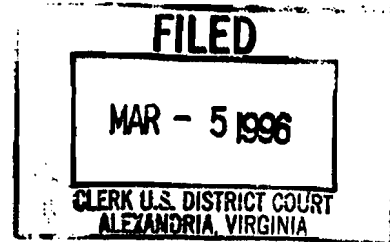


IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA, )  
Plaintiff, )  
 )  
v. )  
 )  
COMMONWEALTH OF VIRGINIA; )  
GEORGE ALLEN, Governor of the )  
Commonwealth of Virginia; ROBERT )  
METCALF, Acting Secretary, )  
Department of Health and Human )  
Resources; DR. TIMOTHY KELLY, )  
Commissioner, Department of Mental )  
Health, Mental Retardation and )  
Substance Abuse Services; )  
JANET HILL, Director, Office of )  
Mental Retardation, DMHMRSAS; )  
DAVID H. LAWSON, Director, )  
Northern Virginia Training Center, )  
Defendants. )

Civil Action No. 96-283-A



NOTICE OF ENTRY OF APPEARANCE

PLEASE TAKE NOTICE that in the above-captioned case, Richard Parker, Assistant United States Attorney, has entered his appearance for the Plaintiff, United States of America,

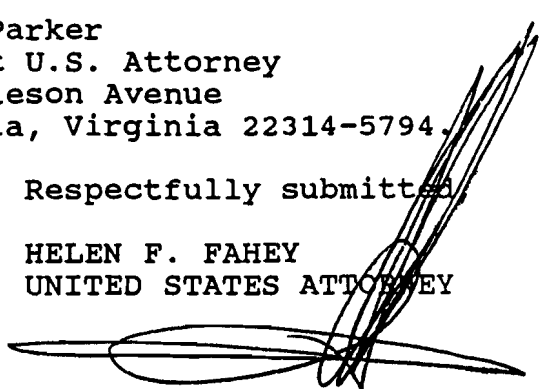
AND HEREBY REQUESTS copies of all pleadings in this case be sent to:

Richard Parker  
Assistant U.S. Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314-5794.

Respectfully submitted,

HELEN F. FAHEY  
UNITED STATES ATTORNEY

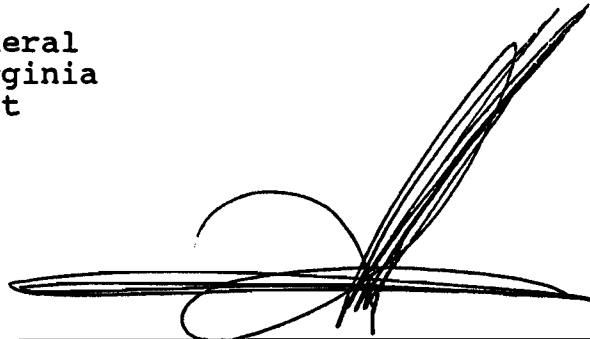
By:

  
Richard Parker  
Assistant United States Attorney  
Appearing pursuant to 28 U.S.C. § 5177  
2100 Jamieson Avenue  
Alexandria, Virginia 22314  
Telephone: (703) 299-3742

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a true and correct copy of the foregoing Notice of Entry of Appearance, to be sent by Federal Express, postage prepaid, on this 5th day of March, 1996, to:

William H. Hurd  
Deputy Attorney General  
Commonwealth of Virginia  
900 East Main Street  
Richmond, VA 23219

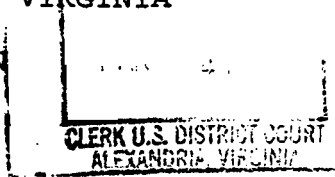
A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above a horizontal line.

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Richard Parker  
Assistant U.S. Attorney

A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 COMMONWEALTH OF VIRGINIA; )  
 GEORGE ALLEN, Governor of )  
 the Commonwealth of Virginia; )  
 ROBERT METCALF, Acting Secretary, )  
 Department of Health and )  
 Human Resources; DR. TIMOTHY )  
 KELLY, Commissioner, Department of )  
 Mental Health, Mental Retardation )  
 and Substance Abuse Services; )  
 DR. RUSSELL PERELLA, Director, )  
 Office of Mental Health Services; )  
 JOHN M. FAVRET, Director, )  
 Eastern State Hospital, )  
 )  
 Defendants. )

Civil Action No. 96-284-A  
COMPLAINT  
Civil Rights

THE UNITED STATES OF AMERICA alleges:

1. This action is brought by the Attorney General, on behalf of the United States, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 et seq., to enjoin the named Defendants from depriving persons residing at the Eastern State Hospital, including the Hancock Geriatric Center, (hereinafter "ESH"), in Williamsburg, Virginia, of their rights, privileges and immunities secured and protected by the laws and Constitution of the United States.

