UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Jane DOES 1 through 8, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Charles D. BAKER, in his official capacity as Governor of the Commonwealth of Massachusetts;

Thomas TURCO, in his official capacity as Commissioner of the Massachusetts Department of Correction;

Paul HENDERSON, in his official capacity as Superintendent of the Massachusetts Correctional Institution at Framingham; and

The MASSACHUSETTS DEPARTMENT OF CORRECTION,

Defendants.

CIVIL ACTION

No. 1:14-cv-12813-DPW

DEFENDANTS' MEMORANDUM OF REASONS IN SUPPORT OF MOTION TO DISMISS CASE AS MOOT UNDER FED. R. CIV. P. 12(b)(1)

The defendants Charles D. Baker, Thomas Turco, and Paul Henderson, all in their official capacities, and the Massachusetts Department of Correction ("Defendants"), submit this Memorandum of Reasons in support of their Motion to dismiss this case for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) because it is moot and, therefore, no longer presents an Article III case or controversy.

INTRODUCTION

Mass. Gen. Laws ch. 123, § 35 ("Section 35") authorizes courts to involuntarily commit persons to inpatient treatment facilities if "there is a likelihood of serious harm as a result of the person's alcoholism or substance abuse." When Plaintiffs sued, Section 35 authorized courts to commit women to the Massachusetts Correctional Institution at Framingham ("MCI-Framingham") if no "suitable" inpatient treatment facilities were available. Plaintiffs alleged that such commitments violated their Constitutional and other rights and the Court certified a plaintiff class comprised of women who at that time were or would in the future be committed under Section 35 to that specific location: MCI-Framingham.

Commitments to MCI-Framingham have now permanently ended. On January 25, 2016, Governor Baker signed into law an amendment to Section 35 eliminating the provision in the statute that had authorized those commitments. *See* 2016 Mass. Act., ch. 8, § 4. The amendment took effect on April 24, 2016. Section 35 now authorizes civil commitments of women *only* to treatment facilities approved by either the Massachusetts Department of Mental Health ("DMH") or Department of Public Health ("DPH") and nowhere else. Because MCI-Framingham is not a DMH or DPH approved treatment facility, it no longer houses any women committed under

Section 35.[1] Instead, courts now commit women to DPH and DMH approved treatment facilities, as memorialized in recent guidance by the Trial Court's Chief Justice. And, the Commonwealth has fast-tracked the creation of 73 new inpatient treatment beds explicitly for women committed under Section 35.

The statutory amendment to Section 35 has mooted this case. Plaintiffs sued to stop civil commitments to MCI-Framingham. Section 35 no longer authorizes those commitments and courts have thus stoppered ordering them. There are no longer *any* women at MCI-Framingham who were committed there under Section 35, and there is no statutory authorization—and thus no reasonable expectation—that such commitments will resume in the future. "[W]hen an intervening event strips the parties of any legally cognizable interest in the outcome, a case, once live, is rendered moot." *Barr v. Galvin*, 626 F.3d 99, 104 (1st Cir. 2010) (internal quotation omitted). This case is a textbook example of such an intervening event. This case no longer presents a case or controversy under Article III of the Constitution and this Court no longer has jurisdiction to adjudicate it. This case is moot and must be dismissed.

[1] Some women are held at MCI-Framingham because a court has placed a criminal hold (*e.g.* bail) on that woman, providing an independent statutory authorization to hold such women at a MCI-Framingham. *See, e.g.*, Mass. Gen. Laws ch. 276, § 42 ("If it appears that a crime has been committed and that there is probable cause to believe the prisoner guilty, the court or justice shall, if final jurisdiction is not exercised, admit the prisoner to bail, if the crime is bailable and sufficient bail is offered; otherwise, except as provided for in section sixteen of chapter one hundred and twenty-five, such prisoner shall be committed to jail for trial."). Some of these pretrial detainees are also subject to a court-ordered commitment under Section 35. This lawsuit did not challenge the placement of women at MCI-Framingham in such circumstances, which formerly were called "dual commitments." (The term is no longer meaningful, as Section 35 commitments to MCI-Framingham are impermissible.) Instead, this lawsuit challenged only commitments based solely on Section 35.

