

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	
)	
THE STATE OF NEW MEXICO; and)	Civil No. _____
Michelle Lujan Grisham, Secretary,)	
Department of Health, in her)	
official capacity only,)	
)	
Defendants.)	
_____)	

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 residents of the Fort Bayard Medical Center ("Ft. Bayard") 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 Mexico is proper pursuant to 28 U.S.C. § 1391.

DEFENDANTS

6. Defendant State of New Mexico owns and operates Ft. Bayard, and as such has responsibility for the services and supports provided to individuals residing there.

7. Defendant Michelle Lujan Grisham is the Secretary of the New Mexico Department of Health, which has responsibility for overseeing the operation of Ft. Bayard.

8. Ft. Bayard Medical Center is a state nursing home located in Bayard, New Mexico, which provides skilled and long-term nursing care and related services for residents who require medical or nursing care, and rehabilitation services for injured, disabled, or sick persons who require such services. Ft. Bayard Medical Center also includes any facility constructed as a replacement to the facility in place at the time of entry of this Settlement Agreement as an Order of the Court.

9. The individual Defendant named in paragraph 7 above is an officer of the State of New Mexico and is sued in her official capacity only.

FACTUAL ALLEGATIONS

10. Defendants are legally responsible, in whole or in part, for the operation of Ft. Bayard and for the health and safety of the persons residing in Ft. Bayard.

11. Ft. Bayard is an institution within the meaning of 42 U.S.C. § 1997(1). Ft. Bayard is a nursing home that provides custodial or residential, intermediate or long-term, skilled nursing care.

12. The State has the authority to prevent a Ft. Bayard resident from leaving State custody if it determines that the resident's leaving Ft. Bayard endangers the resident.

13. Certain Ft. Bayard residents have such great physical and/or mental disabilities that New Mexico State courts have appointed guardians to oversee their care. One of these court-appointed guardians has obtained court orders requiring placement of their ward at Ft. Bayard.

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

15. Defendants are obligated to provide services and activities to individuals residing in Ft. Bayard in a manner and environment consistent with Title XVIII and Title XIX of the

Social Security Act and implementing regulations.

42 U.S.C. § 1395i-3, 42 U.S.C. § 1396r, 42 C.F.R. § 483.

16. Defendants are obligated to provide services, programs, and activities to individuals residing in Ft. Bayard consistent with the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12132, 28 C.F.R. § 35.130(d).

17. Defendants are obligated to provide services, programs, and activities to individuals residing in Ft. Bayard in a manner consistent with Section 504 of the Rehabilitation Act of 1973 and implementing regulations. 29 U.S.C. § 794, 45 C.F.R. § 84.4.

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

19. Individuals are admitted to Ft. Bayard because they require skilled and long-term nursing care and related services and/or rehabilitation services for injuries, disabilities or sickness and require residential medical or nursing care, rehabilitation services, or health care and services for the treatment of such conditions.

20. Ft. Bayard's supports and services substantially depart from generally accepted professional standards of care, thereby exposing individuals residing at Ft. Bayard to significant risk and, in some cases, to actual harm.

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

- a. the implementation and review of comprehensive healthcare plans;
- b. the proper use of psychotropic medication;
- c. the appropriate management of pain and suffering;
- d. the implementation of adequate measures to ensure a safe environment and to prevent injury from falls or resident-on-resident violence;
- e. the provision of adequate nutritional and hydration services; and
- f. the provision of adequate activities for physical and mental stimulation.

22. Ft. Bayard'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 appropriate treatment, supports, and services and to protect residents from harm.

23. Defendants have failed to assess individuals residing in Ft. Bayard to ascertain whether these individuals are receiving adequate treatment, supports, and services in the most integrated setting appropriate to their individual needs; to ensure that those individuals whom professionals determine should

be placed in community programs are placed in such programs, when appropriate; and to make certain 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 of individuals residing in Ft. Bayard, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law.

26. Unless restrained by the Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraphs 20 through 22 that deprive Ft. Bayard 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

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 paragraphs 20 through 22 violate Titles XVIII and XIX of the Social Security Act and implementing regulations. 42 U.S.C. § 1395i-3, 42 U.S.C. § 1396r, 42 C.F.R. § 483.

29. Unless restrained by the Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraphs 20 through 22 that deprive Ft. Bayard 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

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

31. The egregious and flagrant acts and omissions alleged in paragraph 23 violate the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12132, 28 C.F.R. § 35.130.

32. Unless restrained by the Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraph 23 that deprive Ft. Bayard residents of rights, privileges, or immunities secured or protected by federal law, and will cause irreparable harm to these residents.

COUNT FOUR:

Violations of the Rehabilitation Act of 1973

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

34. The egregious and flagrant acts and omissions alleged in paragraph 23 violate Section 504 of the Rehabilitation Act of 1973 and implementing regulations. 29 U.S.C § 794, 45 C.F.R. § 84.4.

35. Unless restrained by the Court, Defendants will continue to engage in the egregious and flagrant acts and omissions set forth in paragraph 23 that deprive Ft. Bayard residents of rights, privileges, or immunities secured or protected by federal law, and will cause irreparable harm to these residents.

PRAYER FOR RELIEF

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

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

a. Declaring that the acts, omissions, and practices set forth in paragraphs 20 through 23 above constitute a pattern or practice of resistance to Ft. Bayard'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 through 23 above, and that this Court require Defendants to take such actions as will ensure that lawful conditions of institutionalization are afforded to Ft. Bayard residents, including the provision of adequate treatment in the most integrated setting appropriate to their individual needs; and

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

Respectfully submitted,

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

Date: May 14, 2007

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