

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA, )  
 )  
                                Plaintiff, )  
 )  
                                v. )  
 )  
THE STATE OF TEXAS; )  
The Honorable Rick Perry, )  
Governor of the State of Texas, )  
in his official capacity only; )  
Adelaide Horn, Commissioner )  
Texas Department of Aging and )  
Disability Services, )  
in her official capacity only; )  
David L. Lakey, Commissioner )  
of Texas Department of State )  
Health Services, )  
in his official capacity only; )  
Barry Waller, )  
Assistant Commissioner, )  
Provider Services, )  
in his official capacity only; )  
Linda Hinshaw, Superintendent, )  
Abilene State School, )  
in her official capacity only; )  
Dave Ptomey, )  
Acting Superintendent, )  
Austin State School, )  
in his official capacity only; )  
Robert Ham, Superintendent, )  
Brenham State School, )  
in his official capacity only; )  
Iva Benson, Superintendent, )  
Corpus Christi State School, )  
in her official capacity only; )  
Nancy Condon, Superintendent, )  
Denton State School, )  
in her official capacity only; )  
Antonio Ochoa, Superintendent, )  
El Paso State Center, )  
in his official capacity only; )  
Kristen Weems, Acting )

CIVIL NO. \_\_\_\_\_

Superintendent, )  
 Lubbock State School, )  
 in her official capacity only; )  
 Gale Wasson, Superintendent, )  
 Lufkin State School, )  
 in her official capacity only; )  
 W.H. Lowry, Superintendent, )  
 Mexia State School, )  
 in his official capacity only; )  
 Adalberto Barrera, )  
 Superintendent, )  
 Richmond State School, )  
 in his official capacity only; )  
 Sonia Hernandez-Keeble, )  
 Superintendent, )  
 Rio Grande State Center, )  
 in her official capacity only; )  
 Philip Baugh, Superintendent, )  
 San Angelo State School, )  
 in his official capacity only; )  
 Ralph Henry, Superintendent, )  
 San Antonio State School, )  
 in his 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 of 1980, 42 U.S.C. § 1997, to enjoin the named Defendants from depriving individuals housed at 13 Texas State Schools and Texas State Centers ("the Facilities") of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. The 13 Facilities

are: Abilene State School, Austin State School, Brenham State School, Corpus Christi State School, Denton State School, El Paso State Center, Lubbock State School, Lufkin State School, Mexia State School, Richmond State School, Rio Grande State Center, San Angelo State School, and San Antonio State School.

#### **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 Western District of Texas is proper pursuant to 28 U.S.C. § 1391.

#### **DEFENDANTS**

6. Defendant State of Texas ("State") owns and operates the Facilities, where individuals with intellectual or other developmental disabilities reside, and as such, has responsibility for the protections, services, and supports provided to the residents of the Facilities.

7. Defendant Rick Perry is the Governor of the State of Texas, and, in this capacity, heads the Executive Branch of the

State's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies regarding the Facilities. He selects and appoints the Commissioner of the State of Texas's Department of Aging and Disability Services, which is responsible for the operation of the Facilities. Governor Perry is sued in his official capacity only.

8. Defendant Adelaide Horn is the Commissioner of the State of Texas's Department of Aging and Disability Services, and, in this capacity, exercises administrative control of, and responsibility for all the Facilities except the Rio Grande State Center. Ms. Horn is an officer of the Executive Branch of the State of Texas, and is sued in her official capacity only.

9. Defendant David L. Lakey is the Commissioner of the Texas Department of State Health Services, and, in this capacity, exercises administrative control of, and responsibility for, the Rio Grande State Center. Mr. Lakey is an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

10. Defendant Barry Waller is the Assistant Commissioner for Provider Services, a part of the State of Texas's Department of Aging and Disability Services, and, in this capacity, exercises administrative control of, and responsibility for all the Facilities except the Rio Grande State Center. Mr. Waller is

an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

11. Defendant Linda Hinshaw is the Superintendent of Abilene State School, and is responsible for the administration and day-to-day operations at Abilene State School. Ms. Hinshaw is an officer of the Executive Branch of the State of Texas, and is sued in her official capacity only.

