IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff, v. THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA, THE SUPREME COURT OF PENNSYLVANIA, THE BLAIR COUNTY COURT OF COMMON PLEAS, THE LACKAWANNA COUNTY COURT OF COMMON PLEAS, THE JEFFERSON COUNTY COURT OF COMMON PLEAS, and THE NORTHUMBERLAND COUNTY COURT OF COMMON PLEAS, Defendants.	No. 22-cv-00709

UNITED STATES OF AMERICA'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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The United States seeks to enforce the fundamental right of equal access to courts in Pennsylvania for people with disabilities. Congress enacted Title II of the Americans with Disabilities Act (ADA) after learning that "many individuals, in many States across the country, were being excluded from courthouses and court proceedings by reason of their disabilities," and hearing "numerous examples of the exclusion of persons with disabilities from state judicial services and programs." *Tennessee v. Lane*, 541 U.S. 509, 527 (2004). Congress sought to hold states and their component agencies accountable for discrimination within their programs and services, especially where the discrimination involves deprivation of a fundamental right like "access to the courts." *Id.* at 529.

As the Supreme Court confirmed in *Lane*, lawsuits like this, which aim to root out discriminatory practices by state courts, do not violate the separation of powers between federal and state courts. On the contrary, this suit furthers Title II's central goal of preventing states from discriminating against people with disabilities in the administration of their programs and services. As such, it is a correct and appropriate exercise of the United States's well-established enforcement authority under Title II.

Ignoring this fundamental principle and the precedent applying it, Defendants contend that only state courts can decide whether they are subject to Title II or have violated it. Defendants contend further that even if they might be subject to this Court's scrutiny, the Court should simply stand aside and abstain from deciding the matter. If all else fails, Defendants argue, the Court should dismiss the case for lack of venue and simply make it disappear. None of Defendants' asserted grounds for dismissal has merit, and their Motion to Dismiss should be denied.

I. FACTUAL BACKGROUND

In its Amended Complaint, the United States identifies eleven courts within the Unified Judicial System (UJS) that have or recently had administrative policies restricting the use of medication to treat opioid use disorder (OUD). These courts include the Luzerne County Court of Common Pleas, which adopted new treatment court policies categorically prohibiting participants from taking buprenorphine or methadone on February 18, 2022, two weeks after the United States formally notified the UJS of the discriminatory policies at issue. Am. Compl. (AC) ¶ 132, ECF No. 28. They also include the Berks County Drug Treatment Court, which, more than a month *after* the United States filed this lawsuit, issued a revised policy that categorically prohibited the use of methadone and buprenorphine. *Id.* ¶¶ 123–24.

UJS Courts in Allegheny, Clinton, Delaware, and Lackawanna Counties continue to have policies that categorically limit access to OUD medication. *Id.* ¶¶ 55, 120–21, 128, 130. Blair County did not revise its expressly discriminatory policy until four months after the filing of this lawsuit. *Id.* ¶ 32. Even then, it did so begrudgingly while its Drug Court personnel continued as a matter of policy and practice to pressure participants to wean off OUD medication. *Id.* ¶¶ 33–34. To the extent UJS Courts in Jefferson, Northumberland, Butler, or York Counties have rescinded their expressly discriminatory policies, they have failed to act to ensure such changes are permanent or that court personnel do not continue as a matter of unwritten policy or practice to discriminate against individuals who take OUD medication. *Id.* ¶¶ 69, 117, 136, 145, 148.

The enforcement of these policies, and the failure by the UJS to correct them, has had dire consequences. Individuals who use opioids are much more likely to be arrested and to end up under court supervision. *Id.* ¶ 25. In the 11 UJS Courts identified, there are tens of thousands of individuals under court supervision, many for drug law violations. *Id.* ¶¶ 149–51. There is

thus a high likelihood that UJS Courts have harmed other individuals with OUD through the implementation of their discriminatory administrative policies. *Id.* ¶¶ 149–56.

In the Amended Complaint, the United States identifies six aggrieved individuals. Complainants A and B were subject to an administrative order by the Jefferson County Court requiring all individuals under the court's supervision to cease use of medication for OUD within 30 days of being sentenced. *Id.* ¶ 66. Complainant C was pressured to wean off her prescribed medication by the Northumberland County Drug Court pursuant to its general policy prohibiting the use of methadone and buprenorphine. *Id.* ¶¶ 103–04.

Complainant D was ordered to stop taking his prescribed buprenorphine pursuant to the Blair County Court's categorical ban on individuals under court supervision taking methadone or buprenorphine. *Id.* ¶¶ 31, 38. This discriminatory policy was enforced against Complainant D in November 2021, six months *after* the UJS had admitted to the United States that it was aware of Blair's policy. *Id.* ¶ 31, 39. As a result of the UJS's inaction, Complainant D spent Thanksgiving in forced inpatient treatment, away from his family, vomiting, twitching, and feeling like he wanted to die. *Id.* ¶ 40. The UJS could have prevented the harm done to Complainant D. *Id.* ¶¶ 11–12, 138–39. Instead, it did nothing. *Id.* ¶ 143.

Complainant E was similarly ordered off his prescribed buprenorphine by the Blair County Court, enduring a painful withdrawal and then suffering multiple relapses. *Id.* ¶¶ 46, 48–51. Complainant F was charged with a probation violation for taking his prescribed buprenorphine in violation of the Lackawanna County Court's policy prohibiting use of OUD medication by individuals under court supervision. *Id.* ¶¶ 54, 61–63. He was then jailed and sent to in-patient treatment. *Id.* ¶¶ 63–65.

