

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
VICINAGE OF NEWARK

GEORGE RILEY, et al., : HON. DICKINSON R. DEBEVOISE, U.S.D.J.  
Plaintiff, : Civil Action No. 06-0331 (DRD)  
v. :  
DEVON BROWN, et al., :  
Defendants. :

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BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY  
RESTRAINING ORDER

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**PRELIMINARY STATEMENT**

Plaintiffs have filed a Complaint and Motion for Temporary Restraining Order against the State Defendants alleging a 42 U.S.C. § 1983 cause of action under the First, Eighth and Fourteenth Amendments of the United States Constitution. Plaintiffs, all state inmates currently housed in the Adult Diagnostic and Treatment Center ("ADTC"), seek a Temporary Restraining Order requiring the New Jersey Department of Corrections ("DOC") to: 1) keep all "ADTC inmates" segregated from state inmates of other institutions at all times during trips to and from the ADTC; 2) have a Corrections Officer present at all times when segregation is not possible; 3) institute policies and procedures directing DOC staff not to identify "ADTC inmates" as such; 4) provide "ADTC inmates" with clothing that does not identify them as such; and 5) institute policies and procedures providing for "keep separate" status for "ADTC inmates," isolating them from state inmates of other institutions. There is no merit to plaintiffs' claims for injunctive relief.

The State Defendants oppose plaintiffs' Application for a Temporary Restraining Order because plaintiffs have failed to prove: (1) a reasonable probability of success on the merits; (2) they will suffer irreparable harm; (3) that the balance of hardships weighs in favor of granting the relief; or (4) the preliminary relief will be in the public interest.

**PROCEDURAL HISTORY AND COUNTER-STATEMENT OF FACTS**<sup>1</sup>

Plaintiffs, George Riley, 133229B, James J. Krivacska, 106128C, Paul Cornwell, 081208B, Vincent Macrina, 865912C, William Vansciver, 033020A, Richard Gibbs, 232215C, and Peter Braun, 786615A, filed a Motion for Temporary Restraining Order on or about January 18, 2006 and a 42 U.S.C. § 1983 Complaint on January 27, 2006, against State Defendants, Devon Brown, Former Commissioner of the New Jersey Department of Corrections, and William Plantier, Director of the Division of Operations for the New Jersey Department of Corrections. The Motion for Temporary Restraining Order and Complaint were sent ex parte to the court. However, the court has permitted the Office of the Attorney General to file an opposition to plaintiffs' motion by February 17, 2006. Accordingly, this letter brief is submitted to the court. Plaintiffs' Motion for Temporary Restraining Order and Complaint were served on State Defendants by Waiver of Service on February 9, 2006. Therefore, State Defendants Answer to Plaintiffs' Complaint is due on April 10, 2006.

Plaintiffs, state inmates housed at the Adult Diagnostic and Treatment Center ("ADTC"), allege the State Defendants imposed cruel and usual punishment on the plaintiffs, by subjecting plaintiffs to serious physical injury, or threat of injury, which

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<sup>1</sup>The Procedural History and Counter-Statement of Facts have been combined for the convenience of the Court as they are inextricably intertwined.

in turn, has allegedly interfered with plaintiffs' right to necessary medical treatment. (Plaintiffs' MEMORANDUM OF LAW IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ("Memo of Law"), 1).

Specifically, plaintiffs allege the State Defendants have failed to protect plaintiffs from other state inmates, which they come in contact with during medical, court, and other trips outside of the ADTC facility. (Id. at 2). Plaintiffs state that these other state inmates harbor particular enmity toward plaintiffs because the plaintiffs have been convicted of sexual offenses and therefore, these other inmates seek to cause plaintiffs physical and psychological harm in the absence of protection by DOC officers. (Id.)

