IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

Christine M. Finnigan, Plaintiff, v. James Mendrick, *et al.*, Defendants.	Civil Action No. 1:21-cv-00341 Hon. Steven C. Seeger Mag. Sheila M. Finnegan

PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS

For more than one year, Plaintiff Christine Finnigan has been in active recovery from her life-threatening opioid use disorder ("OUD") due to successful treatment with physician-prescribed, daily methadone. However, if Ms. Finnigan is subjected to Defendants' de facto Mandatory Withdrawal policy, she could die. According to public reporting from the DuPage County Sheriff's Office, it could take the DuPage County Correctional Facility ("DuPage County Jail" or the "Jail") up to 14 days after intake to conduct a medical evaluation. *See* Declaration of Rebekah Joab ("Joab Decl."), Dkt. 20, ¶ 9 and Exhibit 2 thereto.[1] By that time, she will have gone through painful and dangerous withdrawal and her recovery will be jeopardized, with risk of relapse, overdose, and death. Declaration of Mark Parrino ("Parrino Decl.") ¶¶ 13-19; Declaration of Ross MacDonald ("MacDonald Decl."), Dkt. 21, ¶ 26.

[1] Reference to authority outside the pleadings is proper for the purposes of a 12(b)(1) motion to dismiss. *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 279 (7th Cir. 2020). This potential two-week delay was confirmed by a report on WBEZ this weekend, which stated that a sheriff spokesman says the jail's medical staff has to evaluate Finnigan to determine if she needs methadone, and **that evaluation "could take up to two weeks**." See Supplemental Declaration of Joseph Longley (Longley Supp. Decl.) at ¶ 4 and Attachment 1 thereto.

Defendants' denial of methadone—or even a delay in its provision—could cost Ms. Finnigan her life. Incarcerated people with OUD who are denied physician-prescribed medication for addiction treatment ("MAT") are at a substantially higher risk of relapse, overdose, and death during incarceration and upon release. Complaint ("Compl."), Dkt. 1, ¶¶ 26-27; MacDonald Decl. ¶¶ 13, 39. Incarcerated people who are allowed to stay on their MAT are 85% less likely to die of an overdose in the first month after release. Compl. ¶ 47.

Ms. Finnigan's claims for relief under the Eighth Amendment to the U.S. Constitution and the Americans with Disabilities Act, 42 U.S.C. §§ 12131–12134, are ripe for adjudication. Ms. Finnigan will report to the Jail in just ten days, yet the record shows no indication that Defendants will ensure daily methadone treatment for the duration of her incarceration or that they have even taken the steps needed to enable this treatment, particularly during the early days following Ms. Finnigan's admission in the Jail. Ms. Finnigan will experience immediate, grave, and irreparable harm by being forced to withdraw from methadone subject to Defendants' de facto Mandatory Withdrawal policy. Additionally, Ms. Finnigan's Complaint pleads with sufficiently particularity claims for relief under the Eighth Amendment and ADA because she is at imminent risk of relapse, overdose, and death due to Defendants' de facto policy.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Ms. Finnigan Has Opioid Use Disorder and Faces Imminent Incarceration in a Facility that Will Force Her into Withdrawal.

OUD is a national public health crisis. Compl. ¶ 24. In Illinois alone, there were 2,219 confirmed opioid-related overdose deaths in 2019. *Id.* ¶ 25. In DuPage County specifically, the rate of overdose deaths was 52% higher from January to June 2020 than it was in January to June of 2019. *Id.*

Methadone is one of three FDA-approved medications to treat OUD, along with buprenorphine and naltrexone. *Id.* ¶ 30. These three medications are referred to as MAT (also known interchangeably as "medication for addiction treatment," "medication assisted treatment," and "medication for opioid use disorder" or "MOUD"). Methadone and buprenorphine reduce all-cause mortality and overdose mortality. *Id.* ¶ 39. In contrast, medically-managed withdrawal *increases* the risk of opioid overdose. *Id.* ¶ 37.

Arbitrarily and involuntarily ceasing MAT violates the standard of care and will cause excruciating and dangerous withdrawal symptoms, likely within one or two days after her last daily dose. *Id.* ¶ 41; Parrino Decl. ¶ 14; *see* MacDonald Decl. ¶¶ 9, 26. The appropriateness of MAT is supported by a medical and scientific consensus. Compl. ¶¶ 42-46. Failure to allow an incarcerated person to continue methadone treatment is especially dangerous in a correctional facility because "[i]n the weeks following release from jail or prison, individuals with or in recovery from OUD are at elevated risk of overdose and associated fatality." *Id.* ¶¶ 26-27. But providing MAT inside of correctional facilities saves lives: individuals receiving MAT were "75% less likely to die of any cause and 85% less likely to die of drug poisoning in the first month after release." *Id.* ¶ 47.

