THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MANUEL GUDIEL GARCIA; GONZALO RAMIREZ TISTA, VICTORIA RAMIREZ TISTA and CELSO RAMIREZ TISTA as Heirs of CELSO RAMIREZ REYES; FEDERICO RAMOS MESA; MARTA CESAREA PEREZ RUIZ; VICTOR MANUEL TECU FLORIAN and Jane and John Does; all individually and on behalf of proposed Class Members, c/o Rudy Zuniga & Hiram Sosa Castaneda 37 Avenida 0-59, Zona 7 Edificio Fivico, 2do Nivel Ciudad de Guatemala, GUATEMALA Plaintiffs, v. KATHLEEN SEBELIUS, Secretary U.S. Department of Health & Human Services (DHHS) (formerly Department of Health, Education, and Welfare (HEW)) 200 Independence Ave., S.W. Washington, DC 20201 HOWARD K. KOH, M.D., MPH, Assistant Secretary for Health U.S. Department of Health & Human Services (DHHS) (overseer of the U.S. Public Health Service (PHS)) 200 Independence Ave., S.W. Washington, DC 20201 VICE ADMIRAL REGINA M. BENJAMIN, M.D., Surgeon General, U.S. Public Health Service (PHS) 5600 Fishers Lane, Room 18-66 Rockville, MD 20857 THOMAS FRIEDEN, M.D., MPH, Director, U.S. Center for Disease Control and Prevention ("CDC"), a center of U.S. Department of Health & Human Services (DHHS) 1600 Clifton Road Atlanta, GA 30333	Civil Action No. _____ CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES Jury Trial Demanded

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and

David Does 1-10,

Defendants.

CLASS ACTION COMPLAINT

I. NATURE OF THE ACTION

1. Plaintiffs MANUEL GUDIEL GARCIA; GONZALO RAMIREZ TISTA, VICTORIA RAMIREZ TISTA and CELSO RAMIREZ TISTA as the Heirs of CELSO RAMIREZ REYES; FEDERICO RAMOS MESA; MARTA CESAREA PEREZ RUIZ; VICTOR MANUEL TECU FLORIAN, and Jane and John Does (hereinafter Plaintiffs), bring this action on behalf of themselves and all other similarly situated persons who were subjected to experimental non-consensual human medical testing overseen by predecessor office holders of the Defendants or are the heirs to those so subjected. Plaintiffs bring this action against Defendants KATHLEEN SEBELIUS, Secretary of U.S. Department of Health & Human Services ("DHHS"); HOWARD K. KOH, M.D., MPH, Assistant Secretary for Health, of DHHS; VICE ADMIRAL REGINA M. BENJAMIN, M.D., Surgeon General, of the United States Public Health Services ("PHS"); THOMAS FRIEDEN, M.D., MPH, Director of U.S. Center for Disease Control and Prevention ("CDC"); RIMA KHABBAZ, M.D., Director of the CDC's Office of Infectious Diseases; KEVIN FENTON, M.D., Ph.D., Director of the CDC's National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention; GAIL BOLAN, Director of the CDC's Division of STD Prevention; HAROLD VARMUS, M.D., Director of The National Cancer Institute, a division of DHHS; MIRTA ROSES PERIAGO, Director of the Pan-American Health Organization; and David Does 1-10 (collectively referred to as "Defendants") for equitable relief and damages.

2. This case involves Tuskegee-style medical experimentation that took place in Guatemala from, as the U.S. Government has admitted, 1946 to 1948 and lasted potentially several decades more at the hands of American and Guatemalan doctors and U.S. government

officials who continued to operate the program once it was established. This case is brought under the Alien Tort Statute and seeks to remedy the egregious violations suffered by those personally subjected to the non-consensual human medical experimentation and others living with the devastating results. The Defendants knowingly engaged in non-consensual human medical experimentation on highly vulnerable populations that resulted in the harms Plaintiffs suffered.

3. The United States Public Health Service ("PHS") was established in 1798, and, with the 1944 Public Health Service Act, PHS became the primary division of the Department of Health, Education and Welfare ("HEW", now the Department of Health and Human Services ("DHHS")). PHS comprised all Agency Divisions of Health and Human Services and the Commissioned Corps, with the U.S. Surgeon General serving as the head of the PHS, overseen by the DHHS Assistant Secretary for Health.

4. It is now well documented that from 1932 through 1972, physicians from the Venereal Disease Research Laboratory ("VDRL") of the PHS conducted the highly controversial "Tuskegee Study of Untreated Syphilis in the Negro Male" on six hundred African-American men in Tuskegee, Alabama ("Tuskegee study"). According to the Centers for Disease Control and Prevention ("CDC"), the African-American men who participated in the study "did not receive the proper treatment needed to cure their illness."[1] The men did receive free medical exams, free meals and burial insurance in exchange for their participation, but "even when penicillin became the drug of choice for syphilis in 1947, researchers did not offer it to the subjects."[2] Throughout those four decades, the 399 African-American participants who tested

[1] Centers for Disease Control and Prevention, *U.S. Public Health Service Syphilis Study at Tuskegee*, available at http://www.cdc.gov/tuskegee/timeline.htm (February 2009) (hereinafter "CDC February 2009").

[2] CDC February 2009.

positive for syphilis were never told that they had the debilitating and potentially fatal disease – instead, the PHS physicians observed as the disease crippled and killed many of the men. After the whistle was blown on the study and the *New York Times* published a front-page account in 1972, the Department of Health, Education and Welfare ("DHEW") appointed the Tuskegee Syphilis Study Ad Hoc Panel to review both the study and the department's procedures. One member of the panel expressed dismay over the researchers' deliberate efforts to "obstruct the opportunity for treatment."[3]

5. While Tuskegee progressed paid-for by but unbeknownst to the American public, the PHS conducted other unethical, shorter-term venereal disease experiments on human subjects, such as a 1944 experiment on prisoners in a federal penitentiary in Terre Haute, Indiana. Assistant Surgeon General Dr. John Charles Cutler worked on the Terre Haute project, where attempts to infect prisoners with gonorrhea bacteria cultured from chancres (sores) of other prisoners with the disease proved ineffective.

