No. 20-

IN THE

Supreme Court of the United States

CRAIG GENESS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA, ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Third Circuit erred in granting the collateral appeal of Defendant, Administrative Offices of Pennsylvania Courts (hereinafter "AOPC"), where the record facts support a valid cause of action against AOPC, and where the Circuit's ruling grants sovereign immunity to AOPC, an agency of the Commonwealth, where the record evidence demonstrates that the statutory and constitutional violations suffered by the Petitioner were the direct result of the failure of AOPC to perform its duty to protect the Petitioner from those violations, which obligations were placed upon the Commonwealth, and therefore AOPC, by the United States Congress with the passage of the Americans with Disabilities Act (hereinafter "ADA")?

RELATED PROCEEDINGS

- *Geness v. Cox*, No. 2:16-cv-00876, United States District Court for the Western District of Pennsylvania. Judgment entered May 1, 2017.

- *Geness v. Cox*, No. 17-2073, U.S. Court of Appeals for the Third Circuit. Judgment entered Aug. 28, 2018.

- *Geness v. Pennsylvania*, No. 2:16-cv-00876, United States District Court for the Western District of Pennsylvania. Judgment entered May 28, 2019.

- *Geness v. Admin. Office of Pa. Courts,* No. 19-2253, U.S. Court of Appeals for the Third Circuit. Judgment entered Sept. 8, 2020.

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PETITION FOR WRIT OF CERTIORARI

Craig Geness, an individual, by and through the Law Offices of Joel Sansone, Joel S. Sansone, Esquire, Massimo A. Terzigni, Esquire, and Elizabeth A. Tuttle, Esquire, respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the Third Circuit Court of Appeals.

OPINIONS BELOW

The decision by the Third Circuit Court of Appeals granting AOPC's collateral appeal is reported as *Geness v. Admin. Office of Pa. Courts*, 974 F.3d 263 (3d Cir. 2020). The opinion and dissent are attached at Appendix A, pp. 1a-34a. Preceding that decision, the district court denied AOPC's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. That opinion is unreported and is attached at Appendix B, pp. 35a-52a.

JURISDICTION

The Third Circuit denied Mr. Geness' Petition for Rehearing on October 29, 2020. *See* Appendix C, pp. 53a-54a. This petition is timely filed pursuant to Supreme Court Rule 13.1. and Order 589, dated March 19, 2020. This Honorable Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Americans with Disabilities Act, 42 U.S.C. § 12132:

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Pennsylvania Mental Health Procedures Act, 50 Pa. C.S. Section 7403(d):

Whenever a person who has been charged with a crime has been determined to be incompetent to proceed, he shall not for that reason alone be denied pretrial release. Nor shall he in any event be detained on the criminal charge longer than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If the court determines there is no such probability, it shall discharge the person. Otherwise, he may continue to be criminally detained so long as such probability exists but in no event longer than the period of time specified in subsection (f).

STATEMENT OF THE CASE

To say that Mr. Geness suffered a grave injustice at the hands of the system for justice is inadequate. There are no words.[1]

Craig Geness has a functional Intelligence Quotient of 54. He was held in Fayette County Jail for five years, with almost five additional years in state custody, shackled with an ankle bracelet, on a general homicide charge. Mr. Geness was deemed mentally incompetent to stand trial very early in the process.[2] He was never brought to trial in all that time, and none of the four *habeas corpus* motions brought on his behalf were ever heard or ruled upon. The charges against Mr. Geness were dismissed with an Order of *nolle prosequi,* based upon the admission by the District Attorney, after a decade, that there was insufficient evidence to convict Mr. Geness of this charge.[3]

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1. *Geness v. Admin. Office of Pa. Courts.,* 974 F.3d 263, 279 (3d Cir. 2020) (Ambro, J. dissenting) (Hereinafter, "*Geness II*"); Appendix A, p. 30a.

2. Initially, within months of his arrest, Mr. Geness was deemed incompetent and unlikely to regain competency at any future time by a physician employed by the state mental hospital. Thereafter, on two separate additional occasions during Mr. Geness' incarceration and detention, two other physicians employed by the state concurred in that original conclusion. No evidence was ever offered to contradict those three separate expert conclusions. *Geness II*, 974 F.3d at 267-68; Appendix A, pp. 2a-5a.

