

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**JANE DOE, JANE DOE 2, JANE DOE 3,  
JANE DOE 4, JANE DOE 5, JANE DOE 6,  
JANE DOE 7, and JANE DOE 8**, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

**CHARLES D. BAKER**, Governor of the  
Commonwealth of Massachusetts;  
**MASSACHUSETTS DEPARTMENT OF  
CORRECTION; THOMAS TURCO**,  
Commissioner of the Massachusetts  
Department of Correction; and **PAUL  
HENDERSON**, Superintendent of the  
Massachusetts Correctional Institution at  
Framingham,

Defendants.

Civil Action No. 1:14-cv-12813-DPW

**PLAINTIFFS' RESPONSE TO THE COURT'S JUNE 13TH DOCKET ENTRY**

## INTRODUCTION

This submission responds to the Court’s question, both at the motion hearing on June 10, 2016, and in a docket entry dated June 13, 2016 (Dkt. 91), about how best to address the interpretation of amended Section 35. At the June 10 motion hearing, the Court posited that further amendment of the complaint might be necessary to frame the crucial statutory construction issue. Mot. Hr’g Tr. 19:3-20, 24:9-19. But the Court also invited the parties to propose “something different” that might be a more appropriate vehicle for resolving that issue. Tr. 24:22-25. Through this submission, Plaintiffs suggest that a claim for declaratory relief is adequately presented in the existing complaint, and that a motion for partial summary judgment would be a better vehicle for addressing the statutory interpretation question. In the alternative, Plaintiffs could seek to dismiss the case voluntarily, conditioned on the Court’s determination under Rule 23(e) of the Federal Rules of Civil Procedure that dismissal would be fair to the class because amended Section 35 now proscribes civil commitment to MCI-Framingham. Plaintiffs are prepared to file either of these documents, and therefore seek the Court’s guidance as to which one it prefers.

### **I. FURTHER AMENDMENT OF THE COMPLAINT IS NOT WARRANTED**

On June 10, 2016, this Court denied Defendants’ motion to dismiss this case as moot, after Defendants took the position that amended Section 35 still permits women to be imprisoned at MCI-Framingham based solely on a civil commitment, “[i]f DPH or DMH approves it.” Tr. 5:2-9. Thus, the case centers on Plaintiffs’ amended complaint of January 27, 2015 (Dkt. 54), and a certified class of “[a]ll women who are now or will be civilly held at MCI-Framingham based solely on [a Section 35 order].” *See* Dkt. 43; 49. The January 2015 amended complaint alleges that incarcerating Plaintiffs at MCI-Framingham violates substantive due process (Count I) and the Americans with Disabilities Act (Count II). *See* Dkt. 54 ¶¶ 165-179. It specifically

seeks a declaratory judgment that “placing women committed solely under Section 35 to DOC facilities [is] unlawful.” *See* Dkt. 54 ¶ b.<sup>1</sup>

A further amendment would not present a better vehicle for issuing a declaration that imprisoning women under the new Section 35 is unlawful. At present, there are no women imprisoned at MCI-Framingham based solely on a civil commitment under Section 35. There is, accordingly, “every reason to believe” that a further amendment would trigger a motion to dismiss on ripeness, standing, and possibly other grounds. Tr. 19:3-20:4. Such a motion would substantially delay—and, if successful, perhaps foreclose—any ruling on what amended Section 35 means. In contrast, the existing complaint already presents the following options for reaching that question.<sup>2</sup>

## **II. A SUMMARY JUDGMENT MOTION WOULD SQUARELY RAISE THE QUESTION OF WHETHER AMENDED SECTION 35 PROHIBITS IMPRISONING CIVILLY COMMITTED WOMEN**

Plaintiffs are prepared to move for partial summary judgment on the substantive due process claim in the existing amended complaint.