BACKGROUND

Section 35 authorizes courts to order the civil commitment of those in need of treatment for alcoholism or a substance use disorder when a person presents a "likelihood of serious harm." Mass. Gen. Laws ch. 123, § 35. A "likelihood of serious harm" is established when one of three forms of risk—risk of self-harm, risk of harm to others, or risk that the respondent is unable to protect herself in the community—is present and the risk cannot be founded only upon evidence that he or she has substance use disorder or alcoholism. *Id.* § 1.[2] Commitment under Section 35 is "civil and remedial in nature, not punitive." *Greenberg v. Commonwealth*, 442 Mass. 1024 (2004) (rescript). It exists "for the purpose of inpatient care in public or private facilities" to treat "alcoholism or substance abuse." *Id.* § 35.

Prior to April 24 of this year, Section 35 authorized courts to commit women to MCI-Framingham if space at a "suitable" inpatient treatment facility was not available. *Id.* (eff. Jan. 1, 2015, amended eff. Apr. 24, 2016). This lawsuit—filed in June 2014—challenged civil commitments to MCI-Framingham made on the authority of that statutory provision. *See* Dkt. # 1 (Complaint filed on June 30, 2014); # 54 (Amended Complaint filed on January 27, 2015). Plaintiffs alleged that those commitments violated substantive Due Process under the Fourteenth Amendment and Title II of the Americans with Disabilities Act. *Id.* The Defendants did not oppose class certification, *see* Dkt. # 43 (Assented-To Amended Motion for Class Certification), and on January 13, 2015, this Court certified Plaintiffs as a class of "All women who are now or will be civilly held at MCI-Framingham based solely on an order under Massachusetts General

[2] Under the statutory definition, a "likelihood of serious harm" is: "(1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community." Mass. Gen. Laws ch. 123, § 1.

Laws Chapter 123, Section 35." Dkt. # 49 (Clerk's notes for January 13, 2015 initial scheduling conference).

On February 18, 2015, Plaintiffs served broad discovery requests on the Defendants who served written responses and objections on April 24, 2015 and made an initial production of documents a few days later. Thereafter, the parties agreed to two stays of this action, Dkt. ## 73, 77, 79-80, "to allow the multiple state officials and agencies involved in the Section 35 process to focus their efforts on developing a plan to end the practice of sending women to MCI-Framingham solely under a Section 35 civil commitment," Dkt. #73. There were no further court proceedings in this case, which remains in its early stages.

Instead, during the pendency of those agreed-to stays and after, the Commonwealth developed and implemented a plan to stop Section 35 commitments to MCI-Framingham in the context of its broader efforts to address the Commonwealth's opioid public health crisis:

- Shortly after taking office in January 2015, the Governor created an "Opioid Working Group" to make recommendations to address the opioid public health crisis and in June 2015 the group released an action plan that recommended, among other things, "Increase access to beds for patients who are civilly committed under [Section 35] and provide a roster of currently available beds to judges for section 35 commitments" and "Transfer responsibility for civil commitments from the Department of Corrections [*sic*] to the Executive Office of Health and Human Services."[3]

- On October 15, 2015, Governor Baker introduced *An Act Relative to Substance Abuse Treatment, Education, and Prevention* (the "Act"), Ma. H. 3817, 189th Gen. Ct. (2015-16), which proposed in Section 9 to amend Section 35's text to eliminate authorization for commitments to MCI-Framingham.[4]

[3] Aff. of Bryan F. Bertram in Support of Mot. to Dismiss Case as Moot Under Fed. R. Civ. P. 12(b)(1) ("Bertram Aff.") Ex. A (*Recommendations of the Governor's Opioid Working Group*, at 9 (June 11, 2015)), Ex. B. (*Action Plan to Address the Opioid Epidemic in the Commonwealth*, at 6-7 (June 22, 2015)).

[4] Bertram Aff. Ex. C.

