IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PLAINTIFF JOSEPH WARD, by his Next Friend, et al. Plaintiffs, vs. STEPHANIE MUTH, in her official capacity as Executive Commissioner of the Texas Health and Human Services Commission, Defendant.	§ § § § § § § § § § § §	CIVIL ACTION NO. 1:16-cv-00917-DAE

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I. SUMMARY OF THE FACTS

Since 2006, the Texas Health & Human Services Commission[1] ("HHSC") has caused tens of thousands[2] of pretrial detainees found incompetent to stand trial by Texas state courts ("incompetency detainees") to remain confined in county jails without competency restoration services for months to years after courts committed them to HHSC's mental health facilities, even though HHSC concedes, as it must, that the sole purpose of the Plaintiff class members' continued confinement is to receive competency restoration services to attain competency to stand trial.[3] Yet the challenged confinement is not reasonably related to that purpose. Its nature—continued incarceration in a county jail after HHSC has received their competency-restoration commitment orders—neither provides nor advances restoration. Its duration—more than 21 days after HHSC's receipt of the commitment orders—likewise exceeds any period reasonably related to the restoration objective. For both reasons, the challenged confinement violates the class members' constitutional rights. This unconstitutional in-jail confinement without competency restoration services causes class members multiple harms on top of the constitutional violation, including: (1) confinement in jails often far longer than similarly situated criminal defendants who are competent to stand trial;[4] (2) prejudice to their criminal cases including undermining their relationships with their attorneys;[5] (3) a heightened risk of psychiatric deterioration which can reduce the likelihood

[1] Referred to earlier in the case before HHSC's reorganization as the "Texas Department of State Health Services" or "the Department." *See* Dkt. #137, p. 2; Dkt. #186, p. 1, n.1.
[2] *See e.g.*, Pla-Ward-88A, WL Additions Table (showing 16,968 forensic detainees added to HHSC's waitlists just between 2018 and 2023); Pla-Ward-26 Waitlist Trends (June 30, 2025); D-104, JCAFS Dashboard, FY2025, data table; D-137, Murrie Powerpoint, p. 17 (summarizing D-104: 6,963 forensic detainees added to waitlists in FY2024 and FY2025).
[3] Dkt. #254, p. 32, ¶ 271; *see also* TEX. CODE CRIM. PROC. art. 46B.073(b); Dkt. #186, p. 34.
[4] Pla-Ward-10, State Courts Leading Change, p. 25; Trial Tr. Vol. 2, 88:8-19 (Murrie); Trial Tr. Vo. 1, 114:24-115:12 (Shearer); *Id*. at 190:15-21 (Chacona); *Id*. at 160:13-117:2 (Drumheller)
[5] *See* Dkt. #253, p. 14, ¶ 46, n.61 and accompanying text.

of timely restoration once services begin, as well as a heightened risk of physical injury and death;[6] and (4) actual harm, including worsened psychiatric symptoms, horrific injuries, severe suffering, and death, much of which is reflected in HHSC's own documentation.[7]

As this Court has already found, Texas state law explicitly charges HHSC with planning for and providing sufficient state hospital beds, contracted inpatient mental health beds, and outpatient mental health services to "ensure the appropriate and timely provision of mental health services" to all incompetency detainees, NGRI acquittees,[8] civilly committed patients, and patients receiving mental health services voluntarily.[9] Nonetheless, with the exception of an eighteen month period following a 2021 state court injunction, for the last two decades HHSC has failed to ensure it had sufficient inpatient capacity to timely admit all forensic detainees and civil patients committed to its facilities.[10] HHSC's failure is highlighted by the fact that, in 2013, HHSC retained CannonDesign to project Texas's inpatient psychiatric bed needs over the ensuing decade and to inform system planning, including outpatient services (the "Cannon Report"),[11] consistent with its planning mandate, yet utterly failed to follow its recommendations. Instead, HHSC chose to manage predictable capacity shortfalls by placing incompetency detainees on waitlists—despite knowing that these incompetency detainees would remain in county jails without competency restoration services while they waited.[12] At the time of trial, there were approximately 1,700

[6] *See* Dkt. #253, p. 15, ¶ 48, n.67, and accompanying text.
[7] *See* Dkt. #253, pp. 15-16, ¶¶ 48, 49, nn.65, 68, 69, and accompanying text.
[8] That is, defendants found not guilty by reason of insanity. NGRI acquittees and incompetency detainees collectively are referred to as being on "forensic commitments."
[9] TEX. HEALTH & SAFETY CODE §§ 533.051(a), (b)(1)-(2); 533.052; Dkt. # 186, p. 11.
[10] Trial Tr. Vol. 5, 182:13-15 (Simpson); Pla-Ward-88-D, Forensic Waitlist Lists Trends (2006-2023); Pla-Ward-26, Waitlist_Trends (2014-2025); Pla-Ward-28, Chart of Forensic Waitlists from 2006 to 2025; Trial Tr. Vol. 1, 214:14-23 (Dunson); Trial Tr. Vol. 6, 72:23-73:2 (Petrila).
[11] Pla-Ward-70, CannonDesign Analysis Nov. 2014 ("Cannon Report").
[12] Trial Tr. Vol. 4, 9:22-25 (Schalchlin).

incompetency detainees on HHSC's two forensic waitlists, a number that had been largely unchanged for the entirety of 2025 as the waitlists have plateaued.[13]

More than three years ago, HHSC's Associate Commissioner and Forensic Director Dr. Jennie Simpson called it a "crisis" that incompetency detainees—who are "mothers, they're fathers, they're daughters, they're sons" whose "humanity" she did not "want us to lose"—were waiting in jails for admission to HHSC for competency restoration services and were suffering harm as a result.[14] HHSC's State Hospital Chief Medical Officer Dr. Jeffrey Matthews testified that the duration of incompetency detainees' waits in jail after HHSC receives their commitment orders is excessive.[15] Deputy Executive Commissioner Scott Schalchlin admitted that the existence of the waitlists themselves tells HHSC its inpatient forensic capacity is insufficient to meet the demand for those services.[16] Yet at the time of trial, HHSC had no projection regarding the number of hospital beds it needed to meet the current or future demand for inpatient capacity, no projection regarding whether the additional inpatient capacity that HHSC anticipates will slowly come online between 2026-2029 will actually be enough to meet the demand, and no projection regarding the forensic waitlists to know if or when incompetency detainees would ever be waiting in jails for admission to HHSC's mental health facilities fewer than 21 days, 30 days, or any other threshold.[17]

The evidence at trial was unambiguous: HHSC has known since 2006 that it lacks sufficient forensic capacity to timely admit incompetency detainees for competency restoration after receiving their commitment orders. That capacity deficit predictably leaves class members

[13] Trial Tr. Vol. 4, 68:15-21 (Schalchlin agreeing HHSC's waitlists had remained consistently around 1,700 for the year before trial); Def-Young-104, JCAFS_DB_v2_FYTD25 (at Row 32).
[14] Pla-Ward-113A, 2021 JCMH Simpson Clip; Trial Tr. Vol. 1, 31:21-25 (Simpson video transcribed into the record); Trial Tr. Vol. 5, 176:12-177:5 (Simpson).
[15] Amd. Trial Tr. Vol. 3, 134:24-135:3 (Matthews); *see also id.* at 91:21-92:2 (identifying himself).
[16] Trial Tr. Vol. 4, 51:18-22 (Schalchlin).
[17] Trial Tr. Vol. 4, 51:18-52:10, 67:22-25 (Schalchlin).

confined in county jails without restoration services for extended periods after HHSC receives the orders. Their confinement is of a nature (jail detention without restoration) and duration (prolonged post-receipt waits) that is not reasonably related to their commitments' purpose. HHSC has had two decades to fix this, yet the only time it actually planned for and ensured it provided sufficient forensic inpatient capacity was the year and a half it was under the threat of a state court injunction.[18] The Court should therefore grant the Plaintiffs' requested relief as only an injunction will remedy the violation of their constitutional rights.

II. HHSC IS VIOLATING THE CONSTITUTIONAL RIGHTS OF INCOMPETENCY DETAINEES BY REFUSING TO TIMELY ADMIT THEM TO ITS MENTAL HEALTH FACILITIES FOR COMPETENCY RESTORATION SERVICES WITH THE GOAL OF ATTAINING COMPETENCY TO STAND TRIAL.

