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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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| UNITED STATES AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>COUNTY OF LOS ANGELES et al.,<br><br>Defendants. | Case No. CV 15-05903 DDP (JEMx)<br><br>**ORDER DENYING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**<br><br>[Dkt. 84] |

Presently before the court is Defendants' Motion for Judgment on the Pleadings of Intervenors' First Amended Complaint in Intervention ("FACI"). The FACI alleges that a portion of an executed settlement agreement between Plaintiff ("the government") and Defendant ("the County") violates the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act, and Intervenors' Eighth and Fourteenth Amendment rights. Having considered the submissions of the parties and heard oral argument, the court denies the motion and adopts the following Order.

**I. Background**

On August 5, 2015, the government filed a Complaint against the County under the Civil Rights of Institutionalized Persons Act

("CRIPA"), 42 U.S.C. §§ 1997-1997j, and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.[1] The Complaint alleged repeated and systemic violations of prisoners' constitional rights in the Los Angeles County jail system. The alleged violations included constitutionally deficient mental health care and related services, such as suicide prevention, psychological and pyschiatric services, and discharge planning, as well as inadequate housing and sanitation practices and a pattern of excessive force against prisoners. (Complaint ¶¶ 22-26.)

The same day the Complaint was filed, the government and the County filed a stipulated settlement of this matter. The stipulated Settlement Agreement ("Agreement"), which spans 125 paragraphs and nearly sixty pages, provides for a series of new or enhanced policies and practices across nineteen subject areas intended to ensure that the County will provide "prisoners at the Jails with safe and secure conditions and ensure their reasonable safety from harm, including serious risk from self-harm and excessive force, and ensure adequate treatment for their serious mental health needs." (Agreement ¶ 16.) Among the stipulated terms is a provision regarding inmate discharge planning ("Paragraph 34"). That provision states:

> 34. The County and the Sheriff will conduct discharge planning and linkage to community mental health providers and aftercare services for all prisoners with serious mental illness as follows:
>
> (a) For prisoners who are in Jail seven days or less, a preliminary treatment plan, including discharge information, will be developed.

[1] The Complaint also named Los Angeles County Sheriff Jim McDonnell as a Defendant, in his official capacity.

(b) For prisoners who are in Jail more than seven days, a [Qualified Mental Health Professional] will also make available:

(i) for prisoners who are receiving psychotropic medications, a 30-day prescription for those medications will be offered either through the release planning process, through referral to a re-entry resource center, or through referral to an appropriate community provider, unless clinically contraindicated;

(ii) in-person consultation to address housing, mental health/medical/substance abuse treatment, income/benefits establishment, and family/community/social supports. This consultation will also identify specific action to be taken and identify individuals responsible for each action;

(iii) if the prisoner has an intense need for assistance, as described in [County Mental Health] policies, the prisoner will further be provided direct linkage to an Institution for Mental Disease ("IMD"), IMD-Step-down facility, or appropriately licensed hospital;

(iv) if the prisoner has a moderate need for assistance, as described in [County Mental Health] policies, and as clinically appropriate to the needs of the prisoner, the prisoner will be offered enrollment in Full Service Partnership or similar program, placement in an Adult Residential Facility ("Board and Care") or other residential treatment facility, and direct assistance accessing community resources;

(v) if the prisoner has minimal needs for assistance, as described in [County Mental Health] policies, the prisoner will be offered referrals to routine services as appropriate, such as General Relief, Social Security, community mental health clinics,

> substance abuse programs, and/or outpatient care/support groups.
>
> (c) The County will provide a re-entry resource center with QMHPs available to all prisoners where they may obtain information about available mental health services and other community resources.

(Agreement ¶ 34.)