The identified complainants have all suffered significant harm as a result of Defendants' discrimination. *Id.* ¶¶ 40–41, 51, 65, 76, 82–83, 113–16.

II. LEGAL FRAMEWORK

Title II of the ADA prohibits public entities, including States and state agencies, from discriminating based on disability in the provision of their "services, programs, or activities." 42 U.S.C. §§ 12131(1)(A)–(B), 12132. The phrase "service, program, or activity" includes anything a public entity does. *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 289 (3d Cir. 2019); *see also Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209–12 (1998) (discussing the breadth of Title II's coverage).

Public entities violate Title II when they fail to provide qualified individuals with disabilities an equal opportunity to participate in or benefit from their services, programs, or activities. 28 C.F.R. § 35.130(b)(i)–(iii). Discrimination under Title II includes imposing eligibility criteria that screen out or tend to screen out individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. *Id.* § 35.130(b)(8). Discrimination also includes using methods of administration that (i) have the effect of discriminating against qualified individuals on the basis of disability; or (ii) have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities. *Id.* § 35.130(b)(3). "The phrase 'criteria or methods of administration' refers to official written policies of the public entity and to the actual practices of the public entity." 28 C.F.R. pt. 35, app. B.

The United States sufficiently states a claim under Title II when it alleges that the aggrieved persons whose rights it seeks to vindicate: (1) are qualified individuals with

disabilities; (2) were denied the benefits of or otherwise discriminated against in a public entity's service, program, or activity; and (3) were subjected to such discrimination because of their disability. *See Furgess*, 933 F.3d at 288–89.

To survive a motion to dismiss under Federal Rule of Civil Procedure ("Rule") 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a plausible claim to relief on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In determining whether a plaintiff has stated a plausible claim, the court must view the complaint in the light most favorable to the plaintiff and generally considers only the allegations contained in the complaint, exhibits attached to the complaint, and matters of public record. *Doe v. Univ. of the Scis.*, 961 F.3d 203, 208 (3d Cir. 2020).

III. ARGUMENT

Under the ADA, Defendant UJS—composed of all the Commonwealth's courts and led by Defendant Supreme Court of Pennsylvania—is obligated to ensure that people with disabilities can equally participate in and benefit from its court programs. The UJS has not satisfied this obligation. Many of its courts, four of which are named Defendants (the Defendant County Courts) and all of which are supervised by the Supreme Court of Pennsylvania, have administrative policies limiting people with OUD from taking lawful medication. Defendants' enforcement of these discriminatory policies has harmed the complainants and many others under court supervision in the Commonwealth.

The United States asserts plausible claims against each of the Defendants. None of these claims is barred by sovereign immunity, subject to abstention, or offensive to principles of

federalism. Rather, the United States' lawsuit is an appropriate exercise of its enforcement authority under Title II, which it initiated only after Defendants failed to comply voluntarily with the ADA. Defendants' additional arguments regarding timeliness and venue have no merit. This Court should deny Defendants' Motion.

A. The United States Plausibly Alleges That Defendants Violated Title II by Limiting Lawful Access to OUD Medication

In its April 21, 2023, Memorandum Opinion, the Court found the United States plausibly alleged a possible ADA violation only by the UJS Court in Jefferson County. Mem. Op., ECF No. 26 (Mem. Op.) ¶¶ 15–16. In its Amended Complaint, the United States remedies the shortcomings this Court pointed to in reaching that conclusion. It makes clear that the Northumberland County Drug Court pressured Complainant C to stop taking her prescribed medication pursuant to a categorical administrative policy, not an individual exercise of judicial discretion. AC ¶¶ 91–97, 104–05. The United States identifies three more victims in two additional UJS Courts, *id.* ¶¶ 30–65, and two further UJS Courts that have adopted policies limiting the use of OUD medication, *id.* ¶¶ 123–24, 132–33. It alleges that at least one of these victims was harmed by a policy the UJS knew to be in place and did not correct, *id.* ¶¶ 31, 40, 140, 143, and that the policies at issue have harmed many more people than just the specific victims identified, *id.* ¶¶ 149–56. Finally, it acknowledges that this Court can tailor appropriate injunctive relief to the scope of the violation established. *Id.* at Prayer for Relief.

With these allegations, the United States plausibly alleges that the UJS and each of the other Defendants—the Supreme Court of Pennsylvania and the Blair, Lackawanna, Northumberland, and Jefferson County Courts of Common Pleas—has violated Title II.

1. This Court Can and Should Hold the UJS Liable for Violating Title II

Despite its persistent assertion that it is not the unified entity the Pennsylvania Constitution expressly says it is, PA. CONST. art. V, § 1,[1] the UJS is responsible for the harm caused by the discriminatory administrative policies of its courts. "Generally, the proper defendant for a Title II ADA claim is the public entity or an individual who controls or directs the functioning of the public entity . . . ." *See Miller v. Little*, No. 22-cv-4264, 2023 WL 3674336, at *8–9 (E.D. Pa. May 25, 2023) (permitting inmate to proceed with Title II claim against the Pennsylvania Department of Corrections asserting denial of reasonable accommodations by personnel at only 1 of 23 state correctional institutions). Here, that entity is the UJS, the political subdivision of the Commonwealth that provides the court programs at issue. PA. CONST. art. V, §§ 1, 2, 10.