The Due Process Clause of the Fourteenth Amendment guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law."[19] Indeed, the most important of "freedom's first principles" is the "freedom from arbitrary and unlawful restraint."[20] Detention of pretrial detainees infringes upon their "strong interest in liberty" such that only a "sufficiently weighty" governmental interest can overcome the "important[t] and fundamental nature of this right."[21]

The standard articulated by the Supreme Court in *Jackson v. Indiana* governs Plaintiffs' claims because the specific purpose of commitment is defined for each class member. Where the

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[18] *See* Pla-Ward-20, *Taylor v. Lakey*, No. D-1-GN-07-837, 2012 WL 6840143 (Tex. 250th Dist. Ct., Travis Cnty. Feb. 2, 2012), *rev'd sub. nom, Lakey v. Taylor*, 435 S.W.3d 309 (Tex. App.—Austin May 2, 2014, no pet.); Trial Tr. Vol. 1, 119:1-6 (Shearer); Dkt. #239, Deposition Designation of Timothy Bray, 50:15-51:14; Pla-Ward-21, Defendant's First Interrogatory Responses (Aug. 21, 2017), pp. 6, 13-15.

[19] U.S. CONST. AMEND. XIV, § 1; *see also* Dkt. #186, p. 27.

[20] *Boumadiene v. Bush*, 553 U.S. 723, 797 (2008).

[21] *United States v. Salerno*, 481 U.S. 739, 750-51 (1987); *see also United States v. McKown*, 930 F.3d 721, 726 (5th Cir. 2019) (only a "sufficiently compelling" interest justifies pretrial detention).

State expressly justifies commitment by a specific, nonpunitive objective, due process requires a real fit between custody and that objective: the nature and duration of that commitment must be reasonably related to the purpose invoked to justify custody.[22] In this category of cases, the constitutional question is not simply whether the State can identify some legitimate regulatory interest; it is whether continued confinement remains reasonably related to the specific identified objective of the commitment.[23] While *Jackson* established the standard in the context of competency-restoration commitment, courts apply its nature-and-duration principle to evaluate nonpunitive commitments where the purposes of custody are expressly defined by statute.[24]

HHSC's assertion that *Jackson* is "only" about indefinite commitment is incorrect.[25] Indefiniteness was one problem presented by *Jackson*'s facts, but the constitutional standard expressed by *Jackson* was not limited to that factual detail. The constitutional inquiry is an evaluation of whether the means reasonably fit the ends for any nonpunitive confinement: whether confinement—at any point—remains reasonably related to the purpose invoked to justify it. In *Seling v. Young*, the Supreme Court considered the confinement of a sexually violent predator under a scheme that the Washington Supreme Court had expressly found was civil and not indefinite.[26] The Supreme Court expressly deferred to the Washington court's determination

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[22] *Jackson v. Indiana,* 406 U.S. 715, 738 (1972).
[23] *Id.* at 738. *Bell v. Wolfish* and *United States v. Salerno* do not supply the constitutional standard. *Bell* addressed jail conditions during concededly lawful pretrial detention while *Salerno* upheld detention within a tightly cabined framework marked by individualized findings and a built-in end point under the Speedy Trial Act (which does not apply here). *Bell*, 441 U.S. 520, 535 (1979); *Salerno,* 481 U.S. 739, 747 (1987).
[24] *See, e.g.*, *Jones v. United States*, 463 U.S. 354, 368 (1983) (hospital confinement of insanity-acquittee); *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992) (same); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (post-removal-proceeding detention of non-citizens); *Brown v. Taylor*, 911 F.3d 235, 244 (2018) (in-jail confinement of post-sentence sexually violent predator).
[25] Dkt. #254 p. 33, ¶¶ 275-277.
[26] *Seling v. Young*, 531 U.S. 250, 265 (2001) (relying on *In re Young*, 857 P.2d 989, 1007 (Wash. 1993) (en banc) (superseded by statute)).

regarding conditions and treatment regime at the sex offender center and then applied *Jackson*'s standard to evaluate that plaintiff's confinement, finding that the "conditions and duration of confinement under the [commitment statute] bear some reasonable relation to the purpose for which persons are committed.[27] While the civil conditions of that plaintiff's confinement informed the Court's evaluation of the "nature" of his confinement as non-punitive,[28] the Court explicitly distinguished the case from a conditions-of-confinement case.[29]

In *Brown v. Taylor*, the Fifth Circuit then applied this same standard—whether the "conditions and duration of confinement bear some reasonable relation to the purpose for which persons are committed"—to evaluate whether a period of in-jail confinement *for only twenty days* of a sexually violent predator was reasonably related to the asserted purpose of supervision and treatment.[30] Similarly, in *United States v. McKown*, the Fifth Circuit applied *Jackson*'s standard to evaluate whether the federal incompetency statute was unconstitutional by requiring an automatic commitment to a hospital of up to four months based solely on an incompetency finding.[31] The Court determined that plaintiff's inherently time-limited initial period of confinement in a hospital comported with due process because its nature and duration were reasonably related to the stated purpose of his commitment under the incompetency statute.[32] Accordingly, the constitutional inquiry under *Jackson* is not bound by whether confinement is indefinite but simply asks whether

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[27] *Id*. at 265 (citing *Jackson*, 406 U.S. at 738; *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982).

[28] *Seling* expressly declined to look at specific conditions of that plaintiff's confinement, and instead looked more broadly at whether the nature of the conditions was civil or criminal, punitive or non-punitive. 531 U.S. at 266-67. This Court is not required to evaluate the individual jail conditions of the class members to find that the nature of their confinements violate due process.

[29] *Seling*, 531 U.S. at 265-66.

[30] *Brown v. Taylor,* 911 F.3d 235, 243-44 (5th Cir. 2018).

[31] *United States v. McKown*, 930 F.3d 721, 725 (5th Cir. 2019).

[32] *Id*. at 732; *see also id.* at 725 (identifying the purpose of the commitment).

the means—the nature and duration of the confinement—are reasonably related to the ends—the stated, nonpunitive purpose invoked to justify confinement.[33]

Here, there is no reasonable relationship between the class members' confinements in punitive jail conditions (nature) for months to years (duration) and the State's explicitly defined, nonpunitive objective for their confinement (receiving restorative services with the objective of attaining competency to stand trial).

A. Under *Jackson*, the nature of class members' confinements in jails that do not provide competency restoration services with the goal of their attaining competency is not reasonably related to the purpose of their commitments.

Applying the *Jackson* standard here, it is clear that the nature of class members' continued in-jail confinements is not reasonably related to the nonpunitive objective that Texas defines as the purpose of their commitments, that is, competency restoration. The Fifth Circuit's opinion in *Brown* is again instructive, as it examined Texas's stated statutory goals for that plaintiff's commitment which were "long-term supervision and treatment of sexually violent predators,"[34] and held that "[i]f the state held [him] without providing any sex offender treatment, then the confinement could not possibly further the goals of supervision and treatment."[35] Likewise, in *Calderon-Chavez*, another court in this circuit looked to the federal incompetency statute under

[33] *Jackson*, 406 U.S. at 738; Similarly, the Supreme Court's hesitance to identify a nationwide maximum time limit was not a tacit approval of indefinite confinement. Instead, the Court declined to issue a bright-line rule "in light of differing state facilities and procedures and a lack of evidence in [the] record." *Id*. Here, the class members ask the Court to consider the evidence of HHSC's facilities and procedures to impose only a Texas-wide rule.

[34] *Brown*, 911 F.3d at 243 (relying on TEX. HEALTH & SAFETY CODE § 841.001).

[35] *Id*. at 241, 244. Notably, and in contrast to class members here who have not been evaluated and found to be dangerous, Brown had been adjudicated a "sexually violent predator," meaning a state court determined beyond a reasonable doubt that he was a repeat sexual offender who was "likely to engage in predatory violence." TEX. HEALTH & SAFETY CODE §§ 841.003, 841.062. Yet the Fifth Circuit still looked to the statutory purpose of his commitment rather than simply evaluating whether his confinement was rationally related to the legitimate public safety interest.

which that incompetency detainee had been committed and identified the purpose of his commitment was "for treatment in a suitable facility" in order "to determine whether there is a substantial probability that in the foreseeable future [the detainee] will attain the capacity to permit the proceedings to go forward."[36] The court emphasized that pre-hospitalization detention in "a nonmedical detention facility without access to competency restoration services does nothing to permit the proceedings to go forward."[37]

The same analysis applies here. As the Court has already found and HHSC itself acknowledges, Texas's incompetency statute unambiguously defines the purpose of the class members' post-order commitments as being "for purposes of further examination and competency restoration treatment with the specific objective of the defendant attaining competency to stand trial."[38] The Texas legislature likewise specifically defined the lawful restoration settings—mental health facilities, jail-based competency restoration programs, and outpatient competency restoration programs when authorized and available—underscoring that ordinary jail confinement with no restoration program is not a restoration setting that satisfies the purpose of commitment.[39]

Because the State's asserted nonpunitive purpose of committing the class members is competency restoration so that they may attain competency to stand trial, the "nature" of their confinements must be reasonably related to their actually receiving that restoration.[40] Yet the class

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[36] *United States v. Calderon-Chavez*, 688 F.Supp.3d 472, 477 (W.D. Tex. Aug. 18, 2023) (discussing 18 U.S.C. § 4241(d)); *see also United States v. Pano-Flores*, 784 F.Supp.3d 960, 967 (W.D. Tex. May 27, 2025) (quoting language of commitment order regarding purpose of commitment which tracked commitment statute).