- On November 2, 2015, the General Court approved a supplemental budget allocating $5.8 million to fund operation of new treatment beds and associated treatment services proposed by the Governor.[5]

- In January and February 2016, the DMH opened and began operating 15 new treatment beds for women committed under Section 35 at Taunton State Hospital and Highpoint Treatment Center, a vendor licensed by the DPH, opened and began operating 28 new treatment beds at Shattuck State Hospital—a total of 43 new treatment beds.[6]

During this time, both the Governor and the Secretary of the Commonwealth's Executive Office of Health and Human Services also publicly and consistently committed to ending the commitment of women to MCI-Framingham under Section 35.[7]

Finally, in January 2016, the General Court voted to approve the portion of the Governor's proposed Act that amended Section 35 to delete its language authorizing commitments to MCI-Framingham. On January 25, 2016, the Governor signed that legislation into law. On April 24, the amendment took effect. Section 35 no longer authorizes the commitment of women to MCI-Framingham. *See* Mass. Gen. Laws ch. 123, § 35, ¶ 4 (eff. Apr. 24, 2015).

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[5] Bertram Aff. Ex. D (*An Act Making Appropriations for the Fiscal Year 2015 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects*, Mass. Acts 2015, ch. 119, p. 2, Line item no. 5095-0015 (Nov. 2, 2015)).

[6] Aff. of Leslie Darcy in Support of Mot. to Dismiss Case as Moot Under Fed. R. Civ. P. 12(b)(1) ("Darcy Aff.") ¶¶ 4-6.

[7] *E.g.*, Matt Murphy, *Bill would prohibit civil commitments to MCI-Framingham for drug problems*, State House News Serv., Oct. 7, 2015 (describing legislation introduced by Governor Baker to end commitments to MCI-Framingham); *State Looks To Reform Handling Of Involuntary Commitments For Substance Abuse*, WBUR Boston Public Radio, Aug. 11, 2015 ("[EOHHS] Secretary Mary Lou Sudders says the state will spend $6 million to create 45 new beds for women at Taunton State Hospital, a facility that's under the supervision of the state Department of Mental Health."); Letter from Governor Charles D. Baker to the Commonwealth of Massachusetts Senate and House of Representatives (Oct. 15, 2015) (enclosing proposed legislation ending Section 35 commitments to MCI-Framingham) (Bertram Aff. Ex. C)

Section 35 Text Prior to April 24	Section 35 Text After April 24
Such commitment shall be for the purpose of inpatient care in public or private facilities approved by the department of public health under chapter 111B for the care and treatment of alcoholism or substance abuse. The person may be committed to the Massachusetts correctional institution at Bridgewater, if a male, or at Framingham, if a female, if there are not suitable facilities available under said chapter 111B; provided, however, that the person so committed shall be housed and treated separately from convicted criminals.	Such commitment shall be for the purpose of inpatient care for the treatment of an alcohol or substance use disorder in a facility licensed or approved by the department of public health or the department of mental health. … If the department of public health informs the court that there are no suitable facilities available for treatment licensed or approved by the department of public health or the department of mental health, or if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility, then the person may be committed to: (i) a secure facility for women approved by the department of public health or the department of mental health, if a female; or (ii) the Massachusetts correctional institution at Bridgewater, if a male; provided, however, that any person so committed shall be housed and treated separately from persons currently serving a criminal sentence.

The amended statute continues to allow commitments of women to properly approved inpatient treatment facilities. It now further provides that women may be committed to a "secure facility" if the court makes a "specific finding" that such a facility is the only "appropriate setting for treatment." But it does not provide for commitments to MCI-Framingham. Women are now committed to treatment facilities, such as the Woman's Addiction Treatment Center in New Bedford ("WATC"), the newly created 43 treatment beds at Taunton and Shattuck State Hospitals, and other secure treatment facilities across the state that are approved by DPH or DMH. Moreover, the Commonwealth projects to open 30 additional inpatient treatment beds at Taunton State Hospital this summer, solely for use by women committed under Section 35. Darcy Aff. ¶¶ 4-6. In response to the statutory change, the Chief Justice of the Trial Court has

issued guidance to lower courts explaining that MCI-Framingham will no longer accept women committed under Section 35 and that such women must now be committed to previously existing and newly created treatment facilities.[8]