Intervenors intervened and later filed the FACI, which alleges that Paragraph 34 violates the ADA, Section 504 of the Rehabilitation Act, and the Eighth and Fourteenth Amendments. Intervenors allege, for example, that Paragraph 34 facially discriminates against disabled prisoners whose disability stems from personality disorders, substance abuse and dependence disorders, dementia, or developmental disabilities, as well as all disabled prisoners who spend seven days or fewer in jail.[2] (Agreement ¶ 34, 34(a); FACI ¶ 101.) The FACI also alleges that Paragraph 34 discriminates against disabled inmates, fails to reasonably accommodate Intervenors' disabilities, and places certain inmates in non-integrated environments in violation of the ADA's integration mandate. (FACI ¶¶ 101, 112.) Intervenors further allege, in essence, that Paragraph 34's discharge procedures do not allow Intervenors to access medical and psychiatric services, and that Paragraph 34's failings constitute deliberate indifference to Intervenors' serious medical needs. Defendants now move for judgment on the pleadings.

**II. Legal Standard**

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[2] The Agreement's definition of "serious mental illness" expressly excludes these substantive categories, with the exception of personality disorders that are "associated with serious or recurrent significant self-harm." (Agreement ¶ 15(aa).)

A party may move for judgment on the pleadings "[a]fter the pleadings are closed [] but early enough as not to delay the trial." Fed. R. Civ. P. 12(c). Judgment on the pleadings is proper when the moving party clearly establishes that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1990); Doleman v. Meiji Mut. Life Ins. Co., 727 F.2d 1480, 1482 (9th Cir. 1984). The standard applied on a Rule 12(c) motion is essentially the same as that applied on a Rule 12(b)(6) motion to dismiss for failure to state a claim, with the court accepting all of the non-moving party's allegations as true. Lyon v. Chase Bank USA, N.A., 656 F.3d 877, 883 (9th Cir. 2011).

**III. Discussion**

A. Standing

Defendants contend first that Intervenors lack standing to bring their claims. It is well established that the "imminent" invasion of a concrete, legally protectable interest is sufficient to constitute an injury for purposes of standing. See Lujan v. Defenders of Wildlife, 540 U.S. 555, 560, 564 n.2 (1992). Defendants argue that it is uncertain whether Intervenors will be incarcerated again, and that even if they are incarcerated, it is unclear whether they will be adversely affected by the policies set forth in Paragraph 34. Intervenors need only show, however, a credible threat of future injury. Ibrahim v. Dep't of Homeland Security, 669 F.3d 983, 992 (9th Cir. 2012).

As this court noted in allowing intervention in this case, "Intervenors have presented evidence that they are caught up in a

tragic cycle of homelessness and incarceration perpetuated and punctuated by manifestations of mental illness and unbroken by any adequate treatment." (Dkt. 75 at 8 n.4). The FACI alleges that some Intervenors have been detained in Los Angeles County jail facilities dozens of times, while others have been arrested hundreds of times. All suffer from at least one mental illness, and most have histories of substance abuse. In some cases, it appears that Intervenors have entered the jail system largely as a result of their mental health conditions, and that those conditions have then been aggravated by incarceration and, in some cases, the denial of medication. Intervenors have then been released onto the streets, often in a more vulnerable, less stable state than when they entered the jail system. Under these circumstances, there appears to be little doubt that there is a credible threat that Intervenors will again find themselves incarcerated and subject to the policies set forth in Paragraph 34.

Defendants also argue that Intervenors lack standing as a matter of law because the threat of future injury to Intervenors is entirely dependent on their engaging in illegal conduct in the future. The Ninth Circuit has held that "standing is inappropriate where the future injury could be inflicted only in the event of future illegal conduct by the plaintiff." Armstrong v. Davis, 275 F.3d 849, 865 (9th Cir. 2001). In other words, standing should be denied where it is "contingent upon [plaintiffs'] violating the law, getting caught, and being convicted." Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1041 (9th Cir. 1999) (en banc) (quoting Spencer v. Kemna, 523 U.S. 1, 15 (1983).