[37] *Calderon-Chavez*, 688 F.Supp.3d at 477.

[38] TEX. CODE CRIM. PROC. art. 46B.073(b); Dkt. #186, pp. 3, 34; Dkt. #254, p. 32, ¶ 271; Dkt. #99, p. 3, ¶ 4.

[39] TEX. CODE CRIM. PROC. art. 46B.071(a); *see also* Amd. Trial Tr. Vol. 3, 104:24-105:4 (Matthews) (clinically, the only places competency restoration services can be provided are a mental health facility, residential care facility, or jail-based competency restoration program.").

[40] *See also Disability Law Ctr. v. Utah*, 180 F.Supp.3d 998, 1009-10 (D. Utah 2016) ("To be sure,

members remain confined in county jails that are not designed, equipped, or required to provide competency services and, in fact, don't provide these specialized services outside of the limited number of JBCR programs.[41] A jail setting that provides only general mental health care is not a restoration option Texas authorizes.[42] Indeed, the jail environment often worsens incompetency detainees' underlying decompensation, leading to further suffering and injury—further undermining any claim that jail warehousing is reasonably related to restoration.[43]

Under *Jackson* and *Seling*, the State cannot invoke restoration as the justification for class members' commitments and then warehouse them in jails that provide no restoration at all.[44] Instead, due process requires that the conditions (nature) and duration of the class members' civil, nonpunitive confinement bear a reasonable relation to its restorative purpose. Here, as in *Brown* and *Calderon-Chavez*, class members' detention without the very services that are the asserted purpose of their commitments cannot reasonably relate to that purpose and violates due process.

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the State has a substantial interest in initially detaining a criminal defendant who is dangerous or a flight risk before trial. But once a court declares a defendant incompetent to stand trial, that interest is displaced by the State's interest in 'determin[ing] whether there is a substantial probability that he will attain [ ] capacity in the foreseeable future.'")

[41] TEX. GOV'T CODE § 511.009(a)(2); Pla-Ward-4, Groundswell Expert Report, p. 9; *see also* Pla-Ward-9, Murrie Supplemental Expert Report, pp. 13-14; Trial Tr. Vol. 5, 114:22-24 (Simpson); *id*. at 38:4-10 (Webb); Amd. Trial Tr. Vol. 3, 9:2-5, 89:17-90:6 (Murrie); Trial Tr. Vol. 1, 196:20-197:3 (Chacona); Trial Tr. Vol. 2, 64:13-18 (Murrie); Amd. Trial Vol. 3, 104:8-18 (Matthews); see Dkt. #239, Deposition Designation of Dr. Felix Torres (May 26, 2023) 108:3-22, 122:14-124:3, 143:11-22, 139:22-140:2, 200:3-24; *see also* TEX. CODE CRIM. PROC. art. 46B.001(3) (definition "competency restoration" as "the treatment or education process for restoring" a person's competency to stand trial).

[42] *See* TEX. CODE CRIM. PROC. art. 46B.071(a); *see also supra* p. 8, n.39 and accompanying text.

[43] *See supra* p. 2, nn.6–7; *infra* p. 14, n.64; *see also* Dkt. #253, pp. 15-16, ¶¶ 48, 49, nn.65, 68, 69, and accompanying text.

[44] *See Jackson*, 406 U.S. at 738 (commitment must be tied to meaningful progress toward restoration and cannot be used as a guise for custodial warehousing).

B. The protracted duration of class members' confinements awaiting admission to an HHSC mental health facility is not reasonably related to the purpose of their commitments and violates the Due Process Clause.

Due process requires not only that the nature of confinement justified by a specific, nonpunitive objective be reasonably related to that objective, but also that the duration of that confinement remain reasonably related to the purpose for which the person is committed.[45] To determine whether the post-commitment, pre-hospitalization confinement of an incompetency detainee comports with due process, courts must identify the purpose served by that specific period of confinement and then evaluate whether its length remains reasonably related to the stated purpose.[46]

Here again, Texas law makes the purpose plain. An initial competency restoration order "must place the defendant in the custody of the sheriff … for transportation to the facility or program in which the defendant is to receive competency restoration services."[47] Texas law is also clear that the clock does not start to run on class members' commitments until they actually start to receive competency restoration services to restore them to competency in the one of the three statutory-designated restoration program settings.[48] These provisions read together confirm that an initial restoration order functions as a transfer-and-placement order directing prompt transport and admission to the ordered restoration setting, not prolonged detention in jail while the restoration process has not yet begun.

Nonetheless, HHSC forces the class members to remain confined in jails that do not provide restoration services and where no restoration process occurs. Because the restoration process has not begun, the class members' continued jail confinement after their finding of incompetency cannot be justified by "progress toward" the objective of their attaining restoration.[49] Instead, the only post-order

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[45] *Jackson,* 406 U.S. at 738.
[46] *United States v. Donnelly*, 41 F.4th 1102, 1106 (9th Cir. 2022); *Calderon-Chavez*, 688 F.Supp.3d at 479.
[47] TEX. CODE CRIM. PROC. art. 46B.075.
[48] TEX. CODE CRIM. PROC. art. 46B.0735; *id.* at art. 46B.073(b).
[49] *Jackson*, 406 U.S. at 738.

jail confinement that remains reasonably related to the purpose of the class members' commitments is the brief period reasonably necessary to complete the logistics of transfer and admission—collecting paperwork, identifying the appropriate facility, coordinating transport, effecting the transfer, and completing admission. Any materially longer period exceeds the period's limited transfer-and-placement function and becomes detention untethered to transportation or restoration, in violation of *Jackson's* reasonable-relation requirement.

Consistent with this principle, both of the Texas district courts to evaluate the purpose of the post-commitment, pre-hospitalization period reached the same conclusion: due process permits only the time reasonably necessary to complete the ministerial tasks incident to transfer—identifying the appropriate treatment facility and arrangement of transportation to that facility.[50] The fact that state law does not impose a deadline for the class members to be transported to HHSC's mental health facilities has no bearing on the Court's analysis here.[51] As this Court already acknowledged, "[w]hether Plaintiffs' constitutional rights have been violated is a question of constitutional law, not Texas law, as even the state of Texas must abide by the constitution."[52]

HHSC's argument that there is "no clinical support" for a 21-day deadline thus misses the point, as does its continued argument that the Court should look to the individual circumstances of the class members.[53] Clinical need is not the constitutional standard by which the Court is required to judge the class members' confinements; rather, *Jackson*'s requirement that the duration of confinement remain reasonably related to the restoration purpose governs. Because the duration of this confinement

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[50] *Calderon-Chavez*, 688 F.Supp.3d at 479; *Pano-Flores*, 784 F.Supp.3d at 968; *see also Donnelly*, 41 F.4th at 1106.
[51] *See* Dkt. #254, p. 29, ¶ 260; *Erwin v. Dallas Cnty.*, No. 15-24-00013-cv, 2025 WL 2429525, *1 (Tex. App.—Austin [15th] Aug. 22, 2025) ("This case addresses who pays the cost of detaining certain criminal defendants awaiting transfer to the state hospital system.")
[52] Dkt. #186, p. 14; *see also O'Connor v. Donaldson*, 422 U.S. 563, 574 (1975) (fact that state law authorizes confinement does not establish a constitutionally adequate purpose).
[53] Dkt. #254, p. 25, ¶¶ 229-31.

is evaluated with respect to the statutory purpose of commitment and not by any class members' individual circumstances, it remains appropriate for class-wide relief. Regardless, HHSC cannot credibly claim that extended in-jail confinement is clinically appropriate for any class members where it does not evaluate each person on the waitlist to determine whether their continued jail confinement is appropriate.[54] Without individualized clinical determinations, HHSC's "clinical necessity" is just a hollow excuse for its capacity shortfall.

