

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE UNIFIED JUDICIAL SYSTEM OF  
PENNSYLVANIA,

Defendant,

CIVIL NO.

**COMPLAINT**

Plaintiff, United States of America, respectfully alleges:

1. The United States brings this suit against Defendant, the Unified Judicial System of Pennsylvania (UJS), to enforce Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§12131-34, as amended, and its implementing regulation, 28 C.F.R. Part 35. The UJS has unlawfully discriminated against individuals with Opioid Use Disorder in its court supervision programs, in violation of Title II of the ADA, by prohibiting or otherwise limiting the use of medication prescribed to treat their disability.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under Title II of the ADA, 42 U.S.C. § 12133, and 28 U.S.C. §§ 1331 and 1345.

3. The Court may grant the relief sought in this action pursuant to 28 U.S.C. §§ 2201-2202 and 42 U.S.C. § 12133.

4. The United States has authority to seek a remedy for violations of Title II of the ADA. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, Subpart F.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this action occurred in this judicial district.

### **PARTIES**

6. Plaintiff is the United States of America.

7. Defendant UJS is established by the Constitution of Pennsylvania and consists of all of the state courts and judges in the Commonwealth of Pennsylvania including “the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, [and] such other courts as may be provided by law and justices of the peace.” P.A. CONST. art. V, §1. As the state court system of Pennsylvania, the UJS is a “public entity” within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104 and is therefore subject to Title II of the ADA and its implementing regulation. The Supreme Court is “the highest court in the Commonwealth of Pennsylvania,” and exercises “general supervisory and administrative authority” over the entire UJS. P.A. CONST. art. V, §§ 2, 10(a).

8. Complainants A, B, and C are qualified individuals with disabilities who are protected by Title II of the ADA because of their Opioid Use Disorder (OUD). OUD is a form of drug addiction, which causes clinically significant impairment and distress, including health problems, social problems, and a failure to fulfill obligations at work, school, or home. Complainants’ OUD is a physical or mental impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(1)(A); 28 C.F.R. § 35.108(b)(2) (listing “drug addiction” among other physical and mental impairments). Complainants are not currently engaging in the illegal use of drugs. 42 U.S.C. § 12210; 28 C.F.R. § 35.131.

## FACTS

### A. Medication for OUD

9. Methadone, naltrexone, and buprenorphine (including brand names Subutex and Suboxone) are medications approved by the Food and Drug Administration to treat OUD. These medications may be prescribed as part of a comprehensive treatment plan that includes counseling and other behavioral therapies.

10. Methadone and buprenorphine help diminish the effects of physical dependency to opioids, such as withdrawal symptoms and cravings, by activating the same opioid receptors in the brain targeted by prescription or illicit opioids without producing euphoria. Naltrexone, meanwhile, treats OUD by blocking opioid receptors and thereby preventing any opioid from producing rewarding effects such as euphoria or pain relief.

11. How long a patient receives OUD medication is tailored to the needs of each patient, and in some cases, treatment can be indefinite. According to the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA): “OUD medication can be taken on a short- or long-term basis, including as part of medically supervised withdrawal and as maintenance treatment.” SAMHSA, *Treatment Improvement Protocol 63: Medications for Opioid Use Disorder* at ES-3 (July 2021). The best results, according to SAMHSA, “occur when a patient receives medication for as long as it provides a benefit,” an approach referred to as “maintenance treatment.” *Id.* at 1-8.

12. SAMHSA cautions that “patients who discontinue OUD medication generally return to illicit opioid use.” *Id.* This is because addiction to opioids “is more than physical dependence” and actually “changes the reward circuitry of the brain, affecting cognition, emotions, and behavior.” *Id.* If a patient plans to stop use of OUD medication, SAMHSA

advises that they and their providers base decisions “on knowledge of the evidence base for the use of these medications, individualized assessments, and an individualized treatment plan they collaboratively develop and agree upon. Arbitrary time limits on the duration of treatment with OUD medication are inadvisable.” *Id.*

