACP calls continuity of care "an essential and integral component of effective mental health treatment." AACP's position statement on post-release planning provides that "it is imperative that any psychiatric treatment provided during a period of incarceration include planning for post-release follow-up care in the community." According to AACP, this includes assessing a detainee's insurance status, providing referrals for post-release treatment, and providing detainees with an adequate supply of medication.

101. ICE failed to provide Mr. Charles with discharge planning that comports with AACP's standards as set forth above.

F. The American Public Health Association Recommends Discharge Planning

102. The American Public Health Association ("APHA") is one of the largest associations of public health professionals in the United States. APHA publishes *Standards for Health Services in Correctional Institutions*, a set of healthcare standards for people in correctional settings.

103. *Standards for Health Services in Correctional Institutions* requires that a plan for continuity of care be created for people released from correctional facilities, including people with mental illness. Satisfactory compliance with this requirement includes providing each patient with a detailed discharge summary, providing a supply of essential medications sufficient for at least two weeks or until the patient can reasonably be expected to obtain follow-up care, and assisting patients who are eligible to enroll in health insurance programs.

104. ICE failed to provide Mr. Charles with discharge planning that comports with APHA's standards as set forth above.

G. New York State Discharge Planning Requirements

105. Further, in the year 2000, *Brad H. v. City of New York* established that New York's Mental Hygiene Law § 29.15 requires that facilities providing mental healthcare in segregated mental health units, such as the jail at Rikers Island in New York City, must provide adequate discharge planning. 712 N.Y.S.2d 336, 343 (Sup. Ct. N.Y. Cty. 2000), *aff'd*, 716 N.Y.S.2d 852 (1st Dep't 2000). Rikers Island has provided discharge planning under a court-monitored consent decree for nearly two decades.

106. In early 2015, New York State expanded the requirement for discharge planning to anyone incarcerated in the state prison system who had received mental health treatment in the three years prior to release.

H. ICE's Own Guidance Requires Discharge Planning

107. ICE itself recognizes that discharge planning is an essential element of mental health treatment in institutional settings. ICE's own written guidance requires discharge planning for people in civil immigration detention who receive medical treatment, such as Mr. Charles.

108. In 2008, ICE promulgated the 2008 Performance-Based National Detention Standards ("2008 ICE Detention Standards"), which, *inter alia*, set forth minimum standards for the medical care that ICE provides to people held in immigration detention.

109. The 2008 ICE Detention Standards provide in relevant part:

> The facility administrative health authority must ensure that a plan is developed that provides for continuity of medical care in the event of a change in detention placement or status. . . . Upon transfer to another facility or release, the medical

> provider shall ensure that all relevant medical records and at least 7 days' . . . supply of medication shall accompany the detainee. Pt. 4.V.S.

110. In 2011, ICE promulgated the 2011 Performance-Based National Detention Standards ("2011 ICE Detention Standards"), aimed at improving upon the 2008 ICE Detention Standards.

111. The 2011 ICE Detention Standards provide in relevant part:

> Detainees shall receive continuity of care from time of admission to time of transfer, release or removal. Detainees, who have received medical care, released from custody or removed shall receive a discharge plan, a summary of medical records, any medically necessary medication and referrals to community-based providers as medically-appropriate. Pt. 4.3.II.5

112. The 2011 ICE Detention Standards also require that a detention facility ensure that "a plan is developed that provides for continuity of medical care in the event of a change in detention placement or status." Pt. 4.3.V.W. The 2011 ICE Detention Standards state that "[u]pon release from ICE custody, the detainee *shall* receive up to a 30 day supply of medication" and that "the [facility] *must* ensure that a continuity of treatment care plan is developed and a written copy provided to the detainee prior to removal." *Id.* (emphasis added).

113. The discharge planning requirements imposed by the 2011 ICE Detention Standards are mandatory. Neither ICE nor the facilities with which it contracts have discretion with respect to their implementation, including whether to disregard them.

114. ICE failed to provide Mr. Charles with discharge planning that comports with ICE's own guidance as set forth in the 2008 and 2011 ICE Detention Standards.

IV. Medical Care and Discharge Planning for People Confined to Civil Immigration Detention

115. As the federal governmental entity responsible for "manag[ing] and oversee[ing] the nation's civil immigration detention system," ICE owes a duty of care to the individuals it

detains. U.S. Immigration and Customs Enforcement, *Detention Management*, http://www.ice.gov/detention-management (last visited Jan. 31, 2018).

116. While contracting with the Orange County Detention Center, ICE retains responsibility for managing and overseeing the medical care provided to its detainees, and for ensuring compliance with its policies, including the 2011 ICE Detention Standards. ICE approves or denies requests by in-facility medical providers for specific medical care for people confined to immigration detention.

