

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|                        |   |                                  |
|------------------------|---|----------------------------------|
| CHRISTINE M. FINNEGAN  | ) |                                  |
|                        | ) |                                  |
| Plaintiff,             | ) | Case No.: 1:21-cv-341            |
|                        | ) |                                  |
| v.                     | ) |                                  |
|                        | ) |                                  |
| JAMES MENDRICK, et al. | ) | Honorable Judge Steven C. Seeger |
|                        | ) |                                  |
| Defendants.            | ) |                                  |

**DEFENDANTS’ REPLY IN SUPPORT OF THEIR MOTION TO DISMISS**

Defendants, JAMES MENDRICK and ANTHONY ROMANELLI, by and through their attorney, Robert B. Berlin, DuPage County State’s Attorney, and his Assistant, Nicholas V. Alfonso, for their Reply in Support of their Motion to Dismiss, state the following:

Plaintiff filed her Response to Defendants’ Motion to Dismiss on February 15, 2021 at 10:00 p.m. (ECF # 36). Therein, she restates several newly alleged facts and arguments not contained in her initial Complaint, but which were subsequently included in an Emergency Motion for Preliminary Injunction (*see* ECF # 18) filed subsequent to the Motion currently at issue (ECF # 15). Defendants have already addressed the majority of Plaintiff’s novel arguments and factual allegations contained in the Emergency Motion with the filing of their Response thereto. (*See* ECF # 34, Defendants’ Response to Plaintiff’s Emergency Motion for Preliminary Injunction). Because Defendants have already responded to the same arguments as are in the presently considered Response to Defendants’ Motion to Dismiss, Defendants hereby incorporate those responses contained in ECF # 34 by reference, as though specifically stated fully herein, in support of dismissing this cause. (*Id.*). Notwithstanding the risk of repetition

given the aforementioned procedural history, Defendants shall briefly address Plaintiff's Response to their Motion to Dismiss below.

As an initial matter, Plaintiff is correct that she may incorporate additional facts which were not originally alleged, as part of her Response to Defendants' Motion to Dismiss. (*See* ECF # 36 at Fn 1). Generally, when reviewing a motion to dismiss the court's inquiry is limited to the factual allegations contained within the four corners of the complaint. *Hill v. Trustees of Ind. Univ.*, 537 F.2d 248, 251 (7th Cir.1976). "Legal conclusions and conclusory allegations that merely recite the elements of a claim are not entitled to the presumption of truth afforded to well-pleaded facts... [and] it is [the Court's duty] to excise from the complaint any legal conclusions or conclusory allegations that are not entitled to the presumption of truth." *McCauley v. City of Chi.*, 671 F.611, 616 (7th Cir. 2011). In limited circumstances, however, the Court may look beyond the pleadings to determine whether Plaintiff has stated a claim. *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 279 (7th Cir. 2020). Defendants admit that, for purposes of determining Defendants' Rule 12(b)(1) Motion to Dismiss, doing so on a limited basis in this case is proper.

In all cases, the plaintiff as the party invoking the court's jurisdiction must establish the elements of standing: she must prove that she has suffered a concrete and particularized injury that is both fairly traceable to the challenged conduct and likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). A preliminary injunction represents an extraordinary exercise of judicial power and is one that is "never to be indulged in except in a case clearly demanding it." *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 389 (7th Cir.1984). In cases seeking a preliminary injunction based upon a theory of deliberate indifference to serious

medical need, Plaintiff's standing rests upon establishing proof that there exists—at minimum—imminent danger of a deliberate disregard for her medical needs that is substantially likely to cause serious harm absent Court intervention. (ECF # 34). Because standing is an **essential** ingredient of subject-matter jurisdiction, it must be secured at each stage of the litigation. *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130.

At the pleading stage, to establish standing “general factual allegations of injury resulting from the defendant's conduct may suffice.” *Id.* “Even when a plaintiff's allegations sufficiently demonstrate standing at the outset of the action, however, they don't show standing for long. Once the allegations supporting standing are questioned as a factual matter—either by a party or by the court—the plaintiff must support each controverted element of standing with competent proof,” *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936), which is understood as “a showing by a preponderance of the evidence, or proof to a reasonable probability, that standing exists.” *Retired Chi. Police Ass'n v. City of Chicago*, 76 F.3d 856, 862 (7th Cir. 1996).