6. It has recently been revealed that despite ongoing intense debates within the U.S. National Research Council over the ethics of the Terre Haute prison study and national and global attention to medical ethics following the Nuremberg Trials that had concluded eight months prior, the PHS also sanctioned a VD medical study in Guatemala. From their offices in the United States, PHS and other U.S. entities decided to seek a location where they would be able to carry out more invasive methods of inoculation without ethical scrutiny.

7. This decision to move to Guatemala was part of a deliberate plan to continue the Tuskegee testing offshore, where it would not be subject to the same level of oversight as in the United States. Escaping from the ethical scrutiny of Terre Haute, Dr. Cutler continued the

[3] U.S. Department of Health, Education, and Welfare, *Final Report of the Tuskegee Syphilis Study Ad Hoc Panel*, p. 14 (Washington, D.C.: GPO, 1973).

project in Guatemala where, from 1946 through at least 1948, in concert with Guatemalan government officials and PHS-trained doctors, PHS physicians conducted highly invasive medical tests on Guatemalan test subjects, including Plaintiffs listed herein, in the national penitentiary, the national orphanage, the military and mental institutions. These human medical experiments were performed without informed consent.

8. Recently revealed documents confirm that Dr. Cutler oversaw these non-consensual human medical experiments through 1948. It has not been established when the experimentation ended; as of late 2010, U.S. researchers were organizing a case review of those involved in the Guatemalan study to determine who was still alive and infected with the disease.

9. The objective of the human medical experiments in Guatemala was to discover whether penicillin, then a recently-discovered cure for syphilis, could also be used as a prophylaxis immediately following exposure to the syphilis bacteria. The doctors and U.S. government entities involved also sought to discover what the exact penicillin doses were required to cure a patient. Additionally, after the failed Terre Haute experiments, part of the goal was to figure out the most effective way to inoculate patients with the disease, an experiment that would not have been permitted in the United States.

10. To test this, Dr. Cutler and his staff only worked with Guatemalans who were syphilis-free when the human experimentation began. With cooperation from officials in Guatemala's Ministry of Justice, the medical team started with inmates in the national penitentiary, using American taxpayer money to hire prostitutes who tested positive for syphilis or gonorrhea to offer sexual services to inmates. For prostitutes who were uninfected, PHS physicians placed an inoculum of the diseases on their cervixes before the sexual visits. The PHS team did not seek consent from the inmates themselves, instead operating only with cooperation

from and permission of the Guatemalan institution. Although the PHS doctors noted that they had more success inoculating the Guatemalan prisoners than those in Terre Haute, the persisting low rates of infection and other clinical complications led them to their next test subjects – children in the national orphanage.

11. The doctors and U.S. Government entities performed invasive testing of 438 orphaned Guatemalan children between the ages of six and sixteen using blood tests to discover why many of the uninfected men in their prison study had falsely tested positive for venereal disease. In accord with the racialized assumptions that the medical team carried with them from the United States, the PHS physicians believed that venereal diseases would manifest differently in each race, so they wanted to analyze the blood of an uninfected Guatemalan test group. Again, no consent from the child test subjects themselves was sought or obtained. To induce permission from the managers of the orphanage, the medical team offered substantial quantities of malaria medications and other essential medications that were in scarce supply for the orphanage. After studying the several hundred blood samples taken from these children, PHS officials turned to patients in Guatemala's only mental hospital to continue their research into whether penicillin could be a prophylaxis as well as a cure for syphilis.

12. The PHS strategy in the asylum was one of planned inoculation, rather than sexual exposure, because they could not bring prostitutes into the mental asylum. The methods used to inoculate – scraping the head of the patient's penis with a hypodermic needle and then introducing directly to the raw skin liquid bacteria cultured from the open genital sores of other Guatemalan men – was both unprecedented and unequivocally impermissible in the United States and throughout the civilized world.

13. At no point in the PHS research projects throughout the U.S. and in Guatemala did the team obtain informed consent. In Guatemala, instead of consent, the PHS sought cooperation from the institution in which their prospective subject pool resided. To gain that cooperation, the medical team offered essential supplies, such as epilepsy medication to the mental asylum, malaria medication to the orphanage and refrigerators for medications. The bribes were not always life-saving supplies; reticent individual subjects were offered cigarettes in exchange for (uninformed) compliance – one single pack of cigarettes for inoculation, blood draws or spinal taps, or an individual cigarette for "clinical observation." Worse still, most of the officials at the mental asylum thought at first that "inoculation" was just another type of drug, not actively being infected.

14. Only after Dr. R.C. Arnold, Dr. Cutler's supervisor, expressed concern over the ethical issues involved in the Guatemalan experiments following the Nuremberg Trials did the PHS team seek informed consent. With Dr. Arnold urging them to cease using mental patients and children, the medical team turned to a population who could give consent: Guatemalan soldiers.

II. JURISDICTION AND VENUE

15. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction) and based on the ATCA, 28 U.S.C. §1350, for the alleged violations of international human rights law. Supplemental jurisdiction exists over the state law causes of action pursuant to 28 U.S.C. § 1367.

16. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 (a)(2). All Plaintiffs are citizens and domiciles of Guatemala, and the Defendants are all United States

domiciles with their principal place of business and/or residence also in the United States. The amount in dispute between each Plaintiff and each defendant exceeds $75,000.

17. Venue properly lies in this Judicial District pursuant to 28 U.S.C. §1391(b) and (e).

III. PARTIES

A. Named Plaintiffs

18. There are currently a total of seven named Plaintiffs in this case. They are either the victims of or the legal heirs to victims of the nonconsensual human medical experimentation that Defendants conducted in Guatemala.