117. At Orange County Detention Center, the Orange County Department of Mental Health provides mental healthcare directly to people confined to civil immigration detention, such as Mr. Charles.

118. Employees of Orange County Detention Center screen people confined to civil immigration detention when they enter the facility and assess their medical care needs, including the need for prescription medication.

119. In order to seek medical care at Orange County Detention Center, people confined to civil immigration detention put in "sick call" requests for medical attention, and sometime thereafter a medical professional responds.

120. ICE performs inspections and prepares reports on its detention facilities. According to the 2013 Compliance Inspection of the Office of Detention Oversight at the Department of Homeland Security, Orange County Detention Center's mental health department consists of a full time mental health director, two staff psychiatrists, and one psychiatric nurse practitioner.

121. Orange County Detention Center has a psychiatrist on call to provide care for people in civil immigration detention twenty-four hours a day, seven days a week.

122. Although Orange County Detention Center, with which ICE contracted to confine people in civil immigration detention, had a program in place to provide discharge planning for people criminally incarcerated at the jail, ICE failed to use resources that were clearly available for it to provide similar services for persons held in civil immigration detention, including Mr. Charles.

123. Upon information and belief, throughout Mr. Charles' detention at Orange County Detention Center, ICE regularly failed to provide discharge planning to other individuals with serious ongoing mental illnesses who received mental health treatment while in civil immigration detention at Orange County Detention Center.

124. Upon information and belief, during the time Mr. Charles was detained at Orange County Detention Center, no discharge planning was provided to people in civil immigration detention in the form of interim medication.

125. ICE, through its official website and published materials, has acknowledged that discharge planning is a necessary part of institutional mental healthcare. *2011 Operations Manual ICE Performance-Based National Detention Standards*, http://www.ice.gov/detention-standards/2011 (last visited Jan. 31, 2018).

V. Actual or Constructive Knowledge of Risk of Serious Harm to Mr. Charles

126. ICE was, or should have been, aware of the substantial risk of serious harm to Mr. Charles by failing to provide discharge planning. Mr. Charles is an individual with mental health diagnoses and requires regular treatment, which ICE provided while he was detained.

127. Years prior to his confinement at the Orange County Detention Center, Mr. Charles had been hospitalized for his condition. Information about previous hospitalizations was present in Mr. Charles' medical records at Orange County Detention Center, and Mr. Charles

had informed the medical providers at Orange County Detention Center of his previous hospitalization. In the previous 20 years, Mr. Charles had been hospitalized on three prior occasions when he missed his medications. On these occasions, Mr. Charles decompensated into paranoia, experienced hallucinations, and felt scared shortly after going without medication. He would receive inpatient care and return to his community once stabilized. ICE was aware of the substantial risk of serious harm to Mr. Charles from failing to provide discharge planning and sending him out into the community with only his identification and clothing. Nonetheless, ICE disregarded that risk and did not provide any discharge plan to Mr. Charles.

128. Further, ICE was aware, or should have been aware, of the substantial risk of injury caused by a failure to provide discharge planning because of the many standards and guidelines setting forth the need and requirement for discharge planning in institutional settings, such as immigration detention. A wide array of medical professional associations provide that adequate medical care requires discharge planning, a straightforward and basic process of planning for an individual's release from an institutional setting. Additionally, ICE's Detention Standards, which are applicable to its contracted facilities, require discharge planning. These guidelines and standards exist because failing to provide discharge planning and leaving someone diagnosed with a mental illness, and who has been receiving regular care, without a continuum of care plan, transitional medication allotment, or information on how to seek further care creates a substantial risk of serious harm to that person and the wider community. ICE disregarded that risk when it neither provided nor ensured the provision of discharge planning to Mr. Charles.

FIRST CLAIM FOR RELIEF

28 U.S.C. § 1346(b) (FTCA): Negligence

129. Mr. Charles repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

130. By arresting Mr. Charles and placing him in civil detention, ICE and its officials and employees assumed a duty to care for Mr. Charles' health and to provide adequate medical care. Adequate medical care for individuals receiving mental healthcare includes discharge planning.

131. ICE's detention standards require that, upon release from ICE's custody, all people confined to immigration detention receive a supply of medication and written continuity of treatment plan. ICE officials and employees have no discretion to disregard these requirements.

132. ICE officials failed to provide or to cause others to provide Mr. Charles with discharge planning, in violation of ICE's detention standards and national medical associations' standards of medical care.

133. By failing to provide or to cause others to provide Mr. Charles with discharge planning or access to his prescribed medication, ICE and its officials and employees violated ICE's detention standards and breached their duty to Mr. Charles.