The purpose of this lawsuit is to ensure that each ESH patient receives adequate care and treatment, including medical and psychiatric services, and is otherwise protected from harm. In addition, the United States seeks to ensure that each patient is evaluated to determine appropriateness of placement at ESH and to ensure that services are being provided in the most integrated, least separate setting necessary to meet each patient's individual needs, and for those patients professionals have determined are in need of placement in alternate community-based programs, that those judgments are implemented in a reasonable manner. It is not the goal of this case to close the facility.

#### JURISDICTION, STANDING AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

3. The United States has standing to maintain this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all prefiling 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 Eastern District of Virginia is proper pursuant to 28 U.S.C. § 1391. All claims set forth in the Complaint arose in said District.

#### DEFENDANTS

6. Defendant COMMONWEALTH OF VIRGINIA owns and operates ESH, which is a state mental health facility located in

Williamsburg, Virginia, and includes the Hancock Geriatric Center.

7. Defendant GEORGE ALLEN is the Governor of Virginia and, in this capacity, heads the Executive Branch of the Commonwealth's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies. He selects and appoints the Secretary of the Department of Health and Human Resources ("DHHR").

8. Defendant ROBERT METCALF is the Acting Secretary of the Department of Health and Human Resources and, in this capacity, exercises administrative control of, and responsibility for, ESH.

9. Defendant DR. TIMOTHY KELLY is the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services ("DMHMRSAS") and, in this capacity, exercises administrative control of, and responsibility for, ESH.

10. Defendant DR. RUSSELL PERELLA is the Director of the Office of Mental Health Services, who, along with Defendants METCALF and KELLY, is responsible for the administration of ESH.

11. Defendant JOHN M. FAVRET is Director of ESH and is responsible for the day-to-day operations of ESH.

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

13. ESH is an institution within the meaning of 42 U.S.C. § 1997(1).

14. Persons residing at ESH are individuals with special needs, including those with mental illness, mental retardation or other developmental disabilities, and the elderly. Persons residing at ESH are "qualified individual[s] with a disability" pursuant to the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, 12131.

15. The Commonwealth of Virginia, the Department of Health and Human Resources, DMHMRSAS, and ESH are "public entities" pursuant to Title II of the ADA, 42 U.S.C. § 12131.

16. Defendants are legally responsible, in whole or in part, for the operation of and conditions at ESH, as well as for the care and treatment of persons residing at that institution.

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

#### FACTUAL ALLEGATIONS

18. Defendants have failed and are continuing to fail to provide patients residing at ESH with that level of treatment and training necessary to protect the liberty interests of patients, including their right to treatment and training sufficient to ensure safety and freedom from undue restraint.

19. Defendants have failed to evaluate or assess, consistent with accepted professional standards, each patient confined to ESH and to develop for each patient an appropriate, accurate diagnosis.

20. Defendants have failed and are continuing to fail to ensure that medications are prescribed and administered to ESH

patients by appropriately qualified professionals in keeping with accepted professional standards and to ensure that drug regimens do not harm patients and are not used as punishment, in lieu of treatment, or for the convenience of staff.

21. Defendants have failed and are continuing to fail to ensure that there is an adequate number of sufficiently trained staff, at all levels of ESH operation, to render and implement adequate care and treatment of ESH patients and to ensure reasonable safety and freedom from undue physical restraint.

22. Defendants have failed and are continuing to fail to provide adequate medical care, including nursing services, to ESH patients by failing, inter alia, to provide an overall system of medical care which is sufficient to respond to the medical needs of all patients in a timely manner.

23. Defendants have failed and are continuing to fail to provide reasonably safe conditions at ESH and to ensure the reasonable safety and personal security of ESH patients.