When considering the additional factual evidence provided by the Parties to date (*see* ECF ## 18, 19, 34 & 36), it remains apparent that Plaintiff has failed to establish by any preponderance of the evidence either: (a) that Defendants have a “de facto policy of not allowing methadone while incarcerated;” or (b) that they presently intend to “...force [Plaintiff] into a potentially dangerous and life-threatening withdrawal.” (*See* ECF # 36 at pp. 2 – 4; *see also* ECF # 34 at §§ I - IV). Whereas Plaintiff initially complained that Defendants had outright “refused” to consider offering Plaintiff methadone OUD treatment (due to Plaintiff's *assumption* that they employ a policy of refusing MAT) (*see* ECF # 1), Plaintiff appears now to have amended her allegation(s) to state some variation of the following claim:

‘Defendants will violate [Plaintiff’s] rights because it could take time for their physicians to come to a reasonable medical conclusion on the issue of whether to prescribe her MAT.... By allowing their physicians time to evaluate Plaintiff’s medical needs prior to determining her prescription, Defendants are [somehow] violating her 8<sup>th</sup> Amendment and ADA right(s).’

(ECF # 36 at pp. 1, 10 &11).

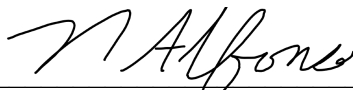
Plaintiff’s last-minute attempt to fundamentally modify her allegation(s) belies the insufficiency of her Complaint. As was outlined in Defendants recently filed Response to Plaintiff’s Emergency Motion (ECF # 34), Plaintiff’s allegations taken as a whole, as well as the facts existing at the time of filing hereof, are easily distinguished from those cases wherein courts of other jurisdictions have ordered methadone MAT to be provided to incarcerated individuals. (*Id.* at § I). Unlike the two cases cited by Plaintiff in her Response, Defendants here are not presently refusing to provide Plaintiff methadone—they are actively considering it. (*Id.*) Defendants have never made any representation that they have a policy of ‘outright refusal’ of MAT. (*Id.*) Contrary to Plaintiff’s claims, Defendants’ intent in requiring updated analysis of Plaintiff’s medical needs is to protect Plaintiff’s right to adequate treatment by ensuring that her current medical and physical state(s) indicate a need for methadone. (*Id.* at § III). Plaintiff’s last evaluation for methadone will have been six (6) months prior to the date of her upcoming incarceration. (*Id.* at Fn 1). Defendants’ duty to ensure appropriate treatment **requires** they permit their physicians to treat Plaintiff—based upon the result of a reasonable medical investigation—rather than simply dictating her care. (*Id.* at § III). Ordering Defendants to forego a considered analysis of Plaintiff’s current healthcare needs prior to prescribing her methadone could endanger Plaintiff’s health and *would* destroy Defendants ability to satisfy their duty to protect Plaintiff.

Even if a party does not challenge the court's subject-matter jurisdiction, “federal courts are obliged to police the constitutional ... limitations on their jurisdiction.” *Kanzelberger v. Kanzelberger*, 782 F.2d 774, 777 (7th Cir. 1986). Thus, when a court is put on notice that an allegation integral to standing is probably false (or if the complaint fairly shrieks that there is no federal jurisdiction), the district judge must investigate whatever supplementary factual disclosures have been made to resolve the doubt. *Id.* Here, Plaintiff’s allegations that Defendants are refusing to consider methadone and that they have a policy of outright MAT refusal are absolutely, demonstrably false. This Court must disregard them for purposes of ruling on Defendants’ Motion to Dismiss and therefore, Defendants’ Motion must be granted.

WHEREFORE, for the reasons stated herein, Defendants JAMES MENDRICK and ANTHONY ROMANELLI respectfully request that this honorable Court dismiss Plaintiff’s Complaint, and ask for any and all further relief deemed to be just and equitable under the circumstances, without further notice.

Respectfully submitted,

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