134. ICE and its officials and employees' failure to provide or to cause others to provide Mr. Charles with discharge planning or access to his prescribed medication substantially caused Mr. Charles' mental healthcare to seriously lapse upon his release from civil detention. This breach of the duty of care owed to Mr. Charles resulted in Mr. Charles having no access to medication, or any other mental healthcare, for two weeks after his release, until he was

hospitalized. As a result, he suffered psychiatric decompensation that required hospitalization for several months and he continues to suffer mental and emotional harm.

135. Prior to bringing this suit, Mr. Charles exhausted his administrative remedies by filing a claim with the Department of Homeland Security and ICE. The Department of Homeland Security and ICE denied that claim.

136. Accordingly, Mr. Charles is entitled to compensatory damages from the United States, including economic damages.

SECOND CLAIM FOR RELIEF

28 U.S.C. § 1346(b) (FTCA): Negligent Infliction of Emotional Distress

137. Mr. Charles repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

138. By arresting Mr. Charles and placing him in civil detention, ICE and its officials and employees assumed a duty to care for Mr. Charles' health and provide adequate medical care, including discharge planning.

139. ICE's detention standards and national medical associations' standards of medical care require that all people confined to immigration detention receive a supply of medication and written continuity of treatment plan upon release from ICE custody. ICE officials and employees have no discretion to disregard these requirements.

140. ICE and its officials were aware that detainees diagnosed with mental health disorders and released without an adequate supply of medication faced a substantial risk of mental decompensation and resultant physical and emotional harm.

141. Despite having custody of Mr. Charles at the time of his release, ICE officials and employees failed to provide or to cause others to provide Mr. Charles with discharge planning, in violation of ICE's detention standards.

142. By failing to provide or to cause others to provide Mr. Charles with discharge planning or access to his prescribed medication, ICE and its officials and employees violated ICE's detention standards and breached their duty to Mr. Charles.

143. ICE and its officials and employees' failure to provide or to cause others to provide Mr. Charles with discharge planning or access to his prescribed medication created an unreasonable risk to Plaintiff's physical safety and directly injured his mental health. This breach of duty of care denied Mr. Charles access to medication, or any other mental healthcare, for approximately two weeks. As a result, he suffered psychiatric decompensation that required hospitalization for several months and he continues to suffer mental and emotional harm.

144. Prior to bringing this suit, Mr. Charles exhausted his administrative remedies by filing a claim with the Department of Homeland Security and ICE. The Department of Homeland Security and ICE denied that claim.

145. Accordingly, Mr. Charles is entitled to compensatory damages from the United States, including economic damages.

THIRD CLAIM FOR RELIEF

28 U.S.C. § 1346(b) (FTCA): Negligent Supervision

146. Mr. Charles repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

147. By arresting Mr. Charles and placing him in civil detention, ICE and its officials assumed a duty to care for Mr. Charles' health and provide adequate medical care, including discharge planning.

148. ICE's detention standards and national medical associations' standards of medical care require that all people confined to immigration detention receive a supply of medication and written continuity of treatment plan upon release from ICE custody. ICE officials have no discretion to disregard these requirements.

149. ICE and its officials failed to properly supervise and train officials and employees to ensure compliance with ICE's mandatory policies regarding discharge planning.

150. By failing to ensure that Mr. Charles was provided with discharge planning and access to his prescribed medication, ICE and its officials violated ICE's detention standards and breached their duty to Mr. Charles.

151. ICE's failure to ensure that Mr. Charles was provided with discharge planning and access to his prescribed medication substantially caused Mr. Charles' mental healthcare to seriously lapse upon his release from civil detention. He had no access to medication, or any other mental healthcare, for approximately two weeks. As a result, he suffered psychiatric decompensation that required hospitalization for several months and continues to suffer mental and emotional harm.

152. Prior to bringing this suit, Mr. Charles exhausted his administrative remedies by filing a claim with ICE and the Department of Homeland Security. The Department of Homeland Security and ICE denied that claim.

153. Accordingly, Mr. Charles is entitled to compensatory damages from the United States, including economic damages.

RELIEF REQUESTED

WHEREFORE, Plaintiff Michelet Charles respectfully requests that the Court:

a. Assume jurisdiction over this matter;

b. Issue a judgment for compensatory damages against the United States, in amounts to be determined by the Court that are fair, just, and reasonable;

c. Issue a declaratory judgment on behalf of Mr. Charles with respect to the claims set forth above declaring that Defendant's failure to provide, or cause to be provided, a discharge plan for Mr. Charles breached Defendant's duty of care to Mr. Charles as a person Defendant confined to civil immigration detention;

d. Award Plaintiff the costs of this action;

e. Award Plaintiff pre- and post-judgment interest, as permitted by law;

f. Award Plaintiff reasonable attorneys' fees; and

g. Grant Plaintiff such other relief as the Court deems appropriate and just.

January 31, 2018
New York, New York

Respectfully submitted,

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