Plaintiff Christine Finnigan has struggled with opioid addiction for nearly twenty years. *Id.* ¶ 61. Ms. Finnigan lost three of her four brothers to heroin overdoses. *Id.* She tried to enter recovery through straight detoxification numerous times, but no attempt without MAT was successful. *Id.* ¶ 62.

In August 2019, Ms. Finnigan began receiving methadone maintenance treatment for her OUD at the Bobby Buonauro Clinic in Evanston, Illinois. *Id.* ¶¶ 5, 63. With the help of

methadone, Ms. Finnigan has achieved and maintained active recovery from her OUD. *Id.* She currently takes physician-prescribed methadone to treat her OUD. *Id.* ¶ 60.

Ms. Finnigan is scheduled to report to the DuPage County Correctional Facility ("DuPage County Jail") on February 25, 2021 for a 60-day sentence for a 2016 charge for driving under the influence of alcohol ("DUI"). *Id.* ¶ 67; Declaration of Christine Finnigan (Finnigan Decl.), Dkt. 22. With credit for good time, she expects to serve 30 days in the Jail.[2]

Upon admission to the DuPage County Jail, Ms. Finnigan will be forced into a dangerous and potentially life-threatening withdrawal. *Id.* ¶ 66. Defendant James Mendrick, the DuPage County Sheriff, and Defendant Anthony Romanelli, the Chief of the Corrections Bureau ("Defendants") have an unwritten policy and practice of prohibiting the use of methadone and buprenorphine, even for people who are taking these physician-prescribed medications in the community. *Id.* ¶¶ 68, 71. Ms. Finnigan sought a reasonable modification of this policy to ensure access to her methadone. *Id.* ¶ 72. However, Defendants' counsel informed Ms. Finnigan that they would not honor her longstanding diagnosis and prescription for methadone, and that Defendants would instead complete their own evaluation following Ms. Finnigan's admission to the Jail and provide methadone only if they determined that methadone was "necessary." *Id.* ¶ 73. Defendants failed to inform Ms. Finnigan who would conduct this evaluation, their qualifications to conduct the evaluation, or the clinical criteria that would be used to determine whether her methadone treatment would be continued. *Id.* Given Defendants' de facto policy of not allowing methadone while incarcerated, Ms. Finnigan reasonably believes that the Jail will determine that continued access to methadone is not "necessary." *Id.* Even if Defendants

[2] Ms. Finnigan was sentenced to 60 days of incarceration, but expects to earn one day off her sentence for every day served with good behavior. *See* Finnigan Decl. ¶ 12 and Exhibit 1 thereto; County Jail Good Behavior Act 730 ILCS 130/3.

ultimately agree to provide her with methadone, she is at risk of a dangerous and painful interruption in treatment due to a potential two-week delay in conducting a medical evaluation. *See* Supplemental Declaration of Joseph Longley (Longley Supp. Decl.) ¶ 4 and Attachment 1 thereto; Joab Decl. ¶ 9 and Exhibit 2 thereto. The regulations governing methadone treatment could also occasion delay, which is why it is important for jails that do not regularly provide methadone to plan ahead. Parrino Decl. ¶¶ 4-12; MacDonald Decl. ¶ 40.

B. Procedural History

Ms. Finnigan filed her Complaint on January 20, 2021. Dkt. 1. Count I of the Complaint alleges a claim under 42 U.S.C. § 1983 against both Defendants for a violation of the Eighth Amendment due to Defendants' deliberate indifference to Ms. Finnigan's OUD, a serious medical need. *Id.* ¶¶ 74-78. Count II of the Complaint alleges a claim under 42 U.S.C. §§ 12131-12134 against both Defendants for a violation of the ADA due to Defendants' unlawful discrimination against Ms. Finnigan, a qualified individual with a disability, namely OUD. *Id.* ¶¶ 79-88. Ms. Finnigan's Complaint seeks injunctive and declaratory relief, along with attorneys' fees and costs, and any further relief the Court deems just and proper. *Id.* at 21.