The history of the *Geness* litigation supports that the UJS is a proper defendant to this suit. While the Third Circuit affirmed the dismissal of Geness' claim against the Administrative Office of Pennsylvania Courts (AOPC) in *Geness v. AOPC*, 974 F.3d 263 (3d Cir. 2020), it reached that decision only after concluding in 2018 that Geness had sufficiently stated a Title II claim against the Commonwealth of Pennsylvania based in part on the conduct of Fayette County judges. *See Geness v. Cox*, 902 F.3d 344, 360–65 (3d Cir. 2018). Following the 2020 remand, the District Court found the Commonwealth had indeed violated Title II when a Fayette County judge committed Geness to a long-term structured release program for an indefinite period. *Geness v. Pennsylvania*, 503 F. Supp. 3d 318, 339–44 (W.D. Pa. 2020).

Given that the Commonwealth as a whole can be held liable for violating Title II based on the actions of one county court, it would make little sense if the UJS cannot similarly be held

[1] *See also* U.S. Opp'n to Mot. to Dismiss, ECF No. 21 (2022 Opp'n), at 9–14.

liable. The Pennsylvania Constitution vests the UJS with all the judicial power of the Commonwealth. PA. CONST. art. V, § 1; *see also In re Bruno*, 101 A.3d 635, 662–63 (Pa. 2014) ("The Unified Judicial System exercises the judicial power of the Commonwealth.") By definition, it includes the county courts that implement discriminatory administrative policies as well as the Supreme Court of Pennsylvania, which, in its own words, has the power and the obligation to supervise those county courts. PA. CONST. art. V, § 1, 2, 5, 10; *Bruno*, 101 A.3d at 671 (the Supreme Court is empowered to "exercise authority commensurate with its 'ultimate responsibility' for the proper administration and supervision of the judicial system") (citation omitted)). As the instrumentality of the Commonwealth responsible for providing court services, the UJS is plainly a covered public entity under Title II. And it has failed to identify any text within the ADA or case law suggesting that it should not be held liable for discrimination in the administration of its services.

a. This Court Can Correct the Administrative Policies at Issue Without Interfering with Judicial Decision-Making in Individual Cases

Holding the UJS liable for its courts' discriminatory administrative policies does not require the sort of "judicial back-seat driv[ing]" the Third Circuit was concerned about in *Geness v. AOPC*, 974 F.3d at 277. The Amended Complaint clearly challenges the implementation by UJS Courts of generally applicable administrative policies that categorically limit the use of OUD medication by individuals under court supervision. *See* AC ¶¶ 160–64. These general policies, whether written or unwritten, are not individualized acts of judicial decision-making. *See* AC ¶¶ 3–5, 31, 34, 38, 46, 54–55, 61, 63, 66, 91–97, 103–13, 117, 118–19, 121, 123–24, 126, 128, 130, 132–33, 135–36, 140–46, 152. Claiming otherwise does not make it so. And correcting these general policies does not require that the UJS "closely monitor . . . every criminal case pending in the Commonwealth." *Geness,* 974 F.3d at 278.

Many of the policies at issue are publicly posted on county court websites. *See, e.g.*, AC ¶¶ 124, 126, 128, 130, 135. Where relevant policies are not publicly posted, the UJS could easily obtain them from its County Courts of Common Pleas under the Supreme Court's general administrative authority. PA. CONST. art. V, § 10. And of course, it is within the UJS's power, acting through the Pennsylvania Supreme Court, to proscribe and modify the county courts' administrative policies and to enact a general administrative rule applicable to all UJS Courts that prohibits illegal discrimination against individuals with OUD. *Id.*; *see also* 42 Pa.C.S. §§ 1701, 1722, 323, 916(a); Pa.R.J.A. 103(c)(1)–(2). The UJS has previously done exactly that to ensure equal access to UJS services and programs for individuals with limited English proficiency. *See* Pa.R.J.A. 260–63.

Such straightforward corrective measures are not "extraordinary" or "intrusive" as Defendants suggest. Defs.' Mot. to Dismiss, ECF No. 48 (Defs.' Mot.), at 15 n.11. Nor do they require the UJS to monitor or meddle in discretionary decisions made by county court judges in individual cases. *Geness*, 974 F.3d at 278. On the contrary, these corrective measures would further the Supreme Court of Pennsylvania's obligations to ensure equal access to the Commonwealth's courts, and to "keep all inferior tribunals within the bounds of their authority." *See Bruno,* 101 A.3d at 663–64, 670.

b. The United States' Claims against the UJS for Systemwide Relief are Appropriately Sought, and Sufficiently Pled

A Title II claim against a state or state judicial system can be based on discrimination by one county court. *See Geness*, 503 F. Supp. 3d at 342; *cf. Giordano v. Unified Judicial Sys. of Pa.*, No. 20-277, 2021 WL 1193112 (E.D. Pa. Mar. 30, 2021) (permitting civil rights claim to proceed against the UJS based on alleged discriminatory conduct by a single court). The

Supreme Court's decision in *Tennessee v. Lane*, 541 U.S. 509 (2004), confirms that the United States' allegations are sufficient to state a claim against the UJS.

