

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.B., by and through her next friend
Cassie Cordell Trueblood, *et al.*

Plaintiffs,

v.

Washington State Department of
Social and Health Services, *et al.*,

Defendants.

No. 14-cv-01178-MJP

PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER

Note on Motion Calendar:

March 17, 2016

Oral Argument Requested

Plaintiffs, Disability Rights Washington and class members respectfully move the Court for an order temporarily restraining Defendant Department of Social and Health Services ("DSHS") from assigning class members to receive restoration treatment at the Yakima Competency Restoration Center ("YCRC").

I. INTRODUCTION

Faced with this Court's order to provide therapeutic competency restoration services within seven days to all class members, Defendants proceeded with an ill-considered plan to place class members in a partially renovated jail, instead of a state psychiatric hospital, which is

unsafe and which violates this Court's orders. *See* Dkt. No. 131, Dkt. No. 186. Plaintiffs Disability Rights Washington and Plaintiff class members are entitled to a temporary restraining order prohibiting their transfer to YCRC. Defendants' assignment of Plaintiffs to this facility violates this Court's April 2, 2015 Order directing Defendants to provide competency services to class members in a state psychiatric hospital or a facility that is therapeutically comparable to the hospital. Plaintiffs are entitled to a TRO because they are likely to succeed on the merits, will suffer irreparable harm without judicial relief, and the balance of equities and public interest tip in their favor.

II. FACTUAL BACKGROUND

A. This Court Ordered Defendants to Provide Plaintiff Class Members Inpatient Competency Services in a Therapeutic Environment

After a seven-day bench trial, this Court found that state psychiatric hospitals are "an appropriate environment for mental health treatment" while jails are "inherently punitive." Dkt. 131 at 9. Consistent with these findings, this Court ordered Defendants to provide inpatient competency restoration services in the "therapeutic environment of a psychiatric hospital." Dkt. 131 at 22. To comply with this directive, Defendants' originally planned to create additional beds for competency services at the state psychiatric hospitals and thirty temporary beds in correctional settings. Dkt. 164 at 13-17.

B. Defendants' Provision of Competency Services to Class Members in its Corrections-based Restoration Program, YCRC, Violates This Court's Order Because YCRC Is Not a Sufficiently Therapeutic Environment

Although it is certain that Defendants must have known that it was not possible for them to meet this Court's January 2, 2016 deadline to comply with its Order, Defendants waited until the last minute to inform Plaintiffs and the Court that, dispute months of assurances, Defendants would not be able to meet the January 2016 compliance deadline. On December 30, 2015

1 Defendants moved to modify this Court's order requesting more time to comply – specifically
2 they sought more time to implement corrections-based restoration programs. *See* Dkt. 174.

3 Defendants seek to implement these programs and assign Plaintiff class members to these
4 facilities instead of to the state psychiatric hospitals even though Defendants' own consulting
5 experts found that corrections-based restoration programs are "not a national best practice
6 model," that such programs present challenges because corrections-based restoration
7 programming is inappropriate for Washington State, and perhaps most importantly, expressed
8 significant concerns regarding civil liberties and least restrictive settings for mental health
9 treatment." Cooper Decl. Ex. F at 31.

10 Instead of increasing the capacity at the state hospitals, Defendants decided to spend
11 millions of dollars to implement corrections-based restoration programs and heavily rely on them
12 as a means of providing in-patient competency services to class members within the seven day
13 timeframe. Over the course of this litigation, Defendants repeatedly assured this Court and
14 Plaintiffs that any reliance on corrections-based competency restoration programming would be
15 short term to address the backlog and provide a bridge for full in-hospital compliance with this
16 Court's order. Dkt. 164 at 13-17. However, Defendants now seem intent on permanently
17 implementing corrections-based restoration programming, the likes of which have never existed
18 in Washington, and, as such, are planning fifty-four restoration beds in correctional facilities.,
19 Cooper Decl., Ex C at 21; Cooper Decl. Ex. A at 1 (Defendants conceded that YCCC, indeed,
20 was "originally built" and "did function" as a jail."). Defendants are moving forward with
21 making corrections-based competency restoration programming permanent even though doing so
22 is diametrically opposed to what it represented to the public, the legislature, this Court, and
23 Plaintiffs. Dkt. 164 at 15. And even though the costs of such a permanent program caused the