Defendants filed the instant Motion to Dismiss on February 2, 2021. Defs' Motion to Dismiss ("Mot. to Dismiss"), Dkt. 15. On February 8, 2021, Ms. Finnigan moved for an emergency preliminary injunction to require Defendants to provide her with her physician-prescribed methadone throughout her incarceration at the DuPage County Jail, which begins February 25, 2021.[3]

[3] On February 8, 2021, Plaintiff's counsel sent Defendants expedited discovery requests, seeking limited discovery on issues material to the Preliminary Injunction Motion. Dkt. 33 at 1 and Exhibit 1 thereto. Following a meet and confer, Defendants refused to voluntarily provide any discovery in advance of a Rule 26(f) conference. *Id.* at 3-5. Plaintiff filed a motion for expedited discovery on February 11, 2021. *Id.* That motion is pending.

II. ARGUMENT

Plaintiff has stated valid claims for violations of her rights under the Eighth Amendment and the ADA. First, Ms. Finnigan's Complaint is ripe for adjudication because she will be subject to Defendants' de facto Mandatory Withdrawal policy in just ten days. She faces the near certainty of painful and dangerous withdrawals, and imminent, substantial risk of relapse, overdose, and death from the denial of methadone treatment for at least part of her incarceration. Second, Ms. Finnigan's Complaint states plausible claims for relief on its face, namely that Defendants' de facto Mandatory Withdrawal policy violates Ms. Finnigan's Eighth Amendment and ADA rights.

A. The Complaint is Ripe for Adjudication.

Whether Ms. Finnigan may be forcibly removed from methadone when she reports to the DuPage County Jail next week is ripe for judicial resolution.

The ripeness doctrine "is based on the Constitution's case-or-controversy requirements as well as discretionary prudential considerations." *Wisc. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 148 (7th Cir. 2011). "Ripeness 'requir[es] [courts] to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Texas v. United States*, 523 U.S. 296, 300–01 (1998) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)). Civil rights litigants need not "await the consummation of a threatened injury" or "tragic event" in order to obtain injunctive relief. *Farmer v. Brennan*, 511 U.S. 825, 845 (1994) (internal citations and quotations omitted). Indeed, it is well established that "the Eighth Amendment protects against future harm to inmates." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Injunctive relief is proper to "prevent a substantial risk of serious injury from ripening into actual harm." *Farmer*, 511 U.S. at 845. The test for

ripeness in this context is whether the risk alleged is "sufficiently imminent" to constitute a cognizable claim. *Helling*, 509 U.S. at 34.

Rule 12(b)(1) allows defendants to challenge subject-matter jurisdiction, including on ripeness grounds. Fed. R. Civ. P. 12(b)(1). This challenge can be either facial or factual. *Apex Dig., Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443–44 (7th Cir. 2009). In a facial challenge, all facts alleged by the plaintiff are taken as true, and defendants argue that subject matter does not exist under the facts as alleged. *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 279 (7th Cir. 2020). In a factual challenge, on the other hand, defendants offer a competing set of facts and courts can "consider and weigh evidence outside the pleadings" to make its determination. *Id.* Defendants never state whether they are making a facial or factual challenge to subject matter jurisdiction. Under either approach, they fail.

In the context of policies denying MAT in jails, courts have found that preliminary injunctive relief is properly granted to individuals suffering from OUD who challenge—***in advance of a known date of incarceration***—jails' blanket policies denying MAT. *See Pesce v. Coppinger*, 355 F. Supp. 3d 35, 43–45, 49 (D. Mass. 2018); *Smith v. Aroostook Cty.*, 376 F. Supp. 3d 146, 155–58, 162 (D. Me. 2019).

1. The Claim is Fit for Judicial Review Because Ms. Finnigan Will Be Subject to Defendants' De Facto Mandatory Withdrawal Policy.

Here, the risk that Defendants will interrupt Ms. Finnigan's methadone treatment is "sufficiently imminent" to create a case or controversy. *Helling*, 509 U.S. at 34. Ms. Finnigan will imminently report to the DuPage County Jail. Compl. ¶ 67. Once there, she will be subject to the de facto Mandatory Withdrawal policy. *Id.* ¶¶ 66, 73. The application of this policy to Ms. Finnigan's situation will result in harm: denial of daily methadone treatment for all or part of her incarceration, and the resulting withdrawal, and substantially increased risk of relapse, overdose,

and death. *Id.* The Complaint specifically alleges that Ms. Finnigan was diagnosed with OUD and that methadone maintenance is "medically necessary." *Id.* ¶¶ 60, 63. The Complaint does not speculate about what any Jail physician may or may not decide, but rather alleges that Defendants' de facto policy will be applied to Ms. Finnigan, resulting in interruption of the daily methadone that has saved her life. *Id.* ¶¶ 68, 73.