Defendants appear to assume that Intervenors are only caught up in the jail system when they violate the law and are convicted of a crime. Granted, some Intervenors acknowledge that they have been incarcerated for drug offenses stemming from addiction problems, or for shoplifting food, soap, shampoo, toothpaste, and deodorant, or for other petty offenses often associated with homelessness. Some have outstanding warrants for failure, or inability, to pay fines incurred after riding public transportation without a valid fare. It is unclear at this stage, however, whether or how often Intervenors have been convicted of criminal offenses. In addition, criminal activities of the type described above may be closely entwined with mental health issues and potential defenses related thereto. Furthermore, a person may be subjected to unlawful practices by law enforcement or custodial personnel without having ever engaged in illegal conduct. See, e.g. Armstrong, 275 F.3d at 866; Hodgers-Durgin, 199 F.3d at 1041. Some Intervenors, including veterans, appear to have been incarcerated after exhibiting symptoms of mental illness, including schizophrenic episodes, periods of confusion related to post-traumatic stress disorder, hearing voices, and talking to trees, without any facially apparent tie to any illegal activity. (Dkt. 27.)

Nor is the court persuaded that the standing principle articulated in Armstrong is applicable to the mental health-focused circumstances here. The Hodgers-Durgin court, citing the same Supreme Court cases as did the Armstrong court, explained that the Supreme Court's approach to the denial of standing was "based on the plaintiff's ability to avoid engaging in illegal conduct."

Hodgers-Durgin, 199 F.3d at 1041 (discussing City of Los Angeles v. Lyons, 461 U.S. 95, 105 (1983) and Spencer v. Kemna, 523 U.S. 1, 15 (1998)) (emphasis added). This court has serious questions whether mentally ill, homeless, and possibly addicted or chemically dependent individuals can realistically be said to have the ability to avoid engaging in the type of minor infractions that appear to result in repeated incarcerations, particularly where the very fact of incarceration may disrupt ongoing care, exacerbate the effects of disabilities, and impede future treatment.

At this stage, it appears to the court that the threat of future harm to Intervenors is not dependent on their conscious decisions to purposefully engage in unlawful activity in the future. Rather, the very nature of Intervenors' disabilities and concomitant symptoms and behaviors, which may be aggravated by the types of practices challenged here, are likely to lead to repeated incarcerations and exposure to the harms alleged. Intervenors, therefore, have standing.

B. ADA and Rehabilitation Act Claims

A plaintiff bringing a discrimination claim under Title II of the ADA or Section 504 of the Rehabilitation Act must allege "(1) the plaintiff is an individual with a disability; (2) the plaintiff is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) the plaintiff was either excluded from participation in or denied the benefits of the public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability." Thompson v. Davis, 295 F.3d

890, 895 (9th Cir. 2002); Melton v. Dallas Area-Rapid Transit, 391 F.3d 669, 676 (9th Cir. 2004).

Much of the parties' argument here is colored by differences in the characterization of the FACI's claims. Defendants seek to cast the claims in terms of discrimination between groups of disabled inmates; namely, those who qualify for extra discharge planning under Paragraph 34 and those who do not. Although acknowledging that they did take this position earlier, Intervenors appear to concede that benefits extended to one group of disabled individuals need not necessarily be provided to all disabled people. See Traynor v. Turnage, 485 U.S. 535, 548-49 (1988) ( . . . [T]he central purpose of [the Rehabilitation Act] . . . is to assure that handicapped individuals receive 'evenhanded treatment' in relation to nonhandicapped individuals. . . . There is nothing in the Rehabilitation Act that requires that any benefit extended to one category of handicapped persons also be extended to all other categories of handicapped persons.").

Intervenors' main contention, however, is different. Intervenors argue that Paragraph 34 results in a denial of meaningful, state-provided discharge planning services with respect to Intervenors. (Opposition at 16.) That denial, in turn, "bars [Intervenors] from meaningful access to County and other services based on their disability." (Opp. at 18:14-15.)