**B. The Jefferson County Court of Common Pleas**

13. The Jefferson County Court of Common Pleas is a component court of the UJS.

14. The Honorable John Foradora is the presiding—and only—judge for the Jefferson County Court of Common Pleas.

15. On August 3, 2018, Judge Foradora issued an administrative order (below) requiring all individuals under the court’s supervision to be “completely clean” of any “opiate based treatment medication regardless of whether or not these drugs are prescribed,” within 30 days of being sentenced. This included individuals sentenced to the court’s Accelerated Rehabilitative Disposition, Probation, Parole, Intermediate Punishment, and Drug Court

**ORDER OF COURT**

**AND NOW**, this 3<sup>rd</sup> day of August, 2018, this Court and its probation department dealing with opiate abuse by probationers, and this Court finding that the vast majority (well in excess of 80%) of individuals prescribed with Suboxone, Methadone, Subutex and other opiate based treatment programs, abuse those drugs with regularity; and further that it makes these probationers ineffective and nearly impossible to manage; and finally, it does not appear to help the patients in any way to become productive members of society. It should be noted that among the thousands of individuals who have been on probation while prescribed these drugs, there have been less than 15 people who have successfully completed treatment and been completely weaned off of these drugs.

**IT IS HEREBY ORDERED AND DECREED** that effective immediately but beginning with this Court’s sentencing on August 15, 2018, no individual who is sentenced to ARD, Probation, Parole, Intermediate Punishment or Drug Court shall be permitted to take Suboxone, Subutex, Methadone or any other opiate based treatment medication regardless of whether not these drugs are prescribed, they will be completely clean of the substance within 30 days of the date of their sentence or face probation revocation.

**IT IS FURTHER ORDERED AND DECREED** that the only exception shall be pregnant probationers (who are pregnant upon commencement of probation) during pregnancy and with the permission of their obstetrician/gynecologist. These probationers shall be off opiates and free of the substance within 30 days of the end of their pregnancy.

programs. The only individuals exempted from the court's prohibition of use of OUD medication were pregnant probationers during their pregnancy.

16. Judge Foradora's administrative order remained in effect for over four and a half months.

17. While it was in place, the administrative order caused individuals under the court's supervision, including Complainants A and B, significant harm.

### **C. Complainant A**

18. Complainant A is an individual with a disability within the meaning of 42 U.S.C. § 12102 because she has OUD, a physical or mental impairment that substantially limits one or more major life activities. 28 C.F.R. § 35.108(b)(2).

19. In 2018, while under state probation supervision, Complainant A began treatment with physician-prescribed buprenorphine, and views that treatment as essential to her recovery.

20. In November 2018, the state transferred Complainant A's probation supervision to Jefferson County.

21. Complainant A's Jefferson County probation officer advised her that she was subject to Judge Foradora's administrative order and that she had 30 days—until December 30, 2018—to stop taking her prescribed OUD medication. If she failed to do so, she would be considered in violation of her probation and sent to jail.

22. Complainant A met with her doctor and—after discussing the risks associated with tapering off her medication, including relapse and death—she attempted to comply with the court's administrative order.

23. Complainant A's attempts to wean caused her significant physical and emotional distress. Complainant A felt nauseous and achy, had trouble getting out of bed, had a reduced

appetite, and experienced mood swings that severely strained her personal relationships.

24. After Judge Foradora rescinded his administrative order on December 21, 2018, Complainant A's physician immediately returned her to her previous dosage. At her next medical appointment, she reported feeling "much improved" with no cravings or withdrawal symptoms.

**D. Complainant B**

25. Complainant B is an individual with a disability within the meaning of 42 U.S.C. § 12102 because she has OUD, a physical or mental impairment that substantially limits one or more major life activities. 28 C.F.R. § 35.108(b)(2).

26. Complainant B was prescribed buprenorphine in 2018 as part of her treatment for OUD, which she says allows her to be a functioning homeowner, parent, and responsible member of society.

27. In September 2018, facing criminal charges, Complainant B entered the Jefferson County Court's Accelerated Rehabilitative Disposition program, which is designed to keep first time offenders out of jail.

28. As with Complainant A, Complainant B's Jefferson County probation officer told her that, pursuant to Judge Foradora's order, she had to stop using her OUD medication.