3. Mr. Geness was, and remains, innocent of this charge. The only evidence of his guilt was a "confession" from Mr. Geness (without the benefit of counsel) obtained by a lone policeman who forced this "confession" from Mr. Geness after he had been involuntarily committed to a mental institution by the owner of the personal care home where Mr. Geness lived.

In each month of Mr. Geness' decade long incarceration and shackled detention in various state facilities, his case was brought before the Common Pleas Court of Fayette County, Pennsylvania, during the monthly call of the criminal trial list. On each occasion, the presiding Judge continued the matter for trial, despite knowledge of Mr. Geness' incompetency and repeated outcries from local officials demanding that Mr. Geness' case be resolved. The system repeatedly failed Mr. Geness.

When this matter was initially before the Third Circuit Court of Appeals, the Court recognized this systemic failure:

> …[M]ultipoint failures in the criminal justice system have brought us to this juncture. Those failures point out the essential role of each player in that system—whether law enforcement officer, prison official, mental health professional, defense counsel, prosecutor, or judge—and the devastating consequences that can follow when one or more of them fails to diligently safeguard the civil rights with which they are entrusted. With the complexities

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The victim was a resident who fell from the porch of that home, when he should have been supervised by that owner. Before dying, the man admitted that he fell, his wife said he fell, and the first responders both reported a fall.

Medical evidence established that Mr. Geness' condition makes him highly suggestible. When asked by *pro bono* defense counsel why he confessed, Mr. Geness explained that the policeman told him that he had committed the crime. *Geness v. Cox*, 902 F.3d 344, 349-52 (3d Cir. 2018) (Hereinafter, "*Geness I*").

> at the intersection of the criminal justice and mental health systems, those risks are only compounded and ***require vigilance at a systemic level***.

Geness I, 902 F.3d at 365.

The Third Circuit went on to find that "taking all pleaded allegations as true and viewing them in a light most favorable to the plaintiff as we must when evaluating futility, Geness has stated cognizable [ADA] and due process claims" against the Commonwealth of Pennsylvania. *Id.* at 361.

Thereafter, Mr. Geness pled that AOPC administers the Pennsylvania Judicial System and is responsible for the prompt and proper disposition of all business of the courts of the Commonwealth of Pennsylvania.[4] Among the duties and responsibilities of the AOPC is insuring accessible and safe courts for all citizens. The duties of the AOPC also include insuring that the courts of the Commonwealth comply with Title II of the ADA. Mr. Geness pled that the AOPC failed in executing its duties with respect to his prolonged, inexcusable detention.

In *Geness II,* which decided a collateral appeal by the AOPC to the Third Circuit claiming sovereign immunity, the majority departed from *Geness I* and the applicable pleading standard, and required that Mr. Geness plead with a high degree of specificity the actions that the AOPC *should* have taken to assist Mr. Geness, rather than

4. It is undisputed that AOPC is an "arm of the Commonwealth." *Geness II*, 974 F.3d at 269 n.5; Appendix A, p. 17a.

focusing on what it did not do. *Geness II,* 974 F.3d at 276; Appendix A, p. 24a. Thus, the Circuit granted sovereign immunity to AOPC because it ruled that Mr. Geness could not establish causation at the pleading stage between the AOPC's failure to do its duty, and the outcome that would have occurred had the Pennsylvania Supreme Court been notified of this horrendous failure of the criminal justice system.

Despite this ruling, it will be remembered that, at the motion to dismiss stage, the Plaintiff is entitled to the fair inferences that grow out of the record. *Geness II,* 974 F.3d at 269; Appendix A, pp. 7a-8a. Moreover, *Geness I* and *Geness II* do not align, as the majority's expectations, or lack thereof, regarding the AOPC in *Geness II* are far from the systemic vigilance and diligent safeguarding of civil rights previously contemplated by the Third Circuit when addressing the intermixing of the mental health and criminal justice systems presented in this matter. *See Geness I*, 902 F.3d at 365. [5]

In 1990, when President George H.W. Bush signed the ADA, he said, "[l]et the shameful wall of exclusion finally come tumbling down."[6] Thirty years later, in

5. "The law of the case doctrine instructs that 'one panel of an appellate court generally will not reconsider questions that another panel has decided on a prior appeal in the same case.' *In re City of Phila. Litig.*, 158 F.3d 711, 717 (3d Cir. 1998). We are thus bound by our prior opinion to the extent it bears upon the matter before us." *Geness II,* 974 F.3d at 272, n.7; Appendix A, p. 14a.

