UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

J.B., by and through his Next Friend LINDA WINDLEY, D.P. by and through his Next Friend STACEY BLEVINS, B.W. by and through his Next Friend JEANNA WALTERS, and J.J. by and through his legal guardian DENISE VICK, on behalf of themselves and those similarly situated, and DISABILITY RIGHTS NORTH CAROLINA, *Plaintiffs*, v. THE NORTH CAROLINA DEPARTMENT OF HEALTH AND AND HUMAN SERVICES and DEVDUTTA SANGVAI, in his official capacity as Secretary of the North Carolina Department of Health and Human Services, *Defendants*.	)	Case No. 1:24-cv-335

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION OF PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT AND PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7.3, Plaintiffs respectfully move the Court to expedite resolution of Plaintiffs' unopposed Motion for Leave to File Amended Complaint (D.E. 41) and Motion

for Class Certification (D.E. 43). This case has been pending since April 2024 and has yet to proceed to discovery. As of October 16, 2026, Plaintiffs' motion to amend and class certification motion will have been pending seven months. Plaintiffs recognize this Court is very busy and charged with deciding many complex and important issues. However, this matter implicates the constitutional rights of pre-trial detainees with severe mental health disabilities who are currently confined or who are at risk of imminent confinement for prolonged periods in county jails. Delay has become especially prejudicial during the pendency of Plaintiffs' motions, as jail populations and wait times have increased. Some detainees experience detention times that exceed the maximum criminal sentences they could receive by statute while they await mandated services from Defendant NC DHHS to determine whether they are incapable to proceed (ITP) and require restorative services. As detention continues, detainees experience decompensation and needless suffering.

STATEMENT OF THE CASE

This case was initiated on April 18, 2024, (D.E. 1), and Plaintiff DRNC moved for a Preliminary Injunction on May 13, 2024, (D.E. 15). On March 25, 2025, Magistrate Judge Webster heard oral arguments on Defendants' Motion to Dismiss, (D.E. 22), and Plaintiff's Motion for a Preliminary Injunction, (D.E. 32). On June 12, 2025, Magistrate Judge Webster issued a Memorandum

Opinion and Recommendation ("O&R"). (D.E. 33). The O&R recommended that Defendants' Motion to Dismiss be denied in part as to counts one and two, which allege violations of the Due Process clause, and granted without prejudice as to counts three and four, which allege violations of the Americans with Disability Act ("ADA") and Rehabilitation Act ("RA"). The O&R also recommended denial of Plaintiff's Motion for a Preliminary Injunction without prejudice. On July 3, 2025, both parties filed objections to the O&R. (D.E. 36, 37). On March 16, 2026, prior to a ruling on either parties' objections, Plaintiff filed its unopposed Motion for Leave to File First Amended Complaint and Class Action. (D.E. 41). That same day, Plaintiff filed its Motion for Class Certification. (D.E. 43). Both motions are still pending with this Court. On March 30, 2026, Judge Osteen issued his order adopting and supplementing Judge Webster's O&R. (D.E. 44). The order dismissed Plaintiff's ADA disparate impact claim and RA discrimination claim without prejudice but allowed Plaintiff's ADA reasonable accommodation claim and substantive and procedural due process claims to proceed. (D.E. 44 at 14).

ARGUMENT

There is good cause for expedited consideration of these pending motions. *See* 28 U.S.C. § 1657(a) (expedited consideration "shall" be granted upon good cause shown). Rule 15 provides that a party may amend its pleading with the court's leave or the opposing parties' written consent and that "[t]he court

should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Motion for Leave to File First Amended Complaint and Class Action is unopposed. The granting of that Motion would enable the parties and the Court to move the case forward on the docket.[1] A ruling on Plaintiffs' Motion for Class Certification would likewise provide clarity when a scheduling order is issued and ensure that this matter can proceed efficiently.

Furthermore, Plaintiff DRNC's constituents, proposed Class Representative Plaintiffs, and putative class members continue to suffer violations of their constitutional and statutory rights, and this Court has already upheld the majority of these claims against Defendants' previous motion to dismiss.[2]

The problem of prolonged ITP detainee wait times has only worsened during the two years this case has been pending. Jails across the state face unprecedented crowding, in part due to Iryna's Law, HB307, N.C. Gen. Stat. § 15A–533, *et seq*, the relevant portions of which took effect December 1, 2025. The new law requires more individuals to be detained without bond and

[1] This is true whether or not Defendant pursues a second motion to dismiss the proposed First Amended Complaint.

