

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE STATE OF NEW JERSEY; )  
 James E. McGreevey, Governor of )  
 the State of New Jersey; )  
 James Davy, Commissioner, )  
 Department of Human Services; )  
 James W. Smith, Jr., Director, )  
 Division of Developmental )  
 Disabilities; )  
 Jeffrey Schroeder, Chief )  
 Executive Officer, )  
 New Lisbon Developmental Center, )  
 )  
 Defendants. )  
 )  
 )  
 )

Civ. No. 04-

COMPLAINT

PLAINTIFF, THE UNITED STATES OF AMERICA, 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 depriving residents housed in the New Lisbon Developmental Center 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 New Jersey is proper pursuant to 28 U.S.C. § 1391.

DEFENDANTS

6. Defendant STATE OF NEW JERSEY ("State") owns and operates New Lisbon Developmental Center ("New Lisbon"), a facility housing individuals with developmental disabilities.

7. Defendant JAMES E. MCGREEVEY is the Governor of the State of New Jersey, 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 New Lisbon.

8. Defendant JAMES DAVY is the Commissioner of the Department of Human Services and, in this capacity, exercises administrative control of, and responsibility for, New Lisbon.

9. Defendant JAMES W. SMITH, JR. is the Director of the

Department of Developmental Disabilities, and in this capacity exercises administrative control of, and responsibility for, New Lisbon.

10. Defendant JEFFREY SCHROEDER is the Chief Executive Officer of New Lisbon and is responsible for the administration and day-to-day operations of New Lisbon.

11. The individual Defendants named in paragraphs 7, 8, 9, and 10 above are officers of the Executive Branch of the State of New Jersey and are sued in their official capacities.

12. Defendants are legally responsible, in whole or in part, for the operation of and conditions at New Lisbon, as well as for the care and treatment of persons residing at New Lisbon.

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

#### FACTUAL ALLEGATIONS

14. New Lisbon is an institution as that term is defined in 42 U.S.C. §§ 1997(1)(A), (1)(B)(i), and (1)(B)(v).

15. Persons residing at New Lisbon are individuals with developmental disabilities, and some of the individuals also have mental illness.

16. Persons residing at New Lisbon are "qualified individual[s] with a disability" under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, 12131.

17. The State of New Jersey and the New Jersey Department

of Human Services are "public entities" under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131.

18. Defendants have failed and are continuing to fail to provide reasonably safe conditions and to ensure the reasonable safety and personal security of New Lisbon residents.

19. Defendants have failed and are continuing to fail to provide New Lisbon residents with that level of training, including behavioral and related training programs, necessary to protect the residents' liberty interests, including their right to training sufficient to ensure their safety and freedom from undue or unreasonable restraint.

20. Defendants have failed and are continuing to fail to ensure that residents of New Lisbon are free from undue or unreasonable restraint.

21. Defendants have failed and are continuing to fail to ensure that restraints are administered to residents by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff. Defendants have failed and are continuing to fail to supervise adequately residents in restraints to protect them from harm.

22. Defendants have failed and are continuing to fail to provide adequate health care to New Lisbon residents.

23. Defendants have failed and are continuing to fail to

provide adequate nutritional management and related services to New Lisbon residents.

24. Defendants have failed and are continuing to fail to provide adequate therapy services, including physical therapy, occupational therapy, speech therapy, and other forms of therapy, physical management, and related health care services, to New Lisbon residents.

25. Defendants have failed and are continuing to fail to provide adequate psychiatric care and related services to New Lisbon residents with mental illness.

26. Defendants have failed and are continuing to fail to provide a sufficient number of adequately trained staff to render the essential basic care, health care, related services, treatment, and training outlined above in paragraphs 18 through 25 as required by the laws and Constitution of the United States.

27. Defendants have failed and are continuing to fail to ensure that citizens living at New Lisbon are adequately evaluated for placement in the most integrated setting; that those individual residents whom professionals determine are appropriate for community placement and who do not oppose such placement are actually placed in the community; and that the institutions' residents are served in the most integrated setting appropriate to each resident's individual needs.

VIOLATIONS ALLEGED

28. The acts and omissions alleged in paragraphs 14 through 27 constitute a pattern or practice and deprive New Lisbon residents of their rights, privileges or immunities secured or protected by federal law and the Fourteenth Amendment to the Constitution of the United States.

29. Due to the acts and omissions alleged in paragraphs 16, 17, and 27, Defendants have failed and are continuing to fail to meet the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the regulations promulgated pursuant thereto, by excluding the citizens living at the institutions, by reason of their disability, from participation in or by denying them the benefits of services, programs, or activities, or by subjecting them to discrimination, and by failing to administer services, programs, and activities in the most integrated setting appropriate to their needs.

30. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 14 through 27 that deprive residents of New Lisbon of rights, privileges, or immunities secured or protected by the laws and Constitution of the United States.

PRAYER FOR RELIEF

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

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions set forth in paragraphs 14 through 27, and that this Court require Defendants to take such action as will bring Defendants into compliance with federal law and provide constitutional and lawful conditions of care to persons who presently reside at New Lisbon. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

/s/ John Ashcroft

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of the United States

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CERTIFICATE OF THE ATTORNEY GENERAL

I, JOHN ASHCROFT, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. State of New Jersey, I have complied with all subsections of 42 U.S.C. § 1997b(a)(1). I certify as well that I have complied with all subsections of 42 U.S.C. § 1997b(a)(2). I further certify, pursuant to 42 U.S.C. § 1997b(a)(3), my belief that this action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

In addition, I certify that I have the "reasonable cause to believe," set forth in 42 U.S.C. § 1997a, to initiate this action. Finally, I certify that all prerequisites to the initiation of this suit under 42 U.S.C. § 1997 have been met.

Pursuant to 42 U.S.C. § 1997a(c), I have personally signed the foregoing Complaint. Pursuant to 42 U.S.C. § 1997b(b), I am personally signing this Certificate.

Signed this 26 day of July, 2004, at  
Washington, D.C.

/s/ John Ashcroft

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JOHN ASHCROFT  
Attorney General of the  
United States