29. Complainant B attempted to comply with the court's administrative order, which caused her significant emotional distress and significant withdrawal symptoms, including insomnia, cramps, abdominal pain, nausea, and vomiting.

30. Complainant B required emergency treatment as a result of her withdrawal symptoms on at least one occasion.

31. When Complainant B's initial efforts to taper were unsuccessful, Jefferson

County probation referred her to an inpatient residential treatment program for the express purpose of detoxing her off her OUD medication. She spent more than a month at the facility but was ultimately unable to fully taper.

32. After Judge Foradora rescinded his administrative order on December 21, 2018, Complainant B returned to being treated by a physician with OUD medication and has continued with such treatment.

**E. The Northumberland County Court of Common Pleas Drug Court Program**

33. The Northumberland County Court of Common Pleas is a component court of the UJS.

34. The Northumberland County Drug Court program, administered by the Northumberland County Court of Common Pleas, provides an alternative to incarceration for individuals with substantial but non-violent and non-sexual criminal histories and “current addiction issues.”

35. Participants must comply with various program requirements. These include submitting to frequent drug testing, engaging in treatment, and reporting regularly to the drug court and to their probation officer.

36. To graduate from the program, participants must complete three sequential phases, structured to last 18 months.

37. The Honorable Paige Rosini of the Northumberland County Court of Common Pleas oversees the drug court program with the assistance of a treatment court team (hereafter, “Treatment Court Team” or “Team”). The Team includes representatives from Northumberland County’s Adult Probation and Drug & Alcohol Departments and a representative from a private provider of treatment services.

38. Judge Rosini bears ultimate responsibility for determining who is admitted to the drug court and whether they advance or graduate.

**F. Complainant C**

39. Complainant C is an individual with a disability within the meaning of 42 U.S.C. § 12102 because she has OUD, a physical or mental impairment that substantially limits one or more major life activities. 28 C.F.R. § 35.108(b)(2).

40. Since at least 2016, Complainant C has been prescribed buprenorphine by a physician as part of her OUD treatment plan. Buprenorphine has helped her stay stable, enabling her to buy a house, start a small business, and be a better parent to her young child.

41. Complainant C was admitted to the Northumberland County Drug Court on or about October 2016 after pleading guilty to driving under the influence.

42. Judge Rosini and the Treatment Court Team were concerned about Complainant C's use of buprenorphine and informed her that to continue or advance in the program she would need to stop taking her prescribed medication. The Team then took various steps to achieve this end.

43. The Team sent Complainant C to an in-patient treatment rehabilitation facility to be detoxed from buprenorphine.

44. The Team referred Complainant C to an abstinence-based intensive outpatient treatment provider that restricted her participation because of her OUD medication.

45. The Team delayed Complainant C's progression through the successive phases of drug court because of her failure to taper off her medication, despite the fact that she otherwise satisfied the criteria for advancement and graduation.

46. For more than two years, the Team repeatedly directed Complainant C to stop



using her medication despite being informed by her doctor that Complainant C was doing well on buprenorphine and that tapering her off of it “could put her at increased risk of relapse, overdose, and death.”

47. Complainant C made multiple attempts to comply with the Team’s directives and experienced significant emotional distress and severe side effects as a result, including loss of appetite and energy, body aches, soreness, backpain, diarrhea, depression, and anxiety.

48. Ultimately, Complainant C stopped trying to taper when her symptoms and opioid cravings increased to the point that she feared she would relapse.

49. Complainant C was finally permitted to graduate from drug court in October 2020, after spending four years in what is typically a less-than-two-year program.

50. Complainant C had spent more time in drug court than any other participant in the program’s history.

#### **G. Other Pennsylvania Treatment Court Programs**

51. The United States alleges that other UJS courts have or had policies that prohibit or otherwise limit the use of OUD medication by individuals in “treatment court” programs providing court supervision. These treatment court programs, which include drug treatment, mental health, and veterans courts, are also referred to as “problem-solving courts” in Pennsylvania.