1 anticipated costs of this to Washington State taxpayers to double.¹

2 **C. Defendants' YCRC is Located in the Yakima County Correctional Complex, Which**
 3 **Is a Jail not a Hospital**

4 Defendants' corrections-based YCRC program is housed at the Yakima County
 5 Correctional Complex ("YCCC"). The facility was built in 2004 so that Yakima County could
 6 house inmates from other jurisdictions as a means of income. Cooper Decl. Ex. G at 16, Cooper
 7 Decl. Ex. H. . It can house 72 inmates across each of its four units. Cooper Decl. Ex. H. The
 8 facility has previously been used as a jail. *Id.* Currently, the YCRC is the only occupant of the
 9 facility; however, it is clear that Yakima County is searching for inmate populations to house in
 10 YCCC. Cooper Decl. Ex. I.

11 As the Court noted, it is clear from YCCC's history, its physical structure, its location,
 12 and by the entity that operates the facility that the YCRC is not a state psychiatric hospital and
 13 differs from the hospitals in several key respects. Cooper Decl., Ex. B.

- 14 • There is no barrier on stairs to prevent class members jumping onto a concrete floor
 15 and potentially harming themselves. *Id.* at 6:7-10; Cooper Decl. Ex. J at 13 (Dr.
 16 Pinals' stated the YCRC "design plan included putting some non-breakable clear
 17 walls up to avoid the possibility of jumping."). Defendants claimed that they would
 18 remedy the risk presented by housing the YCRC in a two story unit. However, they
 19 have not done so and, as such, the YCRC poses a great risk to class members'
 20 physical safety. Housing class members at YCRC is problematic for a number of
 21 reasons including the bedrooms, which have ligature² risks, lack privacy, have
 22 inadequate sunlight, and have mattresses that cannot accommodate an adult's body.
 23 Although Defendants were alerted to these issues they did not remedy them before
 assigning class members to the facility. Cooper Decl. Ex. B at 6-7.

21 ¹ In its original Long Term Plan, DSHS projected that they would spend at least \$8.97 million on alternative
 22 locations for restoration. Dkt. 164 at 5. However, the cost of these facilities have only just this week increased to
 \$15.7 million. Cooper Decl. C at 8. DSHS plans to ask the legislature for even more funding for this facility in its
 "2016 Supplemental Capital Budget." *Id.*

² A "ligature" (i.e. piece of cloth, string, rope, etc.) is defined as "something that is used to bind." See Webster's
 definition, last accessed on March 17, 2016: <http://www.merriam-webster.com/dictionary/ligature>

- 1 • Contrary to Defendants repeated assurances that all ligatures would be removed
2 before class members were brought into the facility, the YCRC still has substantial
3 ligature risks. Cooper Decl. Ex. L at 2. This is gravely concerning as ligature risks
4 increase the likelihood that class members can harm themselves while in the facility,
5 which is why the state psychiatric hospitals do not have any in areas to which class
6 members have access. Cooper Decl. Ex. B at 6:11-13. It is further it is our
7 understanding that YCRC currently is only provisionally licensed by the Department
8 of Health and that licensing could be revoked.
- 9 • The facility is staffed by corrections officers. *Id.* at 5:18-21 and 43:4-5. And
10 although Defendants made multiple assertions that class members would not have any
11 interaction with corrections officers the YCRC will be staffed by two corrections
12 officers at all times, and there is an observation station within eyesight of the YCRC
13 directly adjacent to the restoration unit. *Id.* at 5:18-21 and 43:4-5; Cooper Decl. Ex.
14 J. The corrections officers that staff the YCRC wear a weapon belt which includes
15 chemical weapons. Cooper Decl. Ex. B at 5:18-21 and 43:4-5.
- 16 • Although Defendants gave assurances that class members would not come in contact
17 at all with others in the facility, access and egress to the YCRC is through a shared
18 common corridor that will be used by corrections officers and inmates. Cooper Decl.
19 Ex. B at 5:23-25; Cooper Decl. Ex. J at 6 (noting that “Mr. Hunter indicated that...the
20 different populations [class members and inmates] would not be mixed or within view
21 of each other.”) This is concerning because there is no plan governing class
22 members’ access or ingress to YCRC through these main corridors not for protecting
23 class members from inmates in these common areas. Also, Defendants have not
addressed Plaintiffs’ questions regarding whether they plan on shackling class
members when they are in YCCC common areas.
- The contractor who will provide competency restoration services at YCRC, Central
Washington Comprehensive Mental Health, has no experience providing in-patient
competency restoration services. Dkt. 180 at 39. “Their lack of experience is likely
to result in lower rates or restoration to competency than WSH or ESH.” *Id.* Class
members will bear the brunt of lower restoration rates and this experimental program.
They will also suffer as they will likely stay longer in Defendants’ custody
undergoing restoration services, take longer for their criminal matters to resolve, and
some may never be restored to competency.
- The outdoor recreation is “cement-walled garage” with “[n]o recreation items.”
Cooper Decl. Ex. B at 7:15-17. This is radically different than the state psychiatric
hospitals where there are multiple outdoor recreation areas that are large, and contain
green space that provides ample space for recreation.
- The common areas consist of mostly hard surfaces creating a very loud environment
which would make group discussions (including those that are part of restoration
programming) difficult. *Id.* at 7:18-23. Defendants and Comprehensive Mental