Plaintiffs assert that the alleged failure of the State Defendants to protect plaintiffs from other state inmates has resulted in plaintiffs fear of being seriously injured by other state inmates during trips outside the ADTC. (Id.) Plaintiffs claim that due to their fears, they have voluntarily forgone needed medical treatment<sup>2</sup> and necessary court appearances, which has allegedly placed them at risk of suffering serious medical problems

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<sup>2</sup>State Defendants note at the outset that although plaintiffs allege they forgo necessary medical trips outside the ADTC, medical care is provided within the ADTC facility, and medical transports are only for that care which, above and beyond the basic medical care provided at the ADTC. Therefore, plaintiffs are not entirely without medical care when they voluntarily refuse to go on medical trips outside the ADTC.

and sacrificing significant property and/or liberty interest. (Id. at 3).

**A. Facts Specific to Plaintiff James J. Krivacska**

Plaintiff James Krivacska, currently housed at the ADTC, is serving a sixteen-year sentence for one count of aggravated sexual assault in the first degree, two counts of aggravated sexual assault in the third degree, and two counts of endangering the welfare of a child. (New Jersey Department of Corrections Inmate Locator, [https://www6.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www6.state.nj.us/DOC_Inmate/inmatefinder?i=I)).

Plaintiff Krivacska alleges that in August of 2002, he was transported for a court proceeding and throughout that trip he was allegedly subjected to verbal abuse and threats of physical assault, by another state inmate, due to Krivacska's status as a convicted sex offender. (Plaintiffs' Memo of Law, at 7). Plaintiff Krivacska also alleges that on May 31, 2005, he was scheduled for a medical trip to have a tooth extracted. (Id.). Krivacska went on his medical trip, coming into contact with state inmates housed at other institutions, and allegedly suffered some verbal abuse on the morning trip. (Id. at 8-9). Krivacska was not threatened or physically assaulted on this trip. (Id. at 9). Despite the safe medical trip on May 31, 2005, Krivacska, allegedly still fearful, claims to have delayed the extraction of a broken tooth for six months until an oral surgeon visiting the ADTC could perform the procedure. (Id.). Plaintiff Krivacska has a court



appearance scheduled for February 17, 2006, which he allegedly intends to waive his right to appear due to his alleged fear of physical assault or injury at the hands of other state inmates during the trip. (Id. at 10).

**B. Facts Specific to Plaintiff Richard Gibbs**

Plaintiff Richard Gibbs, currently housed at the ADTC, is serving a twenty-five year sentence for two counts of sexual assault on a victim under thirteen years of age, four counts of endangering the welfare of a child in the second degree, and one count of aggravated sexual assault in the first degree. (New Jersey Department of Corrections Inmate Locator, [https://www6.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www6.state.nj.us/DOC_Inmate/inmatefinder?i=I)).

Plaintiff Gibbs alleges only that he had a court appearance scheduled for January 30, 2006 and he was allegedly fearful of being assaulted during that trip and waived his right to appear. (Plaintiffs' Memo of Law, at 12-13).

**C. Facts Specific to Plaintiff George Riley**

Plaintiff George Riley, currently housed at the ADTC, is serving thirteen years for one count of rape and carnal abuse, one count of endangering the welfare of a child, and one count of criminal attempt to commit a sexual offense. (New Jersey Department of Corrections Inmate Locator, [https://www6.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www6.state.nj.us/DOC_Inmate/inmatefinder?i=I)).

Plaintiff Riley alleges only that he has an Appeal before the Appellate Division and that if his case is remanded, he will be required to be transported to and from court. (Plaintiffs' Memo of Law, at 14). Riley is allegedly fearful of physical injury or assault during these potential court trips. (Id.)

**D. Facts Specific to Plaintiff Peter Braun**

Plaintiff Peter Braun, currently housed at the ADTC, is serving eight years for one count of sexual assault on a victim under thirteen years of age, one count of endangering the welfare of a child by selling/viewing child pornography, and one count of endangering the welfare of a child in the second degree. (New Jersey Department of Corrections Inmate Locator, [https://www6.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www6.state.nj.us/DOC_Inmate/inmatefinder?i=I)).