52. Some of these policies explicitly ban specific forms of OUD medication. Others are inconsistent in how they address OUD medication and its use.

53. The Allegheny County Court of Common Pleas’ Mental Health Court requires court approval for OUD medication, and cautions that permission to use OUD medication is granted “only on rare occasions” and that “[i]f a regularly prescribing physician feels that a client

needs to be on any prohibited prescription continuously to sustain a certain quality of life, then the client may not be acceptable to participate in the Mental Health Court Program.”

54. The Blair County Court of Common Pleas prohibits participants in its treatment courts who have OUD from taking any OUD medication other than Vivitrol (i.e., naltrexone). It does not allow the use of other commonly prescribed medications such as methadone or buprenorphine.

55. The Butler County Court of Common Pleas’ Drug Treatment Court, until June 2021, stated in its publicly-available policy manual that it did not allow the use of methadone or suboxone while in the program.

56. The Clinton County Court of Common Pleas’ three treatment courts all restrict participants from getting OUD medication outside of that small rural county.

57. The Delaware County Court of Common Pleas’ policies for its three treatment courts on its website all prohibit use of “[m]aintenance drugs in any form such as Vivitrol, Subutex, Suboxone, Methadone, Buprenorphine, and Naltrexone....”

58. The York County Court of Common Pleas’ policies for its DUI and Mental Health Courts on its website ban the use of methadone and suboxone.

**CAUSE OF ACTION**  
**Violation of Title II of the Americans with Disabilities Act**  
**(42 U.S.C. §§ 12131-12134)**

59. The foregoing paragraphs are incorporated herein.

60. All conditions precedent to the filing of this Complaint have occurred or been performed. *See* 28 C.F.R. Part 35, Subpart F.

61. Defendant UJS, through the acts and omissions of its component courts, has directly, or through contractual, licensing, or other arrangements, violated Title II of the ADA,

42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, by discriminating on the basis of disability, including by:

a) denying qualified individuals with disabilities, including the individuals identified herein, an equal opportunity to participate in or benefit from its services, programs, or activities—including probationary and treatment court supervision—in violation of 28 C.F.R. § 35.130(a)-(b);

b) imposing or applying unnecessary eligibility criteria that screen out or tend to screen out an individual with a disability, including the individuals identified herein, or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity. 28 C.F.R. § 35.130(b)(8).

c) utilizing criteria or methods of administration that (i) have the effect of subjecting qualified individuals with disabilities, including the individuals identified herein, to discrimination on the basis of disability; and (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of Defendant's programs in which such individuals are participating. 28 C.F.R. § 35.130(b)(3).

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff United States prays that the Court:

A. Grant judgment in favor of the United States and declare that Defendant UJS has violated Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35;

B. Enjoin Defendant and its agencies, agents, employees, instrumentalities, successors, and all persons in active concert or participation with it from engaging in discriminatory policies and practices against individuals with disabilities or otherwise violating

Title II of the ADA and its implementing regulation;

C. Require Defendant to adopt or revise its policies to explicitly state that no court within the UJS may discriminate against, exclude from participation, or deny the benefits of their services, programs, or activities—including county court proceedings, probationary programs, and treatment courts—to qualified individuals with disabilities because they take prescribed OUD medication;

D. Order Defendant to identify one or more employees responsible for monitoring the compliance of courts within the UJS with the ADA, training court staff, and overseeing investigations and resolutions of ADA complaints or grievances;

E. Order Defendant to update its complaint process as needed, to ensure that ADA-related complaints filed against any court in the UJS are promptly reviewed, investigated, and equitably resolved in compliance with 28 C.F.R. § 35.107;

F. Order Defendant to train and educate all court staff about OUD and the nondiscrimination requirements of Title II of the ADA;

G. Award compensatory damages to the Complainants and other aggrieved individuals for injuries caused by the ADA violations alleged in this Complaint;

H. Order such other appropriate relief as the interests of justice may require.

### **DEMAND FOR JURY TRIAL**

Plaintff demands a trial by jury as to all issues, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Electronically filed on: February 24, 2022

Respectfully submitted,

/s/ Jennifer Arbittier Williams

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