12. Defendant Dave Ptomey is the Acting Superintendent of Austin State School, and is responsible for the administration and day-to-day operations at Austin State School. Mr. Ptomey is an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

13. Defendant Robert Ham is the Superintendent of Brenham State School, and is responsible for the administration and day-to-day operations at Brenham State School. Mr. Ham is an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

14. Defendant Iva Benson is the Superintendent of Corpus Christi State School, and is responsible for the administration and day-to-day operations at Corpus Christi State School. Ms. Benson is an officer of the Executive Branch of the State of Texas, and is sued in her official capacity only.

15. Defendant Nancy Condon is the Superintendent of Denton State School, and is responsible for the administration and day-to-day operations at Denton State School. Ms. Condon is an officer of the Executive Branch of the State of Texas, and is sued in her official capacity only.

16. Defendant Antonio Ochoa is the Superintendent of El Paso State Center, and is responsible for the administration and day-to-day operations at El Paso State Center. Mr. Ochoa is an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

17. Defendant Kristen Weems is the Acting Superintendent of Lubbock State School, and is responsible for the administration and day-to-day operations at Lubbock State School. Ms. Weems is an officer of the Executive Branch of the State of Texas, and is sued in her official capacity only.

18. Defendant Gale Wasson is the Superintendent of Lufkin State School, and is responsible for the administration and day-to-day operations at Lufkin State School. Ms. Wasson is an officer of the Executive Branch of the State of Texas, and is sued in her official capacity only.

19. Defendant W.H. Lowry is the Superintendent of Mexia State School, and is responsible for the administration and day-to-day operations at Mexia State School. Mr. Lowry is an officer

of the Executive Branch of the State of Texas, and is sued in his official capacity only.

20. Defendant Adalberto Barrera is the Superintendent of Richmond State School, and is responsible for the administration and day-to-day operations at Richmond State School. Mr. Barrera is an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

21. Defendant Sonia Hernandez-Keeble is the Superintendent of Rio Grande State Center, and is responsible for the administration and day-to-day operations at Rio Grande State Center. Ms. Hernandez-Keeble is an officer of the Executive Branch of the State of Texas, and is sued in her official capacity only.

22. Defendant Philip Baugh is the Superintendent of San Angelo State School, and is responsible for the administration and day-to-day operations at San Angelo State School. Mr. Baugh is an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

23. Defendant Ralph Henry is the Superintendent of San Antonio State School, and is responsible for the administration and day-to-day operations at San Antonio State School. Mr. Henry is an officer of the Executive Branch of the State of Texas, and is sued in his official capacity only.

24. Defendants are legally responsible, in whole or in part, for the operation of, and conditions at the Facilities and for the health and safety of the Facilities' residents.

25. Defendants are governmental authorities or agents thereof with responsibility for the administration of the Facilities within the meaning of 42 U.S.C. § 1997a.

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

#### **FACTUAL ALLEGATIONS**

27. Defendants are legally responsible, in whole or in part, for the operation of the Facilities and for the health and safety of the residents residing at the Facilities.

28. The Facilities are institutions within the meaning of 42 U.S.C. § 1997(1).

29. Individuals are confined to, or reside at, the Facilities because they have been determined by Defendants to have intellectual or other developmental disabilities requiring protections, supports, and services.

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

31. Defendants are obligated to provide medical assistance, rehabilitation and other services to individuals residing at the



Facilities in a manner consistent with Title XIX of the Social Security Act and implementing regulations. 42 U.S.C. § 1396; 42 C.F.R. Part 493, Subpart I (Medicaid Program Provisions).

32. Defendants are obligated to provide services, programs, and activities to individuals residing in the Facilities consistent with the Americans with Disabilities Act ("ADA") and implementing regulations. 42 U.S.C. § 12132 et seq.; 28 C.F.R. § 35.130(d).

33. Persons residing at the Facilities are "qualified individual[s] with a disability" under the ADA, 42 U.S.C. §§ 12101, 12131.