Health, who is contracted to run the facility, noted this as a concern and indicated that they would remedy the problem. Cooper Decl. Ex K. However, Defendants have taken no action.

- A “quiet room” in a restoration program is designed for seclusion and restraint for class members who are having a difficult time following rules, behaving appropriately, or may be acting out in ways that are disruptive, violent, or otherwise extremely concerning. As such, a “quiet room” is a key component in treatment and safety protocols in a competency restoration program. They keep class members safe. However, the “quiet room” at YCRC was fully operational when the facility opened and still is not. Cooper Decl. Ex. B at 7-8. On a March 9, 2016 tour of the facility the room was unreasonably hot, loud, and not conducive to the therapeutic goals of a “quiet room.”
- Video visitation limits in-person contact with family and friends. Although video visitation probably saves the state some resources limiting such visitations is counter to general practices in restoration programming offered at the hospital, where it is noted that in-person visits can be extremely helpful component in restoration programming. However, it seems that class members in YCRC are by necessity going to rely upon video visitation and phone consultations for attorney interactions. Further, there is the lack of transparency and rules regarding privacy and recording of video visitations. Jails typically records phone and video communications. It is unclear what YCRC communications will be exempted from such recording practices or what class members will have to do to ensure that their communications are confidential. Cooper Decl. Ex. B 8:12 and 9: 11.
- Defendants’ plan to rely upon video evaluations of class members by evaluators who have never seen the class member in-person. Such an evaluation can miss key information, is not best practice, and can result in erroneous evaluations. Snow Decl.
- The facility is correctional in design and “gives the appearance of a windowless warehouse.” *Id.* at 5:14-15. The lack of natural light, windows, and the correctional setting reinforces the fact that the YCRC is not a hospital setting, it is not a therapeutic setting – it is a jail. And, as a jail it lacks the therapeutic milieu that is inherent in the state psychiatric hospitals.
- YCRC’s corrections-based restoration program has rejected the patient rights that are available to class members at the state psychiatric hospitals but will not be available to class members assigned to YCRC. These rights are a necessary component of hospital accreditation. These rights include significant access to visitation opportunities with family and friends, an activity that is known to have great benefits on restoration; the right to keep and wear their own clothing (versus wearing a uniform); the right send and receive uncensored mail and phone calls; and a robust complaint system with peer or other advocate.

- Class members assigned to YCRC are at risk of not having or being able to exercise the same rights to counsel as class members assigned to receive competency services in the state psychiatric hospitals. It is unclear whether Defendants will ensure that defense counsel will have private meaningful access to their clients who may be assigned to a corrections-based restoration program. Schwarz Decl; Goldsmith Decl.

Defendants have long known about these issues, and have repeatedly assured Plaintiffs, the Court Monitor, and the Court that these issues would be resolved prior to the opening of YCRC.³ Cooper Decl. Ex. L at 15 (Defendants' counsel stated "[o]ur clinical experts have been working diligently to create at therapeutic environment at these facilities and we believe they will be."); Cooper Decl. Ex. L at 22 (On November 25, 2015, Defendant's counsel stated, "Plaintiffs are correct in stating that the facility would not have the same accreditation standards as the state psychiatric hospitals. However, wherever DSHS decides to provide competency restoration treatment services, those services would be provided in a manner that is similar to the restoration service model within the state hospitals."). Dkt. 183 at 3 ("Plaintiffs' assertion that the offsite facilities of Yakima and Maple Lane in anyway subject class members to equivalent harms is absurd. This is especially true given that these claims are being made in the abstract, before programs at Maple Lane and Yakima have even been fully designed and implemented.").