19. Plaintiff **MANUEL GUDIEL GARCIA** was a soldier at the Cuartel General, between 1948 and 1950, a garrison that is now called "Cuartel Matamoros" in Zone 1 of Guatemala City. While serving as a soldier, Manuel was inoculated by Defendants over the course of 18 months.

20. Plaintiff **GONZALO RAMIREZ TISTA,** Plaintiff **VICTORIA RAMIREZ TISTA and** Plaintiff **CELSO RAMIREZ TISTA** are all surviving children and legal heirs of **CELSO RAMIREZ REYES**, who served in the Guatemalan military between 1948 and 1950, in the "Guardia de Honor." Celso was inoculated during six months of that service and suffered many diseases. When he left the military, Celso had sores, poor sight, gonorrhea, and was extremely lethargic. Plaintiff Victoria, the second child of Celso, has suffered many health problems since she was born, including losing her vision at age 15. Plaintiff Victoria remains blind today. The daughter of Celso's oldest child, Plaintiff Gonzalo, also has canker sores on her head which have caused her to lose her hair.

21. Plaintiff **FEDERICO RAMOS MESA** was a soldier from 1948 through 1950 in the Guatemalan air force (Destacamento de la Fuerza Aerea Guatemalteca). Over a course of 6 months during his service, he was inoculated every 15 days. These inoculations gave him uncomfortable feelings in the genital area along with secretions and hives. Before being inoculated, Federico had none of these symptoms. Each time he was inoculated, Federico had to stay in bed for one to three days, due to being too tired, in pain and wanting to sleep. He was seen by Guatemalan and by American physicians during these months. After Federico left the military, the genital secretions continued and he had difficulty in urinating. Federico also suffered from pain in his bones, headaches and sleepiness. Federico has three children. Odilia Ramos Ruano, the youngest, was born with cankers on her head, which caused her total hair loss.

22. Plaintiff **MARTA CESAREA PEREZ RUIZ** is the wife of Oscar Perez Ruiz, who was abandoned at a young age and lived on the streets. In approximately 1960, Oscar was picked up by unknown persons working with Defendants and inoculated with syphilis. Oscar became so lethargic that people said "he should be buried." Years later, he married Marta and the two had seven children in total. The first was stillborn and the second, who is now 27 years old, has been severely disabled her entire life. In 1980, Oscar had a blood test and learned he had syphilis. Marta was then tested as well and learned that she, too, had syphilis. Marta and Oscar were treated with daily shots of penicillin for approximately 20 days. The treatment was very painful and they could barely walk after having each shot. After the treatment, however, the couple had their last five children, all of whom are free of syphilis.

23. **Plaintiff VICTOR MANUEL TECU FLORIAN** was a soldier in the Guatemalan Army Corps of Engineers in Guatemala City from 1969 through 1971. During his 18 months of service, Victor received injections from members of a medical team every 15 days

and thus contracted syphilis. Victor was not cured by the medical team before he left the Army Corps of Engineers – or after. Instead, Victor independently sought treatment at a health center. Though Victor was ultimately cured, he is unable to walk properly to this day due to the impact of the experiments.

B. Plaintiffs' Class Action Allegations

24. Plaintiffs bring this action individually, and pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3), on behalf of the following class:

> All individuals who were subjected to non-consensual human medical experimentation in Guatemala ("test subjects") or were themselves infected to be used as vehicles for infecting the test subjects as part of Defendants' venereal disease experiments, and all children, domestic partners, and spouses of the test subjects who suffered serious, negative health conditions as a result of Defendants' non-consensual human medical experimentation.

25. The class is so numerous that joinder of all members is impractical. The Plaintiffs believe that there are thousands of potential class members; the non-consensual human medical experimentation involved at least 700 test subjects and thousands of others were impacted as a result of Defendants' non-consensual human medical experimentation.

26. There are questions of law and fact common to the class. Key common questions include, but are not limited to, the following:

a) Whether Plaintiffs and Proposed Class Members were unlawfully subjected to non-consensual human medical experimentation in violation of "the law of nations" provision of the Alien Tort Statute?

b) Whether Defendants caused and/or aided and abetted the non-consensual human medical experimentation imposed on Plaintiffs by either providing logistical support to the medical team performing the non-consensual human medical experimentation and/or failing to provide sufficient oversight and/or take adequate action to prevent and stop such non-consensual human medical experimentation in violation of international law, federal law and District of Columbia law?

27. The Plaintiffs' claims are typical of the claims of the class. They seek redress for

the same conduct that has affected all class members and press legal claims which are the same for all class members.

28. The Plaintiffs named herein will fairly and adequately represent the class. These Plaintiffs do not have conflicts of interest with members of the class and have retained counsel in both the United States and Guatemala who are experienced in complex litigation, including class actions and international litigation, who will vigorously prosecute this action.

29. A class action is the superior method for adjudication of this controversy. In the absence of a class action, courts will be unnecessarily burdened with multiple, duplicative individual actions. Moreover, if a class is not certified, many meritorious claims will go un-redressed as the individual class members are not able to prosecute complex litigation against government defendants. Finally, given the lack of an adequate forum for these claims in Guatemala, it would be logistically and financially impossible for the thousands of class members to each bring an individual action in the courts of the United States.