Defendants incorrectly claim that Plaintiff's allegation of a de facto Mandatory Withdrawal policy is conclusory. The factual assertion that Defendants have a de facto Mandatory Withdrawal policy is supported by the allegation that the Jail will not honor her longstanding diagnosis and prescription and will instead complete its own evaluation, after she enters the Jail. *Id.* ¶ 73. The existence of the de facto policy is further supported by allegations that counsel for Defendants made vague statements suggesting that methadone may be available only if it was determined to be "necessary," without providing information about who would conduct the medical evaluation, their qualifications, or what clinical criteria would be used to determine if continuation on methadone is appropriate. *Id.* Ms. Finnigan thus has good reason to believe that her treatment will be interrupted, or even entirely denied, that she will be forced into withdrawal and that Defendants will not be ready or willing to facilitate access to her medication, on day one of her incarceration, or at all. *Id.*

Defendants' arguments to the contrary ask this Court to reject the allegations of the Complaint. Defendants contend that for Plaintiffs to show ripeness, this Court must assume that a physical evaluation will show that Ms. Finnigan "suffers from OUD" and that "methadone treatment is the only viable treatment option for the plaintiff." Mot. to Dismiss at 3. Defendants also argue that the Court would purportedly have to assume Defendants will ignore the results of the physical and "deny her physician's permission to prescribe their recommended course of

treatment." *Id*. But, for purposes of a facial challenge to subject matter jurisdiction, the facts alleged in the Complaint must be accepted as true. *Bazile*, 983 F.3d at 279. The facts alleged clearly establish ripeness: Ms. Finnigan has OUD; methadone maintenance is medically necessary; Defendants will deny it to her based on their de facto policy; the denial of methadone will cause her serious and irreparable harm. Nothing more is required.

To the extent that Defendants intend to make a factual challenge to subject matter jurisdiction, this Court must consider facts outside the Complaint. *Id.* Although Defendants brought the motion to dismiss and control the evidence of their policies and practices, Defendants offer no evidence contesting Plaintiff's claims. While Defendants make a bare assertion in their Motion to Dismiss that Plaintiff's understanding of their MAT policy is incorrect, Mot. to Dismiss ¶ 2, they offer no evidence to that effect and they do not state, let alone provide evidence of, what their policy is. Additionally, they never assert that individuals coming into the jail on methadone are routinely—or ever—allowed to continue treatment. Nor do they assert that they have taken necessary steps to ensure Ms. Finnigan has access to her methadone when she arrives to the Jail.

Moreover, Plaintiff has developed the record on ripeness since the Complaint was filed. Ms. Finnigan is now due to report to the DuPage County Jail in 10 days. Finnigan Decl. ¶ 12 and Exhibit 1 thereto.

The record includes ample evidence of the de facto Mandatory Withdrawal policy, including a 2018 *Chicago Tribune* article reporting the lack of a methadone program at DuPage County Jail and explaining that "[b]y policy, almost all detainees there go through detox." Joab Decl. ¶ 8 and Exhibit 3 thereto. The article quoted the Health Services Administrator of the Jail at the time criticizing methadone treatment as "another form of addiction." *Id*. The article also

confirmed that the Jail's de facto Mandatory Withdrawal policy and practice has had lethal consequences in the past. It reported on the death of a twenty-one-year-old man who was enrolled in a MAT program prior to incarceration in the DuPage County Jail, but was forced into detox during his six-week incarceration at that facility. Exhibit 3 to Joab Decl. He died of accidental overdose soon after his release from the Jail. *Id*. Additionally, the DuPage County Jail denied a twenty-four-year-old man access to his prescribed Suboxone during his incarceration, calling it "a narcotic." Declaration of Louis Lamoureux ("Lamoureux Decl."), Dkt. 23, ¶ 3. The young man died of a heroin overdose five days after release. *Id*. ¶ 5.

Defendant Mendrick's own statements confirm the Mandatory Withdrawal Policy. On January 9, 2021, as she was trying to figure out what a possible stay in jail would mean for her recovery, Ms. Finnigan reached out to Defendant Mendrick through Facebook Messenger to inquire about the availability of MAT in the Jail. Finnigan Decl. ¶¶ 21, 22 and Exhibit 2 thereto. Defendant Mendrick admitted that the Jail's addiction services are "full detox" and counseling. *Id*. ¶ 21 and Exhibit 2 thereto. He admitted the value of MAT generally and mentioned that they are "working on" providing injectable buprenorphine ***in the future***, and did not address methadone. *Id*. and Exhibit 2 thereto. But when Ms. Finnigan asked specifically if someone who comes into the jail on MAT is stopped "cold turkey," he broke off the communication. *Id*. ¶ 22 and Exhibit 2 thereto.