³ As early as August 2015, the Court Monitor noted serious concerns with the efficacy of jail-based restoration. Dkt. 171 at 36. Plaintiffs' likewise alerted Defendants several times to their concerns regarding whether these proposed facilities would be therapeutic and comply with this Court's order. Cooper Decl., Ex. D and E. The Court Monitor repeated these concerns in her January report noting that neither of the proposed correctional-based restoration programs provide the same level of services or therapeutic treatment as the restoration services provided in the state psychiatric hospitals. Dkt. 180 at 36. Dr. Pinals also articulated several concerns with providing restoration services in correctional facilities. She noted that the YCRC facility would not be licensed as a hospital nor accredited by either CMS or the Joint Commission. Dkt. 180 at 37. She found YCCC has a "correctional feel," and noted class members would be expected to wear correctional attire. Dkt. 180-3 at 35,40. Bedrooms in the YCCC would house four individuals, as opposed to single or double rooms at the hospitals, and would not have sufficient partitions to provide privacy, deepening the sense that the environment is more correctional than therapeutic. Dkt. 180-3 at 41. There were also significant ligature concerns. Dkt. 180-3 at 41. In addition, it is unclear how much patients would be in contact with correctional staff or be subjected to jail sanctions, rules, and regulations. *Id.*

1 Indeed, the Department of Corrections came to a similar conclusion as Plaintiffs, the Court
 2 Monitor, and the Court, and rejected YCCC as a location for housing DOC offenders with
 3 mental health issues, because it found that the facility was inappropriate for “offenders with
 4 special needs, such as offenders with mental health issues.” Cooper Decl. Ex. G at 4.⁴

5 Ultimately, Defendants have repeatedly asserted that concerns raised regarding YCRC
 6 would be addressed before assigning class members to this facility. However, Defendants opted
 7 to ignore the concerns expressed by Plaintiffs, the Court Monitor, and the Court Monitor’s
 8 consultant about the facility and instead chose to assign class members to a corrections-based
 9 restoration program that does not comply with this Court’s order and will likely cause injury to
 10 class members. Now that the YCRC is open, it is clear that Defendants have implemented a
 11 corrections-based competency restoration program that is not in compliance with this Court’s
 12 order and that is contrary to the corrective action Defendants repeatedly assured Plaintiffs, the
 13 Court Monitor, and this Court it would take.

14 **III. ARGUMENT**

15 Plaintiffs move this Court to issue a TRO enjoining Defendants from assigning class
 16 members to YCRC until a full hearing can be conducted regarding whether Defendants violate
 17 this Court’s order when it assigns class members to YCRC for court ordered services. This
 18 Court should issue an temporary restraining order regarding YCRC because Plaintiffs meet the
 19 standard for both a TRO and for a finding of contempt, and bring this motion as a TRO to ensure
 20
 21

22 ⁴ "Offenders with special needs, such as offenders with mental health issues, would be a challenging population to
 23 house because the physical plant structure of YCCC inhibits the ability to safely manage the risks associated with
 this special population. For example, there are no close observation rooms in which to monitor offenders in mental
 health decline. The congregate living supported by the 12 man dormitories at the YCCC may also exacerbate mental
 health symptoms." Cooper Decl. Ex. G at 4.

1 it is ruled on before class members are irreparably harmed by being transferred to unsafe and
2 non-therapeutic correctional facilities.

3 When asked to grant a preliminary injunction where the public interest is at stake, a court
4 must consider whether: (1) the plaintiff is likely to succeed on the merits, (2) the plaintiff is
5 likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities
6 tips in his or her favor, and (4) an injunction is in the public interest. Fed. R. Civ. P. 65(a);
7 *Winter v. Nat'l Res. Def Council, Inc.*, 555 U.S. 7, 20 (2008). The standard "is substantially
8 identical for the injunction and the TRO," *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush &*
9 *Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001), except for the additional requirement that the
10 applicant show immediate relief is necessary to obtain a TRO. *See Hunt v. Nat'l Broad. Co.*,
11 *Inc.*, 872 F.2d 289, 293 (9th Cir.1989); Fed.R.Civ.P. 65(b)(1)(A).