C. Defendants

30. Defendant KATHLEEN SEBELIUS is a United States citizen. Defendant Sebelius is currently Secretary of the U.S. Department of Health & Human Services ("DHHS"), which was formerly the Department of Health, Education, & Welfare ("HEW"). Defendant Sebelius is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

31. Defendant HOWARD K. KOH, M.D., M.P.H. is a United States citizen. Defendant Koh is currently Assistant Secretary for Health, which is part of DHHS, and oversees

the U.S. Public Health Services ("PHS"). Defendant Koh is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

32. Defendant VICE ADMIRAL REGINA M. BENJAMIN, M.D., is a United States citizen. Defendant Benjamin is currently Surgeon General, whose Office is part of the Office of the Assistant Secretary for Health in the Office of the Secretary and oversees the operations of the Commissioned Corps of the PHS. Defendant Vice Admiral Benjamin is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

33. Defendant THOMAS FRIEDEN, M.D., MPH, is a United States citizen. Defendant Frieden is currently Director of the U.S. Center for Disease Control and Prevention. Defendant Frieden is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

34. Defendant RIMA KHABBAZ, M.D., is a United States citizen. Defendant Khabbaz is currently Director of the Office of Infectious Diseases, of the U.S. Center for Disease Control and Prevention. Defendant Khabbaz is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

35. Defendant KEVIN FENTON, M.D., Ph.D., is a United States citizen. Defendant Fenton is currently Director of the National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention, a subdivision of the Office of Infectious Diseases, of the U.S. Center for Disease Control and Prevention. Defendant Fenton is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

36. Defendant GAIL BOLAN is a United States citizen. Defendant Bolan is currently Director of the Division of STD Prevention (formerly the Venereal Disease Research Laboratory

("VDRL"), formerly a division of HEW), a division of the National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention, a subdivision of the Office of Infectious Diseases, of the U.S. Center for Disease Control and Prevention. Defendant Bolan is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

37. Defendant HAROLD VARMUS, M.D. is a United States citizen. Defendant Varmus is currently Director of the National Cancer Institute, a division of the National Institutes of Health, a division of DHHS. Harry Eagle, Defendant Varmus' predecessor as the scientific director of the National Cancer Institute from 1947-49 and a National Institutes of Health employee until 1961, created one of the serology tests for syphilis and was likely involved with the non-consensual human medical experimentation studies in Guatemala. Defendant Varmus is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein.

38. Defendant MIRTA ROSES PERIAGO is a United States citizen. Defendant Periago is currently Director of the Pan-American Health Organization formerly the Pan-American Sanitary Bureau, which was at the helm of the non-consensual human medical experiments in Guatemala. Defendant Periago is the successor office-holder for the person or persons who were directly responsible for the unlawful actions alleged herein. According to an October 11, 2010 article in the Journal of the American Medical Association (JAMA), the Guatemala work was "funded with a grant from the National Institutes of Health (NIH) to the Pan American Sanitary Bureau..."[4] In addition to being the Assistant Surgeon General at PHS, Dr. Cutler was Defendant Periago's predecessor, as the Deputy Director of the Pan-American Sanitary Bureau.

[4] Thomas R. Frieden and Francis S. Collins, *Intentional Infection of Vulnerable Populations in 1946-1948: Another Tragic History Lesson*, Journal of the American Medical Association, Vol. 304(18), 2063-2064, 2063 (October 11, 2010; reprinted with corrections, November 1, 2010).

39. All of these Defendants are liable under the principles of successor liability for the acts of their predecessor office-holders.

40. None of these Defendants enjoys immunity for the acts committed by their predecessor office-holders. Those predecessor office-holders implemented a medical policy or program that, as set forth below, violated clearly-established rights protected by the U.S. Constitution. In addition to being ethically unsound, this medical policy or program of non-consensual human medical experimentation was facially unconstitutional. The predecessor office-holders, the nation's top health officials, knew of the ethical and constitutional violations inherent to non-consensual human medical experimentation. Regardless of what motivated the predecessor office-holders to create, authorize, supervise, and enforce the non-consensual human medical trials in contravention of the Fifth and Eighth Amendments, their motivations do not presumptively immunize the program or them, the nation's chief medical officials, and others implementing and executing it, from complying with the rule of law.

41. Defendants David Does 1-10 are persons or corporations that were involved in the non-consensual human experimentation but whose identities are not known at this time.

IV. BACKGROUND FACTS CONCERNING THE NON-CONSENSUAL HUMAN MEDICAL EXPERIMENTATION IN GUATEMALA.

42. There are striking similarities between the background of the "Tuskegee Study of Untreated Syphilis in the Negro Male," which was deplored as one of the worst ever human rights violations on American soil, and the Guatemalan human medical research studies at issue in the present case. Both non-consensual human medical experiments involved many of the same actors, including Surgeon General Thomas Parran, who oversaw and reviewed the whole endeavor, and Assistant Surgeon General Thomas Cutler, who actually implemented the studies

in Guatemala. They occurred concurrently, at a time of heightened global awareness of medical ethics and standards arising from the Nuremberg Trials of 1946 and 1947. In those trials, sixteen German doctors who conducted human experimentation during the Holocaust were indicted and sentenced as war criminals before an American military tribunal.

43. The seeking of informed consent from test subjects was widely regarded as an ethical norm long before the 1940s. This is evidenced by the cessation of studies like those at Indiana's Terre Haute federal penitentiary and the recognition in the human experimentations in the United States that became public in the first half of the 20th century of distinct limitations in the scope of what doctors could ethically do to their human subjects. Unfortunately, the physicians who faced ethical limitations in what they were able to do at Terre Haute moved their work to Guatemala *for the explicit purpose* of pushing the boundaries of medical ethics beyond what they could do in the United States. After malaria specialist G. Robert Coatney, who had done prison malaria studies, visited the Guatemalan project in February 1947 and reported back to Surgeon General Parran, Coatney stated that "with a "merry twinkle [that] came into [Parran's] eye…[he] said 'You know, we couldn't do such an experiment in this country.'"

44. The medical team and U.S. entities took advantage of the fact that ethical limitations in the United States were enforced, while in Guatemala, they were not. But, as the parties involved fully recognized, these ethical limitations were not unique to the United States nor did they apply only on U.S. soil; the ethical limitations were part of international law and, as such, transcend any particular country and apply to humans everywhere. Nuremberg made abundantly clear that all humans have the right to be free from non-consensual medical experimentation. The medical team and U.S. entities involved unquestionably violated that right by going to a country where they were less likely to be caught or punished for engaging in

unethical practices. Trying to escape the law by violating it in a country known for weak enforcement is reprehensible.