6. President George H. W. Bush Signs American With Disabilities Act, 1990; https://www.c-span.org/video/?c4763579/user-clip-president-george-h-w-bush-signs-american-disabilities-act-1990; (0:30).

Geness II, the Third Circuit granted AOPC the authority to take a *laissez faire* approach, not just to the rights of Mr. Geness, but towards all disabled individuals who meet the criminal justice system. Effectively, AOPC, a state agency, can say that they will expedite litigation, but it does not have to; it can say that it is committed to ADA rights and accessibility; but it is not required to do anything in that regard. If untouched, the Circuit's decision is another brick in the wall of exclusion that this country sought to tear down thirty years ago, with many more to come. For the reasons that follow, Mr. Geness respectfully requests that this Honorable Court grant Petitioner's writ of certiorari.

REASONS FOR GRANTING THE WRIT

With the passage of the ADA in 1990, and specifically in Title II, Congress placed the duty on every state and its agencies to prevent discrimination against disabled persons. The ADA specifically provided a prohibition against disabled people being "excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

Mr. Geness pled that, as part of its effort to fulfill its responsibility to ensure the Commonwealth's compliance with the ADA, AOPC makes regular inquiries of the ADA coordinators for each county with regard to cases involving criminal defendants who are pretrial detainees whose cases have not been called to trial in a timely fashion, according to Pennsylvania law. Regarding Mr. Geness' case, the AOPC made repeated and direct contact with the Fayette County Court Administrator to inquire about Mr. Geness' case and the reasons for his extended

incarceration without trial. Notwithstanding that those inquiries were made by AOPC, neither AOPC, nor any other agent of AOPC, including AOPC's local ADA coordinator in Fayette County, took any action designed to provide Mr. Geness with his right to be brought to trial on the charges that he faced. During the period of Mr. Geness' incarceration from in or about November, 2006, through in or about November, 2015, the Fayette County Court Administrator received from the Fayette County Prison a daily list of inmates incarcerated in the Fayette County Prison. This list included various information about each incarcerated individual, including the date that the individual was incarcerated, as well as the minimum and maximum incarceration dates for each prisoner. On each of the daily lists sent from the prison to the Court Administrator, Mr. Geness appeared together with information about his incarceration, as described above.

Of particular importance is the specifically stated duty of the AOPC to report to the Supreme Court on the efficiency of the court system, and to examine the dockets and "make recommendations [to the Pennsylvania Supreme Court] for the expedition of litigation." Pa. R.J.A. No. 505 (1)(6).[7] Mr. Geness further pled that the AOPC abandoned these duties in this regard.

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7. The Administrative Office shall have the power and its duties shall be:

> (1) To review the operation and efficiency of the system and of all offices related to and serving the system and, when necessary, to report to the Supreme Court or the Judicial Council with respect thereto….
>
> (6) To examine the state of the dockets and practices and procedures of the courts and of the magisterial district judges and make recommendations for the expedition of litigation.

It was known that Mr. Geness was not mentally competent to stand trial within the first year of his incarceration. By the time that he was unshackled and set free, it had been known for over nine years that Mr. Geness would never be competent to stand trial. Had the AOPC done its job, and had the head of the AOPC simply walked down the hall to the office of the Chief Justice, Mr. Geness contends that the Pennsylvania Supreme Court could have, and would have, invoked the mandatory language of the Mental Health Procedures Act to free Mr. Geness.[8] Given the belated admission by the District Attorney that the Commonwealth did not have sufficient evidence to convict Mr. Geness, a demand by the defense for an Order of *nolle prosequi* would have been granted with Mr. Geness having been freed from captivity.[9] In light of the foregoing, Mr. Geness adequately pled that the AOPC was a cog in the system that failed him, as referenced by the Court in *Geness I.*

The Trial Court agreed. Relying on this Honorable Court's holdings in *United States v. Georgia,* 546 U.S.151,159 (2006), and *Tennessee v. Lane,* 541 U.S. 509, 533-34 (2004),

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8. *See* footnote 13, *infra*, and accompanying text.