12 A TRO that arises from a party's contempt of a court order must show that they are likely
13 to succeed on the merits of a contempt motion. An order of civil contempt may issue pursuant to
14 18 U.S.C. §401. Civil contempt is defined as "a party's disobedience to a specific and definite
15 court order by failure to take all reasonable steps within the party's power to comply." *Reno Air*
16 *Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). "The contempt 'need not be
17 willful', and there is no good faith exception to the requirement of obedience to a court order." *In*
18 *re Dual-Deck Video Cassette Recorder Antitrust Litigation Go-Video v. Motion Picture*
19 *Association of America*, 10 F.3d 693,695 (9th Cir. 1993) (citation omitted). The moving party
20 has the burden of proving contempt by clear and convincing evidence. *Id.* Once this burden is
21 met, it "then shifts to the contemnors to demonstrate why they were unable to comply." *FTC v.*
22 *Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). The Ninth Circuit has long held that a
23 finding of contempt depends on "whether the defendants have performed 'all reasonable steps

1 within their power to insure compliance’ with the court's orders.” *Stone v. San Francisco*, 968
 2 F.2d. 850, 856 (9th Cir. 1992) (citing *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th
 3 Cir.1976).

4 As discussed below, Plaintiffs can show by clear and convincing evidence that
 5 Defendants’ corrections-based program does not comport with the Court’s order and can show
 6 that Defendants have not taken all reasonable steps in their power to ensure compliance. As
 7 such, Plaintiff Disability Rights Washington and Plaintiff class members meet the *Hunt* test and
 8 therefore seek an order that temporarily restrains Defendants from providing class members
 9 services in corrections-based restoration programs that do not comply with this Court’s order.
 10 *See* Dkt. 131.

11 **A. Plaintiffs Are Likely to Succeed on their Claim that Assigning Class Members to**
 12 **Receive Competency Services in Corrections-based Competency Restoration**
Programs Violate this Court’s April 2, 2015 Order

13 An order of civil contempt may issue pursuant to 18 U.S.C. §401. It is well established
 14 that a district court “has the inherent power to hold a party in civil contempt in order ‘to enforce
 15 compliance with an order of the court or to compensate for losses or damages.’” *United States v.*
 16 *United Mine Workers*, 330 U.S. 258, 303-04 (1947) (purpose of contempt); *Shillitani v. U.S.* 384
 17 U.S. 364, 370, 86 S.Ct. 1531 (1966) (inherent power re: civil contempt); *Gen. Signal Corp. v.*
 18 *Donallco, Inc.*, 787 F.2d 1376, 1380 (9th Cir. 1986). This Court has “wide latitude in
 19 determining whether there has been a contemptuous defiance of its order.” *Gifford v. Heckler*,
 20 741 F.2d 263, 266 (9th Cir. 1984). Civil contempt is defined as “a party’s disobedience to a
 21 specific and definite court order by failure to take all reasonable steps within the party’s power to
 22 comply.” *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). “The
 23 contempt ‘need not be willful’, and there is no good faith exception to the requirement of

obedience to a court order.” *In re Dual-Deck Video Cassette Recorder Antitrust Litigation Go-Video v. Motion Picture Association of America*, 10 F.3d 693,695 (9th Cir. 1993) (citation omitted). The moving party has the burden of proving contempt by clear and convincing evidence. *Id.* Once this burden is met, it “then shifts to the contemnors to demonstrate why they were unable to comply.” *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). The Ninth Circuit has long held that a finding of contempt depends on “whether the defendants have performed ‘all reasonable steps within their power to insure compliance’ with the court’s orders.” *Stone v. San Francisco*, 968 F.2d. 850, 856 (9th Cir. 1992) (citing *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 404 (9th Cir.1976). A history of noncompliance and failure to comply despite a pending contempt motion are both factors a court may consider to find a failure to take all reasonable steps. *Stone* at 857.

Here, this Court should issue a temporary restraining order barring Defendants from assigning class members to YCRC, and any other corrections-based restoration program, until this Court has the opportunity to have a full evidentiary hearing regarding whether or not such programs violate this Court’s order that direct Defendants to provide in-patient competency services either in a state psychiatric hospital or in an environment that does not compromise the therapeutic nature found in the hospitals. Enforcement of this Court’s order is warranted given that Defendants have both failed to comply with ensuring restoration services are being provided in a therapeutic environment and admitted at least one class member to YCRC despite documented, ongoing, and credible risks to class members. Cooper Decl. Ex. C at 21.

