

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

MICHELE HADDAD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 3:10-cv-414-J-99MMH-TEM
THOMAS ARNOLD, in his official	)	
capacity as Secretary, Florida Agency for	)	
Health Care Administration	)	
	)	
Dr. ANA VIAMONTE ROS,	)	
in her official capacity as Secretary,	)	
Florida Department of Health,	)	
	)	
Defendants.	)	
	)	

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**UNITED STATES’ MEMORANDUM OF LAW  
REGARDING THE PRELIMINARY INJUNCTION STANDARD**

Pursuant to the Court’s order, the United States respectfully submits this memorandum of law concerning the legal standard for a preliminary injunction.

**ARGUMENT**

The decision whether or not to issue a preliminary injunction lies within the sound discretion of the trial court. *Charles H. Wesley Educ. Foundation, Inc. v. Cox*, 408 F.3d 1379, 1354 (11th Cir. 2005). To grant a motion for preliminary injunction, the court must determine that (1) the plaintiff has a substantial likelihood of prevailing on the merits; (2) the plaintiff will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the plaintiff outweighs whatever damage the proposed injunction may cause the Defendants; and (4) the injunction, if issued, would not be adverse to the public interest. *Id.*

The “primary justification” for the issuance of a preliminary injunction is to preserve the court’s ability to render a meaningful decision on the merits. *Canal Authority of the State of Florida v. Callaway*, 489 F. 2d 567, 573, 576 (5th Cir. 1974).

As the court in *Callaway* explained:

It must not be thought ... that there is any magic in the phrase ‘status quo.’ The purpose of the preliminary injunction is always to prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits. ***It often happens that this purpose is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent injury,*** either by returning to the last uncontested status quo between the parties...,by the issuance of a mandatory injunction...or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.

*Id.* (emphasis added). Thus, the determination of whether to grant a preliminary injunction should focus not on the specific nature of the relief, but on whether such relief is necessary to prevent irreparable harm so as to preserve the court’s ability to render a meaningful decision. Consistent with this reasoning, to enjoin violations of civil rights, courts in this and other circuits have granted preliminary injunctions requiring affirmative acts on the part of defendants in order to prevent irreparable harm to the moving party.

For instance, in *Cox*, a case in which plaintiffs alleged violations of the U.S. Constitution and federal voting rights acts, the Eleventh Circuit, without applying a heightened standard, affirmed the granting of a preliminary injunction requiring the defendants to process sixty-four voter registration applications. *Cox*, 408 F.3d at 1351; *id.*, 324 F. Supp. 2d 1358, 1369 (N.D. Ga. 2004); *see also Gresham v. Windrush*

*Partners, Ltd.*, 730 F.2d 1417, 1425 (11th Cir. 1984) (issuing preliminary injunction requiring defendants to display notices and instruct employees and agents of nondiscrimination policies and finding that “when housing discrimination is shown it is reasonable to presume that irreparable injury flows from the discrimination”); *Rogers v. Windmill Point Vill. Club Assoc., Inc.*, 967 F.2d 525, 528 (11th Cir. 1992); *Long v. Benson*, No. 08cv26, 2008 WL 4571903 \*2 (N.D. Fla. Oct. 14, 2008) (granting preliminary injunction requiring Florida to provide Medicaid coverage for certified nursing assistant services after finding irreparable injury would result if plaintiff was forced to enter a nursing home to receive necessary assistance); *Daniels v. School Bd. of Brevard*, 985 F.Supp. 1458 (M.D. Fla. 1997) (granting preliminary injunction requiring defendants to remedy Title IX inequalities).<sup>1</sup>

If no injunction is issued in this case and Ms. Haddad is forced to enter a nursing home to receive services, even a short-term institutional placement will result in irreparable injury. Ms. Haddad’s unnecessary institutionalization will sever her ties to the community in which she actively participates. *See, e.g. Gresham*, 730 F.2d at 1424 (granting preliminary injunction after finding irreparable harm when an individual is forced to sever his or her ties to the community due to housing discrimination).