9. With respect to the Pennsylvania courts, organized under the Pennsylvania Unified Judicial System, the administrative arm of those courts is the AOPC. The website maintained by the AOPC acknowledges that it has the duty of compliance with the ADA. One specific portion of the site is dedicated to "ADA compliance." Within that section, the AOPC promises to insure "accessible courts for all citizens." The website also identifies AOPC's duty to make recommendations to the Pennsylvania Supreme Court, and to ensure that "every citizen has equal access to courtrooms." That same website asserts that the Pennsylvania Supreme Court has the power to take control of any case pending in the Commonwealth.

the Trial Court stated that Mr. Geness pled facts which created a plausible claim against the AOPC. Those facts included that AOPC had the express duty to (1) make regular inquiries of each county ADA coordinator regarding criminal trials that have not proceeded in a timely fashion, and (2) make recommendations to the Pennsylvania Supreme Court for the expediting of litigation. *Geness v. Pennsylvania*, 388 F. Supp. 3d 530, 535 (W.D. Pa. 2019); Appendix B, pp. 43a-45a.[10] Recognizing that the issues described above required factual determinations, the Trial Court concluded that these questions "may then be left to our jury." *Id.*

Pursuant to the *Lane* and *Georgia* holdings, *supra,* the Trial Court further observed that Congress had validly abrogated sovereign immunity under the ADA "for claims brought under Title II 'as it applies to the class of cases implicating the fundamental right of access to the courts.'" *Geness v. Pennsylvania*, 388 F. Supp. 3d at 534, n.8; Appendix B, p. 42a. In that regard, the Trial Court held,

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10. In so holding, the Trial Court relied on the duties, responsibilities and activities imposed upon AOPC by the Pennsylvania Rules of Judicial Administration, including specifically Pa. R.J.A. 505(1) and 505(6), which respectively require AOPC to "review the operation and efficiency of the system … and, when necessary … report to the Supreme Court … with respect thereto," and "examine the state of the dockets and … ***make recommendations for the expedition of litigation.***" *Geness v. Pennsylvania*, 388 F. Supp. 3d at 535, n.19; Appendix B, p. 44a. These rules led the Court to conclude:

> Mr. Geness plausibly pleads the AOPC could have helped him by exercising its duty to monitor the status of dockets and make recommendations to expedite litigation, ensure ADA compliance . . . and (report) to the Pennsylvania Supreme Court.

Id.

> [S]overeign immunity poses no bar to Mr. Geness' claim against the Commonwealth, because "insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity." The AOPC nonetheless argues it is entitled to sovereign immunity even though the Commonwealth of which it is "an arm" is not shielded by such immunity. This argument is unavailing.

Geness v. Pennsylvania, 388 F. Supp. 3d at 534; Appendix B, p. 42a. AOPC subsequently filed a collateral appeal to the Third Circuit, *Geness II*.

The Third Circuit in *Geness II* recognized the precedential value of the Third Circuit's ruling in *Geness I*, wherein the earlier panel held that,

> (A)s alleged, these multiple, protracted, and inexcusable delays in the handling of Geness' examinations, transfers, and (habeas corpus) motions – resulting in nearly a decade of imprisonment and civil commitment . . . – are more than sufficient to state a claim under the ADA."[11]

902 F.3d at 362. The Court highlighted the holding in *Geness I,* that the time that Mr. Geness spent languishing

11. The *Geness I* Court erroneously found that Mr. Geness' *habeas corpus* motions were eventually ruled upon by the Common Pleas Court. 902 F.3d at 362. As the record demonstrates, no hearing was ever held on any of the four *habeas corpus* motions filed on behalf of Mr. Geness over the course of almost a decade. *See, e.g.,* Geness II, 974 F.3d at 268, n.2; Appendix A, p. 5a.

in prison after it was evident that he would never be competent to stand trial far exceeded the "reasonable" time frame for holding a mentally disabled defendant. *Geness II,* 974 F.3d at 272, citing *Geness I*, 902 F.3d 344 at 363-64; Appendix A, pp. 13a-14a.

The Court also recognized Title II's requirement that disabled people be protected from discrimination in the services, programs and activities provided by state entities, and that such requirement is "extremely broad in scope, and includes anything a public entity does." *Geness II,* 974 F.3d at 277; Appendix A, 25a.

