

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
VINCINAGE OF CAMDEN

Teresita Carey, by and through :
her guardian, Jim Carey, *et. al.*, :
 :
Plaintiffs, : HON. RENEE MARIE BUMB, U.S.D.J.
 :
v. : Civil Action No. 1:12-cv-02522
 :
Christopher Christie, Governor of :
the State of New Jersey, *et. al.* :
 :
Defendants. :
 :

NOTICE OF INTEREST OF THE UNITED STATES OF AMERICA

The United States files this Notice of Interest, pursuant to 28 U.S.C. § 517,¹ to alert this Court that it has an interest in this matter.

Plaintiffs are seven women with intellectual disabilities who currently reside in Vineland Developmental Center (“Vineland”), a large state-operated institution. Their Complaint alleges that, through the actions of Defendants, Plaintiffs may be forced to move from Vineland at some time in the future, and that this move would violate their rights under title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“ADA”), Section 504 of Rehabilitation Act of 1973, 29 U.S.C. § 794, the Medicaid Act, 42 U.S.C. §1396 *et seq.*, and the United States Constitution. Amended Compl. ¶¶ 92-127.

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

The Department of Justice has authority to enforce title II of the ADA, and to issue regulations implementing the statute. The Department frequently provides guidance in federal courts regarding the meaning of the ADA and its regulations, and its views have been accorded respect. *Olmstead v. L.C.*, 527 U.S. 581, 597-598 (1999) (“Because the Department is the agency directed by Congress to issue regulations implementing Title II, its views warrant respect.”) (citation omitted); *Pashby v. Delia*, 2013 WL 791829 *10 (4th Cir. 2013) (“Because Congress instructed the DOJ to issue regulations regarding Title II, we are especially swayed by the DOJ’s determination...”); *M.R. v. Dreyfus*, 663 F.3d 1100, 1117 (9th Cir. 2011), *opinion amended and superseded on other grounds upon denial of rehearing*, 697 F.3d 706, 735 (9th Cir. 2012) (opinions deferring to DOJ’s views regarding title II and its regulations, stating that “[a]n agency’s interpretation of its own regulation is ‘controlling unless plainly erroneous or inconsistent with the regulation.’”) (citations omitted).

Plaintiffs’ allegations, on their face, are not ripe for adjudication.² However, should the Court determine it is necessary to reach the merits of Plaintiffs’ claims, the United States respectfully requests an opportunity to submit a Statement of Interest to vindicate its interest in the proper interpretation of federal law, and in particular, title II of the ADA and its regulations. The United States is not a party to the case and just learned of the scheduled oral argument date. The United States would be prepared to submit a Statement of Interest on the merits at a date set

² A claim “‘is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Gov’t Emples. Ret. Sys. v. Turnbull*, 134 Fed. Appx. 498, 500 (3d Cir. 2005) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)); *Porter-Bey v. Bledsoe*, 456 Fed. Appx. 109, 110-111 (3d Cir. 2012) (same); *Disabled in Action v. SEPTA*, 539 F.3d 199, 217 (3d Cir. Pa. 2008) (citing *Texas*, 523 U.S. 296, 300 (1998) (rejecting an argument contingent on anticipated events that may not occur and that if adopted, would encourage unripe ADA claims). See also *Hoxha v. Levi*, 465 F.3d 554, 565 (3d Cir. Pa. 2006) (citing *Texas*, 523 U.S. at 300) (rejecting a claim as unripe when an agency has not yet acted upon a petitioners’ claim). Defendants have shown that there are no plans to close Vineland or to move Plaintiffs from Vineland over their objections. Deft. Br. at 1, 8-9 (Doc. #33-1).

by this Court, should the Court not dismiss the claims as not ripe.

FOR THE UNITED STATES:

Respectfully submitted,

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Dated: March 14, 2013

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the State of New Jersey, <i>et. al.</i>	:	
	:	
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	:	

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2013, I electronically filed the United States' Notice of Interest with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

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Respectfully submitted,

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