In *Lane*, two individuals who used wheelchairs filed a putative class action under Title II against the State of Tennessee and 24 of its 95 counties alleging they were denied equal access to the state's judicial services and processes because of their disabilities. *Id.* at 513–14. George Lane alleged he had to crawl up two flights of stairs to answer criminal charges in a courthouse with no elevator. *Id.* When he refused to do the same for a subsequent hearing, he was arrested and jailed for failure to appear. *Id.* at 514. Beverly Jones, a certified court reporter, alleged she could not physically access several county courthouses and, as a result, had lost work and an opportunity to participate in the judicial process. *Id.*

Mr. Lane and Ms. Jones specifically alleged encountering barriers at only five county courthouses, two of which they acknowledged had taken steps to at least partially correct the barriers identified. Complaint at App. 15–20, *Lane v. Tennessee*, No. 3:98-0731 (M.D. Tenn. Aug. 10, 1998).[2] They broadly alleged that 19 other county courthouses did not comply with the access requirements of the ADA and that there "may well be other counties that do not fully comply." *Id.* at App. 22. Lastly, they alleged that the barriers they identified impeded access to the courts for thousands of others, noting the state had issued over 200,000 accessible parking placards to people with physical disabilities. *Id.* The plaintiffs sought damages and equitable relief, asking the federal court to "compel the State of Tennessee to do a survey of all counties" to determine whether they complied with the ADA and, if they did not, to join them as party defendants and compel them to comply. *Id.* at App. 28.

[2] A copy of the *Lane* complaint as it appeared in the appellate record is available here: https://clearinghouse.net/doc/10588/.

Tennessee moved to dismiss the suit as barred by the Eleventh Amendment. The District Court denied the motion. The Sixth Circuit agreed. And the Supreme Court affirmed, holding that Title II validly abrogates state sovereign immunity as it applies to cases "implicating the accessibility of judicial services." *Lane*, 541 U.S. at 530–34. In so holding, the Supreme Court found Congress had enacted Title II after learning that "many individuals, in many States across the country, were being excluded from courthouses and court proceedings by reason of their disabilities," and hearing "numerous examples of the exclusion of persons with disabilities from state judicial services and programs." *Id.* at 527.

As noted above, the plaintiffs' claim against the State of Tennessee in *Lane* was based on allegations by two aggrieved individuals identifying specific barriers at five courthouses and broadly alleging barriers at others. Here, the United States' allegations—which identify six complainants and specific barriers at eleven county courts[3]—surpass those in *Lane* and are sufficient to state a claim against the UJS as a whole.

The Supreme Court emphasized in *Lane* that Congress enacted Title II because existing laws had proven inadequate to address the pervasive "unequal treatment of persons with disabilities by States and their political subdivisions." *Id.* at 526. In so holding, the Supreme Court underscored that Title II's core purpose was to hold states and their various agencies

[3] The Court found that the United States' initial allegations about counties in which it had not identified victims were not specific enough to state a claim. Mem. Op., at 15. The Amended Complaint alleges that it is highly likely many individuals with OUD under court supervision in the counties at issue have been impacted by their discriminatory policies. AC ¶¶ 122, 125, 127, 129, 131, 134, 137, 149–56. There is also no basis to conclude at this stage that the facially discriminatory policies identified—many of which remain publicly posted on county court websites more than a year after the initiation of this lawsuit—are not actually being applied to the supervision programs that they govern. Under the circumstances, the United States' allegations are sufficient "to raise a reasonable expectation that discovery will uncover further proof of [its] claims." *See Connelly v. Lane Const. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016).

accountable for discrimination within their programs and services. *Id.* This is especially true where the discrimination involves deprivation of a fundamental right like "access to the courts." *Id.* at 529 ("Title II is aimed at the enforcement of a variety of basic rights, including the right of access to the courts . . . that call for a standard of judicial review at least as searching, and in some cases more searching, than the standard that applies to sex-based classifications.")

It would have been ineffective, inefficient, and inconsistent with Congressional intent to require the *Lane* plaintiffs to file scores of separate lawsuits against each county in Tennessee to redress physical accessibility issues that they had plausibly alleged existed in multiple state courthouses. The same is true here. The UJS is the political subdivision of the Commonwealth tasked with providing court services to the public. The United States has plausibly alleged that individuals prescribed medication for OUD are being unlawfully denied equal access to those court services in multiple counties in Pennsylvania. The UJS is therefore a proper defendant to this suit.

2. The Supreme Court of Pennsylvania has Violated Title II

As the leader of the UJS, the Supreme Court of Pennsylvania is directly liable for violating Title II by failing to ensure individuals with OUD can equally access and benefit from UJS court supervision programs. AC ¶¶ 12, 138–47. Title II's broad prohibition of disability-based discrimination by public entities covers everything that public entities do. *See Furgess*, 933 F.3d at 289; *see also Yeskey*, 524 U.S. at 209–12. Moreover, the Third Circuit has held that public entities may violate Title II not just through affirmative conduct but also by failing to act to ensure equal access to their programs for individuals with disabilities. *See Furgess*, 933 F.3d at 291–92 (holding prisoner adequately alleged Title II violation where Pennsylvania Department of Corrections failed to provide him with an accessible shower); *cf. Delano-Pyle v. Victoria*

Cnty., Tex., 302 F.3d 567, 575 (5th Cir. 2002) (Title II plaintiff need not identify policy of discrimination where public entity failed to take necessary steps to ensure equal access).

The Supreme Court of Pennsylvania is a public entity that provides various services, programs, and activities covered by Title II, to which it must ensure equal access for all of Pennsylvania's citizens. Those services, programs, and activities include the Commonwealth's courts and court programs—which the Pennsylvania Constitution charges the Supreme Court with providing and for which it grants the Supreme Court necessary administrative and supervisory authority. *See Bruno*, 101 A.3d at 663–64 (citing PA. CONST. art. V, § 10). In its own words, the Supreme Court's "principal obligations are to conscientiously guard the fairness and probity of the judicial process . . . for the protection of the citizens of this Commonwealth." *Id.* at 675. As noted above, the high court has a "duty to keep all inferior tribunals within the bounds of their own authority" and bears "'ultimate responsibility' for the proper administration and supervision" of the UJS. *Id.* at 670–71 (quoting *In re Assignment of Avellino*, 690 A.2d 1138, 1144 n.7 (Pa. 1997)).

