

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**J.H., by and through his next friend,
Flo Messier; L.C., by and through her
next friend, Flo Messier; R.J.A., by and
through his next friend, J.A.; Jane Doe,
by and through her next friend Julia
Dekovich; S.S., by and through his next
friend, Marion Damick; G.C., by and
through his next friend, Luna Pattela;
R.M., by and through his next friend,
Flo Messier; P.S., by and through his
next friend M.A.S.; T.S., by and
through his next friend Emily McNally;
M.S., by and through his next friend
Emily McNally; and all others similarly
situated;**

Plaintiffs,

v.

**Teresa D. Miller, in her official capacity
as Secretary of the Pennsylvania
Department of Human Services; Edna I.
McCutcheon, in her official capacity as
the Chief Executive Officer of
Norristown State Hospital; Valerie
Vicari, in her official capacity as the
Chief Executive Officer of Torrance
State Hospital;**

Defendants.

Civil Action No. 1:15-cv-02057-SHR

Judge Sylvia H. Rambo

**PLAINTIFFS' SECOND RENEWED AND AMENDED MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65 and the Second Interim Settlement, ECF 59 ¶¶ 4 and 10, Plaintiffs move to renew their initial motion for a preliminary injunction against Defendants in their official capacities (ECF 4) and to amend that motion. Plaintiffs state as follows:

1. Plaintiffs are individuals who have been declared incompetent by the courts to stand trial for criminal charges. They have been committed to Norristown State Hospital (“NSH”) and Torrance State Hospital (“TSH”) in an effort to restore their competence. Instead, however, they have been left to languish in jail, in many cases for over a year. Plaintiffs renew and amend their initial preliminary injunction motion for a maximum wait time of seven days and other relief on behalf of themselves and a class of similarly situated persons.

2. There is no dispute that Plaintiffs and putative class members are not competent to stand trial. A Common Pleas Court judge has so found in each of their cases. There is also no dispute that Plaintiffs are entitled to mental health treatment to try to make them competent. A court also has so held in each of their cases.

3. Despite some improvement since the last settlement agreement in June 2017, the delays challenged in this case remain unconstitutional. Defendants stipulated in the First Interim Settlement that wait times over 60 days are unconstitutional. ECF 35 ¶ 1. As of March 8, 2019, 45 people on the

NSH waitlist had already been waiting more than 60 days. One person has been waiting for admission for 297 days. Thirteen people on the NSH list have waited for more than four months, with another seventeen already waiting more than three months. And although TSH wait times are down to between one and two months, these delays are unconstitutional as well. Federal courts have held that the Due Process Clause of the Fourteenth Amendment requires that persons incompetent to stand trial be transferred to a hospital to receive restoration treatment within *seven days*. *Oregon Advocacy Ctr. v. Mink*, No. CV 02-339-PA, 2002 WL 35578888, at *1 (D. Or. May 15, 2002), *aff'd*, 322 F.3d 1101 (9th Cir. 2003); *Trueblood v. Wash. State Dep't of Soc. and Health Servs.*, 101 F. Supp. 3d 1010, 1023 (W.D. Wash. 2015) (seven days absent individualized good cause finding), *vacated and remanded on other grounds*, 822 F.3d 1037 (9th Cir. 2016).

4. Plaintiffs and the class they seek to represent are entitled to a preliminary injunction because: (1) they are likely to succeed on the merits; (2) they will suffer irreparable harm in the absence of the injunction; (3) there will be no greater harm to DHS if the injunction is granted; and (4) granting the injunction is in the public interest. *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney Gen. New Jersey*, 910 F.3d 106, 115 (3d Cir. 2018).

5. Plaintiffs are likely to prevail on the merits on two independent grounds:

6. **First**, “it is well-established that the extended imprisonment of pretrial detainees when they have been ordered to receive [mental health] services violates the Constitution.” *Geness v. Cox*, 902 F.3d 344 (3d Cir. 2018). The Fourteenth Amendment’s Due Process Clause requires a reasonable relation between detention and the purpose for which the individual is detained, *see Jackson v. Indiana*, 406 U.S. 715, 738 (1972), and the excessive wait times in this case lack such a reasonable relation. *See, e.g., Advocacy Ctr. for Elderly and Disabled v. Louisiana Dep’t of Health and Hosps.*, 731 F. Supp. 2d 603 (E.D. La. 2010) (entering injunction under circumstances similar to those in this case) (hereinafter “*Louisiana Advocacy Ctr.*”); *Mink*, 322 F.3d 1101 (affirming injunction under similar circumstances); *Trueblood*, 101 F. Supp. 3d at 1023 (ordering injunction under similar circumstances); *Terry v. Hill*, 232 F. Supp. 2d 934 (E.D. Ark. 2002) (finding due process violations under similar circumstances).