Here, the only constitutional permissible duration of class members' post-order, pre-admission jail confinement is the time needed to gather paperwork, identify the appropriate facility, coordinate with sheriffs, effect the transfer, and admit the detainee. HHSC's proposed findings of fact expressly admit that "[o]n average, it takes approximately two weeks for a county to coordinate travel."[55] This is consistent with the evidence produced at trial showing a typical two-week average timeline of both the entire logistical process—and the timeline in reverse of discharging restored detainees back to county jails which is also "a week or two."[56] HHSC's own documents introduced at trial showed incompetency detainees being admitted to HHSC's mental health facilities within two weeks or less of HHSC notifying their county a bed was going to be available for them, even when they were across the state from their appropriate facility, including the Named Plaintiffs, each of whom were admitted within a week of their county's notification.[57] Those time frames are also consistent with the 21 days HHSC demonstrated in 2012-2014 it could comply with when under threat of injunction, as well as other states' deadlines for the maximum duration of this period.[58] Given the evidence of HHSC's past

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[54] Amd. Trial Tr. Vol. 3, 108:16-109:5 (Matthews); Trial Tr. Vol. 4, 85:19-25 (Moravec-Gallagher); Trial Tr. Vol. 6, 95:5-96:7 (Murrie); *see also infra* pp. 13-21.
[55] Dkt. #254, p. 5, ¶ 38.
[56] *See* Dkt #253, pp. 11-12, ¶ 37, nn.48-49 and accompanying text.
[57] *See* Dkt #253, pp. 12-13, ¶ 41, nn.54-55 and accompanying text.
[58] *See* Dkt. #253, p. 13, ¶ 42, n.56 and accompanying text; *see also, e.g., Adv. Ctr. for Elderly & Disabled v. La. Dep't of Health & Hosps.*, 731 F.Supp.2d 603, 627 (E.D. La. 2010); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1105 (9th Cir. 2003); *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, 101 F. Supp. 3d 1010, 1018 (W.D. Wash. 2015), *abrogated on other grounds*

ability to comply with a 21-day injunction and the evidence of the time currently required to accomplish the necessary logistical tasks, the similar conclusions reached by states and other courts regarding how long the logistical process generally takes, and accounting for minor administrative variability with the counties establish that 21 days is a conservative constitutional cap on the duration of class members' post-order, pre-hospitalization confinement.

As of August 30, 2025, incompetency detainees on HHSC's non-MSU list had been waiting an average of 178 days after HHSC received the order committing them to HHSC's mental health facilities for competency restoration services while their MSU counterparts had waited an average of 202 days.[59] Further, once class members arrive at HHSC's facilities, the evidence is clear they the vast majority of them restore within an average of 100 days.[60] Given that HHSC is causing the class members to remain confined in county jails more than eight to nine times the amount of time it actually takes to arrange for their transport and admission and twice as long as it takes to actually retore them, it is clear that the duration of class members' confinement bears no reasonable relation to the purpose of their commitment and thus violates due process.

C. While *Jackson* governs, no rational basis justifies HHSC's warehousing the class members in county jails for months.

Although *Jackson* supplies the governing standard, Plaintiffs understand that the Court also intends to evaluate their confinements under rational basis review. Even under that deferential standard, HHSC's practice fails. As pretrial detainees, the class members cannot be subjected to punishment.[61] While the "rational basis standard is highly deferential, it is not toothless."[62]

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by 822 F.3d 1037 (9th Cir. 2016); *see also* Dkt. #174-2, pp. 43-44, n.185.

[59] Pla-Ward-115, Reporting of Waiting Lists for Mental Health Services (Nov. 2025), pp. 15, 16.

[60] Pls.' Ex. Pla-Ward-23, Chief of Forensic Medicine State Hospital Update (Jan. 17, 2024) at pp. 6-7 (In 2024, 98% of defendants receiving restoration services at a state hospital were restored during their initial restoration commitment, with an average time to restoration of 100 days).

[61] *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

[62] *Simi Inv. Co. Inc. v. Harris Cnty., Tex.*, 236 F.3d 240, 253 (5th Cir. 2000) (citation omitted).

Courts evaluating claims similar to Plaintiffs' under this standard have confirmed that confining incompetency detainees in jails for similarly lengthy periods of time awaiting transfer to mental health facilities for competency restoration is not rationally related to any legitimate government interest and constitutes unconstitutional punishment.[63] The same is true here: no legitimate government interest is rationally related to HHSC's choice to place incompetency detainees on waitlists and force them to wait in county jails for months to years, rather than timely admitting them to its mental health facilities.

First, Dr. Matthews, HHSC's own designated expert and chief medical officer, as well as all of Plaintiffs' forensic psychology experts agree that there is no clinical or treatment reason for keeping incompetency detainees in county jails after they have been found incompetent to stand trial and dong so causes harm.[64] Thus, Plaintiffs' experts testified that, from a clinical perspective, competency restoration treatment should begin immediately.[65] In fact, HHSC's causing incompetency detainees to remain confined in county jails is *irrational* where all of the experts agree this exposes incompetency detainees to the risk of deterioration, injury, and death and many in fact suffer these injuries.[66] HHSC's exposing incompetency detainees to the risk of psychiatric deterioration is also *irrationally* related to any state interest in treatment where such deterioration lengthens the time it takes for an incompetency detainee to restore once they reach an HHSC

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[63] *See, e.g., Terry ex rel. Terry v. Hill*, 232 F.Supp.2d 934, 943 (E.D. Ark. 2002); *Trueblood* v. *Wash State Dep't of Soc. & Health Servs.*, 73 F.Supp.3d 1311, 1315 (W.D. Wash 2014).

[64] Amd. Trial Tr. Vol. 3, 148:9-12 (Dr. Matthews agreeing some incompetency detainees do decompensate or deteriorate while waiting in jail); *id*. at 149:7-14 (Dr. Matthews agreeing that delaying competency restoration could be harmful in the context of incompetency detainees arriving at state hospitals); *id*. at 48:4-8, 89:17-90:6 (Murrie); Trial Tr. Vol. 2, 79:9-18, 112:4- 21 (Murrie); Trial Tr. Vol. 6, 93:11-15 (Murrie); Pla-Ward-9, Murrie Supplemental Report, p. 21; Pla-Ward-4, Groundswell Report, pp. 13-14; Dkt. #219, Deposition Designations (Kois at 141:16-143:10; 143:11-146:1); *id*. (Packer at 127:1-12, 169:1-170:20, 174:9-177:12, 189:7-192:12).

[65] *See supra*, n.64.

[66] *See supra*, p. 2, nn.6-7, 64.

mental health facility.[67] Needless suffering, preventable injuries and death in jail while awaiting admission to HHSC's inpatient mental health facilities serves no legitimate government interest and are thus arbitrary, purposeless and punitive.[68] Indeed, as the Court already found, Plaintiffs' requested relief, not HHSC's waitlists, serves the State's interest in treatment.[69]

Nor does the requested relief require overcrowding or abandonment of individualized care. As the Court has already recognized, Plaintiffs' relief simply requires HHSC to fulfill its statutorily-mandated duty to plan for and operate sufficient inpatient capacity to timely admit them to its mental health facilities so that they can receive competency restoration services with the goal of attaining competency to stand trial.[70] Concomitant with HHSC's duty to plan for and provide sufficient inpatient capacity is its duty to plan for and ensure the provision of adequate outpatient services for civil and forensic patients.[71] These mandated outpatient services are many of the services HHSC's Associate Commissioner and State Forensic Director Jennie Simpson, Ph.D. as well as its expert Mr. Petrila described at trial at Intercepts 0, 1, 4, and 5 on the Sequential Intercept Model.[72] These outpatient services, if HHSC actually planned for and provided them in sufficient

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[67] Pla-Ward-4, Groundswell Expert Report, p. 13; Pla-Ward-9, Murrie Supplemental Expert Report, pp. 21-22; Trial Tr. Vol. 2, 89:1-10, 92:17-93:25, 109:23-110:8 (Murrie); Pla-Ward-100, Biswas et al., p. 5.

[68] *See Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

[69] Dkt. #186, pp. 18, 31.

[70] Dkt. #186, p. 18, p. 31 n.3; *see also* Dkt #253, pp. 44-45, § E ("Remedy") (Plaintiffs' requested relief includes a phased injunction, not an immediately implemented 21-day deadline); Amd. Trial Tr. Vol. 3, 88:17-89:16 (Murrie testifying that in his experience he has not seen the imposition of a timeline result in overcrowding or poor care but in fact the opposite has often occurred).