Additionally, her health would likely deteriorate. (Decl. of Dr. Johns ¶ 21: Ms. Haddad would “quickly become depressed and her health would most likely quickly deteriorate”

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<sup>1</sup> *See also Katie A. v. Bonta*, 433 F. Supp. 2d 1065 (C.D. Cal. 2006) (granting a mandatory preliminary injunction requiring the state to provide wraparound services and therapeutic foster care to a statewide class of children with mental health needs who faced irreparable injury due to unnecessary institutionalization) (rev’d and remanded, 481 F. 3d 1150 (9th Cir. 2007) (finding proper standard for a mandatory preliminary injunction was applied, but reversing and remanding on other grounds); *Community Services, Inc. v. Heidelberg*, 439 F. Supp. 2d 380, 400-401 (M.D. Pa. 2006) (entering preliminary injunction ordering defendants to issue permits for plaintiff to utilize property as long term structured residence for individuals with mental illness).

if she is placed in a nursing home.) Similar concerns led the court in *Long* to grant a preliminary injunction where forcing plaintiff to enter a nursing home “will inflict an enormous psychological blow...*each day* he is required to live in the nursing home will be an irreparable harm.” *Long*, 2008 WL 4571903 \*2 (emphasis added). *See also Kathleen S. v. Dep’t. of Public Welfare of Com.*, 10 F.Supp.2d 476, 481 (E.D. Pa. 1998) (denying stay because individuals with disabilities “are irreparably injured every day they remain unnecessarily segregated in violation of the ADA.”) Any deterioration in Ms. Haddad’s health as a result of unnecessary institutionalization cannot be remedied by a later decision on the merits.

The cases cited by Defendants for the proposition that a heightened preliminary injunction standard should be applied are inapposite. Two of the cases defendants cite are materially different, as neither case involves the critical rationale justifying a preliminary injunction: preventing irreparable harm in order to preserve the ability of the courts to render a meaningful decision on the merits. In *Mercedes-Benz U.S. Int’l, Inc. v. Cobasys, LLC*, 605 F.Supp. 2d 1189 (N.D. Ala. 2009), there was no question that, absent a preliminary injunction, the court could render a meaningful decision on the merits.<sup>2</sup> Further, given the uncertainty as to the terms of the contract, the court in *Mercedes-Benz* could not know if the specific performance it would require in a preliminary injunction would ultimately be ordered. Here, on the other hand, the only question is *where* defendants will be required to provide services (in a nursing facility in violation of *Olmstead*, or in the community – at an arguably lower cost). In light of this undisputed

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<sup>2</sup> In *Exhibitors Poster Exchange, Inc. v. National Screen Service Corp.*, 441 F.2d 560 (5th Cir. 1971), the movant could not establish irreparable harm where the action it sought to enjoin had been ongoing for five years without objection. Thus, there was no concern that absent an injunction the court would be unable to render a meaningful decision.

obligation to fund services, the determination of whether this court should grant a preliminary injunction does not present the concerns over ordering an action that may later be determined to be unnecessary; the state's obligation to fund Ms. Haddad's services is inevitable, and thus the concerns that drive the heightened standard for preliminary injunctions that require affirmative actions by the enjoined party are not present here. *Friends for All Children, Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816, 829 (D.C. Cir. 1984) (affirming grant of mandatory preliminary injunction requiring manufacturer to create fund to pay for diagnostic exams where defendants' obligations were already established).

*Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976), while applying a heightened standard, supports Ms. Haddad's request for a preliminary injunction, as the court there ordered defendants to appoint plaintiffs to an administering board. The court was persuaded that plaintiffs were likely to succeed on the merits and that plaintiffs established irreparable harm that would result from absence of plaintiff's voice on the board (pointing specifically to the harm arising from delays in health care improvements that would likely result from absence of plaintiffs on the board). These facts, unlike the facts in *Mercedes-Benz* and *Exhibitors*, justify the rationale for granting a preliminary injunction: to preserve the court's ability to render a meaningful decision on the merits.

For the foregoing reasons and the reasons set forth in the United States' Statements of Interest, the Court should grant Ms. Haddad's motion for preliminary injunction.

June 21, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Anne S. Raish  
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