45. While the medical experimentation studies in Alabama and Guatemala had much in common, there are also marked differences. In Tuskegee, the PHS doctors did not infect the African-American subjects with syphilis, but rather, studied (and withheld full treatment from) subjects who were *already* infected with syphilis. In Guatemala, on the other hand, the PHS doctors actively infected the test subjects with syphilis and gonorrhea either by (a) exposing them to infectious prostitutes, or (b) directly through inoculum made from tissue from human and animal syphilitic gummas and chancres (i.e. pus of gonorrhea-filled sores.) Once the PHS learned what it wished from each Guatemalan subject's induced exposure, it may have provided penicillin to presumably cure the infection. However, the PHS provided little follow-up to ensure that the subjects were actually cured of their infection. How long the study continued and how long treatment, if any, was provided to those affected is not clear.

A. Why Test at all?

46. By the end of World War II, penicillin became more widely available and was making great strides toward becoming a cure for syphilis and other diseases. However, many syphilologists did not know for certain the correct dosages and limitations, and they sought a better chemical prophylaxis – like a morning-after cream – that a man could apply directly after possible exposure. Concerned that the syphilis animal research studies could not be translated to humans, the PHS researchers took to human subjects.

47. The PHS had a long history of international work prior to the Guatemala study. In the 19th century, it participated in foreign quarantines and sanitary conferences focusing on infectious disease, which led to the 1945 establishment of the Office of International Relations.

In 1901, PHS led a movement to organize the Pan-American Sanitary Bureau (later, PAHO). The official heads of PHS served as the Bureau's Directors from 1902-1936, so much so that the Bureau was a virtual branch of the PHS.

B. Why Guatemala?

48. Guatemala was the perfect place to conduct experiments on humans that violated international law. The decade between 1944 and 1954 was one of relative peace until the U.S.-led coup of the democratically-elected government in 1954, after which Guatemala made strides toward labor protection laws, land reform and democratic elections.

49. Prior to then, the purported main goal of PHS' involvement in the Guatemalan public health sector was to transfer laboratory materials, skills and knowledge to the Guatemalan public health elite. The PHS trained Juan Funes, Guatemala's leading VD public health official, which gave it a close government contact when they needed domestic support.

50. In the 1930s, Harvard Medical School Tropical Medicine Professor George Cheever Shattuck conducted haphazard surveys in the Guatemalan highlands that showed little prevalence of syphilis either there or in the army ranks. Shattuck carried racialized assumptions about syphilis from the U.S. to Guatemala, presuming that the disease was more frequent in those of Latin descent than in others. Such assumptions were at the core of the ongoing experiments. In addition, Guatemala had legalized prostitution and "allowed prostitutes to pay regular visits to men in penal institutions," facilitating the design of the penitentiary portion of their study.

C. The Beginnings of the Study

51. From the beginning of the study, the PHS secured cooperation from the Guatemalan government, namely the Ministry of Health, the National Army of the Revolution,

the National Mental Health Hospital and the Ministry of Justice. The Guatemalan research was initially called "a series of experimental studies on syphilis in man." Dr. Cutler of the PHS and Dr. Funes of Guatemala had two main goals: first, they sought to use "syphilization" to test the human response to infective material, enhance the response to disease, and understand superinfection and reinfection.

52. Second, Drs. Cutler and Funes sought ways to prevent syphilis immediately after exposure. Existing prophylaxis kits ("pro kits") given to American soldiers during WWII contained a calomel-sulpha-thiazole that was painful to use, so PHS wanted to determine if penicillin or some less noxious chemical could be used instead. In addition, they wanted to discover the cause for false positive syphilis tests and demonstrate more fully how and when differing dosages of penicillin actually cured infection.

i. The Subject Groups – Prisoners, Mentally Ill, Orphans and Soldiers

53. Prisoners in the national penitentiary: The PHS team secured cooperation from Ministry of Justice officials and the warden of Guatemala City's Central Penitentiary, which had nearly 1,500 inmates to conduct serological tests on the inmates before the prostitutes were invited, and then afterward to see if infection had occurred. Prostitutes who tested positive for either syphilis or gonorrhea were allowed to offer their services to prison inmates (paid for by U.S. taxpayers, through PHS funds). These inmates were followed and their sexual activity recorded; after, they were tested. Uninfected prostitutes had inoculum of the diseases placed on their cervixes before the sexual visits. The men were divided into groups, and each group received different chemical and biological prophylaxis techniques after presumed infection.

54. Four prohibitive problems arose throughout the course of the research. One researcher lamented over the low retention rate for prostitutes as subjects, noting that many left

the profession once they were married. Not enough of the men in the prison were contracting syphilis, even when the physicians plied them with alcohol to induce them to seek the infected prostitutes. Thus, the sample pool was too small to create statistical significance. The third problem was the high number of false positives – too many men were testing positive for syphilis before exposure even occurred, although they exhibited no signs of actually having the disease. To decipher the false positives problem, researchers began to perform an intensive variety of blood tests, drawing 10 cubic centimeters of blood weekly or bi-weekly. This intensified existing resistance from the inmates, especially over the frequent blood withdrawals, which they believed would "weaken" them. The resistance led the researchers to look to the orphanage for new subjects in their false positives testing.

55. Children in the National Orphanage: The main purpose of the orphanage tests was to understand the blood testing results and figure out the cause for the false positives. Reverting to their racialized notions of medical science, this phase was based on the presumption that Guatemalans and Hispanics generally would produce different blood test results than other races. Thus, reports suggest that the researchers did not give this group of children syphilis, but rather, put them through a barrage of blood tests to try and understand the difference between the minority of children who falsely tested positive for syphilis, and those who accurately tested negative for the disease. Still seeking their syphilis prophylaxis, the PHS physicians then turned to the mentally ill patients in the national asylum.