[2] In his order on Magistrate Judge Webster's O&R, Judge Osteen dismissed one ADA claim but allowed the other to proceed. The proposed amended complaint endeavors to address the alleged pleading deficiencies related to that claim identified by Judge Osteen.

increases the number of individuals subjected to mandatory involuntary commitment evaluations.[3] More than one third of North Carolina jails have exceeded capacity.[4] As of July 16, 2026, Mecklenburg County's jail had a population of 2,146, well over its capacity of 1,904.[5] In Scotland County, the jail population is regularly 180 people, well above its capacity of 109.[6] Representative Reeder of Pitt County, who is a physician, has stated with respect to the overcrowded jails that "[s]ome of the challenges in the jails is that they're not delivering ongoing mental health treatment, which makes it more difficult to take care of those people in custody[.]"[7] Jail administrators

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[3] Christine Zhu, *NC Senators advance bill shifting involuntary commitment orders to jails*, NC NEWSLINE (June 17, 2026), https://ncnewsline.com/2026/06/17/nc-senators-advance-bill-shifting-involuntary-commitment-evaluations-to-jails/; *see also*, Mackenzie Thomas, *Rethinking involuntary commitment in NC while trying not to break the system*, CAROLINA PUBLIC PRESS (Aug. 25, 2026), https://carolinapublicpress.org/80450/rethinking-involuntary-commitment-in-nc-while-trying-not-to-break-the-system/

[4] Rachel Crumpler, *More than one-third of NC jails have exceeded capacity this year*, NC HEALTH NEWS (July 20, 2026), https://www.northcarolinahealthnews.org/2026/07/20/nc-jail-crowding/

[5] *Id.*

[6] *Id.*

[7] Zhu, *NC Senators advance bill shifting involuntary commitment orders to jails*.

blame the overcrowding, at least in part, on the slow moving ITP system.[8] As of June 17, 2026, there were 300 beds in state psychiatric hospitals left empty due to staffing shortages.[9]

In Wake County, the jail population is currently around 1,895. (Exhibit A, Declaration of Ashleigh Powell, ¶ 5). At the time this action originally commenced in 2024, the population was approximately 1,400. (*Id.*, ¶ 6). The current wait time for court-ordered capacity evaluations in Wake County (the first step in the ITP process) is approximately 5 months. (*Id.*, ¶ 8). As a result, individuals charged with misdemeanor offenses will almost always serve their maximum sentences and be released before being evaluated or receiving any restoration services. (*Id.*, ¶ 10). The wait time is significantly longer than it once was. (*Id.*, ¶ 9). Additionally, the Wake County NC RISE pilot program, which was initiated to provide jail-based restoration services, has been discontinued. (*Id.*, ¶¶ 17, 19). Wake County also participates in a community-based restoration pilot program, but it is rarely used. (*Id.*, ¶ 22). When an individual is ordered to community-based restoration services, the district attorney's office often objects and the sole provider of evaluations for those

[8] *See* Crumpler, *More than one-third of NC jails have exceeded capacity this year*.

[9] Zhu, *NC Senators advance bill shifting involuntary commitment orders to jails*.

accused of misdemeanors is often unable provide restoration services due to its internal policies regarding eligibility for the program and provider conflicts. (*Id.*).

Without and expedited decision on Plaintiffs' motions, the parties are unable to proceed with discovery, and putative class members will continue to suffer constitutional harms. Accordingly, Plaintiffs respectfully move this Court to resolve the pending unopposed Motion for Leave to File Amended Complaint, (D.E. 41), and pending Motion for Class Certification, (D.E. 43) as soon as possible.

CONCLUSION

For the reasons set forth above, this Court should expedite consideration of Plaintiff's unopposed Motion for Leave to File Amended Complaint, (D.E. 41), and Motion for Class Certification, (D.E. 41).

Respectfully submitted this the 20th day of October, 2026.

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CERTIFICATE OF SERVICE

I certify that on October 20, 2026, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will effect service on all counsel of record.

Respectfully submitted this the 20th day of October, 2026.

/s/Michele Delgado
Michele Delgado

Counsel for Plaintiff