MCI-Framingham no longer houses any women who were committed there solely under Section 35. *See* Aff. of Donna Benedict in Support of Mot. to Dismiss Case as Moot Under Fed. R. Civ. P. 12(b)(1) ("Benedict Aff.") ¶ 4. As of April 19, 2016, and through the date of this Memorandum, no woman has been accepted into the custody of MCI-Framingham pursuant only to an order of commitment under Section 35. *Id.* Thus, there is no longer a single member of Plaintiffs' certified class of "women who are now or will be civilly held at MCI-Framingham based solely on an order under Massachusetts General Laws Chapter 123, Section 35." There is also no reasonable expectation that the class will contain any members in the future. To be sure, neither the DPH nor the DMH has MCI-Framingham under consideration for approval as a treatment facility under Section 35. Darcy Aff. ¶ 7.

ARGUMENT

I. The Court Must Dismiss this Case Because It No Longer Presents An Ongoing Article III Case or Controversy and is Therefore Moot.

The Constitution "confines the jurisdiction of the federal courts to actual cases and controversies." *ConnectU LLC v. Zuckerberg,* 522 F.3d 82, 88 (1st Cir. 2008) (citing U.S. Const. art. III, § 2, cl. 1). "[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English v. Arizona,* 520 U.S. 43, 67 (1997) (internal quotations omitted). Courts are "required to determine whether Article III jurisdiction exists prior to proceeding to the merits of the case," *United Seniors Ass'n, Inc. v. Philip Morris USA,* 500 F.3d 19, 23 (1st Cir. 2007), and "when an intervening event strips the

[8] Bertram Aff. Ex. E (Memo. from C.J. Paula M. Carey to Judges, Clerk Magistrates, and Assistant Clerk Magistrates Boston Municipal, District, and Juvenile Court Departments, re: Implementation of Changes to G.L. c. 123, § 35 (Apr. 21, 2016)).

parties of any legally cognizable interest in the outcome, a case, once live, is rendered moot," *Barr*, 626 F.3d at 104 (internal quotation omitted).

The Commonwealth's amendment to Section 35 renders this case moot because it eliminated both the plaintiff class and the complained-of harm. Courts no longer commit women to MCI-Framingham under Section 35. There are no longer any women at MCI-Framingham who were committed there under Section 35. And Section 35 no longer authorizes such commitments; Section 35 now only authorizes courts to commit women to approved treatment facilities and MCI-Framingham is not such a facility. That statutory change completely and permanently ended the complained-of actions in this case.

This case is thus is a clear-cut example of a statutory change eliminating the basis for a lawsuit. Many other courts have recognized that changes to statutes or regulations moot lawsuits, requiring their dismissal. *See, e.g., United States Dep't of the Treasury, Bur. of Alcohol, Tobacco & Firearms v. Galioto* 477 U.S. 556, 559–60 (1986) (holding constitutional challenges to firearms restrictions for previously-committed individuals moot due to intervening enactment of procedural protections); *United Bldg. & Const. Trades Council v. Mayor & Council of Camden*, 465 U.S. 208, 213 (1984) (holding that challenge to a duration element of a residency requirement for city employment became moot when ordinance was amended to remove duration element); *Anderson v. City of Boston*, 375 F.3d 71, 93 (1st Cir. 2004) ("[W]hen a governmental entity revised a challenged policy to remove the offending language, plaintiffs' claim for injunctive relief was mooted.") (citing *New England Reg'l Council of Carpenters v. Kinton*, 284 F.3d 9, 18 (1st Cir. 2002)); *see also Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (A statutory change ... is usually enough to render a case moot, even if the legislature possesses the power to reenact the statute after the lawsuit is dismissed."). This case is no different. The Commonwealth has taken deliberate and significant steps to end civil commitments to MCI-Framingham, including amending Section 35. Those changes moot the basis for this lawsuit. It is not a close call.

II. The Voluntary Cessation Exception to Mootness Does Not Apply to This Case Because There is No Reasonable Basis to Conclude that Commitments to MCI-Framingham Will Resume in the Face of the Statutory Change.