Plaintiff Braun alleges that he must attend compliance conferences in Union County Family Court. (Plaintiffs' Memo of Law, at 15). Braun alleges that on December 13, 2005, during a trip to one of these conferences, he was subjected to verbal harassment and threats by other state inmates, who also allegedly touched Braun's person searching for jewelry. (Id. at 16). Braun claims he suffered psychological trauma as a result of this incident and that he is allegedly fearful of abuse during his next trip to court. (Id. at 17). Finally, Braun alleges that the state inmates knew he was a convicted sexual offender because the corrections officers told them. (Id.).

**E. Facts Specific to Plaintiff Vincent Macrina**

Plaintiff Vicent Macrina, currently housed at the ADTC, is serving eleven years for one count of aggravated sexual assault, in the first degree, on a victim under thirteen. (New Jersey Department of Corrections Inmate Locator, [https://www6.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www6.state.nj.us/DOC_Inmate/inmatefinder?i=I)).

Plaintiff Macrina alleges that due to his medical condition, he must make frequent medical trips to New Jersey State Prison and St. Francis Hospital. (Plaintiff's Memo of Law, at 18). Plaintiff Macrina alleges that he is fearful of being assaulted and therefore, allegedly refuses his medical trips. (Id.).

**F. Facts Specific to Plaintiff William Vansciver**

Plaintiff William Vansciver, currently housed at the ADTC, is serving eighteen years for two counts of aggravated sexual assault on a victim under thirteen. (New Jersey Department of Corrections Inmate Locator, [https://www6.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www6.state.nj.us/DOC_Inmate/inmatefinder?i=I)).

Plaintiff Vansciver alleges that due to his medical condition, he is in need of frequent medical trips. (Plaintiffs' Memo of Law, at 19). However, Vansciver is allegedly fearful of injury or assault on these medical trips and therefore, has allegedly foregone necessary medical trips. (Id.).

**G. Facts Specific to Plaintiff Paul Cornwell**

Plaintiff Paul Cornwell, currently housed at ADTC, is serving five years, one month and eight days for one count of sexual assault in the second degree. (New Jersey Department of Corrections Inmate Locator, [https://www6.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www6.state.nj.us/DOC_Inmate/inmatefinder?i=I)).

Plaintiff Cornwell alleges that during his return from a medical trip on May 24, 2005, he was injured by another state inmate while being held in a holding area at Garden State Prison. (Plaintiffs' Memo of Law, 5). Cornwell alleges that he was placed in the holding cell with another state inmate from ADTC and that while his wrist shackles were being removed, one of the Corrections officers announced that they were from "Avenel", which is allegedly understood to mean the ADTC facility. (Id.). Cornwell further alleges that the Corrections officers left his leg shackles on, stating it would make a "fair fight." (Id.). Then Cornwell alleges that the officers left the holding area and watched from a plexiglass partition as he was physically assaulted by another state inmate. (Id.). Cornwell allegedly suffered injuries and psychological trauma as a result of the assault. (Id. at 6).

**Plaintiffs' Motion for Temporary Restraining Order**

Plaintiffs filed an Order to Show Cause seeking a Temporary Restraining Order compelling the DOC to: 1) keep all "ADTC inmates" segregated from State inmates of other institutions at all times

during trips to and from the ADTC; 2) have a Corrections Officer present at all times when segregation is not possible; 3) institute policies and procedures directing DOC staff not to identify "ADTC inmates" as such; 4) provide "ADTC inmates" with clothing that does not identify them as such; and 5) institute policies and procedures providing for "keep separate" status for "ADTC inmates," isolating them from State inmates of other institutions. (Plaintiffs' MOTION FOR TEMPORARY RESTRAINING ORDER). This office opposes plaintiffs' application for a Temporary Restraining Order because plaintiffs' have failed to establish the elements necessary to impose preliminary restraints on the State Defendants.