[71] TEX. HEALTH & SAFETY CODE § 533.051(a), (b)(4).

[72] Trial Tr. Vol. 5, 121:24-124:17 (Simpson); Trial Tr. Vol. 6, 37:11-39:13, 45:20-46:24 (Petrila); *see also* Dkt. #239, Deposition Designations of Sonja Gaines via Rule 30(b)(6), 217:17-21 (funding and expansion of crisis services at Intercept 0 in 2009), *id.* at 38:20-25, 122:21-126:23, 127:18-128:11, 144:3-147:25, 166:7-12, and 168:1-5 (HHSC's funding of programs at Intercepts 0 and 1 as early as 2017); *id.* at 77:17-78:25 (describing HHSC's Step Down Programs at Intercept 4); TEX. HEALTH & SAFETY CODE §§ 614.013(c), 614.014(c), & 614.015(c) (requiring HHSC to coordinate with the Texas Department of Criminal Justice and others to ensure continuity of care

amount to meaningfully reduce additions to the waitlist, would undercut overcrowding concerns.

Similarly, HHSC's stated interest in "operating a mental health system that takes into account the individualized needs of its patients by allocating its limited resources effectively"[73] is not rationally related to forcing incompetency detainees to remain confined in jails without competency restoration services for months after HHSC receives their commitment orders for four reasons. First, Plaintiffs' requested relief does not require HHSC to lessen the quality or individualized nature of the treatment it provides to incompetency detainees in its mental health facilities. The evidence introduced at trial identified numerous opportunities that are low-hanging fruit for HHSC to expand its inpatient forensic capacity (and thus admit incompetency detainees timely) without sacrificing individualized inpatient care including (1) hiring personnel to staff the 237 off-line state hospital beds, (2) expanding and actually using community placements for the several hundred state hospital patients who could be discharged if a sufficiently supportive community placement existed for them, (3) allocating over 700 beds currently used for civil patients to forensic patients, and (4) expanding contracted inpatient capacity.[74]

Second, HHSC's waitlist is not rationally related to any "individualized needs" of class members where HHSC itself treats 97-98% of incompetency detainees the same by placing them on waitlists and removing them on a first-come, first-served basis once HHSC decides to make an age-, gender-, specialty-, and geographically-appropriate bed available for admission.[75] The

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for persons with mental illness re-entering the community at Intercept 5); *see also* Trial Tr. Vol. 5, 120:16-121:13 (Simpson describing the SIM generally); Def-Young-113, The Sequential Intercept Model, p. 2.

[73] *See* Trial Tr. Vol. 1, 61:19-23 (HHSC opening).

[74] *See* Dkt. #253, pp. 26-29, ¶¶ 86-99.

[75] Dkt. #218, p. 5, ¶¶ 47, 48; Dkt. #254, p. 4, ¶¶ 26, 27, 31-33; Dkt. #99, p. 2, ¶¶ 6, 8; Trial Tr. Vol. 4, 86:24-87:4, 87:8-17, 87:24-88:25 (Moravec-Gallagher); Trial Tr. Vol. 5, 10:2-23 (Moravec-Gallagher); Trial Tr. Vol. 1, 214:1-10, 219:13-222:1 (Dunson); Trial Tr. Vol. 2, 11:10-13, 12:2-13:14, 36:12-25; 40:14-43:6 (Dunson).

undisputed evidence at trial showed that HHSC individually reviews only about 3% of incompetency detainees to determine if they require expedited admission to its facilities and actually offers expedited admission to only 1-2% of detainees. HHSC's individual review of only 3% of incompetency detainees on its waitlists is not rationally related to any interest in ensuring the remaining 97% of the incompetency detainees receive individualized assessment or treatment.

Third, though HHSC appeals to "limited resources," the Fifth Circuit has expressly rejected "general budgetary constraints" and operational limitations as lawful bases for prolonged confinement. As the court in *Wyatt v. Aderholt* noted, the Texas legislature is

> ordinarily free to choose among various social services competing for legislative attention and state funds. But that does not mean a state legislature is free, for budgetary or any other reasons, to provide a social service in a manner that will result in the denial of individuals' constitutional rights.[76]

Indeed, many of the courts that have evaluated similar claims raised by incompetency detainees and held that lengthy pre-hospitalization delays violate incompetency detainees' rights to due process were also presented with "budgetary" or "availability" excuses and rejected them.[77]

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[76] *Wyatt v. Aderholt*, 503 F.2d 1305, 1314-15 (5th Cir. 1974); *see also Gates v. Collier*, 501 F.2d 1291, 1319 (5th Cir. 1974) ("Where state institutions have been operating under unconstitutional conditions and practices, the defenses of fund shortage and the inability of the district court to order appropriations by the state legislature, have been rejected by federal courts."); *Alberti v. Sheriff of Harris County, Tex.*, 406 F.Supp. 649, 669 (S.D. Tex. 1975) ("lack of adequate resources does not excuse, nor does it lessen, the obligation" of government entities to provide constitutionally adequate facilities).

[77] *See Adv. Ctr. for Elderly & Disabled*, 731 F. Supp. 2d at 626 (rejecting assertion that state would have to cut spending in another area to obtain funding to comply with 21-day injunction was "insufficient," as a "state's constitutional duties toward those involuntarily confined in its facilities does not wax and wane based on the state budget."); *Trueblood*, 101 F. Supp. 3d at 1013 (Incompetency detainees "are deserving of the protections of the Constitution that our forefathers so carefully crafted. The rights protected can be difficult and sometimes costly to secure; however, the Constitution is a guarantee to all people, and is not dependent upon a price tag."); *Terry*, 232 F.Supp.2d at 944 (noting the court could find the State of Arkansas had been deliberately indifferent to the needs of incompetency detainees as the state knew for over five years that incompetency detainees were harmed and "limited resources" were no excuse); *Disability Law Center*, 180 F. Supp. 3d at 1012 (lack of space did not justify Utah's practice of keeping

HHSC's appeals to "limited" resources are also dubious where the evidence at trial was that in the FY24-FY25 legislative biennium, HHSC asked for only $110 million to expand inpatient forensic capacity, yet the legislature gave it more than twice its request.[78] In the following session, FY26-FY27, HHSC did not ask for any money to expand future capacity,[79] despite having over 1,700 incompetency detainees on its waitlists. This is a particularly glaring omission given the evidence at trial that a mere $270 million would clear the existing 1,700 detainees off the waitlist.[80]

Fourth, HHSC's failures to meaningfully expand bed capacity after receiving the 2013 Cannon Report are not rationally related to its legitimate interest in allocating its resources effectively. The evidence introduced at trial showed that in 2013, HHSC commissioned the Cannon Report which identified that HHSC already had 570 fewer inpatient beds than what was necessary to meet the then-immediate need, needed to address significant facility understaffing and high staff turnover contributing to a lack of inpatient capacity, and needed to add 1,849 beds by the end of 2024,[81] yet HHSC's own testimony at trial was that in 2028 or 2029 it would finally

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incompetency detainees confined in jails awaiting competency restoration evaluation and services); *United States v. Wazny*, No. 3:21-CR- 247, 2022 WL 17363048, *6 (M.D. Penn. Dec. 1, 2022) ("failure…to designate a sufficient number of facilities, employ the necessary staff, and provide the adequate resources, to serve the increasing demands of the judicial system and requirements of [the incompetency statute]," is of limited significance); *see also Stiavetti v. Clendenin*, 65 Cal. App. 5th 691, 714 (Cal. Ct. App. 2021) (imposition of a state-wide injunction was necessary given, among other factors, the absence of legislative action to allocate resources to solve the problem).

[78] Trial Tr. Vol. 4, 213:3-18, 217:17-218:7 (Schalchlin); Def-Young-120, HHSC's FY26-FY27 Legislative Appropriations Request, p. 7; Def-Young-118, HHSC's Updated Exceptional Item Request FYs 2024-2025, p. 6; *see* Dkt. #255, p. 11 (admitting legislature appropriated $2.85 billion—more than *twenty* times their request).

[79] Trial Tr. Vol. 5, 47:24-48:7 (Schalchlin); *see also* Pla-Ward-114, Vol. II of HHSC's FY26-FY27 Legislative Appropriations Request, pp. 397-530.

[80] Trial Tr. Vol. 4, 70:15-73:17 (Schalchlin).