To further these important duties and responsibilities, the Supreme Court of Pennsylvania is entrusted with supervisory power over all UJS personnel and lower courts that is "beyond question." *Id.* at 678. This includes the power to prescribe and modify general rules governing "the administration of all courts," PA. CONST. art. V, § 10(a); 42 Pa.C.S. § 1722, as well as the power to override local rules in the "administration of problem-solving courts and their related treatment services," *see* 42 Pa.C.S. § 916(a). Indeed, the UJS and the Supreme Court of Pennsylvania have repeatedly admitted throughout this litigation that the Supreme Court can and has prescribed rules applicable to the entire UJS aimed at preventing disability-based

discrimination. *See, e.g.*, UJS Ltr., ECF No. 30, at 2 n.4; UJS's Mot. to Dis., ECF No. 18, at 18–19; Defs.' Ltr., ECF No. 38, at 1 n.1.

The Supreme Court of Pennsylvania has not fulfilled its obligations under the ADA—or the Pennsylvania Constitution—to ensure that the Commonwealth's courts are fairly administering justice to individuals with OUD. AC ¶¶ 5, 12, 138–48. It has thereby violated Title II and is a proper defendant in this suit. *See Miller*, 2023 WL 3674336, at *8.[4]

3. The Defendant County Courts have Violated Title II

Defendants continue to assert that claims pertaining to the Jefferson County administrative order are untimely—an argument this Court has already rejected, *see* Mem. Op., at 14 n.8—but do not make any specific challenges to the United States' claims against the other three Defendant County Courts. They do not, for example, dispute that as alleged the six identified complainants are qualified individuals with disabilities who were discriminated against on the basis of disability while under state court supervision. Nor do they dispute that as alleged the Defendant County Courts can provide relief for the harm allegedly caused to the complainants and to other aggrieved individuals through the implementation of their discriminatory administrative policies.

As explained below, Defendants' general arguments challenging the claims against the Defendant County Courts (regarding the United States' enforcement authority under Title II,

[4] Because the Supreme Court of Pennsylvania is directly liable for violating Title II, the Court need not address vicarious liability. Even so, the Supreme Court could also be held vicariously liable for the administrative policies of the county courts it supervises. Finding otherwise, as Defendants suggest based on *Jones v. City of Detroit*, 20 F.4th 1117, 1121 (6th Cir. 2021), would conflict with the District Court's decision in *Geness v. Pennsylvania* and multiple decisions by other circuit and district courts—including this one—finding that vicarious liability is available under Title II. *See, e.g.*, *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1141 (9th Cir. 2001); *Delano-Pyle,* 302 F.3d at 574–75; *Waters v. Amtrak*, 456 F. Supp. 3d 666, 671 (E.D. Pa. 2020); *Guynup v. Lancaster Cnty.*, Civ. No. 06-4315, 2008 WL 4771852, at *1 (E.D. Pa. Oct. 29, 2008).

venue, and abstention), should be denied. Accordingly, the United States plausibly alleges that the Defendant County Courts have violated Title II.

B. Sovereign Immunity Does Not Bar the United States' Suit

Defendants' suggestion that the UJS and Supreme Court of Pennsylvania enjoy sovereign immunity from the United States' Title II claim is meritless.

Most importantly, while the United States filed this action to vindicate the rights of affected individuals with disabilities, it brings suit in its own name and does not represent any individual complainant. *Cf. Smith v. City of Phila.*, 345 F. Supp. 2d 482, 489–90 (E.D. Pa. 2004) (concluding the United States' Title II suit could proceed even after individual claims were dismissed). It is thus irrelevant whether the ADA validly abrogated the state entities' Eleventh Amendment immunity because "States retain no sovereign immunity as against the Federal Government." *West Virginia v. United States*, 479 U.S. 305, 311 n.4 (1987). This is so because "[i]n ratifying the Constitution, the States consented to suits brought by . . . the Federal Government." *Alden v. Maine*, 527 U.S. 706, 755 (1999); *see also United States v. Mississippi*, 380 U.S. 128, 140 (1965) ("[No] provision of the Constitution prevents or has ever been seriously supposed to prevent a State's being sued by the United States.").

In any case, even if sovereign immunity were at issue, the ADA has expressly abrogated it. 42 U.S.C. § 12202 ("A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter."). As discussed above, the Supreme Court directly held in *Lane* that this abrogation is valid as it relates to claims that implicate "the fundamental right of access to the courts." 541 U.S. at 533. As the Third Circuit has explained, *Lane* concluded that "Title II was a congruent and proportional response to remedy discrimination against disabled individuals in the administration of judicial services." *Bowers v. Nat'l*

Collegiate Athletic Ass'n, 475 F.3d 524, 552 (3d Cir. 2007), *amended on reh'g* (Mar. 8, 2007); *see also Geness*, 974 F.3d at 270.[5]