7. **Second**, Defendants are breaching their separate constitutional duty of due process to protect the safety and welfare of the Class A Members,¹ whom

¹ Plaintiffs pled this action on behalf of two classes, Class A and Class B. Class A is defined as:

Defendants are holding involuntarily and preventing from being able to help themselves. *See DeShaney v. Winnebago Cty. Dep't of Social Servs.*, 489 U.S. 189, 189, 195 (1989); *Youngberg v. Romeo*, 457 U.S. 307, 313, 317 (1982).

8. Plaintiffs will suffer irreparable harm absent a preliminary injunction. While they are jailed awaiting treatment, Plaintiffs are deprived of a constitutionally protected interest in their liberty. This is classic irreparable harm that cannot be remedied after the fact. *See United States v. Washington*, 549 F.3d 905, 917 & n.17 (3d Cir. 2008) (noting that the “potential for excess prison time” is irreparable harm); *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988) (“[U]nnecessary deprivation of liberty clearly constitutes irreparable harm.”). Moreover, the denial of medical and competency-restoration treatment is a harm that cannot be addressed following trial. As the Supreme Court held in *DeShaney*, the state’s affirmative act of incarcerating a defendant, which prevents his obtaining treatment on his own, “is the ‘deprivation of liberty’ triggering the protections of the Due Process Clause.” 489 U.S. at 200.

All persons who are now, or will be in the future, charged with a crime in the State of Pennsylvania, and who: (a) are adjudged by a court to be mentally incompetent to stand trial; (b) are committed to Defendants for competency restoration treatment; and (c) have not been admitted by Defendants for such treatment within seven (7) days of the date of the court’s commitment order.

See Complaint, Docket No. 1, ¶ 181. Class B plaintiffs are those who have already been committed to state hospitals, but are trapped there indefinitely. *Id.*, ¶ 193. Class B plaintiffs are not at issue in this motion.

9. There will be no greater harm to Defendants if the preliminary injunction is granted. Defendants' interest is in making Plaintiffs competent. Defendants cannot advance a legitimate interest in continuing to violate Plaintiffs' constitutional rights, especially when doing so delays Plaintiffs' access to treatment and thus prevents or postpones them from becoming competent. *See New Jersey Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 388-89 (3d Cir. 2012) ("Granting the preliminary injunction would not result in a greater harm to the State because the State 'does not have an interest in the enforcement of an unconstitutional law[.]'" (quoting *Am. Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003))). And avoiding expense is not a cognizable defense to the failure to provide mental health treatment to the incarcerated Plaintiffs. *See Louisiana Advocacy Ctr.*, 731 F. Supp. 2d at 624 ("[L]ack of funding cannot justify the continued detention of defendants who have not been convicted of any crime, who are not awaiting trial, and who are receiving next to no mental-health services."); *Mink*, 322 F.3d at 1121 ("Lack of funds, staff or facilities cannot justify the State's failure to provide . . . treatment necessary for rehabilitation." (internal quotation marks and citation omitted)); *Terry*, 232 F. Supp. 2d at 944 (same); *see also Monmouth Cty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 351 (3d Cir. 1987) (county's financial burden not legitimate state interest to justify violating prisoners' rights: "in the absence of

alternative methods of funding, the County must assume the cost of providing inmates with elective, nontherapeutic abortions”).

10. Finally, the public interest weighs in favor of issuing a preliminary injunction. Absent “legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights.” *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997). The public interest will be served by protecting Plaintiffs’ individual rights and by treating Plaintiffs so that they can be restored to competency and stand trial.

11. Defendants have had ample opportunity to address the unconstitutional wait times. Unfortunately, they have failed to do so.

12. The bases for Plaintiffs’ Motion are more fully set forth in the accompanying brief.

WHEREFORE, for all the reasons set forth in the Brief in Support of Plaintiffs’ Second Renewed and Amended Motion for Preliminary Injunction, Plaintiffs respectfully request that their Second Amended Motion for Preliminary Injunction be granted.

Dated: March 19, 2019

Respectfully submitted,

/s/ Witold J. Walczak

Witold J. Walczak
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CERTIFICATE OF NON-CONCURRENCE

I, Witold J. Walczak, hereby certify on this 19th day of March that counsel for the Defendant was contacted regarding Defendants' possible concurrence with this Motion. In response, counsel for Defendants indicated non-concurrence with this Motion.

/s/ *Witold J. Walczak*
Witold J. Walczak

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2019, a copy of the foregoing motion was served, via electronic mail, on Defendants' counsel, Doris Leisch, at dleisch@pa.gov.

/s/ *Witold J. Walczak*
Witold J. Walczak