56. It is not clear at this time what other groups of children the medical team involved in their non-consensual human medical experimentation. While publicly available reports discuss the use of children in the Guatemalan orphanages, there is evidence to suggest other orphans were used and actively infected.

57. Patients in Guatemala's only mental hospital: The PHS' tests on Guatemala's mentally ill patients are perhaps the most disconcerting, as the patients very clearly were unable to give their consent and because the vulgar methods used to inoculate them – scraping the head of the penis with a needle and then introducing liquid inoculate directly to the raw skin – was unprecedented and certainly would not ever be sanctioned or replicated in the United States or elsewhere in the civilized world. Most of the asylum officials initially thought that "inoculation" was just another kind of drug, indicating that the medical team was not forthcoming in their attempts even to gain institutional compliance.

58. One of the most obvious shortcomings of the study is that PHS only sought compliance from the institutions that housed the orphans, the prisoners and the mentally ill, and did NOT seek consent from the patients themselves. Nonetheless, these patients were frequently referred to as "volunteers." In the case of the asylum test subjects, the PHS physicians lured participants by offering cigarettes – one single cigarette for "clinical observation," or an entire packet for inoculation, blood draws or spinal taps. Still, the patients were not given information about the procedures before accepting the exchange. In a similar tactic, they bought the institutions' compliance with supplies, such as epilepsy meds to counter the prevalent epilepsy problem in the asylum; a refrigerator to store medications; a movie projector; and metal cutlery.

ii. Initial Study Methods

59. PHS used two methods to make the syphilis inoculums used to infect the "volunteers." The first was to grind up gummas (syphilitic growth) in the testes of rabbits infected with the Nichols & Frew strains of the syphilis bacteria and then use this to inoculate test subjects. The problem with this method was that it required that rabbits from the VDRL in Staten Island, New York be flown into Guatemala City. Many of the rabbits either didn't survive

the trip, or did not develop enough of an infection to make the gummas sufficiently potent.[5] The second method, and the one predominantly used in Guatemala, was to scrape open sores from the penises of infected asylum inmates or from army men who had a "street strain" of syphilis picked up from local prostitutes who were not involved in the study. After the sample was taken, there was only a narrow 45-90 minute turnaround time, because the spirochetes could not last longer than that outside a body. In that time, researchers had to remove the bacteria, centrifuge it with homemade beef broth, and deliver the inoculum to the subjects.

60. Men and women were inoculated in different ways. It was frowned upon in Guatemala for men, even physicians, to view a female body, so the PHS doctors used needles to abrade the women's forearms, faces or mouths, and then inserted the inoculum. The men underwent what they eventually referred to as a "short arm" inspection – doctors chose uncircumcised men (for purposes of keeping the mucus membranes moist) who could sit or stand in one place for multiple hours. The doctor held the subject's penis, pulled back the foreskin, abraded the skin just short of drawing blood by scraping it with a hypodermic needle, covered the abrasions with a cotton dressing, and finally dripped drops of the syphilitic emulsion onto the cotton-covered abrasions for between one and two hours. Other inoculation methods used in Guatemala included ingestion of syphilitic tissue mixed with distilled water; removal of spinal fluid, which was then infused with syphilitic mixture and re-injected into the body; and venipunctures of the mixtures into the medial cubital vein of the forearm. In the army barracks prophylaxis studies, the men had sexual intercourse with uninfected prostitutes, then the syphilitic inoculum was put into the meatus of the penis, and they were told to urinate an hour

[5] Dr. Cutler and the PHS physicians did use this inoculation method some years later at a similar experiment in New York's Sing Sing penitentiary, uninhibited by the distance between the rabbit laboratories and the test site.

later and apply different kinds of chemical prophylaxis. Alternatively, the inoculum was placed on the cervixes of prostitutes before they were allowed to have sex with the prisoners or the soldiers. The medical records that are currently available do not conclusively indicate whether his team properly cured the infected prostitutes.

iii. Treating Infected Participants

61. It appears that all of the Guatemalan subjects began the study disease-free. Although "volunteers" infected in the course of the study were given penicillin, the research files show no follow up to determine if they were actually cured. Researchers claimed to be "scrupulous" about administering cures; however, Dr. Cutler admitted to experiencing great difficulty keeping track of his subjects, especially the prostitutes and the mentally-ill patients, even though his wife, Eliese Cutler, helped manage the records by photographing the subjects and their inoculations for the recorded files. "Part III Final Syphilis Report," page 25, Box 1, Folder 3 of the Cutler Papers makes reference to a mentally ill subject who, after scarification and the first emulsion application, fled the room and was only found 2 hours later with the emulsion still in place.

iv. Deception in the Guatemala Study

62. The medical team and U.S. government entities working in Guatemala had experience working with other venereal disease experiments which gave them an acute knowledge of the dangers of syphilis. Dr. Cutler admitted knowing that they weren't telling many people that their inoculum contained syphilis and, in a June 27, 1947 letter, he reiterated his concerns, saying, "a few words to the wrong person here, or even at home, might wreck [the experiment] or parts of it…" Keeping mum about the real reason for their medical work was a

burden on the project, especially as the medical team experimented with methods of inoculation, various prophylaxis treatments and various therapies.

63. As the two years of rigorous and widespread testing in Guatemala progressed, the team balanced demands from the Guatemalan officials that were met in order to ensure the team's continued cooperation, as well as demands from PHS headquarters in the United States, where concerns over the cost and the methods used decreased interest in continuing the experiments.

64. For the most part, the Guatemalan officials traded their cooperation with the PHS for medical supplies and services. They requested that the medical team test and treat the ill men in the army barracks. They also requested a survey of disease in the Guatemalan lowlands. At the time, penicillin was a new and sparse medicine seen as a cure-all; Guatemalan officials sought from Dr. Cutler more penicillin for the country. At the orphanage, the team traded malaria drugs for compliance.

