



NH-DC-001-003

IN THE UNITED STATES DISTRICT COURT  
FOR  
THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE DISTRICT OF COLUMBIA, )  
 the Honorable Marion Barry, )  
 Mayor of the District of Columbia; )  
 Vernon Hawkins, Interim Director, )  
 Department of Human Services; )  
 Frances Bowie, Acting )  
 Administrator, Mental Retardation/ )  
 Developmental Disabilities )  
 Administration; and Alberta )  
 Brasfield, Executive Director, )  
 D.C. Village, )  
 )  
 Defendants. )

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Civ. A. No. 95-0948 TFH

COMPLAINT

1. This action is brought by the Attorney General, on behalf of the United States, pursuant to the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. §1997 et seq., to enjoin the named Defendants from depriving persons residing at the D.C. Village Nursing Home ("DCV") of their legal rights, and of rights, privileges or immunities secured or protected by the Constitution of the United States.

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 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 United States District Court for the District of Columbia is proper pursuant to 28 U.S.C. §1391. All claims set forth in the Complaint arose in said District.

#### DEFENDANTS

6. Defendant DISTRICT OF COLUMBIA ("District") owns and operates DCV, a facility housing individuals with special needs including the elderly, children, those with mental illness and those with mental retardation, located in Washington, D.C.

7. Defendant MARION BARRY is the Mayor of the District of Columbia, and in this capacity heads the Executive Branch of the District's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies. He selects and appoints the Director of the Department of Human Services ("DHS") and must approve the appointment of the Administrator (or Acting Administrator) of the Mental Retardation/ Developmental Disabilities Administration ("MRDDA").

8. Defendant VERNON HAWKINS is the Interim Director of DHS and, in this capacity, exercises administrative control of, and responsibility for, DCV.

9. Defendant FRANCES BOWIE is the Acting Administrator of MRDDA who, along with Defendant HAWKINS, is responsible for the administration of DCV.

10. Defendant ALBERTA BRASFIELD is the Executive Director of DCV and is responsible for the day-to-day operations of DCV.

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

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

13. Persons residing at DCV include individuals with special needs including the elderly, children, those with mental illness, and those with mental retardation.

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

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

#### FACTUAL ALLEGATIONS

16. Defendants have failed and are continuing to fail to provide adequate food, shelter and clothing to DCV residents.

17. Defendants have failed and are continuing to fail to provide adequate medical care to DCV residents.

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

19. Defendants have failed and are continuing to fail to ensure that DCV residents are free from undue or unreasonable restraint and that restraints are administered to DCV 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.

20. Defendants have failed and are continuing to fail to provide DCV residents with that level of minimally adequate individualized training and behavioral programming to ensure and protect the DCV residents' liberty interests.

21. Defendants have failed and are continuing to fail to provide DCV residents with that level of individualized training as is necessary to enhance independence and functioning, facilitate growth and development, attain skills needed to exercise self-determination or independence, and prevent unreasonable losses of liberty so as to preserve a person's pre-existing self-care skills from deteriorating because of his or her institutionalization.

22. Defendants have failed and are continuing to fail to ensure that medications are prescribed and administered to DCV 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.

23. Defendants have failed and are continuing to fail to provide a sufficient number of adequately trained staff to render the essential care and treatment outlined above in paragraphs 16 through 22.

24. Defendants have failed and are continuing to fail to ensure that DCV residents are evaluated for community placement and/or appropriately placed into a community setting according to their individualized needs.

25. Defendants have failed and are continuing to fail to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §12101 et seq., and the regulations promulgated pursuant thereto, by excluding the DCV residents, by reason of their disability, from participation in or by denying them the benefits of the services, programs, or activities of the District, or by subjecting them to discrimination, and by failing to administer services, programs, and activities in the most integrated setting appropriate to their needs. For purposes of Title II of the ADA, the Defendants are a "public entity," and the residents of DCV are "qualified individual[s] with a disability."