C. No Principles of Federalism Bar this Suit or Warrant Abstention

"[C]alling upon all government actors to respect the dignity of individuals with disabilities is entirely compatible with our Constitution's commitment to federalism, properly conceived." *See Lane*, 541 U.S. at 537 (Ginsburg, J., concurring). Congress enacted Title II to address pervasive discrimination against individuals with disabilities in the administration of state services and to enforce fundamental rights "like the right of access to the courts." *Id.* at 522–25 (majority opinion). To accomplish Title II's antidiscrimination goals, Congress incorporated a well-established enforcement scheme that includes the potential for lawsuits to be brought against state entities by the federal government. *See* Section III.D below.[6] And, when the United States proves that Defendants have violated Title II, this Court "unquestionably" has the power to order Defendants to remedy their violations of federal law. *Washington v. Washington State Com. Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 695–96, *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979) (holding that a "federal court unquestionably has the power to enter . . . orders . . . to remedy the violations of federal law [it

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[5] Defendants' repeated citation to *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985), without once discussing *Lane* is puzzling. While *Atascadero* stands for the proposition that Congress may only abrogate state sovereign immunity by making its intention to do so "unmistakably clear," *id.* at 242, the Supreme Court held in *Lane* that Congress did exactly that when it enacted Title II, 541 U.S. at 517–18.

[6] As with *Atascadero*, Defendants' reliance on *Jones v. Hendrix*, 599 U.S. 465 (2023), *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989), and *Bond v. U.S.*, 572 U.S. 844 (2014), is misplaced. None of these cases casts doubt on the Supreme Court's holding in *Lane* that Congress unequivocally intended Title II to subject states and their various agencies to liability for discriminating against individuals with disabilities in the administration of their judicial services. *Lane*, 541 U.S. at 517–18. As it relates to *Bond*, the Supreme Court said nothing in *Lane* to indicate that Congress intended Title II to cover judicial services provided only in *civil* courts. Indeed, Mr. Lane himself was a criminal defendant. *Id.* at 513.

has] found" and that "all parties," including state officials, "have an unequivocal obligation to obey" those orders). *See also New York v. United States*, 505 U.S. 144, 179 (1992) ("[T]he Constitution plainly confers . . . on federal courts" the power to "order state officials to comply with federal law.").

Defendants' muddled smorgasbord of arguments to the contrary—that states retain certain sovereign powers, that they cannot be commandeered by Congress to enact federal regulatory programs, that state courts must be left "unfettered" by federal courts to interpret their own constitutions, and that the Court should abstain from reviewing the United States' equitable claims under *O'Shea v. Littleton*, 414 U.S. 488 (1974)—are all inapt and must be rejected.

First, the United States does not dispute that states retain certain sovereign rights and powers. But those do not include the right to violate federal law with impunity. *See Puerto Rico v. Branstad*, 483 U.S. 219, 228 (1987) (rejecting the premise that states and the federal government should always be viewed as coequal sovereigns and explaining that "[i]t has long been a settled principle that federal courts may enjoin unconstitutional action by state officials").

Second, the anticommandeering principle is not at issue because providing the relief sought does not require that Congress, or any other federal entity, "commandeer the legislative processes of the [Commonwealth] by directly compelling [it] to enact and enforce a federal regulatory program." *New York,* 505 U.S. at 161 (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288 (1981)).

Third, while it is true that the Supreme Court of Pennsylvania retains authority to interpret the Commonwealth's Constitution, it is not a matter of interpretation whether it has "general supervisory and administrative authority" over the entire UJS. PA. CONST. art. V, § 10. The plain language of the Pennsylvania Constitution says that it does. Indeed, as previously

noted, the Pennsylvania Supreme Court has itself held that its "supervisory power over the Unified Judicial System is beyond question." *Bruno*, 101 A.3d at 678. It cannot possibly be the case, as Defendants appear to argue, that it can use this authority to knowingly permit its component courts to violate Title II and then be immune from liability. Defs.' Mot. at 5. Permitting such a violation would fundamentally undermine one of Congress's core goals in enacting Title II of ensuring that people with disabilities have "access to the courts." *See Lane*, 541 U.S. at 529.

Finally, the appropriate scope of relief is an issue to be resolved after trial. Defendants' citation to *Lewis v. Casey*, 518 U.S. 343 (1996) is thus premature; permitting this case to proceed does not bind the Court to crafting a remedy that goes beyond the scope of the violations the United States will prove at trial, and this Court surely would not do so. Moreover, correcting the discriminatory administrative policies at issue does not require "a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings." *O'Shea*, 414 U.S. at 502. In *O'Shea*, the plaintiffs alleged that a county magistrate and judge had engaged in an unconstitutional pattern and practice of illegal bond-setting, sentencing, and jury-fee imposition to discourage the plaintiffs from protesting racial discrimination. *Id.* at 490–92. The plaintiffs sought an injunction that would require the federal court to continuously supervise and potentially interrupt any state court criminal proceedings involving members of the plaintiffs' broadly defined class. 414 U.S. at 500-01.[7] Nothing of the sort is required here. The

[7] Similarly, in *Pipkins v. Stewart*, No. 5:15-cv-2722, 2019 WL 1442218, *10 (W.D. La. Apr. 1, 2019) (Defs.' Mot. at 22), the plaintiffs sought ongoing federal court monitoring and potential intervention in every state court criminal proceeding in Caddo Parish, Louisiana to ensure that the District Attorney did not exercise peremptory strikes against black prospective jurors because of their race.

generally applicable administrative policies at issue can be corrected without closely monitoring or interfering with judicial decision making in individual criminal cases.