**LEGAL ARGUMENT**

**PLAINTIFFS HAVE FAILED TO ESTABLISH THE  
ELEMENTS NECESSARY TO IMPOSE PRELIMINARY  
RESTRAINTS UPON THE STATE DEFENDANTS.**

Plaintiffs have failed to satisfy their burden of proof as to the standards governing applications for preliminary relief. Plaintiffs have failed to prove irreparable harm, have no probability of success on the merits, and will suffer no hardship in the absence of relief.

Injunctive relief is an extraordinary equitable remedy which should be granted in limited circumstances. Frank's GMC Truck Ctr. Inc. v. Gen. Motors Corp., 847 F.2d 100, 102 (3d Cir. 1988)(citing United States v. City of Philadelphia, 644 F.2d 187, 191 n. 1 (3d Cir. 1980)). Four factors govern a district court's decision whether to issue a preliminary injunction:

- (1) whether the movant has shown a reasonable probability of success on the merits;
- (2) whether the movant will be irreparably injured by denial of the relief;
- (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and
- (4) whether granting the preliminary relief will be in the public interest.

Gerardi v. Pelullo, 16 F.3d 1363, 1373 (3d Cir. 1994), quoting SI Handling Systems, Inc. v. Heisley, 753 F.2d 1244, 1254 (3d Cir. 1985). "An injunction should issue only if the plaintiff produces evidence sufficient to convince the court that all four factors

favor preliminary relief." E.B. v. Poritz, 914 F. Supp. 85, 90 (D.N.J. 1996), rev'd on other grounds, 119 F.3d 1077 (3d Cir. 1997) (citing Opticians Ass'n of Amer. v. Independent Opticians of Amer., 920 F.2d 187, 192 (3d Cir. 1990)).

As set forth more fully below, plaintiffs cannot satisfy their burden of proof as to each of these required elements. In particular, plaintiffs have not shown that: (1) a reasonable probability of success on the merits; (2) they will suffer irreparable harm; (3) that the balance of hardships weighs in favor of granting the relief; or (4) the preliminary relief will be in the public interest. Therefore, plaintiffs Motion for Temporary Restraining Order should be denied.

**1. It is Not Probable that Plaintiffs will Succeed on the Merits.**

Plaintiffs have not made a preliminary showing of a likelihood of success on the merits as they have brought a claim for that which they are not entitled; namely, complete isolation and segregation from the rest of the inmate population not housed in the ADTC.

To prevail on an application for temporary relief, "the party seeking a preliminary injunction must demonstrate a 'reasonable probability of eventual success in the litigation.'" LCN Enters. v. City of Asbury Park, 197 F. Supp. 2d 141, 145 (D.N.J. 2002) (quoting Kershner v. Mazurkiewicz, 670 F.2d 440, 443 (3d Cir. 1982)). The party seeking relief must "make a prima facie case

showing a reasonable probability that [they] will prevail on the merits." LCN Enters., 197 F. Supp. 2d at 145 (quoting Oburn v. Shapp, 521 F.2d 142, 148 (3d Cir. 1975)).

Plaintiffs fail to state a claim upon which relief may be granted because plaintiffs assert that they are entitled to complete segregation from the rest of the entire state inmate population by virtue of the fact that they have been housed at the ADTC. However, plaintiffs are not entitled to such segregation, as even the Legislature has recognized that state inmates convicted of sexual offenses may be housed in state institutions other than the ADTC.