65. It is not clear from publicly available data how this non-consensual human medical experimentation progressed and when it ended. Dr. Mahoney, Dr. Cutler's supervisor, recognized *ex post facto* that Dr. Cutler's data was not sufficiently conclusive, and he analogized the Guatemala findings to those of the failed and highly criticized Terre Haute Penitentiary study. However, perceived racial immunological differences led the researchers to believe that tests of every race would have to be conducted in order for any results to really have weight. While such tests are not logistically or ethically possible, it is unknown how long researchers continued to collect data using these unethical procedures before ending the non-consensual human medical experimentation in Guatemala.

V. DEFENDANTS' VIOLATIONS OF LAW

66. Defendants' actions violate, and Plaintiffs' causes of action arise from, the following laws, agreements, conventions, resolutions and treaties, which constitute specific examples of the applicable law of nations or customary international law:

(a) Alien Tort Statute, 28 U.S.C. § 1350;

(b) The Fifth Amendment to the U.S. Constitution;

(c) The Eighth Amendment to the U.S. Constitution;

(d) the Law of Nations;

(e) Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948);

(f) International Covenant on Civil and Political Rights, G.A. Res. 2220A(xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

(g) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)(ratified 10/28/98);

(h) Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);

(i) Vienna Declaration and Programme of Action (World Conference on Human Rights, 1993);

(j) Article 3 of the Geneva Conventions;

(k) The Nuremburg Code;

(l) The Bilateral Treaty of Peace, Amity, Commerce and Navigation between the United States and Guatemala; and

(m) Statutes and common law of the District of Columbia.

VI. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(Violation of Prohibition Against Medical Experimentation on Non-Consenting Human Subjects: Alien Tort Statute 28 U.S.C. § 1350)

67. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

68. Plaintiffs bring this claim against all Defendants.

69. Defendants' acts described herein constitute medical experimentation on non-consenting human subjects in violation of the law of nations and are, therefore, actionable under the Alien Tort Statute, 28 U.S.C. § 1350. The customary international law prohibition of medical experimentation on non-consenting human subjects is expressed and defined in international treaties and declarations, international judicial decisions, and in the domestic legislation of numerous countries throughout the world, including the United States. It is widely-recognized that experimentation on unknowing human subjects is morally and legally unacceptable.

70. Defendants are liable for the alleged conduct in that Defendants, acting under color of law and authority as United States officials, set the conditions for, committed, directed, ordered, confirmed, ratified, acquiesced, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly caused or facilitated the medical experimentation on Plaintiffs, without Plaintiffs' consent. Defendants intended, knew or should

have known, that the non-consensual human medical experimentation was being committed by their subordinates and failed to prevent such abuse or punish those responsible.

71. Non-consensual human medical experimentation, which violates one's rights to life, health, and personal integrity, is universally condemned as violation of customary international law, as reflected in various international instruments, such as the Nuremburg Code, which states as its first principle that "[t]he voluntary consent of the human subject is absolutely essential," the Universal Declaration of Human Rights ("UDHR"), and Article 7 of the International Covenant on Civil and Political Rights ("ICCPR"), which provides that "no one shall be subjected without his free consent to medical or scientific experimentation." Other international documents prohibiting non-consensual human medical experimentation include the Convention on Human Rights and Biomedicine, the Universal Declaration on Bioethics and Human Rights, and the 2001 Directive passed by the European Parliament and the Council of the European Union. This prohibition is also recognized by the World Medical Association's Declaration of Helsinki, which sets forth global ethical principles for physicians and provides that human subjects should be volunteers who give informed consent to participate in research, and by the Council for International Organizations of Medical Services ("CIOMS") guidelines, which require "the voluntary informed consent of [a] prospective subject." The prohibition of non-consensual human medical experimentation is further demonstrated in the enactment by no less than eighty-four countries of laws explicitly including the prohibition. For its part, the United States' Food & Drug Administration has long required informed consent for human medical research. Violations of this international prohibition are capable of impairing international peace and security, especially, as here, when the medical team of one country violates the rights of another State's citizens.

72. As a direct and proximate result of Defendants' acts and omissions, Plaintiffs have been subjected to severe physical and psychological injuries and have incurred expenses and suffered damages. These injuries have caused and will continue to cause Plaintiffs great physical and mental pain and suffering.

73. Plaintiffs are informed and believe and thereon allege that Defendants' aforementioned acts were intentional, willful, malicious, oppressive and despicable, and/or were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiffs, thereby justifying the awarding of punitive and exemplary damages against Defendants.

74. Plaintiffs have suffered severe physical and psychological pain and suffering, and are entitled to monetary damages.

SECOND CLAIM FOR RELIEF

(Violation of Prohibition Against Cruel, Inhuman, or Degrading Treatment: Alien Tort Statute 28 U.S.C. § 1350)

75. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

76. Defendants' acts described herein constitute cruel, inhuman, or degrading treatment of Plaintiffs in violation of the laws of nations and are, therefore, actionable under the Alien Tort Statute, 28 U.S.C. § 1350. The customary international law prohibiting cruel, inhuman, or degrading treatment is expressed and defined in international treaties and international and domestic judicial decisions, among other authorities.

77. Defendants are liable for the alleged conduct in that Defendants, acting under color of law and authority as United States officials, set the conditions for, committed, directed, ordered, confirmed, ratified, acquiesced, had command responsibility for, aided and abetted,

conspired to, and/or otherwise directly or indirectly caused or facilitated the medical experimentation on Plaintiffs, without Plaintiffs' consent. Defendants intended, knew or should have known, that the non-consensual human medical experimentation was being committed by their subordinates and failed to prevent such abuse or punish those responsible.