Hewing closely to Traynor, Defendants argue that Intervenors cannot possibly be discriminated against because non-disabled inmates do not receive any discharge planning services that are not available to disabled inmates, including Intervenors. (Reply at 13 ("Although Intervenors argue that non-disabled persons receive

discharge planning in the form of being 'processed, released, and walked out the door,' they do not allege that disabled persons are not processed and released.").) In other words, even if discharge planning is considered a "service," all inmates are processed and released in the same, evenhanded way. Thus, the argument goes, the fact that Paragraph 34 provides some additional benefits to some, but not all, disabled people is immaterial, as the provision of those extra benefits to a select disabled few does not deny any disabled person a service available to a nondisabled person. (Reply at 13 ("Non-disabled persons do not need or receive any of the services set forth in paragraph 34.").) This argument is not persuasive.

The ADA and Rehabilitation Act cover both intentional discrimination and facially neutral practices that disproportionately impact disabled people. Crowder v. Kitagawa, 81 F.3d 1480, 1484 (9th Cir. 1996). The Ninth Circuit has counseled that courts should not dwell on distinctions between intentionally discriminatory practices and those that are merely "thoughtless," but should instead "assess whether disabled persons were denied 'meaningful access' to state-provided services." Id. (discussing Alexander v. Choate, 469 U.S. 287, 302 (1985).) A policy that denies disabled persons meaningful access to state services by reason of their disability discriminates against disabled individuals in violation of the ADA. Crowder, 81 F.3d at 1485.

It is somewhat unclear whether the parties consider discharge planning itself to be a state-provided service. Defendants implicitly suggest that it is, albeit a very basic one that is provided in the same way to every inmate. At this stage of the

proceedings, the nature and scope of Defendants' "processing and release" procedures are not yet factually developed. Any characterization, however, of discharge policy as mere, and uniformly-applied, guidance toward the jailhouse door strikes the court as an oversimplification. Defendants' discharge policies are designed to achieve certain goals, which may or may not be limited to constitutional or other floors.[3] Defendants presumably do not, and could not, for example, simply show a severely ill inmate to an exit without any concern for what might befall that inmate on the other side of the door. See, e.g. Wakefield v. Thompson, 177 F.3d 1160, 1164 (9th Cir. 1999) ("A state's failure to provide medication sufficient to cover [a post-incarceration] transitional period amounts to an abdication of its responsibility to provide medical care to those, who by reason of incarceration, are unable to provide for their own medical needs."). Indeed, Defendants acknowledged at argument that the discharge process does account for disabilities to some extent. Defendants do not dispute, for example, that a jail cannot discharge a wheelchair-bound inmate by simply wheeling her out the door onto an elevated, ramp-less entryway without running afoul of the ADA.

Although factual questions abound, it appears to the court that inmates may receive some form of discharge planning services.[4] For a non-disabled person, the procedure necessary to satisfy Defendants' goals may not entail anything more than directing the

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[3] The court recognizes that further factual development may be required before these goals can be delineated.

[4] It is unclear, for example, whether Paragraph 34 represents the entirety of Defendants' discharge policy even regarding those disabled persons to whom it applies.

inmate to the exit stairs. That does not mean, however, that no service is provided, or that the same discharge service would prove meaningful to a person in a wheelchair, or to mentally ill persons such as Intervenors. Intervenors argue that Defendants discharge non-disabled people and, as a result of Paragraph 34, some disabled people, in a manner and condition that enables those persons to perform life activities such as arranging transportation, obtaining medical care, accessing food and shelter, and seeking other public services. Intervenors, in contrast, are not discharged in that same manner or condition. At this stage, Intervenors have adequately alleged that, as a result of their particular disabilities, they are denied meaningful access to discharge planning services. Whether that is the case, and if so, whether any or all of the modifications to Paragraph 34 Intervenors seek are reasonable or necessary to afford them meaningful access to such services, are questions for another day.