Notwithstanding these findings, the Circuit granted sovereign immunity to AOPC (not to the Commonwealth of Pennsylvania), in part because it found that imposing the duty on AOPC to intervene directly in the Geness case would require that AOPC "closely monitor, deeply evaluate and consider intervening in every criminal case pending in the Commonwealth." *Geness II,* 974 F.3d at 278; Appendix A, p. 28a. This ruling ignores two important points. First, the issue in this case involves not every criminal case in the Commonwealth, but rather those cases involving defendants found incompetent to stand trial by reason of their disability, which undoubtedly represents a significantly smaller subset of all cases in Pennsylvania.

Second, AOPC apparently already has a mechanism for monitoring cases that have languished for extended periods of time. Mr. Geness argues that AOPC already monitors cases for longevity, and that it should have done a better job in insuring that the matter was brought to some conclusion in a timely fashion. The Pennsylvania Rules of

Judicial Administration already provide the requirements for AOPC action. The fact that AOPC undertook to lightly intervene in the Geness case is an admission by AOPC that it knew its duty in this respect. Mr. Geness argues that AOPC should have done its job better, as so required under the ADA.[12]

Furthermore, the Pennsylvania Mental Health Procedures Act, 50 Pa. C.S. Section 7403(d), imposes the following mandatory requirement:

> Whenever a person who has been charged with a crime has been determined to be incompetent to proceed, he shall not … be denied pretrial release. Nor shall he in any event be detained on the criminal charge longer than the reasonable

12. The Circuit observed that Mr. Geness "neither identifies in his Complaint nor argues before us what further action AOPC should have or could have taken" to prompt action by the Fayette County Common Pleas Court. *Geness II,* 974 F.3d at 276; Appendix A, p. 24a. Mr. Geness respectfully argues that the duty to ensure ADA compliance, and to propose mechanisms to ensure that compliance, was laid upon the states through their agencies, not upon mentally ill criminal defendants challenging ten years of enforced detention. Notwithstanding, Mr. Geness suggests that, during the multiple instances where AOPC contacted the local Court Administrator demanding explanations, it would have been the simplest solution to insist that the Court Administrator prevail upon the President Judge of the county to take action to move the case forward, failing which AOPC could then take the matter up with the Chief Justice of the Pennsylvania Supreme Court. To do so would have initiated AOPC's duty under the rules to "make recommendations for the expedition of litigation." If the local Court then failed to take action, AOPC could have fulfilled its duty by making "a report to the Supreme Court" regarding such failure.

> period of time necessary to determine ***whether there is a substantial probability that he will attain that capacity in the foreseeable future.***

(emphasis supplied).[13]

Mr. Geness respectfully asserts that the fair inference from the facts pled is that, upon being informed of the ongoing miscarriage of justice to Mr. Geness, the highest Court in Pennsylvania would have followed the mandatory dictates of the Mental Health Procedures Act, and freed Mr. Geness.

Nevertheless, the majority held that the allegations against the AOPC failed to satisfy the first requirement of *Georgia*, setting forth a plausible Title II claim, *i.e.*, that Mr. Geness failed to plead that he was an individual who was excluded from participation in or was denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity by reason of his disability. *Geness II*, 974 F.3d at 273-78, Appendix A, pp. 18a-29a.[14]

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13. *See, e.g., Commonwealth v. Kerrigan,* 271 Pa. Super. Ct. 404 (1979) (Pa. Supreme Court Justice Nix sitting by designation); *Commonwealth v. Young,* Nos. MD-938-11, T 051289-0, 2012 Pa. Dist. & Cnty. Dec. LEXIS 126 (C.P. May 4, 2012).

14. To state a claim under Title II of the ADA, in satisfaction of the *Georgia* requirement, a party must sufficiently plead that "(1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability." *Geness II,* 974 F.3d at 273; Appendix A, 18a.