Pursuant to N.J.S.A. 2C:47-3(h), a state inmate, convicted of a sexual offense, is housed in either the Adult Diagnostic and Treatment Center or another DOC facility based on the length of his sentence. If the court sentenced a sex offender/inmate to a term of seven years or less, pursuant to N.J.S.A. 2C:47-3(h)(1), the inmate shall be initially housed in the ADTC, as soon as practically possible. However, pursuant to N.J.S.A. 2C:47-3(h)(2), if the inmate was sentenced to greater than a seven-year term, the ADTC eligible defendant must initially be placed in a traditional state correctional facility designated by the commissioner pursuant to N.J.S.A. 30:4-91.2. Once the commissioner has placed the inmate in the designated facility, the commissioner must then calculate the expiration date of the inmate's sentence, including reductions



for any credits. N.J.S.A. 2C:47-3(h)(2). When the inmate is within five years of parole eligibility, the commissioner would transfer the sex offender into the ADTC for the remainder of his sentence. Id.

Therefore, the Legislature has recognized that inmates convicted of a sexual offense are not entitled to segregation from the rest of the state inmate population and any such segregation would fly in the face of N.J.S.A. 2C:47-3(h), which permits the State to house state inmates convicted of sexual offenses in the same institutions as those state inmates convicted of other criminal offenses.

Plaintiffs attempt to create an imaginary distinction between themselves and state inmates housed at other institutions. In fact, there is no distinction. They are all state inmates, convicted of a criminal offense. Inmates convicted of a sexual offense are not entitled to complete isolation and segregation from the rest of the state inmates population. N.J.S.A. 2C:47-3(h). As stated above, even the Legislature has recognized that inmates convicted of sexual offenses are not entitled to separate housing from those state inmates convicted of other criminal offenses, as the DOC may place them in any other state institution until there is room at the ADTC. N.J.S.A. 2C:47-3(h).

Additionally, state inmates have no liberty interest in which state institution they are placed. Trantino v. N.J. State Parole

Bd., 296 N.J. Super. 437, 493 (App. Div. 1997)(citing Meachum v. Fano, 427 U.S. 215, 224 (1976)), modified in part on other grounds and aff'd, 154 N.J. 19 (1998); Sandin v. Conner, 515 U.S. 472, 486 (1995); and Meachum, 427 U.S. at 224. Under the Due Process Clause, liberty interests are limited to circumstances exceeding the sentence "in an unexpected manner." Sandin, 515 U.S. at 484. Thus, the Due Process Clause does not create a liberty interest in being free from "every change in the conditions of confinement having a substantial adverse impact on the prisoner" or from transfers from one cell to another or one prison to another, so long as conditions remain "'within the normal limits or range of custody which the conviction has authorized the State to impose.'" Id. at 478, 115 S.Ct. at 2297 (quoting Meachum v. Fano, 427 U.S. 215, 225, 96 S.Ct. 2532, 2538-39, 49 L.Ed.2d 451 (1976)). In sum, liberty "interests will be generally limited to freedom from restraint which, while not exceed the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin, 515 U.S. at 484 (citations omitted).

Those inmates convicted of a sexual offense may be housed in an institution other than the ADTC, provided they are not within the last five to seven years of their sentence, and have no right

to segregation from the rest of the inmate population. N.J.S.A. 2C:47-3(h). Therefore, they have no liberty interest in being completely segregated and isolated from other state inmates. Sandin, 515 U.S. at 484.

Accordingly, the Court should deny plaintiffs' request for Temporary Restraining Order.

**2. Plaintiffs Will Not Suffer Irreparable Injury in the Absence of Preliminary Relief.**

The harm plaintiffs claim to be suffering, namely failing to attend medical appointments and court appearances, is a result of their own refusal to attend such appointments. The Department of Corrections continues to make transports available to plaintiffs for such appointments, yet plaintiffs allege that they voluntarily choose to forgo necessary medical trips and court appearances. Therefore, plaintiffs are in control of the harm they are allegedly suffering and such harm is not attributable to the DOC.

Plaintiffs must make a "clear showing of immediate irreparable injury." Continental Group, Inc. V. Amoco Chem. Corp., 614 F.2d 351, 359 (3rd Cir. 1980). ". . .injunctions will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties." Ibid. "Not even all irreparable harm, but only irreparable harm to legal rights, should count." Adams v. Freedom Forge Corporation, 204 F.3d 475, 489 (3rd Cir. 2000); quoting favorably John Luebsdorf, The Standard for Preliminary Injunctions, 91 Harv. L.Rev. 525, 541 (1978).

