

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 06-
	)	
THE STATE OF VERMONT; THE	)	
HONORABLE JAMES H. DOUGLAS,	)	
Governor of the State of Vermont,	)	
in his official capacity only;	)	
CYNTHIA D. LaWARE, Secretary,	)	
Vermont Agency of Human Services,	)	
in her official capacity only;	)	
PAUL E. JARRIS, Commissioner,	)	
Vermont Department of Health, in	)	
his official capacity only;	)	
PAUL R. BLAKE, Deputy	)	
Commissioner, Vermont Division of	)	
Mental Health, in his official	)	
capacity only; TERRY ROWE,	)	
Executive Director, Vermont State	)	
Hospital, in her official capacity	)	
only,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**COMPLAINT**

PLAINTIFF, THE UNITED STATES OF AMERICA ("Plaintiff"), by its undersigned attorneys, hereby alleges upon information and belief:

1. The Attorney General files this Complaint on behalf of the United States of America pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to enjoin the

named Defendants from egregiously and flagrantly depriving individuals housed in the Vermont State Hospital of rights, privileges, or immunities secured and protected by the Constitution and laws of the United States.

### **Jurisdiction and Venue**

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the District of Vermont is proper pursuant to 28 U.S.C. § 1391.

### **Defendants**

6. Defendant State of Vermont owns and operates Vermont State Hospital ("VSH"), and as such has responsibility for the services and supports provided to patients at VSH.

7. VSH is a State mental health hospital.

8. Defendant James H. Douglas is the Governor of the State of Vermont and, in that capacity, he has responsibility for the operation of VSH.

9. Defendant Cynthia D. LaWare is the Secretary of the Vermont Agency of Human Services, which has responsibility for overseeing the operation of VSH.

10. Defendant Paul E. Jarris is the Commissioner of the Vermont Department of Health, which has responsibility for overseeing the operation of VSH.

11. Defendant Paul R. Blake is the Deputy Commissioner of the Vermont Division of Mental Health, which has responsibility for overseeing the operation of VSH.

12. Defendant Terry Rowe is the Executive Director of VSH.

13. The individual Defendants named in paragraphs 8 through 12 are officers of the State of Vermont and are sued in their official capacity only.

#### **Factual Allegations**

14. Defendants are legally responsible, in whole or in part, for the operation of VSH and for the health and safety of the persons residing in VSH.

15. VSH is an institution within the meaning of 42 U.S.C. § 1997(1). VSH provides care to psychiatric patients committed civilly or in connection with criminal proceedings.

16. Defendants are obligated to operate VSH in a manner that does not infringe upon the federal rights, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law, of individuals confined to VSH.

17. Defendants are obligated to provide treatment, supports, and services to individuals confined to VSH consistent with the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12101 et seq., 28 C.F.R. Part 35.

18. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

19. Individuals are confined to, or reside at, VSH because they have been determined by Defendants to have significant mental illness requiring extensive intervention and treatment.

20. VSH's supports and services substantially depart from generally accepted professional standards of care, thereby exposing the individuals confined or residing there to significant risk, and in some cases, to actual harm.

21. VSH's supports and services substantially depart from generally accepted professional standards of care in the following specific respects, among others:

- a. the provision of adequate treatment planning;
- b. the provision of adequate assessments and diagnoses;
- c. the provision of adequate psychiatric services;
- d. the provision of adequate psychological services;
- e. the provision of adequate rehabilitation therapy services;
- f. the provision of adequate pharmacy services;

- g. the provision of adequate protections from undue or unreasonable seclusion and restraint; and
- h. the provision of adequate protections from harm.

22. VSH's supports and services substantially depart from generally accepted professional standards of care in the provision of a sufficient number of adequately trained staff to render adequate supports and services as outlined in paragraphs 20 through 21.

23. Defendants have failed and continue to fail to assess individuals residing in VSH to ascertain whether these individuals are, within the confines of any court-ordered confinement, receiving adequate treatment, supports, and services in the most integrated setting appropriate to their individual needs; that those individuals whom professionals determine should be placed in community programs are placed in such programs, when appropriate; and that these individuals are served in the most integrated setting appropriate to their needs.

### **Violations Alleged**

#### **COUNT ONE:**

#### **Violations of the Due Process Protections of the Fourteenth Amendment to the United States Constitution**

24. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 23 as if fully set forth herein.

25. The egregious and flagrant acts and omissions alleged in paragraphs 20 through 22 constitute a pattern or practice that violates the federal rights, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law, of individuals confined to VSH.

26. Unless restrained by this Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraphs 20 through 22 that deprive VSH's residents of rights, privileges, or immunities secured or protected by the Constitution of the United States and federal law, and will cause irreparable harm to these residents.

**COUNT TWO:**

**Violations of the Americans with Disabilities Act**

27. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 23 as if fully set forth herein.

28. The egregious and flagrant acts and omissions alleged in paragraph 23 violate the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12101 et seq., 28 C.F.R. Part 35.

29. Unless restrained by this Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraph 23 that deprive VSH residents of

rights, privileges, or immunities secured or protected by federal law, and will cause irreparable harm to these residents.

**PRAYER FOR RELIEF**

30. The Attorney General is authorized under 42 U.S.C. § 1997 to seek equitable and declaratory relief.

WHEREFORE, the United States prays that this Court enter an order:

a. Declaring that the acts, omissions, and practices of Defendants set forth in paragraphs 20-23 above constitute a pattern or practice of resistance to VSH's residents' full enjoyment of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, and that those acts, omissions, and practices violate the Constitution and laws of the United States; and

b. Permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in paragraphs 20-23 above, and that this Court require Defendants to take such actions as will ensure that lawful conditions of institutionalization are afforded to residents of VSH; and

c. Granting such other and further equitable relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Alberto R. Gonzales  
THE HONORABLE ALBERTO R. GONZALES  
Attorney General of the United States

Dated this 21 day of July, 2006.



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