D. The United States Has Authority to Sue the Defendants for Violating Title II

The text, purpose, and legislative history of the ADA all demonstrate that the United States may bring a civil action to enforce Title II. *See* 2022 Opp'n 19–25. Indeed, aside from one reversed district court decision outside this Circuit, all courts to consider this question—including a court in this district and the Eleventh Circuit—have recognized the United States' authority to sue to enforce Title II. *See United States v. Florida*, 938 F.3d 1221, 1250 (11th Cir. 2019) (holding that the Attorney General can sue to enforce Title II), *reh'g en banc denied*, 21 F.4th 730 (11th Cir. 2021), *cert. denied*, 143 S. Ct. 89 (Oct 3, 2022); *Smith*, 345 F. Supp. at 489–90 (concluding the United States' Title II suit could proceed, even as the individual plaintiff's federal claims were dismissed); *see also, e.g.*, *United States v. Mississippi*, No. 16-CV-622-CWR-FKB, 2019 WL 2092569, at *2–3 (S.D. Miss. May 13, 2019) (holding that the Attorney General can bring lawsuits under Title II), *reversed on other grounds*, ___ F.4th ____ (5th Cir. 2023); *United States v. Harris Cnty.*, No. 4:16-CV-2331, 2017 WL 7692396, at *1 (S.D. Tex. Apr. 26, 2017) (same); *United States v. Virginia*, No. 3:12CV59-JAG, 2012 WL 13034148, at *2 (E.D. Va. June 5, 2012) (same); *United States v. City & Cnty. of Denver*, 927 F. Supp. 1396, 1399–400 (D. Colo. 1996) (finding the Department of Justice had met the requirements necessary to bring a Title II claim).

In the face of this abundant contrary authority, Defendants rehash prior arguments about textual differences between Titles II and III of the ADA and whether the Attorney General qualifies as "a person alleging discrimination" under Title II's enforcement provision. These arguments are meritless.

The United States has previously explained that whether the Attorney General is himself a "person alleging discrimination" within the meaning of the Title II enforcement provision, 42 U.S.C. § 12133, is beside the point. *See* 2022 Opp'n at 21–23, 23 n.14. When Congress chose to "provide[]" any "person alleging discrimination" under Title II with all of the "remedies, procedures, and rights" set forth in Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act, *see* 42 U.S.C. § 12133, it granted such persons a bundle of well-established remedies and rights, including the right under the cross-referenced statutes to pursue a federal administrative enforcement process that could culminate in a suit by the Attorney General. *See* 2022 Opp'n 19–25; *see also Barnes v. Gorman*, 536 U.S. 181, 189 n.3 (2002) (concluding that "the 'remedies, procedures, and rights"' Title II provides "are the same as the 'remedies, procedures, and rights set forth in'" Title VI and the Rehabilitation Act, and explaining that Title II's status as a non-Spending Clause statute is "quite irrelevant" in reaching that conclusion (quoting 42 U.S.C. § 12133)); *Florida*, 938 F.3d at 1250 ("In the other referenced statutes, the Attorney General may sue. The same is true here."). Thus, the United States' authority to enforce Title II does not depend on the Attorney General himself being a "person alleging discrimination" under § 12133. Defendants' reliance on *Return Mail, Inc. v. United States Postal Service*, 139 S. Ct. 1853 (2019), for the proposition that "the sovereign is not a person" is irrelevant.

Defendants assert that in discussing the differing enforcement language in Titles II and III in its earlier opposition, the United States "conceded that an *expansion* of the Attorney General's enforcement authority requires explicit Congressional specification." Defs.' Mot. at 11. Defendants misconstrue the United States' argument. As the United States explained, *see* 2022 Opp'n at 23–25, Congress *did* explicitly grant the Attorney General the right to sue under

Title II by expressly incorporating the well-established rights and remedies set forth in the Rehabilitation Act and Title VI—rights that include initiating an administrative process that may culminate in an enforcement suit by the Attorney General. Congress saw no reason to expand on those rights and remedies in the Title II context, and thus Congress had no need to specifically reference the Attorney General in Title II's enforcement provision. In sharp contrast, in the Title III context Congress granted the Attorney General *additional* remedies beyond those available under the closest statutory analogues, thus making it necessary to specifically reference the Attorney General.

E. The United States Sufficiently Pled It Tried to Secure Voluntary Compliance Before Filing Suit

Contrary to Defendants' contentions, the United States alleged in the Amended Complaint that it complied with the requirements of 28 C.F.R. Part 35, Subpart F by engaging in good-faith efforts to resolve the violations identified before filing suit. "[P]leading of conditions precedent is governed by Rule 9(c), not Rule 8(a)." *Hildebrand v. Allegheny Cnty.*, 757 F.3d 99, 112 (3d Cir. 2014). Rule 9(c) provides that when "pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed." The United States has alleged just that. AC ¶ 159 ("All conditions precedent to the filing of this Complaint have occurred or been performed. *See* 28 C.F.R. pt. 35, subpt. F."). This allegation satisfies Rule 9(c). *See Hildebrand*, 737 F.3d at 112; *see also Gress v. Freedom Mortg. Corp.*, 386 F. Supp. 3d 455, 467 (M.D. Pa. 2019) (finding plaintiff's allegation that "[a]ll conditions precedent to all alleged claims for relief have occurred or been performed" was sufficient to satisfy Rule 9(c) (citing *Hildebrand*)).