Plaintiffs have not established that they will suffer irreparable injury if the Court does not intervene now. The irreparable harm alleged by plaintiffs is entirely self-inflicted and not the result of any actions or inactions of the State Defendants. Plaintiffs alleged that due to their fear of being injured or assaulted, they have and will continue choosing to forgo necessary medical visits and court appearances. Of the seven plaintiffs, only one, Cornwell, alleges that he was physically assaulted, and just two, Krivacska and Braun, allege they were merely subject to verbal harassment, allegedly at the hands of other state inmates during trips from the ADTC. (Plaintiffs' Memo of Law at 5-20). The remaining four plaintiffs, Riley, Gibbs, Macrina and Vansciver, allege that it is their fear of being assaulted that keeps them from medical appointments and court appearances. (Id.).

It is never sufficient to merely allege in a conclusory fashion, as plaintiffs have, that they will suffer immediate and irreparable harm in the absence of restraints.

"Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of proving a 'clear showing of immediate irreparable injury.'" Ecri v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3rd Cir. 1987) (quoting Continental Group, Inc. v. Amoco Chem. Corp., 614 F.2d 351, 359 (3d Cir. 1980)). The applicant must present specific facts establishing that irreparable harm is

virtually certain without restraints and not merely just a risk thereof. Smith v. Travelers Mortgage Services, 699 F.Supp. 1080, 1084 (D.N.J. 1988). Plaintiffs have failed to make a showing that irreparable harm is "virtually certain," especially since four of the plaintiffs have never been so much as verbally harassed on a trip outside the ADTC and their allegations that they are fearful of injury or physical attack at the hands of other state inmates during such trips outside the ADTC are completely unfounded.

Additionally, plaintiffs, Krivacska and Braun, who allege they were harassed by other inmates, have failed to show that they will suffer "virtually certain" irreparable harm as they alleged they were merely harassed by other state inmates. The allegation that these plaintiffs were harassed by other state inmates, while on trips outside the ADTC, does not support their alleged fear that they will suffer injury or physical assault while on such trips.

Furthermore, plaintiff Cornwell, who alleges that he was physically assaulted by another inmate, has failed to show harm which is irreparable. Harm is not irreparable unless it results in a material injury for which monetary damages are inadequate. Board of Educ., Borough of Union Beach v. New Jersey Educ. Ass'n, 96 N.J. Super. 371, 390-91 (Law Div. 1967), aff'd, 53 N.J. 29 (1968). Plaintiffs have made no allegations nor have they offered any evidence that they will suffer any injuries for which pecuniary damages are insufficient. Specifically, plaintiff Cornwell alleges

a single assault as a result of the actions of a single officer, which would serve as the basis for a single 42 U.S.C. § 1983, failure to protect claim, rather than a request for system wide changes in the Department of Corrections Central Transportation system.

Therefore, plaintiffs' claim of injury is voluntarily withdrawing from transports to medical appointments and court appearances due to their unfounded fear of harassment by other state inmates. Plaintiffs have failed to identify any injuries, imaginary or real, monetary or otherwise, which are attributable to the State Defendants.

Accordingly, the Court should deny plaintiffs' request for Temporary Restraining Order.

**3. The Hardship to Plaintiffs in the Absence of Relief Does Not Outweigh the Hardship to the State Defendants and the Public.**

The balance of hardships favors the State Defendants, as there is no hardship to the plaintiffs. Plaintiffs claimed hardship is that plaintiffs will allegedly continue to voluntarily forgo necessary medical appointments and court appearances, which plaintiffs allege will result in plaintiffs suffering serious medical conditions and forfeiture of their claims, defenses and/or arguments in pending court cases. Again, as set forth in more depth in Point 2, this harm plaintiffs claim to suffer is entirely self inflicted by plaintiffs voluntarily refusing to go on medical

or court trips due to unfounded fears of injury or assault. The new Jersey Department of Corrections will continue to provide safe transports for medical appointments and court appearances. If plaintiffs continue to voluntarily refuse to take part in the transport, then they control whether they suffer injury.