However, "the phrase 'service, program, or activity' under Title II . . . is 'extremely broad in scope and includes anything a public entity does.'" *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 289 (3d Cir. 2019). Mr. Geness pled that AOPC, an arm of the Commonwealth, administers the Pennsylvania Judicial System and is responsible for the prompt and proper disposition on all business of the courts of the Commonwealth of Pennsylvania. The duties and responsibilities of the AOPC include insuring accessible and safe courts for all citizens and ensuring that the courts of the Commonwealth comply with Title II of the ADA. Mr. Geness further set forth that, despite the AOPC's aforementioned enumerated duties and its knowledge that Mr. Geness was languishing in custody, neither the AOPC, nor any other agent of AOPC, including the AOPC's local ADA coordinator in Fayette County, took any action designed to provide Mr. Geness with his right to be brought to trial on the charges that he faced. In light of those facts, the Trial Court, as well as the dissent, found that Mr. Geness had satisfied the pleading standard.

Mr. Geness did not argue that AOPC should expand its responsibility under the ADA. Instead, Mr. Geness merely asked that it perform its enumerated duties, as mandated by the ADA. These duties were pled by Mr. Geness and confirmed through discovery. The majority's holding in *Geness II* focused on the point that AOPC cannot affect judicial decision-making, and, therefore, it was not properly suited to defend Mr. Geness' ADA rights. "The AOPC is not, and should not be, a judicial back-seat driver."[15] *Geness*

15. Mr. Geness respectfully argues that requiring the AOPC to fulfill its obligations and duties under Pa. R.J.A. No. 505(1)(6) is not in the nature of "backseat driving." Rather, it is respectfully urged that requiring AOPC to report this matter to the Pennsylvania Supreme Court with a recommendation as to the expedition of this

II, 974 F.3d at 277; Appendix A, p. 26a. However, as the Circuit previously found in *Geness I*, it was not just the judges that were the problem in this case. It was a systemic failure. Therefore, Mr. Geness urges this Honorable Court to adopt the view of the well-reasoned dissent in *Geness II*.

Judge Ambro wrote for the dissent:

> Mr. Geness clearly identifies the provisions of Pennsylvania law that tasked the AOPC with monitoring the criminal docket and reporting failures directly to the Commonwealth's Supreme Court. And he alleges that the AOPC's failure to perform those tasks substantially, if not exclusively, led to his unconscionable and lengthy pretrial detention … My colleagues do not explain why monitoring the criminal dockets and reporting issues up to the Supreme Court does not satisfy this definition of "service," nor why they discount Mr. Geness' allegations that he was denied the service of having AOPC flag the extreme delay in his case directly to that Supreme Court.

Geness II, 974 F.3d at 279-80; Appendix A, pp. 31a-32a.

The Third Circuit granted AOPC's appeal, thus endangering the mental health protections afforded by the ADA for Mr. Geness, as well as all mentally disabled defendants in the Commonwealth. In fact, given that this holding appears to be a matter of first impression nationwide, this ruling could open the floodgates for

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litigation is the AOPC's job, as part of its duties under the Rules of Judicial Administration and in compliance with the ADA.

all agencies in all states charged with the duty to ensure ADA compliance seeking to avoid that same responsibility. This ruling would likely cause more cases to surface, showcasing the devastating effects of prolonged incarceration of mentally ill pretrial detainees.

Judge Ambro further wrote:

> We are to construe complaints so "as to do substantial justice . . . Mr. Geness's allegations more than suffice at this stage, and given the harrowing ordeal he endured at the hands of the judicial system, it would be a further injustice not to allow his suit against the AOPC (the very agency with the duty to monitor the dockets and report up any issues) to continue. To do otherwise is to define adequacy down. I respectfully dissent.

Geness II, 974 F.3d at 281; Appendix A, p. 34a.

The federal courts are charged with the duty to construe complaints so as to do substantial justice, both to Mr. Geness, and to those current and future pretrial detainees jailed for the sole reason that they are mentally incompetent to stand trial. It is respectfully urged that the Circuit's decision does neither.

CONCLUSION

For the foregoing reasons, Mr. Geness respectfully requests that this Honorable Court issue a writ of certiorari to review the judgment of the Third Circuit Court of Appeals.

Respectfully submitted,

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Dated: March 12, 2021

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED SEPTEMBER 8, 2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2253

CRAIG A. GENESS

v.

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS; COMMONWEALTH OF PENNSYLVANIA; PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES
Administrative Office of Pennsylvania Courts,

Appellant.