Even if discharge planning is not itself a service, Defendants are not entitled to judgment as a matter of law. Defendants' position is premised upon "the assumption that no violation of the ADA occurs unless a service or benefit of the state is provided in a manner that discriminates against disabled individuals." Crowder, 81 F.3d at 1483. As the Ninth Circuit stated in Crowder, however, "[t]his simply is not so." Crowder, 81 F.3d at 1483. In addition to "outright discrimination" of the type upon which Defendants focus, the ADA also prohibits "those forms of discrimination which deny disabled persons public services disproportionately due to their disability." Id.

In Crowder, disabled plaintiffs brought an ADA challenge to the State of Hawaii's policy of quarantining all carnivorous animals entering the state. Crowder, 81 F.3d at 1482-83. The same 120-day quarantine procedures were imposed on all dogs, including guide dogs for the visually impaired. Id. In finding against the visually-imparied plaintiffs on summary judgment, the district court concluded that even though Hawaii's quarantine policy did not allow plaintiffs to make meaningful use of state-provided services, plaintiffs could not show an ADA violation because they had not been denied any state services on the basis of a disability. Id. at 1483-84.

The Ninth Circuit, focusing on "meaningful access" to public services rather than intentional denial of them, reversed. Crowder, 81 F.3d at 1484-85. The court held that, notwithstanding the fact that the state applied the quarantine evenhandedly, the policy disproportionately burdened the visually disabled, effectively denying them access to public services such as transportation, parks, and government facilities. Id. Such denials of meaningful access, the court held, constitute discrimination on the basis of disability in violation of the ADA. Id. at 1485.

Intervenors here allege discrimination similar to that in Crowder. Certain inmates are released, whether under Paragraph 34 or not, in a manner that allows them to access state services, programs, and activities. Intervenors, whose manner of release is allegedly determined by their particular disabilities, are not afforded that same access. See Crowder, 81 F.3d at 1484 ("Hawaii's quarantine effectively denies . . . the plaintiffs in this case[]

meaningful access to state services . . . while such services . . . remain open and easily accessible by others.").

Defendants argue in a footnote that Crowder is inapt because it involved taking something away from a disabled person. (Reply at 13 n. 3.) That distinction is not persuasive. The Crowder court's reasoning had nothing to do with the state's active taking of disabled individuals' guide dogs. To the contrary, the court's "meaningful access" approach moved away from an emphasis on intentional acts in an attempt to better capture instances of discriminatory "benign neglect, apathy, and indifference."[5] Crowder, 81 F.3d at 1484 (internal quotation marks and citation omitted). The court analogized Hawaii's quarantine not to any form of active deprivation, but to other facially neutral barriers, such as stairs or a refusal to communicate by spoken word. Id. at 1483-84. To the extent Defendants contend that "meaningful access" cannot, as a matter of law, require Defendants to provide Intervenors with "extra" accommodations, that argument is no more persuasive than asserting that wheelchair-bound people need not be provided "extra" ramps or elevators to access government buildings accessible by staircase. See Crowder, 81 F.3d at 1483-84.

Intervenors have adequately alleged that they are denied meaningful access to public services on the basis of their

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[5] Even if some sort of active intrusion were required, Defendants provide no explanation why the deprivation of Intervenors' liberty, which denies them the ability to seek out or continue mental health treatment of their choosing, and may disproportionately exacerbate the deleterious effects of certain disabilities, in part as a result of the loss of the ability to access community resources, would not constitute an affirmative deprivation on par with the quarantining of a guide dog.

disabilities. Accordingly, judgment on the pleadings is not warranted.