In contrast, the hardship on the State Defendants is greater than that of the alleged hardship placed on the plaintiffs by the plaintiffs themselves.

While prisoners retain constitutional rights, the Supreme Court has stated "these rights must be exercised with due regard for the 'inordinately difficult undertaking' that is modern prison administration." Thornburgh v. Abbott, 490 U.S. 401, 407 (1989) (citing Turner v. Safley, 482 U.S. 78, 85 (1987)).

Acknowledging the expertise of [prison] officials and that the judiciary is "ill equipped" to deal with the difficult and delicate problems of prison management, this Court has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world.

[Thornburgh, 490 U.S. at 407-08 (citing Procunier v. Martinez, 416 U.S. 396, 405 (1974).]

Such deference is essential to prevent disorder in "the volatile prison environment . . . ." Thornburgh, 490 U.S. at 413.

The Department of Corrections has established Central Transportation, which has developed a safe and secure schedule for

the transportation of those inmates housed at the ADTC. N.J.A.C. 10A:3-9.3(j). The transportation schedule developed by Central Transportation is not only for the safety of the inmates, but also for the safety of the correctional staff, as well as the public, and is rationally related to its legitimate penological goal of maintaining and improving the safe, secure, orderly, and efficient administration of New Jersey state correctional facilities. Farmer v. Brennan, 511 U.S. 825, 832 (1994)(quotations omitted) (the Eighth Amendment requires prison officials to "take reasonable measure to guarantee the safety of inmates"); and Hudson v. Palmer, 468 U.S. 517, 526-527 (1984) ("... prison administrators are to take all necessary steps to ensure the safety of not only the prison staffs and administrative personnel, but also visitors. They are under an obligation to take reasonable measures to guarantee the safety of the inmates themselves.").

To grant the relief sought by plaintiffs would undermine the discretion of the Department of Corrections in the administration of the correctional institutions by invalidating the current Central Transportation system. Additionally, granting plaintiffs' relief would undue N.J.S.A. 2C:47-3(h). As set forth more fully in Point 1, the Legislature enacted N.J.S.A. 2C:47-3(h) to alleviate some of the overcrowding issues in the DOC by allowing the DOC to place those convicted of sexual offenses in institutions other than the ADTC. Therefore, granting plaintiffs' relief would render



N.J.S.A. 2C:47-3(h) useless and place the Department of Corrections back in the position in which it was prior to the enactment of N.J.S.A. 2C:47-3(h).

Therefore, the hardship to the DOC substantially outweighs any harassment that plaintiff may face as a result of their voluntarily forgoing medical appointments and court appearances. Accordingly, the Court should deny plaintiffs' request for Temporary Restraining Order.

**4. Plaintiffs' Request for Preliminary Relief is Not in the Interest of the Public.**

The public will be harmed by plaintiff's request for injunctive relief because it has a paramount interest in the safe, secure, orderly, and efficient administration of the New Jersey state prison system. The transportation schedule of inmates housed at the ADTC to medical appointments and court appearances outside the ADTC is not only for the safety of the inmates, but also for the safety of the correctional staff, as well as the public. To grant the relief requested, the state will be required to provide additionally transports to and from the ADTC, thus increase the risks already associated with the transportation of state inmates.

**CONCLUSION**

Based upon the aforementioned, this office respectfully submits that plaintiffs' have not established that they are entitled to the preliminary restraints they are seeking and therefore, the court should deny plaintiffs' Motion for Temporary Restraining Order.

Respectfully submitted,

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