24. Defendants have failed and are continuing to fail to ensure that ESH patients are free of unreasonable restraints and that restraints and seclusion are used safely, administered and supervised by appropriately qualified staff, utilized consistent with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

25. Defendants have failed and are continuing to fail to maintain professionally appropriate recordkeeping and record review systems to ensure that patient records contain accurate, up-to-date and relevant information necessary to enable staff to render adequate care, treatment, and training.

26. Defendants have failed and are continuing to fail to ensure that ESH patients are adequately evaluated for community placement, that those patients whom professionals have determined should be placed in community programs are placed in such programs, and that all patients are served in the most integrated setting appropriate to each patient's individual needs.

27. Defendants have failed and are continuing to fail to meet the requirements of the ADA, 42 U.S.C. § 12101 et seq., and the regulations promulgated pursuant thereto, by excluding ESH patients, 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.

#### VIOLATIONS ALLEGED

28. The acts and omissions alleged in paragraphs 18 through 27 violate the rights, privileges and immunities of ESH patients secured or protected by the laws and Constitution of the United States and deprive the ESH patients of such rights, privileges and immunities.



29. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 18 through 27 that deprive the patients of ESH of their rights, privileges or immunities secured or protected by the laws and Constitution of the United States and cause them irreparable harm.

PRAYER FOR RELIEF

30. The Attorney General is authorized under 42 U.S.C. § 1997a to seek only 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 at ESH set forth in paragraphs 18 through 27 above, and that this Court require Defendants to take the necessary actions as to provide ESH patients with their

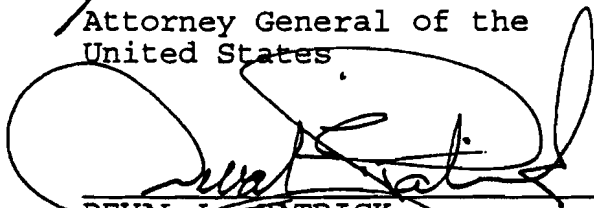
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constitutional and federal statutory rights. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,



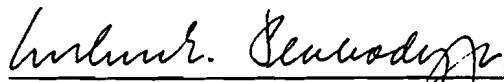
JANET RENO  
Attorney General of the  
United States



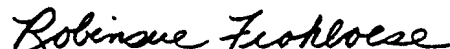
DEVAL L. PATRICK  
Assistant Attorney General  
Civil Rights Division



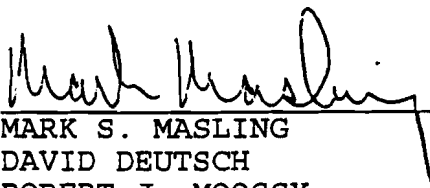
HELEN F. FAHEY  
United States Attorney  
Eastern District of  
Virginia



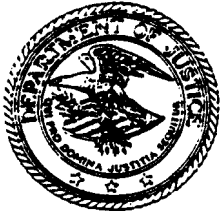
ARTHUR E. PEABODY, JR.  
Chief  
Special Litigation Section



ROBINSUE FROHBOESE  
Deputy Chief  
Special Litigation Section



MARK S. MASLING  
DAVID DEUTSCH  
ROBERT J. MOOSSY  
Attorneys  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section  
Room 1714  
P.O. Box 66400  
Washington, D.C. 20035-6400  
(202) 514-6252



Office of the Attorney General  
Washington, D. C. 20530


CERTIFICATE OF THE ATTORNEY GENERAL.

I, Janet Reno, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. Commonwealth of Virginia, et al., 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 of the United States.

I further certify that I have "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 suit under 42 U.S.C. § 1997 et seq., 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 22 day of December, 1995  
at Washington, D.C.

  
JANET RENO  
Attorney General  
of the United States

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**(a) PLAINTIFFS**

United States of America

**DEFENDANTS**

Commonwealth of Virginia, et al

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Richard Parker, AUSA  
2100 Jamieson Avenue  
Alexandria, VA 22314  
(703) 706-3742

ATTORNEYS (IF KNOWN)

**II. BASIS OF JURISDICTION**

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

42 U.S.C. § 1997 et seq.

**V. NATURE OF SUIT**

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other			

**VI. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated/Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

Check YES only if demanded in complaint:

**JURY DEMAND:**  YES  NO

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE March 96

SIGNATURE OF ATTORNEY OF RECORD 