1. Integration Mandate

Paragraph 34(b)(iii) provides that certain prisoners with an "intense need for assistance" will be provided a "direct linkage to an Institution for Mental Disease ("IMD"), IMD-Step-down facility, or appropriately licensed hospital." Intervenors allege that this provision does not adequately define "intense need," and thus violates the ADA's integration mandate, which requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."[6] 28 C.F.R. § 35.130(d).

In Olmstead v. L.C. ex rel. Zimring, the Supreme Court concluded that the integration mandate requires community-based, as opposed to hospital or institutional, treatment when "[1] the State's treatment professionals determine that such placement is appropriate, [2] the affected persons do not oppose such treatment, and [3] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 607 (1999). The Ninth Circuit subsequently addressed an integration mandate claim in Townshend v. Quasim, 328 F.3d 511 (9th Cir. 2003). There, although citing to both the integration mandate regulation and Olmstead, the court nevertheless applied the traditional ADA pleading standard. Townshend v.

[6] This mandate is patterned on one set forth in the Rehabilitation Act's implementing regulations. See 28 C.F.R. § 41.51(d).

Quasim, 328 F.3d at 516 ("To prove that a public service or program violates Title II of the ADA, a plaintiff must show (1) he is a qualified individual with a disability; (2) he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities or was otherwise discriminated against by the public entity; (3) such exclusion, denial of benefits, or discrimination was by reason of his disability.") (internal quotation and citation omitted).

Here, the arguments regarding the integration mandate claims are focused primarily on the parties' conflicting views of the appropriate pleading standard, and are otherwise not fully developed. At this juncture, Intervenors' integration mandate claim appears sufficiently pleaded under Townshend. Defendants' motion is therefore denied with respect to the integration mandate claim, without prejudice.

B. Constitutional Claims

The FACI alleges that Intervenors "have a known and obvious need for medical care after release from custody," that inadequate discharge planning under Paragraph 34 threatens to deny them that medical care as a matter of policy, and that adoption of Paragraph 34 constitutes deliberate indifference to Intervenors' medical needs in violation of the Eighth and Fourteenth Amendments. Defendants argue that Intervenors' constitutional claims fail as a matter of law.

Defendants, citing to the Supreme Court of Massachusetts, argue that homeless, mentally ill people have no constitutional rights to follow-up medical care after incarceration. (Motion at 21, citing Williams v. Sec'y of the Exec. Office of Human Servs.,

414 Mass. 551, 566 (1993). The court disagrees. In the Ninth Circuit, "the state must provide an outgoing prisoner who is receiving and continues to require medication with a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply. A state's failure to . . . cover this transitional period amounts to an abdication of its responsibility to provide medical care to those, who by reason of incarceration, are unable to provide for their own medical needs." Wakefield, 177 F.3d at 1164. The court sees no reason why this principle should not apply to mental illness.[7]

Next, Defendants contend that Intervenors fail to allege deliberate indifference. Defendants are correct that the FACI inartfully makes reference to the deliberate indifference standard with respect to both the Fourteenth and Eighth Amendment claims. A pre-trial detainee need not show deliberate indifference to prevail on a Fourteenth Amendment claim. See, e.g. Jones v. Blanas, 393 F.3d 918, 934 (9th Cir. 2004). In any event, however, the FACI does allege deliberate indifference. Intervenors allege that their disabilities and serious medical needs are apparent and known to Defendants, and that Defendants not only ignore those needs, but do so as an explicit matter of policy, i.e. Paragraph 34.

As with the integration mandate claim, the constitutional claims are not the focus of either party's briefing. As presented thus far, Intervenors' constitutional claims are adequately

[7] If anything, a public entity may be more responsible for mental health treatment where the incarceration itself has aggravated or exacerbated the harmful symptoms of mental illness.

alleged. Defendants' motion is therefore denied with respect to the constitutional claims, without prejudice.

**IV. Conclusion**

For the reasons stated above, Defendants' motion is DENIED.

IT IS SO ORDERED.

Dated: May 17, 2016

DEAN D. PREGERSON
United States District Judge