1. Providing Competency Restoration Services to Class Members at YCRC Violates This Court’s Order.

The YCRC facility was created and operated as a correctional facility. Cooper Decl. Ex. A at 1; Cooper Decl. Ex. G at 6. The facility’s architectural structure and the physical design is

1 that of a typical correctional facility. *See supra* at 4-7. It is designed to punish rather than to
2 treat. This is starkly in contrast to the state psychiatric hospitals that were architecturally
3 designed to create a therapeutic environment, and more importantly, to alleviate all structural
4 aspects of the building that could potentially be used for self-harm or harm to others consistent
5 with the accreditation and licensing standards.

6 Plaintiffs, the Court Monitor, and the Court Monitor's consultant, Dr. Pinals, all
7 expressed grave concern regarding the safety of class members at YCRC. As detailed below,
8 YCRC is unsafe for at least four (4) reasons: 1) the two tiered unit lacks sufficient barriers
9 creating safety risks; 2) the ligatures have gone unaddressed; 3) the seclusion and restraint room
10 is not ready; and 4) the corrections-based staff has not been trained to work with class members
11 experiencing acute mental health symptoms and the officers wear a weapon belt and carry
12 chemical spray.

13 The corrections-based restoration program offered at YCRC violates this Court's order
14 for a multitude of reasons. *See supra* at 2-4. The pressing concern is the fact that the facility
15 poses a severe risk to class members because it fails to protect against suicide or self-harm
16 because there are safety architectural safety risks that Defendants have failed to remedy (*e.g.*
17 open staircase, ligatures, etc.). *See supra* at 4-7. YCRC also violates this Court's order by
18 failing to be sufficiently therapeutic in the programming it offers. YCRC's competency
19 restoration programming that is substandard to the programming class members will receive at
20 the state psychiatric hospitals, and this difference will likely to cause class members harm
21 assigned to YCRC. Indeed, YCRC is ill-devised, poorly equipped, and operated as a jail, and, as
22 such, is more likely to have lower restoration rates which would cause class members assigned to
23 YCRC to spend more time in Defendants' custody and stave off their criminal matters longer

1 than class members who are assigned to receive competency services in the state psychiatric
2 hospitals. *See* Dkt. 180 at 39-40.

3 Defendants have a legitimate interest in running an efficient system and in ensuring that
4 their mental health systems operate well so that they can provide class members competency
5 services so that their criminal matters can move forward in a timely manner. Dkt. 131 at 18.
6 And Plaintiffs have a strong interest in receiving competency services in a manner that complies
7 with this Court's order and with best practices. Dkt. 131 at 16. Plaintiffs also have a great
8 interest in receiving competency services in a location that does not put them at risk. And the
9 public has an interest in seeing its resources used wisely by the state and in ensuring that the
10 most vulnerable of our society are protected and provided the services to which they have a
11 constitutional right.⁵ Indeed, the Ninth Circuit has explained:

12 It is not only the harm to the individuals involved that we must
13 consider in assessing the public interest. Our society as a whole
14 suffers when we neglect the poor, the hungry, the disabled, or
15 when we deprive them of their rights or privileges. Society's
16 interest lies on the side of affording fair procedures to all persons,
17 even though the expenditure of governmental funds is required. It
18 would be tragic, not only from the standpoint of the individuals
involved but also from the standpoint of society, were poor,
elderly, disabled people to be wrongfully deprived of essential
benefits for any period of time. It would be unfortunate, but far less
harmful to society, were the government to succeed in overturning
the preliminary injunction but be unable to recoup all or a portion
of the funds.

19
20 ⁵ Here, this Court found that DSHS failed to take the public concerns into account when creating YCRC:

21 DSHS does not know, and does not take into account, the cost to Washington's
22 taxpayers of continuing to incarcerate and care for class members in county jails
during periods of time where that responsibility is properly with DSHS. DSHS
does not know, and does not take into account, the cost to the public caused by
significant delays in moving class members through the criminal justice system.

