

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

2008 DEC 15 AM 11:28

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

ROGER CANUPP, JACOB MYERS,
LAWRENCE MCGEE, in need of a next
Friend, HUBERT DAVIDSON, TYWAUN
JACKSON, CHARLES DURDEN,
DANIEL FABIAN, and BRUCE KRAMER
Individually, and on behalf of a Class of all
Persons similarly situated,

Plaintiffs,

Case No: 2:04-CV-260-FtM-29DNF

vs.

**LIBERTY BEHAVIORAL HEALTH
CORPORATION** and **JERRY REGIER**, in
his official capacity as Secretary of the
Department of Children and Families
Defendants,

**INTERESTED CLASS ACTION PARTIES' MOTION TO INTERVENE ON NEW
LEGAL ISSUES VIOLATION OF DUE PROCESS LIBERTY INTEREST AND
MOTIONING FOR AN INVESTIGATION FOR AN INJUNCTIVE AND/OR
TEMPORARY RESTRAINING ORDER RELIEF**

COMES NOW, some of the Class Action Plaintiffs, David Yzaguirre, Khalie Hamid, Craig Williams, Aaron Marsh, Joseph Shaw, Dwayne Head, Frank Wade, Jamaal Bilal, Samuel Lane, William Morales, Barba Neil, Michael Ward, Harden James, Richard Spivey, Richard Spivey, Devin Allen, Daniel Sinclair, John Oakley, Robert Williams and represented by the Florida Institutional Legal Services, pursuant Fed. Rules Civ. Proc. Rule 24(a), (b), **Intervention**, are Involuntarily Civil Commitment Residents, at the Florida Civil Commitment Center, motioning for an investigation for an Injunctive and/or Temporary Restraining Order Relief to prohibit transfer to a more maximum-security prison facility in violation of *substantive due process of liberty interest*, and unlawful use of seclusion and restraints from retaliation, for practicing constitutional rights and in support thereof state as follows:

1. On May 7, 2004, the Florida Institutional Legal Services filed this Class Action Lawsuit in behalf of the Plaintiffs at the Florida Civil Commitment Center, for Declaratory and Injunction relief to enforce their rights secured under the U.S.C. Fourteenth Amendment, and

42 U.S.C. 12131 (ADA) for better condition of confinement in a civil commitment nature, and Plaintiffs seeks adequate treatment under Florida Administrative Code 65E and Mental Health Patient Bill of Rights, 42 U.S.C.A section 9501.

2. And the Plaintiffs has doubts about Florida Institutional Legal Services's representation to enforce their rights secured under the U.S.C. Fourteenth Amendment, and 42 U.S.C. 12131 (ADA) for better condition of confinement and treatment where the Plaintiffs are force to be transfer to a maximum-security prison facility in violation of *substantive due process of liberty interest* where they will be place in more restrictive confinement that will makes the treatment poor and this **Motion To Intervene** is timely and in good faith. See **Yniguez v. State of Ariz.**, 939 F.2d 727, (C.A.9 (Ariz.) 1991), "Under Sagebrush Rebellion criteria, sponsors of ballot initiative could intervene to appeal judgment holding ballot initiative unconstitutional, even though only defendant in case, i.e., governor, chose not to appeal; motion to intervene was timely, as, although most prudent course would have been to attempt intervention as soon as sponsor had doubts about Attorney General's representation, sponsor could not be *faulted for* relying on Attorney General's representation that he would fully defend initiative, sponsor had sufficient interest in subject matter of litigation to intervene, sponsor's interest would be practically impaired absent intervention, as declaration that initiative was facially invalid bound governor and her successors in any actions against initiative's challenger, and sponsor was inadequately represented by other parties, as governor did not appeal and Attorney General was estopped from reentering litigation as party. Fed.Rules Civ.Proc.Rule 24(a), 28 U.S.C.A."

3. This is a complaint against the **Florida Department Children and Family Services**, at 1317 Winewood Blvd. Tallahassee, Florida 32399, contracted with the new defendant **GEO Group, Inc.** at 621 N.W. 53rd Street Boca Raton, Florida 33487 to operate the **Florida Civil Commitment Center** for Involuntary Civil Commitment pursuant to **Fla. Stat. 394.910-932** where they are in violation of the **Plaintiffs** (residents) procedural and substantive due process of liberty interest without color of authority to transfer **Plaintiffs** from the F.C.C.C. least restrictive facility to a more restrictive facility. The new **Florida Civil Commitment Center** is a maximum-security prison facility that is "significantly more restrictive" than other "non-secure" treatment facilities operated by **Department of Children and Family Services**; it is "intended for the confinement of the **"most dangerous individuals"** within the Florida mental health system." Where the **Plaintiffs** are not in the category of serious mentally ill dangerous persons