Plaintiffs have stated that they will contend in opposition to this Motion that they "do not believe that the case will be moot after April 24, 2016, because Defendants have yet to agree that the amended statute precludes commitments of women to MCI-Framingham or any other correctional facility." Dkt. # 82 at ¶ 4.

There is no need for Defendants to have to "agree" to this statement. It is unequivocally true. As amended, Section 35 precludes the placement of women committed solely under Section 35 to MCI-Framingham or any other correctional facility in the Commonwealth because those facilities are not authorized to receive Section 35 commitments under the law and neither MCI-Framingham nor any other correctional facility is approved by either the DPH or DMH as a treatment facility. That is the law. And it would not be enough for Plaintiffs to argue that the case is not moot because it is hypothetically possible that the DPH or DMH could approve a correctional facility as a treatment facility in the future. That argument, if invoked to support the voluntary cessation exception to mootness, is wrong.

"The voluntary cessation exception traces to the principle that a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior." *American Civil Liberties Union of Massachusetts v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 54-55 (1st Cir. 2013) (internal citation omitted). "The exception's purpose is to deter a manipulative litigant [from] immunizing itself from suit indefinitely, altering its behavior long enough to secure a dismissal and then reinstating it immediately after." *Town of Portsmouth, R.I. v. Lewis*, 813 F.3d 54, 59 (1st Cir. 2016) (internal quotation omitted). The exception does not apply, however, when a permanent change has been made eliminating the challenged practice and "there is no reasonable expectation . . . that the alleged violation will recur." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

Courts have consistently held that state government changes to statutory text are presumed not to invoke the voluntary cessation exception. The First Circuit recently reiterated this rule in *Town of Portsmouth, R.I. v. Lewis*, 813 F.3d 54 (1st Cir. 2016), where the plaintiff sued to challenge certain bridge tolls but, during the pendency of the litigation, the Rhode Island legislature revoked the statutory authorization for those tolls. *Id.* at 59. The First Circuit, when affirming the District Court's order of dismissal for mootness, wrote, "we presume that a state legislature enacts laws in good faith, not with the improper motive of mooting pending litigation." *Id.* (internal citations omitted). It further went on to note that "although the Supreme Court has not hesitated to invoke the voluntary cessation exception when considering the conduct of private, municipal, and administrative defendants, it has not applied the exception to state legislatures. Rather, it has consistently and summarily held that a new state statute moots a case, without engaging in further inquiry." *Id.* Those same rationales govern in this case.[9] The Commonwealth amended Section 35 and that amendment now precludes Section 35 commitments to MCI-Framingham, which is not a DPH or DMH approved treatment facility. The analysis need not and should not go further.

Furthermore, this case is far different from those where the voluntary-cessation exception applies—where government makes plain by word or deed that it intends to continue a challenged action. First Circuit law is clear: the voluntary cessation exception will not lie where there is no "indication of a[n] . . . intent" to revert to the prior practice. *D.H.L. Assocs.*, 199 F.3d at 55.

[9] And other First Circuit cases are in accord. *See, e.g.*, *Kinton*, 284 F.3d at 17-18 (holding moot a challenge to a Massport policy governing leafleting in a specific location (Northern Avenue) where Massport rescinded the original policy, reasoning that "there is simply no basis for suggesting that the original permit policy will be reinstated following the conclusion of the litigation"); *D.H.L. Assocs.*, 199 F.3d at 55 (holding a challenge to certain ordinances moot where a town amended them to remediate alleged Constitutional infirmity, with no indication that it would return to prior practice post-litigation); *Anderson*, 375 F.3d at 93 (upholding a ;lower court's denial of a preliminary injunction recognizing that the City of Boston's changes to a school assignment system—challenged as unlawful—rendered the case moot, notwithstanding plaintiffs' protestation that the city could return to its prior ways).