[81] Trial Tr. Vol. 2, 130:18-20, 131:8-15; 132:2-4, 136:5-9 (Murrie); Trial Tr. Vol. 4, 31:5-32:4 (Schalchlin); Pla-Ward-69, Texas DSHS, State Hospital System Long-Term Plan (January 2015), p. 1; Pla-Ward-70, Cannon Report, p. 11, 43, 71-72, 75, 76.

be "only" 315 beds short of the Cannon Report's projection of need for 2024.[82] Meanwhile, of course, the waitlists have grown exponentially since 2013. Given the evidence that HHSC's only significant reductions in the waitlists have been the result of bringing existing beds back on-line with sufficient staffing or adding additional inpatient beds,[83] it is hard to contemplate something less rational—less based on or in accordance with reason and understanding[84]—than commissioning a report identifying necessary inpatient capacity and then not following those recommendations while thousands of incompetency detainees were added to HHSC's waitlists.

Nor does the Covid-19 pandemic excuse HHSC's failure to implement the Cannon Report's recommendations or otherwise redress the violation of class members' rights. HHSC knew fourteen years before the pandemic arrived that it did not have sufficient inpatient capacity. It knew, thanks to the Cannon Report, no later than 2013 that it needed to swiftly act to increase forensic capacity, inpatient staffing, and outpatient diversion services.[85] Yet on the eve of the pandemic, HHSC had only 2,310 operational inpatient beds—six hundred *fewer* than it had in November 2013—and a combined forensic waitlist of 907 incompetency detainees.[86]

As to the State's interest in class members' attending their trials and receiving treatment for their mental illnesses, the Court has already found that Plaintiffs' requested relief better serves both the State's interest in class members' attending trial and receiving treatment where Plaintiffs' relief ensures they more swiftly receive competency restoration, restore to trial (for the vast

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[82] Trial Tr. Vol. 4, 28:4-8; 30:2-15; 30:21-31:1 (Schalchlin).
[83] *See* Dkt. #253, pp. 8-10, ¶¶ 26-34.
[84] MERRIAM-WEBSTER DICTIONARY, Definition of "rational," *available at* https://www.merriam-webster.com/dictionary/rational.
[85] Pla-Ward-70, Cannon Report, pp. 71, 72, 80, 83, 85-88, 138.
[86] Pla-Ward-29-B, Daily Census Monthly Aggregate, CY2020 (operational beds are the sum of funded capacity minus the sum of offline capacity, excluding Waco Center for Youth); *see also* Pla-Ward-26, Waitlist Trends (June 30, 2025), pp. 1, 4; Trial Tr. Vol. 2, 130:18-20 (Murrie); Pla-Ward-70, Cannon Report, p. 11; *see also* Amd. Trial Tr. Vol. 3, 81:3-24 (Murrie).

majority), and continue their trials.[87] In fact, where incompetency detainees' lengthy confinements waiting for admission to HHSC's mental health facilities means that their criminal cases are not only delayed but actually harmed because witnesses can be lost, memories fade, the attorney-client relationship is undermined, and plea negotiations are impossible, HHSC's use of forensic waitlists is *irrational* related to the State's interest in bringing incompetency detainees to trial.[88]

Likewise, because Plaintiffs do not seek class members' release from confinement but admission to HHSC's facilities, the State's interest in preventing crime is not implicated.[89]

Finally, HHSC's use of waitlists in lieu of timely admission to its mental health facilities is not rationally related to the statutory purpose of class members' commitments. The fact that class members may "progress" up HHSC's waitlists towards eventually being admitted to its facilities to receive competency restoration services,[90] does not serve the purpose of class members' commitments which is not only to receive restoration services but specifically to receive them "with the specific objective of…attaining competency to stand trial."[91] Because class members do not progress towards attaining competency by languishing in jails without restoration services (and instead tend to regress),[92] they do not progress towards the goal of restoration, and their confinement is not rationally related to the statutory purpose of their commitment.

Indeed, HHSC is free to use whatever "logical" form of organizing class members'

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[87] Dkt. #186, p. 18, p. 31 n.3.
[88] For example, the Texas Code of Criminal Procedure identifies that the State has an interest in "insur[ing] a trial with as little delay as is consistent with the ends of justice" and "insur[ing] a fair and impartial trial," both of which are disserved by extended trial delays, lost witnesses and evidence, and harm to the attorney-client relationship that results from incompetency detainees' lengthy confinements. *See* TEX. CODE CRIM. PROC. art. 1.03. HHSC's use of the forensic waitlists is not only not rationally related to serving these interests but actively works against them.
[89] Dkt. #186, p. 17, p. 31 n.3.
[90] *See* Dkt. #254, p. 33, ¶ 276.
[91] TEX. CODE CRIM. PROC. art. 46B.073(b).
[92] *See* Dkt. #253, p. 15, ¶ 48, n.66 and accompanying text.

commitments to its facilities that it would like because it is not the waitlists themselves that are the violation of the class members' rights, but the time spent in jails while on them. Put differently, if HHSC's waitlists were organized and administered in exactly their current form but all class members were admitted to HHSC's facilities within 21 days of HHSC's receiving their commitment orders, the nature and duration of class members' confinements would be constitutional. HHSC's need to organize and track its commitments thus does not rationally relate to class members' prolonged jail confinement. Taken to its logical conclusion, HHSC's theory would permit *any* length of delay so long as the State labels it practice a "waitlist," causing constitutional limits to disappear entirely whenever a State underbuilt capacity. Such a theory does not pass even rational basis muster. The connection between the waitlists and HHSC's asserted goal of an "organized and effective system" for admission is so attenuated that the policy is arbitrary and purposeless.

Accordingly, HHSC's choice to operate waitlists rather than sufficient inpatient capacity is not rationally related to any articulated or conceivable goal, is arbitrary, and renders the class members' confinements in state jails more than 21 days after HHSC receives their commitment orders unconstitutional punishment.

III. THE PLAINTIFF CLASS HAS STANDING TO SEEK REDRESS FROM HHSC.

As this Court has already determined, the Plaintiff class members satisfy all three elements of standing.[93] First, months' to years' long confinements in jails where incompetency detainees do not receive competency restoration services to further the goal of their attaining competency to stand trial injured these Plaintiffs and will continue to injure class members, regardless of whether the Court applies *Jackson*'s standard or rational basis review.

[93] Dkt. #186, pp. 9-14.

Second, all class members' injuries are traceable to HHSC. Traceability under Article III requires only that class members' injuries be "fairly traceable" to HHSC's conduct, that is there is a "substantial likelihood" that HHSC's conduct caused their harms, not the "independent action of some third party not before the court."[94] Constitutional injuries like those suffered by the class members require only *de facto* causality, not legal or proximate causality, to establish standing.[95] The fact that HHSC is "solely responsible for admitting incompetency detainees to appropriate treatment facilities" and "manages the forensic waitlists and controls the availability of beds in state mental health facilities is sufficient to establish traceability for purposes of standing."[96] Indeed, as part of this responsibility, HHSC—and only HHSC—is explicitly charged with "determin[ing]…the minimum number of beds that the state hospital system must maintain to adequately serve" forensic and civil patients and actually providing those beds.[97] The fact that class members remain in the custody of local sheriffs until HHSC decides to accept custody of them does not make the class members' unconstitutional confinement an injury non-traceable to HHSC. When class members remain in the custody of sheriffs for more than 21 days after HHSC receives their commitment orders, that is, once their confinements become unconstitutional, HHSC is the cause of the sheriffs' continued custody of the class members.

HHSC's reliance on *DeShaney* is unavailing.[98] Unlike the class members here, the plaintiff

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[94] Dkt #186, pp. 10-11; *Lujan v. Def. of Wildlife*, 504 U.S. 555, 561 (1992).
[95] *Dep't. of Comm. v. New York*, 139 S.Ct. 2551, 2566 (2019) (citing *Block v. Meese*, 793 F.2d 1303, 1309 (D.D.C. 1986) (Scalia, J.)); *id.* at 2566 (finding traceability where plaintiffs' injuries "rel[y]…on the predictable effect of Government action on the decisions of third parties."); *Bennett v. Spear*, 520 U.S. 154, 169 (1997) (traceability "does not exclude injury produced by the determinative or coercive effect upon the action of someone else).
[96] Dkt. #186, p. 11 (citing TEX. HEALTH & SAFETY CODE §§ 533.051(a)(2), (b)(4), 533.052; *see also Mink*, 322 F.3d at 1104 (rejecting analogous traceability argument in similar case concerning incompetency detainees)
[97] TEX. HEALTH & SAFETY CODE § 533.051(a), (b)(2).
[98] Dkt. #254, p. 30, ¶ 266; *see also id.* at p. 29, ¶ 231.

in *DeShaney* was not under any kind of restraint of his liberty at the time he was injured by a non-State actor.[99] Accordingly, the Supreme Court evaluated whether the State was under any kind of affirmative obligation under the due process clause to ensure the minimum levels of safety and security of someone who was entirely outside of the State's custody and answered that question in the negative.[100] Here, of course, the class members are not only restrained in their liberty by their in-jail confinements but are committed to HHSC's facilities to receive restorative services with the objective of attaining competency. HHSC alone controls the placement, acceptance, and admission of class members committed to its facilities. Its failure to admit them timely causes the class members to remain in the custody of other State actors (local sheriffs) pursuant to the Texas incompetency detention and commitment scheme and violates their constitutional rights.

