

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JESSICA GLENDENING, as next friend
of G.W.; AUDRA ASHER, as next friend
of L.P.; COLIN SHAW, as next friend of
C.B. and N.K.; and LAURA
VALACHOVIC, as next friend of E.K.,

Plaintiffs,

v.

Case No. 22-CV-4032-TC-GEB

LAURA HOWARD, Secretary of Kansas
Department of Aging and Disability
Services, in her official capacity,
MIKE DIXON, State Hospitals
Commissioner, in his official capacity, and
LESIA DIPMAN, Larned State Hospital
Superintendent, in her official capacity,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65, Plaintiffs respectfully move the Court for a preliminary injunction against Defendants Laura Howard, in her official capacity as Secretary of the Kansas Department of Aging and Disability Services (“KDADS”), Mike Dixon, in his official capacity as State Hospitals Commissioner, and Lesia Dipman, in her official capacity as Superintendent of Larned State Hospital. Plaintiffs seek a preliminary injunction to enjoin Defendants from forcing Plaintiffs and others similarly situated to remain incarcerated in Kansas county jails for an unconstitutional amount of time as they wait to receive competency evaluation or competency

restoration treatment at Larned State Hospital before they can stand trial. In support thereof, Plaintiffs state as follows:

1. On May 26, 2022, Plaintiffs filed a Complaint seeking to permanently enjoin Defendants from maintaining their unconstitutional wait list policy that denies Plaintiffs and other individuals similarly situated timely competency evaluation and competency restoration treatment, forcing them to wait in county jails for weeks and months to receive evaluation or treatment before they can stand trial.

2. As set forth in the accompanying Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction, a preliminary injunction is necessary and appropriate because Plaintiffs have made a strong showing that (1) they are likely to prevail on the merits of their Fourteenth Amendment claims based on substantive due process, procedural due process, and the prohibition against cruel and unusual punishment as set out under the Eighth Amendment; (2) they will suffer irreparable injury absent a preliminary injunction; (3) the balance of harms tips in their favor because the irreparable harm they are suffering outweighs the burden that the preliminary injunction will cause Defendants; and (4) a preliminary injunction would be in the public interest.

3. Plaintiffs incorporate by reference their Complaint, their Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction, and all exhibits therein.

WHEREFORE, Plaintiffs respectfully request that this Court issue a preliminary injunction enjoining Defendants from maintaining a wait list for Larned State Hospital that subjects Plaintiffs and those similarly situated to unconstitutionally long wait times for competency evaluations and restoration treatment. Plaintiffs further request that this Court issue an injunction requiring Defendants to provide competency evaluation and competency restoration treatment to Plaintiffs and others similarly situated within a constitutional period of time.

Dated this 26th day of May, 2022.

Respectfully submitted,

**AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
KANSAS**

/s/ Sharon Brett

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**NATIONAL POLICE
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OF NATIONAL LAWYERS
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** Pro Hac Vice Application
Forthcoming*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on this 26th day of May 2022, I electronically filed the foregoing document using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record. I have also emailed a courtesy copy to Sherry Diel, Chief Counsel for the Kansas Department of Aging and Disability Services, at Sherry.Diel@ks.gov.

/s Sharon Brett
Sharon Brett