prisons. See Freeman v. Berge, 68 Fed. Appx. 738,740 (C.A.7 (Wis.) 2003), “Two months later, after extensive negotiations among class counsel, the named plaintiffs, and counsel for defendants, a comprehensive settlement was reached. In addition to restricting the defendants' ability to house mentally ill inmates at the prison, the agreement purports to guarantee all inmates confined there at least the same rights and privileges of inmates confined in segregation in other maximum security prisons in the state. The defendants agreed to ease the extreme isolation and sensory deprivation by restricting the time during which inmates could remain in Level One status to not more than seven days absent cause and for an additional seven days with cause. Inmates were to be provided more out-of-cell exercise, cell shutters that open to the hallway, more reading material, expanded face-to-face visitation, a minimum of three showers a week, reduced physical restraints, increased phone privileges, calendar clocks in each cell to give them some temporal reference, and dim cell lighting at night to ease sleep. Notably, the defendants also agreed to build an outdoor recreational area, regulate cell temperatures, and refrain from using certain stunning devices inside cells and from punishing prisoners by feeding them nothing but "nutri-loaf," a blended and baked compost of prison food. An independent monitor was appointed to ensure that the agreement was implemented properly.” Shuman v. State, 358 So.2d 1333 (1978), “Those whom state seeks to involuntarily commit to a mental institution are entitled to the protection of due process and equal protection just as those who are incarcerated in a correctional institution.” and Bell v. Wolfish, 441 U.S. 520, 545, (1979) (“Pretrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners”).

8. Some of the **Plaintiffs** are not in treatment waiting on their civil commitment trial where they should not be place in a jail like setting for punishment to suffer a *harsher* form of confinement where **Plaintiffs** has a right to *substantive due process to liberty interest*. See State, Dept. of Children and Families v. Jackson, 790 So.2d 535, 537 (Fla.App. 2 Dist. 2001), The trial court found that, insofar as the respondents had yet to be committed, it was "inappropriate that they be forced into treatment or suffer a harsher form of confinement for their refusal to enter treatment." Bernstein v. Pataki, 233 Fed.Appx. 21, 25 (C.A.2 (N.Y.) 2007,) However, this decision does not pre-empt a claim that a liberty interest is implicated after being placed in a facility that involves more bodily restraint than is medically necessary, a right discussed with

approval by the Supreme Court in a decision that this court cannot disturb. *Youngberg v. Romeo*, 457 U.S. 307, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982).

9. The **Plaintiffs** have a constitutional right to due process of liberty interests and equal protection clause to not be transferred to a more restrictive maximum-security facility, where **Plaintiffs** should have an **Administrative Hearings**. § 394.467(4) **Fla. Stat.** in which are being deprived of without color of authority. See ***Johnson v. Barnes & Noble Booksellers, Inc.***, 437 F.3d 1112, 1116 (C.A.11 (Fla.) 2006), "As the Supreme Court reiterated in *Terry v. Ohio*, No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. 392 U.S. 1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (quoting *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734 (1891)). In Florida, the tort of false imprisonment is defined as "the unlawful restraint of a person against his will, the gist of which action is the unlawful detention of the plaintiff and the deprivation of his liberty." *Escambia County School Board v. Bragg*, 680 So.2d 571, 572 (Fla.Dist.Ct.App.1996) (quoting *Johnson v. Weiner*, 155 Fla. 169, 19 So.2d 699, 700 (1944)). In a false imprisonment action the plaintiff is required only to "establish imprisonment contrary to his will and the unlawfulness of the detention." *Rivers v. Dillard's Dep't Store, Inc.*, 698 So.2d 1328, 1331 (Fla.Dist.Ct.App.1997) (quoting *Rotte v. City of Jacksonville*, 509 So.2d 1252 (Fla.Dist.Ct.App.1987)); *Everett v. Florida Institute of Technology*, 503 So.2d 1382, 1383 (Fla.Dist.Ct.App.1987) (requiring only "allegations that a person [was] ... unlawfully restrained without color of authority"); see *City of St. Petersburg v. Austrino*, 898 So.2d 955, 957 (Fla.Dist.Ct.App.2005).

10. The **Plaintiffs** as civil commitment patients should not be placed in a maximum-security facility where all their freedom of movement is taken away from them that they had a the old Florida Civil Commitment Center that will subject them under mental anguish and stress or even cause death that constitutes a violation of the of the U.S.C. **Eighth Amendment** right against Cruel and Unusual Punishment. See ***Jones 'El v. Berge***, 164 F.Supp.2d 1096, (W.D.Wis. 2001), "held that: (1) inmates demonstrated more than a negligible chance of success on the merits of their claim that conditions at the facility constituted sufficiently serious conditions of confinement to implicate the protections of the Eighth Amendment for seriously mentally ill inmates confined there, and (2) inmates had no adequate remedy at law and would suffer

irreparable harm if the preliminary injunction was not issued, and public interest would not served by housing seriously mentally ill inmates under conditions in which they risked irreparable emotional damage and, in some cases, a risk of death by suicide.”