Similarly, while HHSC attempts to cast responsibility for class members' injuries on other entities like courts, law enforcement, and community mental health providers for leading to the commitment of so many incompetency detainees to its mental health facilities, this blame shifting is disingenuous at best because HHSC knew, at the latest, by 2013 when it received the Cannon Report that it would be "hard-pressed" to keep up with the already existing trend of increasing forensic commitments if it did not act.[101] Indeed, for several years the number of commitments to its facilities has been steadily increasing[102] yet HHSC has no projection for how many beds it will need to solve this crisis or when the class members will stop waiting months for admission to its facilities.[103] The Ninth Circuit in *Mink* reached a similar conclusion regarding traceability, finding

[99] *DeShaney v. Winnebago Cnt. Dep't of Social Work*, 489 U.S. 189, 193 (1989).
[100] *Id.* at 195.
[101] Pla-Ward-70, Cannon Report, p. 138.
[102] *See* Dkt. #253, p. 25, n. 116 and accompanying text.
[103] Amd. Trial Tr. Vol. 3, 138:20-25, 139:16-140:7 (Matthews); Trial Tr. Vol. 4, 51:18-22, 52:22-53:2 (Schalchlin); Trial. Tr. Vol. 5, 179:24-180:12 (Simpson).

that those incompetency detainees' were caused by Oregon's HHSC-equivalent who had the duty to provide those detainees with the necessary care, despite the fact *Mink's* defendant did not take custody of those detainees until they were admitted to the mental health facility and before that, they were in the custody of the sheriff.[104]

As to redressability, "an injunction restraining HHSC from failing or refusing to admit the class members to its mental health facilities within a reasonable time after HHSC receives their commitment orders is likely to redress Plaintiffs' injuries" as "requiring timely admission to HHSC's mental health facilities will put an end to Plaintiffs' extended confinements in county jails."[105] Courts remedying the unconstitutional confinements of incompetency detainees in other states have redressed those injuries by granting an injunction like the one Plaintiffs seek here.[106]

IV. PLAINTIFFS ARE ENTITLED TO DECLARATORY RELIEF.

Because the class members have shown that HHSC has violated their constitutional rights regardless of the standard the Court applies, they are entitled to declaratory relief.[107]

V. PLAINTIFFS ARE ENTITLED TO PERMANENT INJUNCTIVE RELIEF.

The class members are likewise entitled to permanent, injunctive relief because they satisfy each element of the four-factor test: (1) they have suffered an irreparable injury; (2) the remedies available at law, like money damages, are inadequate to compensate them for their injuries, (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted, and (4) the public interest will not be disserved by a permanent injunction.[108] And class

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[104] *Mink*, 322 F.3d at 1114.
[105] Dkt #186, pp. 12-13; *see also* Dkt. #137, pp. 11-12, 18.
[106] *See, e.g., Mink*, 322 F.3d at 1123; *Adv. Ctr. for Elderly & Disabled*, 731 F.Supp.2d at 627; *Trueblood*, 101 F.Supp.3d at 1024.
[107] *See Powell v. McCormack*, 395 U.S. 486, 517, 550 (1969) (instructing court to enter declaratory judgment after finding constitutional violation).
[108] *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006); *see also Texas v. Yellen*, 105 F.4th

members have likewise shown that HHSC's past conduct" gives rise to an inference that, in light of the present circumstances, there is a reasonable likelihood of future transgressions."[109]

A. The class members have suffered and will suffer irreparable harm.

As set forth above and in Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law, Docket #253, and as this Court previously found, there is overwhelming evidence and little contest regarding the facts that show that the class members have been and will continue to be confined in county jails without receiving competency restoration services with the goal of attaining competency to stand trial for more than twenty-one days after HHSC receives their commitment orders as a result of HHSC's decision to operate waitlists in lieu of sufficient inpatient capacity if the *status quo* remains. The class members' continued, unconstitutional and lengthy confinement in county jails awaiting admission to HHSC's mental health facilities inflict irreparable harms for four reasons.

First, the delay violates the incompetency detainees' constitutional rights, and this infringement on Fourteenth Amendment rights alone is irreparable and incompensable harm to each Class Member.[110]

Second, each and every incompetency detainee has their pretrial detention extended and

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755, 774 (5th Cir. 2024).

[109] *Sec. & Exch. Comm'n v. Life Partners Holdings, Inc*., 854 F.3d 765, 784 (5th Cir. 2017) (internal quotation marks omitted); *see Crown Castle Fiber, L.L.C. v. City of Pasadena, Tex*., 76 F.4th 425, 441 (5th Cir. 2023), cert. denied, 144 S. Ct. 820, 218 L. Ed. 2d 30 (2024).

[110] *See* WRIGHT & MILLER, 11A Fed. Prac. & Proc. Civ. 3d § 2948.1 ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (agreeing with the same proposition quoted from *Elrod*); *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (violation of First Amendment right alone shows irreparable harm); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (violating right of privacy is an irreparable harm).

their day in court delayed because of the policy and practice of HHSC which has persisted for years. The delay causes irreparable harm to each of their criminal proceedings.

Third, many class members have been and will be further harmed, just as several of the class representatives were harmed, because waiting in jail while incompetent to stand trial places incompetency detainees at a higher risk of psychiatric decompensation and other complications of the underlying mental illness which caused their incompetency to stand trial.[111]

Finally, all Class members, even incompetency detainees who do not experience worsening of their psychiatric condition while they wait, are psychiatrically harmed by the delay alone. HHSC is forcing detainees to remain incompetent without reason, while under a legal obligation to attempt to remedy that condition.

B. Other relief is inadequate to compensate for class members' injuries.

The class members have no adequate remedy for the ongoing or future violations of their rights. First, because the class members have suffered violations of their Constitutional rights, nothing more is required for the class members to show that their injuries are irreparable and thus no money relief is inadequate. Further, there is no amount of money that will get them to trial by the time they would have, or fully compensate them for the harms of their extended, unnecessary pretrial detention. Indeed, many incompetency detainees have been kept in jail far longer than they would have been sentenced for the underlying charge as a result of HHSC's decisions.[112]

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[111] *See also Mink*, 322 F.3d at 1120 ("The disciplinary system that jails use to control inmates is ineffective for, and possibly harmful to, incapacitated criminal defendants. Because of their unpredictable or disruptive behavior, they are often locked in their cells for 22 to 23 hours a day, which further exacerbates their mental illness. Incapacitated criminal defendants have a high risk of suicide, and the longer they are deprived of treatment, the greater the likelihood they will decompensate and suffer unduly.").

[112] *See* Trial Tr. Vol. 1, 112:19-113:8, 114:12-115:12 (Shearer); *id.* at 148:16-23, 160:13-161:2 (Drumheller), 190:15-21 (Chacona); *id.* at 239:1-240:9 (Dunson); Trial Tr. Vol. 2, 79:25-80:16 (Murrie); Def-Young-82, Texas Forensic Waitlist Mitigation Strategies, p. 1; *see* TEX. CODE CRIM.

Second, HHSC's continued appeal to habeas relief is meritless.[113] As this Court has already correctly determined regarding habeas relief in the class members' underlying state causes:

> habeas relief is unavailable to Plaintiffs because they are not seeking release from confinement but rather seek admission to state-run [or state-contracted] mental health facilities within a timely manner. Under Texas law, habeas relief is available only where a movant seeks release from confinement and is unavailable where, as here, Plaintiffs seek to be admitted to mental health facilities.[114]

Moreover, any argument that federal habeas provides an adequate relief also fails.