Defendants still have not confirmed that Ms. Finnigan will be able to stay on her methadone while in the Jail, despite Ms. Finnigan going to great lengths to resolve this matter. Ms. Finnigan has already executed a release authorizing the Jail to review her relevant medical records. Declaration of Joseph Longley ("Longley Decl."), Dkt. 24, ¶ 14 and Exhibit 4 thereto. She stands willing to submit to a pre-incarceration evaluation by Jail medical staff while she

awaits her report date, but no one has indicated she will be provided a pre-incarceration evaluation. Finnigan Decl. ¶ 23. Ms. Finnigan's counsel provided Defendants a letter on January 19, 2021 from the BBC documenting Ms. Finnigan's diagnosis and treatment plan. Longley Decl. ¶¶ 4, 11, 14 and Exhibits 2 and 4 thereto. Ms. Finnigan's counsel also provided a medical record indicating her current dosage and her last physical examination and offered to schedule a phone call between the DuPage County Jail and the BBC. *Id.* Counsel for Ms. Finnigan even provided Defendants a recommendation for a third-party consultant to answer any questions they may have about providing access to methadone within the Jail. *Id.* ¶ 8 and Exhibit 4 thereto.

Defendants' own policies and public statements related to this litigation state that their medical evaluation of Ms. Finnigan could take up to two weeks. Joab Decl. ¶ 9 and Exhibit 2 thereto; Longley Supp. Decl. ¶ 4 and Exhibit 1 thereto. Logistical arrangements for her receipt of methadone from a community-based OTP could also contribute to delays. Parrino Decl. ¶¶ 6-12. She cannot sustain any interruption in her daily methadone treatment without serious damage to her health. MacDonald Decl. ¶¶ 9–15, 40, 41. And withdrawal symptoms could begin as soon as one to two days after her last dose of methadone. Parrino Decl. ¶ 14; Declaration of Dr. Robert Reeves ("Reeves Decl."), Dkt. 29, ¶¶ 17-18.

Defendants also assert that hearing Ms. Finnigan's claim "would set a dangerous precedent" which would inundate courts "with Complaints from future inmates . . . directed by Court order without any factual showing of prior impropriety whatsoever." Mot. to Dismiss at 5. This argument not only cites to no authority, but also ignores Supreme Court precedent that explicitly states that incarcerated people need not "await the consummation of a threatened injury" or "await a tragic event" in order to obtain injunctive relief. *Farmer*, 511 U.S. at 845. It is well established that "the Eighth Amendment protects against future harm to inmates." *Helling*,

509 U.S. at 33. Indeed, it is Defendants who seek to set a disastrous precedent by asking this Court to defy Supreme Court precedent and dismiss a complaint despite the clear and supported allegations of serious and imminent harm made therein.

Whether this Court construes Defendants' Motion to Dismiss for lack of ripeness as a facial challenge to the Complaint or a factual challenge based on the record, Ms. Finnigan's claims against Defendants for denial of her medical treatment and discrimination based on disability are ripe for review. If this Court determines that the factual record does not conclusively establish ripeness, the Court should allow Plaintiff limited, expedited discovery on the issue of whether Defendants sustain a de facto Mandatory Withdrawal policy. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n. 13 (1978) ("[W]here issues arise as to jurisdiction or venue, discovery is available to ascertain the facts bearing on such issues.").[4]

2. Ms. Finnigan Faces Great Hardship if Denied Relief.

The hardship Ms. Finnigan faces if this Court declines jurisdiction could not be greater. *See Texas*, 523 U.S. at 300–01. Without access to her physician-prescribed methadone, Ms. Finnigan risks relapse, overdose, and death. Compl. ¶ 65. Arbitrarily and involuntarily ceasing MAT violates the standard of care and will cause excruciating withdrawal symptoms. *Id.* ¶ 41. This failure to allow Ms. Finnigan to have her methadone is especially dangerous in a correctional facility because they are at a much higher risk of overdose upon release. *Id.* ¶¶ 26, 27. Additionally, maintaining an incarcerated person on their physician-prescribed MAT has been shown to make overdose death rates plummet. *Id.* ¶ 47.