78. Cruel, inhuman, degrading treatment is widely prohibited by a variety of international human rights instruments, including the UDHR (Art. 5), the ICCPR (Art. 7), as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") (Art. 16). The United States is a party to the ICCPR, having signed on October 5, 1977 and ratified the Covenant on June 8, 1992, and to the CAT, having signed on April 18, 1988, and ratified on October 21, 1994.

79. As a direct and proximate result of Defendants' acts and omissions, Plaintiffs have been subjected to severe physical and psychological pain and suffering and have incurred expenses and suffered damages. These injuries have caused and will continue to cause Plaintiffs great physical and mental pain and suffering.

80. Plaintiffs are informed and believe and thereon allege that Defendants' aforementioned acts were intentional, willful, malicious, oppressive and despicable, and/or were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiffs, thereby justifying the awarding of punitive and exemplary damages against Defendants.

81. Plaintiffs have suffered severe physical and psychological pain and suffering, and are entitled to monetary damages.

THIRD CLAIM FOR RELIEF

(Violation of Substantive Due Process: Fifth Amendment)

82. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

83. Plaintiffs bring this claim against all Defendants.

84. Defendants' acts described herein constitute a deprivation of life and liberty interests in violation of the Fifth Amendment of the United States Constitution.

85. At all times pertinent to the allegations herein, Defendants were acting under color of law of the United States.

86. Defendants are liable for said conduct in that Defendants, acting under color of law and authority as United States officials, set the conditions for, committed, directed, ordered, confirmed, ratified, acquiesced, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly caused or facilitated the medical experimentation on Plaintiffs, without Plaintiffs' consent, thus depriving Plaintiffs of their liberty. Defendants intended, knew or should have known, that the non-consensual human medical experimentation was being committed by their subordinates and failed to prevent such abuse or punish those responsible. Plaintiffs have had to live with the debilitating and destructive disease syphilis as a result of this nonconsensual human medical experimentation, and have therefore been deprived of their liberty to live their lives free of such intrusive, harmful actions.

87. Plaintiffs, who had not been adjudicated guilty of any crime in accordance with due process of law and therefore were not subject to punishment, were subjected to harms through the medical experimentation that amounted to punishment by the government. Plaintiffs' treatment during the non-consensual human medical experimentation was without

legitimate penological purpose; instead, the medical experimentation was imposed out of medical curiosity, without regard for its impact on its human subjects. The non-consensual human medical experimentation deprived Plaintiffs of their liberty in direct violation of their substantive and procedural due process rights under the Fifth Amendment.

88. As a direct and proximate result of Defendants' unconstitutional acts and omissions, Plaintiffs have been subjected to severe physical and psychological pain and suffering and have incurred expenses and suffered damages. These injuries have caused and will continue to cause Plaintiffs great physical and mental pain and suffering.

89. Plaintiffs are informed and believe and thereon allege that Defendants' aforementioned acts were intentional, willful, malicious, oppressive and despicable, and/or were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiffs, thereby justifying the awarding of punitive and exemplary damages against Defendants.

90. Plaintiffs have suffered severe physical and psychological pain and suffering, and are entitled to monetary damages.

FOURTH CLAIM FOR RELIEF

(Violation of Cruel and Unusual Punishment: Eighth Amendment)

91. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

92. Plaintiffs bring this claim against all Defendants.

93. Defendants' acts described herein constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

94. At all times pertinent to the allegations herein, Defendants were acting under color of law of the United States.

95. Defendants are liable for said conduct in that Defendants, acting under color of law and authority as United States officials, set the conditions for, committed, directed, ordered, confirmed, ratified, acquiesced, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly caused or facilitated the medical experimentation on Plaintiffs, without Plaintiffs' consent, causing Plaintiffs to be subjected to cruel and unusual punishment, including those Plaintiffs who were prisoners at the time of the experiments. Defendants intended, knew or should have known, that the non-consensual human medical experimentation was being committed by their subordinates and failed to prevent such abuse or punish those responsible.

96. Defendants are further liable for their conscious disregard of the excessive risk of serious harm to Plaintiffs' health and safety.

97. As a direct and proximate result of Defendants' unconstitutional acts and omissions, Plaintiffs have been subjected to severe physical and psychological pain and suffering and have incurred expenses and suffered damages. These injuries have caused and will continue to cause Plaintiffs great physical and mental pain and suffering.

98. Plaintiffs are informed and believe and thereon allege that Defendants' aforementioned acts were intentional, willful, malicious, oppressive and despicable, and/or were done in willful and conscious disregard of the rights, welfare, and safety of Plaintiffs, thereby justifying the awarding of punitive and exemplary damages against Defendants.

99. Plaintiffs have suffered severe physical and psychological pain and suffering, and are entitled to monetary damages.

VII. DEMAND FOR JURY TRIAL

100. Plaintiffs demand a trial by jury on all issues so triable.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to:

(a) enter judgment in favor of Plaintiffs on all counts of the Complaint;

(b) declare that Defendants have violated Plaintiffs' human rights and the laws of the District of Columbia and the United States, as set forth herein;

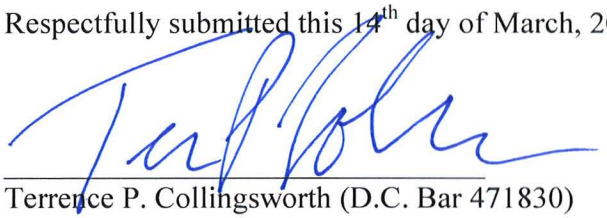
(c) award Plaintiffs compensatory and punitive damages, including, but not limited to, Plaintiffs' medical expenses, lost earning, and damages for pain and suffering, in an amount to be determined at trial;

(d) grant Plaintiffs equitable relief, permanently enjoining Defendants from further engaging in human rights abuses against Plaintiffs and other inhabitants of Guatemala;

(e) award Plaintiffs the costs of suit including reasonable attorneys' fees;

(f) award Plaintiffs such other and further relief as the Court deems just under the circumstances.

Respectfully submitted this 14th day of March, 2011,



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