In policing the distinction between 42 U.S.C. § 1983 and federal habeas, "the question is whether 'the nature of the challenge … could be such as necessarily to imply the invalidity' of the confinement or sentence." *Hill v. McDonough*, 547 U.S. 573, 583 (2006).[115] Plaintiffs do not challenge the *validity* of the class members' confinements: Plaintiffs do not attack in any way the criminal complaints filed against class members, seek to invalidate their commitment orders, contest the validity of the duration of their commitments to HHSC's mental health facilities for competency restoration, seek release from confinement, seek a guarantee of a shorter sentence, or even seek transfer to a different level of state custody.[116] Put differently, success on the merits of Plaintiffs' claim will not undermine the validity of the fact or duration of any class members' confinement, and is not even guaranteed to cause their speedier release, but instead will only speed up the commencement of competency restoration. For most class members, ironically, this will

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PROC. art. 46B.0095(a).

[113] *See* Dkt. #254, p. 33, ¶¶ 278-79.

[114] Dkt. #186, p. 20, citing *Ex parte Ingram*, 533 S.W. 887, 892 (Tex. Crim. App. 2017); *see also Ex parte Weise*, 55 S.W.3d 617, 619 (Tex. Crim. App. 2001); *Ex parte Doster*, 303 S.W.3d 720, 724 (Tex. Crim. App. 2010).

[115] *See also Nance v. Ward*, 597 U.S. 159, 168 (2022) ("A claim should go to habeas … only if granting the prisoner relief 'would *necessarily*'" change the fact or duration of the criminal conviction) (quoting *Nelson v. Campbell*, 541 U.S. 637, 647 (2004)) (emphasis in original).

[116] *See Wilkinson v. Dotson*, 544 U.S. 74, 78, (2005); *see also Jones v. Cain*, 600 F.3d 527, 541 (5th Cir. 2010) (noting that the "typical remedy in habeas corpus is physical release" because the only power of the writ is to "act on the body of the petitioner.") (citations omitted).

expedite their transfer back to their current confinement after restoration.[117] Section 1983 is the appropriate vehicle to challenge conditions of confinement, such as class members' delayed access to competency restoration, even if remedying that condition is likely to have downstream effects on the duration of confinement, so long as the action does not attack the underlying validity of confinement.[118] All that each class member will necessarily receive if they prevail in this Court is speedier access to competency restoration services *while still confined*, making § 1983 appropriate. Further, habeas relief cannot be the appropriate vehicle to remedy HHSC's prospective violations of the class members' constitutional rights.[119] Habeas relief is certainly unavailable to redress the future injuries suffered by the thousands of not-yet-incompetent future class members whose constitutional rights will be violated in the future when they are found incompetent to stand trial, put on HHSC's waitlists, and remain confined in county jails more than 21 days without competency restoration services if Plaintiffs' requested injunction is not granted.[120] A remedy that becomes available only after the class members' rights are violated is an inadequate remedy.[121]

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[117] *See* TEX. CODE CRIM. PROC. art. 46B.081.

[118] *See, e.g.*, *Nance*, 597 U.S. at 168 (attack on death penalty procedure properly brought under § 1983 despite delaying sentence); *Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (demand for DNA testing properly brought under § 1983 despite possibility of undermining conviction); *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (attack on parole eligibility procedure properly brought under § 1983 despite possibility of shortening duration of sentence).

[119] *See Wilkinson v. Dotson*, 544 U.S. 74, 78, 82 (2005).

[120] *See Wilkinson,* 544 U.S. at 81; *see also* 28 U.S.C. § 2241(c)(3) (requiring petitioner for habeas relief to be "in custody in violation of the Constitution").

[121] *See Wyatt*, 503 F.2d at 1316 (in evaluating injunctive relief, habeas relief and tort damages available only after violation occurs are inadequate remedies). While the Rules Governing 28 U.S.C. § 2254 (which also apply to petitions under § 2241) seemingly authorize habeas petitions seeking a determination about the constitutionality of future confinement, this is no answer where there is no way to identify which criminal defendants will be found incompetent to stand trial in their state criminal cases in the future. Even assuming a petition for writ of habeas corpus could be filed on the same day as the incompetency finding (i.e. as soon as they were able to be identified as in danger of unconstitutional confinement), it is almost impossible that incompetency detainee would not suffer some unconstitutional confinement in the time it takes for the petition to be heard.

Finally, as this Court has already determined, bond is unavailable to remedy the class members' unconstitutional confinement where it is only available to criminal defendants who are competent to stand trial and so can accept the bond conditions and incompetency detainees committed to one of the few OCR programs.[122] While there was some evidence at trial that a small, unknown number of incompetency detainees are nonetheless out on bond in violation of state law while they await admission to HHSC's mental health facilities,[123] the fact that Texas criminal courts are allegedly violating state law to put incompetency defendants on bond outside of OCR programs is not evidence that bond is an available remedy but rather evidence of how dire the crisis and the violations of the incompetency detainees' constitutional rights have become.

C. The balance of harms and public interest favor Plaintiffs.

Both the balance of harms as well as the public's interest favor granting the class members injunctive relief. Where, as here, a state or one of its elected officials is a litigant in the case, the balance of hardships is considered in tandem with the public interest.[124]

Compared to the ongoing, irreparable injury being suffered by Plaintiffs and every class member, HHSC will not be unduly harmed by being required to do what state law already requires it do: plan for and ensure the "appropriate and timely provision of mental health services" to all forensic detainees, civil detainees, and people receiving community mental health services.[125]

As to the public interest, "it is always in the public interest to prevent the violation of…constitutional rights."[126]

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[122] *See* TEX. CODE CRIM. PROC. art. 46B.071; *id.* at art. 17.032(b).
[123] By definition, these few defendants are not class members while they are out on bond. *See* Dkt. #137, pp. 18-19 (identifying class members as "remain[ing] detained in a Texas county jail").
[124] *Nken v. Holder*, 556 U.S. 418, 435 (2009).
[125] TEX. HEALTH & SAFETY CODE § 533.051(a), (b).
[126] *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014); *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (same); *Melendres v.*

VI. THE COURT SHOULD GRANT PLAINTIFFS' REQUESTED INJUNCTION AND AWARD FEES.

Because the class members have met the standard for injunctive relief, the Court should grant Plaintiffs' requested permanent injunction, as set out in their Proposed Findings of Fact and Conclusions of Law, Docket #253, enjoining HHSC to, within three years of the date of the Court's order, admit each incompetency detainee confined in a Texas jail and committed to one of its mental health facilities for competency restorations services with the goal of attaining competency to stand trial within 21 days of receiving the commitment order. Plaintiffs respectfully submit that the example provided by other states demonstrates that three years is an achievable timeline for HHSC to come into compliance with the 21-day injunction and that any longer would not adequately redress Plaintiffs' continuing, irreparable injury. Plaintiffs also ask the Court to order HHSC to, within thirty days of the Court's order, propose a schedule suggesting appropriate, achievable benchmarks during the three-year phase-in of the injunction and provide Plaintiffs' 21-days to respond to HHSC's proposal.

Finally, because Plaintiffs will be prevailing parties if the Court grants Plaintiffs' requested relief, the Court should award Plaintiffs' reasonable attorneys' fees and costs.[127] Because this case has been proceeding through the courts for nearly a decade and because the Court will be asking the parties to submit additional briefing after the order, the Court should extend the deadline for Plaintiffs to file a motion seeking attorneys' fees and costs to 60 days after the entry of the order.[128]

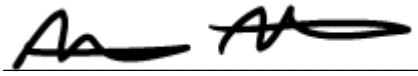
Dated: March 6, 2026.

Arapaio, 695 F.3d 990, 1002 (9th Cir. 2012) (same); *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012) (same); *see also Gannett Co. v. DePasquale*, 443 U.S. 368, 383 (1979) ("there is a strong societal interest in other constitutional guarantees extended to the accused"); *Simms v. D.C.*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (collecting cases).

[127] *Lefemine v. Wideman*, 568 U.S. 1, 5 (2012); *Sanchez v. City of Austin*, 774 F.3d 873, 879 (5th Cir. 2014); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 339 (5th Cir. 1981).

[128] *See* FED. R. CIV. P. 54(d)(2)(B) (authorizing the Court to order a deviation from the 14-day default and extend the time to move for attorneys' fees).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2026, a true and correct copy of the foregoing document was electronically filed using the Court's CM/ECF filing system, thus providing notice of electronic filing to the following:

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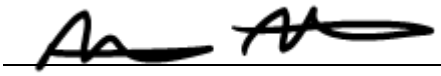

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