11. Some of the **Plaintiffs** are on State Probation condition for Sex Offender Treatment, and has requested Timeout from treatment because of the substantive due process liberty interest violation, but the new defendant **Mr. Budz** under color of state law retaliated by stating if any Plaintiff on timeout from treatment will be placed out of treatment and or start over from M.R.T. The Plaintiffs reasons for taking a timeout from treatment is because they are being deprived of their U.S.C. **Fourteenth Amendment** right to substantive due process of law of liberty interest to *not be transferred* to a more maximum security facility that would effect their mental and physical health that would hinder their progress in the treatment program. The new F.C.C.C. is designed as a county jail or super maximum security prison built in accordance with ACA prison standards and the **Florida Legislature under 394.910** even acknowledges that treatment in a prison setting is poor Id. (The Legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor.) in which the new facility is a prison. See **Hadi v. Liberty Behavioral Health Corp.**, 927 So.2d 34, 40 (Fla. App. 1 Dist. 2006), “The dangerous nature of the individuals to be committed, and the fact that they are required by statute to be committed to a secure facility, supports DCF’s decision to require the sexually violent predator treatment facility be constructed to the security specifications of an ACA approved prison, and that bidders have correctional experience.”

12. In **Hadi v. Liberty Behavioral Health Corp.** is contrary and unconstitutional where the Florida Supreme Court’s opinion in **Westerheide v. State**, 831 So.2d 93, 99 (Fla. 2002), “The Legislature further recognized that “the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from [those for individuals who are committed] under the Baker Act.” And also see **Kansas v. Hendricks**, 117 S.Ct. 2072, 2077 (U.S.Kan. 1997), “The legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the [general involuntary civil commitment statute].”

13. Therefore the Plaintiffs are also requesting for appointment of counsel and for an administrative hearing before a judge to determine the suitability of their transfer to the more maximum-security prison facility.

WHEREFORE we the **Plaintiffs** motioning this Court for an Investigation for an Injunctive and/or Temporary Restraining Order Relief to prohibit transfer to a more maximum-security facility, retaliation, prosecution and unlawful use of seclusion and restraints for practicing constitutional rights.

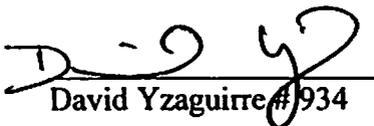
CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing motion has been sent via U.S. Mail to **Christopher M. Jones, esq.**, for the Florida Institutional Legal Services, at 12921 S.W. 1ST Road, suite 107-#346, Newberry, Florida 32669, **State of Florida Department of Children and Family Services**, at 1317 Winewood Blvd. Bldg. 6 Tallahassee, Florida 32399-0700, **Liberty Behavioral HealthCare Corporation**, at 401 E. City Avenue, Suite 820 Bala Cynwyd, Pennsylvania 19004-1155 , **Timothy James Budz**, Facility Administrator at the **Florida Civil Commitment Center (FCCC)** at 13613 S.E. Highway 70, Arcadia, Florida 34266 on this 12 day of **December 2008**.

UNNOTARIZED OATH

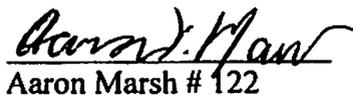
WE THE UNDERSIGNED, Under penalty of perjury, pursuant to Florida Statutes 92.525(1)(b)(2); State v. Shearer, 628 So.2d 1102 (1994); and Federal Statutes 28 U.S.C. 1746: certify that the foregoing and the facts contained in it are true and correct to the best of our knowledge on this the 12 day of **December 2008**.

Respectfully Submitted,

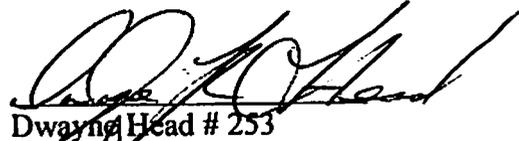

David Yzaguirre # 934


Khalie Hamid # 934

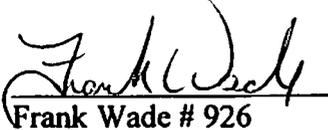

Craig Williams # 650

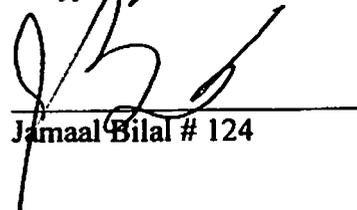

Aaron Marsh # 122


Joseph Shaw # 492


Dwayne Head # 253


Robert Williams # 793


Frank Wade # 926


Jamaal Bilal # 124

Samuel Lane
Samuel Lane # 628

W. Morales
William Morales # 715

Neil Barba
Barba Neil # 996

Michael Ward
Michael Ward # 453

Harden James
Harden James # 802

Maynard Eatherton
Maynard Eatherton # 636

R. Spivey
Richard Spivey # 828

Devin Allen 420
Devin Allen # 420

Daniel Sinclair 862
Daniel Sinclair # 862

John Oakley #107

Mailing Address for above Plaintiffs (residents), Florida Civil Commitment Center, 13613 S.E. Hwy 70, Arcadia, Florida 34266-7829.