26. Defendants have failed and are continuing to fail to meet the requirements of Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. §794, and the regulations promulgated pursuant thereto, by, solely on the basis or severity of their disability, segregating the DCV residents, excluding them from participating in, denying them the benefits of, or subjecting them to discrimination in programs or activities which receive federal financial assistance. For purposes of Section 504, the Defendants receive "Federal financial assistance," the

residents of DCV are "qualified individual[s] with a disability" and are the intended beneficiaries of the assistance.

27. Defendants have failed and are continuing to fail to meet the requirements of the Medical Assistance Program ("Medicaid") established under Title XIX of the Social Security Act, 42 U.S.C. §1396r et seq., and the regulations promulgated pursuant thereto, and of the Health Insurance Program for the Aged and Disabled ("Medicare") established under Title XVIII of the Social Security Act, 42 U.S.C. §1395i et seq., and the regulations promulgated pursuant thereto.

28. Defendants have failed and are continuing to fail to meet the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq., and the regulations promulgated pursuant thereto, by failing to ensure that all children with disabilities residing at DCV receive a free appropriate public education that meets their unique needs in the least restrictive environment.

29. In response to a recent determination of noncompliance with federal regulations and order by the District of Columbia Department of Consumer and Regulatory Affairs, Defendants have engaged and continue to engage in the practice of transferring and discharging residents out of the facility in violation of the federal Medicare and Medicaid regulatory requirements for long term care facilities, 42 C.F.R. §§483.10 and 483.12, by failing to provide the residents with adequate notice before the transfer, sufficient time between the notice and the transfer,

sufficient orientation for the resident prior to transfer, or adequate choice in the transfer.

VIOLATIONS ALLEGED

30. The acts and omissions alleged in paragraphs 16 through 29 infringe upon the DCV residents' legal rights and substantive liberty interests and constitute resistance to their full enjoyment of rights, privileges or immunities secured or protected by the Constitution or laws of the United States, and deprive the DCV residents of such rights, privileges or immunities.

31. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 16 through 29 that deprive residents of DCV of their legal rights under law and the rights, privileges, or immunities secured or protected by the Constitution of the United States, and cause irreparable harm to DCV residents.

PRAYER FOR RELIEF

32. 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 DCV set forth in paragraphs 16 through 29 above, and to require Defendants to take such action as will provide legal and constitutional conditions of care to persons

who reside at DCV. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

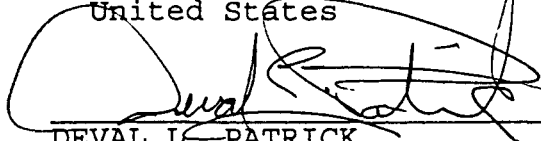
Respectfully submitted,



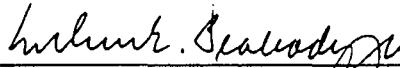
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Attorney General of the  
United States



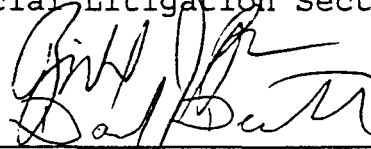
ERIC H. HOLDER, JR.  
United States Attorney  
District of Columbia



DEVAL L. PATRICK  
Assistant Attorney General  
Civil Rights Division

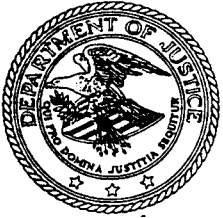


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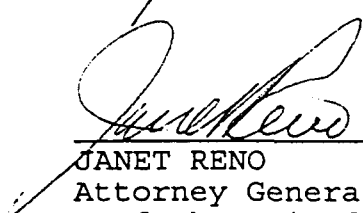
CERTIFICATE OF THE ATTORNEY GENERAL

I, Janet Reno, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. District of Columbia, 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 in this action 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.

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 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 8 day of May, 1995, at  
Washington, D.C.

  
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JANET RENO  
Attorney General  
of the United States