Defendants' continued reliance on *United States v. Arkansas*, No. 4:10-CV-00327, 2011 WL 251107 (E.D. Ark. Jan. 24, 2011)—a distinguishable district court decision[8] from another circuit that conflicts directly with the Third Circuit's ruling in *Hildebrand*—is unavailing. This is confirmed by the treatise on which Defendants ask the Court to rely, which explains that where Rule 8 makes it necessary to plead performance of conditions precedent because they are an element of the claim, they may be "pleaded generally" in accordance with Rule 9(c). Pleading Performance or Occurrence of Conditions Precedent, 5A Fed. Prac. & Proc. Civ. § 1303 (4th ed. 2023); Defs.' Mot. at 21. Contrary to Defendants' suggestion that Rule 8 governs the detail with which conditions precedent must be pled, the treatise notes that "imposing heightened pleading in this context runs counter to the text, history, and purpose of [Rule 9]," *id.*, which was intended to "eliminate the detailed and largely unnecessary allegations" regarding conditions precedent that resulted under previous common law procedure, *id.* § 1302.

Finally, while this Court should not consider Defendants' "factual" assertions on this Rule 12(b)(6) motion, the United States denies Defendants' assertion, made outside the pleadings, that it did not engage in good-faith efforts to resolve the violations identified before filing suit. The United States only filed suit after issuing a Letter of Findings and attempting to further secure Defendants' voluntary compliance, fully satisfying its obligations under 28 C.F.R. Part 35, Subpart F.[9]

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[8] Rule 8(a) was considered by the *Arkansas* court instead of the controlling rule, Rule 9(c). *Arkansas*, 2011 WL 251107, at *4. That court's dismissal of the United States' complaint without prejudice also found the United States "did not make any allegations in its complaint to indicate that it had complied, or attempted to comply, with the prerequisites to suit." *Id.* Here, the United States has alleged compliance.

[9] Without conceding that such materials should be considered, the letters that the UJS attached to its prior motion to dismiss support that the United States tried to conciliate. In its February 2, 2022, letter to the UJS, the United States stated its position that significant corrective measures

F. No Part of the United States' Claim is Time-Barred

Defendants continue to assert incorrectly that any claims pertaining to the administrative order issued by the Jefferson County Court of Common Pleas are time-barred. The Court has already disposed of this argument, correctly finding that "[a] determination of when the [United States] became aware of the facts material to Complainants A and B's cause of action is a factual inquiry that is not appropriate for resolution at the motion to dismiss stage." Mem. Op. at 14 n.8 (citing *Barefoot Architect, Inc. v. Bunge*, 632 F.3d 822, 986 (3d. Cir. 2011) (the statute of limitations does not justify Rule 12(b) dismissal where "the pleading does not reveal when the limitations period began to run")).[10] Defendants provide no basis for disturbing this conclusion.

G. Venue is Proper in the Eastern District of Pennsylvania

Venue is proper because a substantial part of the events giving rise to this action occurred in this District. 28 U.S.C. § 1391(b)(2). In addition, all Defendants reside in Pennsylvania and two Defendants reside in this district. 28 U.S.C. § 1391(b)(1). Defendants "accede to venue so long as UJS and the Supreme Court are defendants in the case." Defs.' Mot. at 22 n.17. But if the roster of Defendants changes, they argue, the Court should "dismiss the matter for improper venue." *Id*. at 22.

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were needed to address the discrimination identified. Defs.' Mot., Ex. C 7-8, ECF 18-4. On February 23, 2022, the UJS responded that "there is no basis for injunctive relief." *Id.*, Ex. D, ECF 19.

[10] As the Court noted, the statute of limitations for tort claims seeking damages brought by the federal government excludes time during which "facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act." 28 U.S.C. § 2416. Defendants cite no authority for the proposition that United States officials should reasonably be expected to know immediately of every matter of public record in the United States that may give rise to a tort claim by the federal government.

Assuming *arguendo* that: (i) Defendants have not waived venue challenges in their entirety;[11] and (2) at some point UJS and the Supreme Court are no longer defendants and only the Defendant County Courts remain, venue would still be proper under 28 U.S.C. § 1391(b)(2). And while the Court may *transfer* an action to another district where it might have been brought if the transfer is "for the convenience of parties and witnesses" and "in the interest of justice," 28 U.S.C. § 1404(a), Defendants offer no basis for doing so here. *See*, *e.g.*, *Twigg v. Varsity Brands Holding Co*., Civ. No. 21-cv-00768, 2023 U.S. Dist. LEXIS 5654 (E.D. Pa. Jan. 12, 2023) (Goldberg, J.) (identifying the movant's burden on a § 1404(a) motion, and the multiple factors the Court must consider to determine if transfer is appropriate). Defendants do not even identify the district to which they contend the Court should transfer this matter. *See* Defs.' Mot. at 22 (noting only that the Defendant County Courts reside in two other districts, effectively conceding that no district is without its inconveniences). While nothing prevents any Defendant from filing a properly supported motion under § 1404, Defendants have failed to carry their burden here.

IV. CONCLUSION

For all the above reasons, the Court should deny Defendants' Motion to Dismiss.

[11] By designating counsel in this district to accept service in this district on their behalf, Defendants have waived their privilege to challenge venue. *See Davis v. Smith*, 253 F.2d 286, 288-89 (3d Cir. 1958); *see also* ECF Nos. 31–36. The UJS has also effectively conceded that venue is proper under § 1391(b)(2), regardless of the presence or absence of other defendants, by not challenging venue in its first Motion to Dismiss (ECF No. 18). *See* Rule 12(b)(3), (g)(2), (h).

Respectfully submitted,

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