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<sup>1</sup> The complaint requests declaratory relief without explicitly citing the Declaratory Judgment Act (“DJA”), 28 U.S.C. §§ 2201-2202. This is no impediment to granting relief. *See Katzenbach v. McClung*, 379 U.S. 294, 295 (1964) (where plaintiffs sought to enjoin enforcement of Title II of Civil Rights Act of 1964, construing complaint as application for declaratory judgment under DJA); *Schultz v. Kelly*, 188 F. Supp. 2d 38, 44 (D. Mass. 2002) (failure to invoke DJA “is of no moment,” especially given “the court’s understanding that the DJA, as designed, would enable the parties to clarify their legal rights and obligations before acting upon them further.”). *Cf.* Fed. R. Civ. P. 54(c) (a non-default judgment “should grant the relief to which [a] party is entitled, *even if the party has not demanded that relief in its pleadings.*”) (emphases added); 57 (“The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate.”).

<sup>2</sup> Moreover, nothing prevents Defendants from moving independently or cross-moving for summary judgment or bringing additional motions under Rule 12(b) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 56(b) (“a party may file a motion for summary judgment at any time until 30 days after the close of all discovery”); 12(h)(1) (providing that waiver does not apply to motions under Rules 12(b)(1) and 12(b)(6), among others).

The amended complaint alleges that incarcerating civilly committed women violates substantive due process because it “does not bear any reasonable relation to the purpose of Section 35.” Dkt. 54 ¶ 168. *Cf. Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (civilly committed individuals “enjoy[] constitutionally protected interests” in having their “conditions of confinement . . . comport fully with the purpose of [the] commitment”); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1122 (9th Cir. 2003) (holding incapacitated criminal defendants in jail instead of hospital violates due process because nature and duration of incarceration bear no reasonable relation to purposes of commitment). If amended Section 35 prohibits civil commitments to MCI-Framingham, then Plaintiffs can arguably prevail on their substantive due process claim as a matter of law, because Defendants could not contend that imprisoning civilly committed women has any reasonable relationship to the purposes of Section 35.

Accordingly, if Plaintiffs move for summary judgment on the substantive due process claim, this Court could order briefing and argument, and render a decision on the meaning of amended Section 35 as an essential step in addressing that motion. *See* Tr. 18:10-15.

If, however, the Court agrees with Defendants that amended Section 35 does not prohibit imprisoning civilly committed women, then the Court could go on to address Defendants’ claim that the voluntary cessation argument should not prevent the case from being dismissed as moot.

**III. IN THE ALTERNATIVE, A CONDITIONAL MOTION TO DISMISS VOLUNTARILY COULD SQUARELY RAISE THE QUESTION OF WHETHER AMENDED SECTION 35 PROHIBITS IMPRISONING CIVILLY COMMITTED WOMEN**

As an alternative to a summary judgment motion, the Court could determine the meaning of amended Section 35 in the context of resolving a voluntary motion to dismiss that is expressly conditioned on addressing the statutory construction issue. Plaintiffs could file a voluntary motion to dismiss conditioned upon the Court’s finding under Rule 23(e) that dismissal would be

fair and reasonable to the class because amended Section 35 completely bars civil commitment at MCI-Framingham. *Cf. Fed. Sav. & Loan Ins. Corp. v. First Nat. Bank, Liberty, Mo.*, 4 F.R.D. 313, 315 (W.D. Mo. 1945) (recognizing plaintiff's right to condition request for voluntary dismissal under Federal Rule of Civil Procedure 41). This motion would be accompanied by a memorandum of law addressing the statutory construction issue, and the Court could order additional briefing from the Defendants on this issue as well.

### CONCLUSION

As this Court has noted, the question of amended Section 35's meaning has already been "teed up." Tr. 5:10-22. Further amending the complaint will divert the litigation away from this central issue and prolong the time before the Court can interpret the statute. In contrast, the alternative methods described above will quickly enable the Court to hone in on the question of whether amended Section 35 now prohibits imprisoning civilly committed women. Plaintiffs therefore respectfully request the Court's guidance on its preferred approach and a briefing schedule consistent with that approach. Under either approach, Plaintiffs are prepared to file papers within four weeks and would be willing to coordinate schedules with Defendants.<sup>3</sup>

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<sup>3</sup> Plaintiffs certify that they conferred with counsel for Defendants in a good faith attempt to resolve the issues raised in this submission. Plaintiffs' understanding is that Defendants are not yet taking a position on the issues until after Defendants have had an opportunity to review this submission.

Dated: June 24, 2016

Respectfully submitted,

/s/ William F. Lee

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