23 Dkt. 186 at 8.

Plaintiffs' Motion for
Temporary Restraining Order - 13
No. 14-cv-01178-MJP

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1 *Lopez*, 713 F.2d at 1437

2 Unfortunately, YCRC does not forward the interests of any party affected by the state's
3 competency restoration program. In fact, for the aforementioned reasons, YCRC undermines all
4 of the legitimate interest of the impacted parties. And, as such, judicial intervention is necessary
5 to protect the rights of class members and to ensure that the state is not prioritizing convenience
6 and financial savings, over its legitimate interests, and to ensure that the public's interests in
7 protecting the most vulnerable within society and administering a fair criminal justice system.

8 **B. Class Members Will Suffer Irreparable Harm if Defendants Are Not Enjoined from**
9 **Sending them to YCRC, a Corrections-Based Restoration Program**

10 Ultimately, if Defendants' are allowed to implement YCRC, it will ensure that some class
11 members will have access to the therapeutic environments of the state psychiatric hospitals and
12 others will be sent to from one jail to another, purportedly to receive competency services even
13 though such services will be substandard and the location these services will be provided will not
14 be as therapeutic as the hospital.

15 What is at the crux of this request for a temporary restraining order is the reason why this
16 Court ordered Defendants to provide in-patient competency services in a state psychiatric
17 hospital or its therapeutic equivalent. Defendants have long deprioritized class members and
18 have subjected them to prolonged incarceration in city and county jails while they wait for court-
19 ordered competency services. Now Defendants wish to comply with this Court's order that class
20 members receive in-patient competency treatment in the state psychiatric hospital by providing
21 them substandard treatment in a jail. However, "[j]ails are not hospitals, [and] they are not
22 designed as therapeutic environments[.] Dkt. 131 at 2. And YCRC is a prime example of the
23 fact that the correctional nature of a jail, arising in part from the physical layout and blueprint of

1 a jail, along with the corrections officers that run the facility, cannot be erased simply because
 2 someone hangs a sign on the jail renaming it a treatment facility. *See* Cooper Decl. Ex. J at 14
 3 (“The building itself is a rate-limiting piece of the equation, as a correctional facility design is
 4 architecturally distinct from a building designed for therapy and programs.”).

5 Defendants’ failure to adequately prevent subjecting class members to an unsafe
 6 environment and to provide appropriate care shows hasty non-clinical decisions have driven
 7 Defendants decision to implement corrections-based restoration programming. And, such
 8 decisions have resulted in Defendants attempting to force class members to be housed in a
 9 facility that poses a real, substantial life threatening risk, that isn’t sufficiently therapeutic for
 10 purposes of competency services, and that is insufficiently constructed to provide class members
 11 with adequate care. Allowing Defendants to implement this program will likely infringe on
 12 other rights and/or expose class members to other injuries and experiences that they are protected
 13 from in the state psychiatric hospitals.

14 **C. Plaintiffs Seek a Waiver of the Bond Requirement**

15 Federal courts may exercise their discretion under FRCP 65(c) to waive the bond
 16 requirements in suits to enforce important federal rights of public interest. *Barahona-Gomez v.*
 17 *Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999); *Cal. ex rel. Van de Kamp v. Tahoe Reg’l Planning*
 18 *Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (no bond required for non-profit group). This
 19 Court should do so here.

20 **IV. CONCLUSION**

21 A TRO is necessary to ensure that Defendants comply with this Court’s April 2, 2015
 22 Order to prohibit Defendants from assigning class members to YCRC, a jail that is unsafe and
 23

1 dangerous for class members to be housed and is insufficiently therapeutic to meet the standard
2 the Court articulated in its Order.

3 For all of these reasons, Plaintiffs request that the Court issue their proposed Temporary
4 Restraining Order and Preliminary Injunction, preventing Defendants from transferring class
5 members to the unsafe, non-therapeutic environment at YCCC.

6 DATED this 17th day of March, 2016.

7 Respectfully submitted,

8 /s/ La Rond Baker

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Plaintiffs' Motion for
Temporary Restraining Order - 16
No. 14-cv-01178-MJP

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION
901 FIFTH AVENUE #630
SEATTLE, WA 98164
(206) 624-2184

Kenan Isitt, WSBA No. 35317

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Plaintiffs' Motion for
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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- Nicholas A Williamson (NicholasW1@atg.wa.gov)
- Sarah Jane Coats (sarahc@atg.wa.gov)
- Amber Lea Leaders (amberl1@atg.wa.gov)

DATED: March 17, 2016, at Seattle, Washington

/s/ La Rond Baker
La Rond Baker, WSBA No. 43610

Attorney for Plaintiffs