[4] *See* Pl's Mot. For Expedited Disc., Dkt. 33, at 3-5. Defendants have also ignored or refused four invitations to speak on the phone about the substance of the case in order to timely resolve Ms. Finnigan's request for confirmation that she will receive daily methadone treatment in the Jail. Longley Decl. ¶¶ 6, 8, 16, 17 and Exhibit 4 thereto.

Ms. Finnigan should not have to wait for this harm to befall her before she can avail herself of judicial relief. There is a controversy here, and this Court should resolve it.

B. The Complaint States a Claim for Relief.

Defendants reference the standards for a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Mot. to Dismiss at 2. However, they make no legal argument other than the ripeness argument. *See generally id.* The Court should consider only the ripeness argument under Rule 12(b)(1). Should the Court interpret Defendants' motion as seeking dismissal for failure to state a claim under Rule 12(b)(6), the Complaint adequately pleads claims for relief under the Eighth Amendment and ADA.

A complaint "must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When assessing a motion to dismiss, a court must accept all factual contentions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint does not need detailed factual allegations, but "requires more than labels and conclusions." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). As long as those factual claims "state a claim to relief that is plausible on its face," a Rule 12(b)(6) motion to dismiss must fail. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

Plaintiff has adequately and plausibly alleged that Defendants have a de facto policy and practice of denying methadone to individuals in the DuPage County Jail. *See, e.g.*, *Harris v. Greer*, 750 F.2d 617, 618-19 (7th Cir. 1984) (holding that prisoner's allegation that prison had a policy of racial segregation in its housing assignments was enough to survive a motion to dismiss). Over the course of her twenty-two-page Complaint, Plaintiff alleges a de facto blanket policy that "automatically and forcibly denies" Ms. Finnigan methadone, causing physical and psychological suffering, and a heightened risk of relapse, overdose, and death. Compl. ¶¶ 76, 86.

These allegations are more than sufficient to state a claim for relief under both the Eighth Amendment and ADA. Indeed, courts have granted relief in cases markedly similar to what Plaintiff alleges here. *Smith*, 376 F. Supp. 3d 146, *aff'd*, 922 F.3d 41 (1st Cir. 2019); *Pesce*, 355 F. Supp. 3d 35.

Moreover, Plaintiff's claim as to the existence of the policy must be accepted as true for the purposes of a motion to dismiss, as it is supported and plausible. *Iqbal*, 556 U.S. at 678. As discussed above in Section II(A)(1), the factual assertion that Defendants have a de facto Mandatory Withdrawal policy is supported by the allegation that Defendants' counsel refused to say whether Ms. Finnigan would be able to stay on her methadone and by their failure to provide information about who would conduct the medical evaluation, their qualifications, or what clinical criteria would be used to determine if continuation on methadone is appropriate. Compl. ¶ 73.[5] Defendants have given Ms. Finnigan good reason to believe that she will be forced into withdrawal and that Defendants will not be ready or willing to facilitate access to her medication upon her incarceration. Thus, Plaintiff's assertion of a de facto Mandatory Withdrawal policy does not amount to a threadbare assertion, and it must be credited as true for purposes of the Motion to Dismiss.

Finally, Ms. Finnigan's allegations do not ask the Court to take on an improper role, as Defendants suggest. Mot. to Dismiss ¶ 2. Ms. Finnigan asks that the Court prevent Defendants from applying their de facto policy of denying methadone to her. Compl. ¶¶ 74-88. This is a well-established and appropriate role for courts to play in adjudicating the medical care claims of

[5] In moving for preliminary injunctive relief, Ms. Finnigan has produced even more factual allegations, supported by evidence, that support the assertion that Defendants have a de facto Mandatory Withdrawal policy. *See* Memorandum of Law in Support of Plaintiff's Emergency Motion for a Preliminary Injunction, Dkt. 27, at 5-8; Section I(A)(1) *supra.*

incarcerated persons. *See, e.g.*, *Roe v. Elyea*, 631 F.3d 843, 861-63 (7th Cir. 2011) (upholding deliberate indifference verdict against defendant who implemented policy basing medical treatment on sentence length rather than a patient's individual condition). The Complaint properly asks that the Court enforce Ms. Finnigan's constitutional statutory rights in the face of Defendants' disregard of them.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss Plaintiff's Complaint should be denied.

Respectfully submitted,

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**Pro hac vice; Not admitted in DC; practice limited to federal courts