34. The State of Texas, the State of Texas Department of Aging and Disability Services, and the Texas Department of State Health Services are "public entities" under Title II of the ADA, 42 U.S.C. § 12131.

35. The protections, supports, and services at the Facilities substantially depart from generally accepted professional standards of care, thereby exposing the individuals residing at the Facilities to significant risk of harm, and in some cases, to actual harm.

36. Defendants depart from generally accepted professional standards of care by failing to provide the protections, supports, and services in the following specific respects, among others:

- a. the provision of adequate health care to the Facilities' residents, including nursing services, psychiatric services, general medical care, and physical therapy;
- b. the provision of adequate nutritional and physical management to the Facilities' residents;
- c. the provision of reasonably safe conditions, including protection from abuse, neglect, and other harm, so as to ensure the reasonable safety and personal security of the Facilities' residents;
- d. the provision of adequate therapeutic services, including physical therapy, occupational therapy, speech therapy, and other forms of therapy;
- e. the provision of adequate psychological services, including adequate functional assessments and that level of training, including behavioral, habilitation, and skills training and other related programs and activities, necessary to protect the residents' liberty interests, including their right to training sufficient to ensure their safety and freedom from unnecessary or inappropriate restraint; and

f. the provision of adequate services to qualified individuals with disabilities in the most integrated setting appropriate to their needs.

37. Defendants have failed and are continuing to fail to ensure that the Facilities' residents are adequately evaluated for placement in the most integrated setting; that those individual residents whom professionals determine should be placed in community programs are placed in such programs, when appropriate; and that residents are served in the most integrated setting appropriate to each resident's individual needs.

38. The factual allegations set forth in Paragraphs 36-37 have been known to the Defendants for a substantial period of time; yet Defendants have failed to adequately address constitutionally deficient health care, services and undue safety risks for Facilities' residents.

#### **VIOLATIONS ALLEGED**

##### **COUNT ONE:**

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

39. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 38 as if fully set forth herein.

40. The acts and omissions alleged in paragraphs 36 and 37 constitute a pattern or practice that violates the federal rights

of individuals residing in the Facilities, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law.

41. Unless restrained by the Court, Defendants will continue to engage in the acts and omissions set forth in paragraphs 36 and 37 that deprive the Facilities' 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 Social Security Act**

42. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 38 as if fully set forth herein.

43. The acts and omissions alleged in paragraphs 36 and 37 violate Title XIX of the Social Security Act and implementing regulations. 42 U.S.C. § 1396; 42 C.F.R. Part 493, Subpart I (Medicaid Program Provisions).

44. Unless restrained by the Court, Defendants will continue to engage in the acts and omissions set forth in paragraphs 36 and 37 that deprive the Facilities' residents of rights, privileges, or immunities secured or protected by federal law, and will cause irreparable harm to these residents.

**COUNT THREE:**

**Violations of the Americans with Disabilities Act**

45. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 38 as if fully set forth herein.

46. The acts and omissions alleged in paragraph 37 violate the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12132 et. seq., 28 C.F.R. § 35.130(d).

47. Unless restrained by the Court, Defendants will continue to engage in the acts and omissions set forth in paragraph 37 that deprive the Facilities' residents of rights, privileges, or immunities secured or protected by federal law, and will cause irreparable harm to these residents.

**PRAYER FOR RELIEF**

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

WHEREFORE, the United States of America respectfully requests that this Court:

- a. Declare that the acts, omissions, and practices set forth in Paragraphs 36 and 37 above constitute a pattern or practice of resistance to the 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 the laws of the United States; and

- b. Permanently enjoin Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts and omissions set forth above in Paragraphs 36 and 37, and require Defendants to take such actions as will bring Defendants into compliance with the Constitution and laws of the United States and ensure that adequate protections, supports, and services are afforded to Facilities' residents; and
- b. Grant such other and further equitable relief as the Court may deem just and proper.

Respectfully submitted,

*/s/ Eric H. Holder, Jr*

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