"Mere skepticism about … future intentions" will not suffice. *Anderson*, 375 F.3d at 93. The amendment to Section 35 alone shows that Governor and General Court reject, as a matter of policy, the civil commitment of women to MCI-Framingham for alcohol and substance abuse treatment. Even more, other facts leading up to and after the amendment show that there is no "reasonable expectation" that the Governor and General Court will reverse themselves if this case is dismissed. MCI-Framingham is not designated as a treatment facility by the DPH or DMH and it is not presently under consideration for such a designation. Darcy Aff. ¶ 7. Instead of pursuing such a designation, the Commonwealth has successfully transitioned civilly-committed women out of MCI-Framingham to other treatment facilities. *See* Benedict Aff. ¶ 4; Bertram Aff. Ex. E. The Commonwealth has additionally fast-tracked the creation and funding of 73 new treatment beds for women committed under Section 35, obviating any lingering need to even contemplate using MCI-Framingham. *See* Darcy Aff. ¶¶ 4-6. And, such a designation would fly in the face of the recommendations of the Opioid Working Group and public statements by the Governor and EOHHS Secretary that this practice would cease. *See* Bertram Aff. Exs. A, B, E.

Finally, there is no merit whatsoever to the assertion that this action must proceed because the DPH or DMH could in the future approve MCI-Framingham as a treatment facility. Such a hypothetical question does not speak to voluntary cessation but only suggests an unripe claim that may never arise. Courts do not and may not adjudicate such hypotheticals because they are not Article III cases or controversies. *See, e.g.*, *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007) ("Our decisions have required that the dispute be 'definite and concrete, touching the legal relations of parties having adverse legal interests'; and that it be 'real and substantial' and 'admi[t] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.'") (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937)); *Town of Portsmouth, R.I.*, 813 F.3d at 59 (noting that courts consider the law "as it exists at the time" and

do not speculate as to the future). Moreover, for all of the reasons this case is moot, voluntary cessation would not apply on this basis there is no "reasonable expectation" that the Commonwealth would pursue such a designation, which is not even under consideration.

At bottom, the Defendants and other agencies and officials of the Commonwealth have said many times that they intend to cease committing women to MCI-Framingham under Section 35. The Commonwealth followed through by amending Section 35 to bar such commitments, and that law has been successfully implemented. Women are no longer committed to MCI-Framingham. This case is a textbook example of state government enacting an important policy change that has the effect of mooting out related litigation. The voluntary cessation exception to mootness does not apply.

III. Even if This Case Were Not Moot, this Court Should Exercise its Equitable Discretion Not to Adjudicate a Statute and Practice That No Longer Have Force or Effect.

Even if there were grounds for the Court to conclude that this case is not moot, the Court still has equitable discretion to dismiss the case because the Amended Complaint seeks solely equitable relief in the form of a declaratory judgment that the practice of committing women to MCI-Framingham under Section 35 is unlawful and an injunction forbidding commitments. *See American Civil Liberties Union of Massachusetts*, 705 F.3d at 56 (holding case moot but also noting that the Court would dismiss on equitable grounds even if not technically moot); *Kinton*, 284 F.3d at 18 n.3 (same). As already explained, Section 35 has been amended, MCI-Framingham is not an approved treatment facility, MCI-Framingham no longer houses civilly-committed women, and the Commonwealth through its words and deeds has demonstrated that it intends to send civilly-committed women to treatment facilities and not MCI-Framingham.

Given these circumstances, there is no reason for this Court to require the Commonwealth to incur the expense or devote the resources to litigate a hypothetical case, nor is there any good reason to expend judicial resources to that task. That is particularly true where, here, this case remains in its early stages with discovery hardly having commenced in light of

multiple agreed-to stays. Equity does not counsel this Court or the parties down such a path, particularly where Plaintiffs wish to adjudicate an entirely hypothetical claim based on facts that have not and may never happen. *See id.*, *cf. Missouri v Jenkins*, 515 U.S. 70, 88 (1995) (noting that Federal court decrees must directly address and relate to violations).

CONCLUSION

For the reasons set forth above, this Court should ALLOW the Defendants' motion and enter an order and judgment DISMISSING this case.

Respectfully submitted,

Charles D. BAKER, in his official capacity as the Governor of the Commonwealth of Massachusetts,

Thomas TURCO, in his official capacity as Commissioner of the Massachusetts Department of Correction,

Paul HENDERSON, in his official capacity as Superintendent of the Massachusetts Correctional Institute at Framingham, and

The MASSACHUSETTS DEPARTMENT OF CORRECTION,

By their attorneys,

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