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 2-16-cv-00876)
District Judge: Honorable Mark A. Kearney

Before: AMBRO, HARDIMAN, and RESTREPO,
Circuit Judges

May 26, 2020, Argued
September 8, 2020, Filed

Appendix A

OPINION OF THE COURT

RESTREPO, *Circuit Judge.*

Mentally disabled and deemed incompetent to stand trial, Craig Geness was detained for nearly a decade before the homicide charge against him was ultimately dismissed. His case exhibits inexcusable failures in Pennsylvania's criminal justice and mental health systems. While there is no doubt that Geness's case languished for far too long, we are limited here to the narrow question whether the Administrative Office of Pennsylvania Courts (AOPC) may plausibly be held liable for his misfortune.

This appeal arises from AOPC's motion to dismiss Geness's claim under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131, and the Fourteenth Amendment. The District Court denied AOPC's motion, finding that AOPC does not have sovereign immunity. For the reasons set forth below, we will reverse the District Court's judgment and remand for dismissal of Geness's Title II and Fourteenth Amendment claim against AOPC.

I. BACKGROUND AND PROCEDURAL HISTORY

The events leading up to this case reveal a breakdown in Pennsylvania's criminal justice system.[1] Geness is a permanently mentally disabled individual in his early

1. The following facts are taken from Geness's Second Amended Complaint except where otherwise noted.

fifties. On November 17, 2006, he was detained after being charged with aggravated assault. The charge was later amended to homicide. This stemmed from an incident at Geness's assisted living facility, McVey Personal Care Home, in Uniontown, Pennsylvania. *Geness v. Cox*, 902 F.3d 344, 349 (3d Cir. 2018). A resident of the facility fell from the building's porch and suffered serious injuries that resulted in his death a few weeks later. *Id.* Despite initial reports that the fall was an accident, the deceased resident's daughter contacted police to share her suspicion that he might have been pushed. *Id.* at 349. Police then initiated an investigation that led to the charge against Geness. *Id.* at 349-50.

On June 18, 2007, a judge for the Court of Common Pleas of Fayette County deemed Geness incompetent to stand trial and ordered him transferred to a psychiatric hospital for no more than sixty days to ascertain his capacity to stand trial and his potential to regain competency. Despite the judge's order, Geness was not immediately transferred because, he avers, "the waiting list for beds for persons deemed incompetent to stand trial far exceeded the number of beds that DHS [the Pennsylvania Department of Human Services] had made available." App. 38 ¶ 17. Approximately two months after the judge's order was entered, and with no psychiatric evaluation undertaken, another judge again "deemed [Geness] incompetent to stand trial and directed that a motion be filed when Plaintiff was deemed competent to proceed." App. 38 ¶ 19.

Another two months after that (approximately ten months after his arrest), Geness was finally transferred to a psychiatric facility where he underwent an evaluation on September 25, 2007 and was then returned to prison. He was deemed incompetent with a "poor" prognosis for improvement, yet no action was taken by the court, and he remained imprisoned for years to come. App. 39 ¶ 21.

Throughout those years, his case was subject to the court's monthly "call of the list." This is when a Court of Common Pleas judge reviews a list of all pending criminal matters that are ripe for trial, addressing each case individually and either continuing it or scheduling the trial. The district attorney and public defender for each case attend this proceeding and provide the judge with relevant information.

In Geness's case, the district attorneys "acquiesced to the repeated continuance" of his trial—and his public defender "made no attempt to have [Geness's] case removed from the trial list, despite [his] known incompetency to stand trial" and despite the public defender's "authority and [] opportunity" to make an appropriate request. App. 40 ¶¶ 28, 30-31. Nor did any of the six judges who at one time or another presided over the "call of the list" intervene throughout three years of monthly check-ins.

On November 23, 2010, the public defender representing Geness "filed a motion requesting that [his] trial be continued until [he] became competent." App. 41 ¶ 35. Less than a week later, a judge ordered his transfer from prison to a psychiatric institution "for a period not to exceed 90 days" to again evaluate his competency and potential to regain competency. App. 41 ¶ 37. Geness was

never transferred pursuant to that order and remained in prison. Once again, on August 17, 2011, a judge ordered a competency determination.

Finally, on September 4, 2011, approximately five years after Geness's arrest, a second competency evaluation was conducted, this time at the prison. It was again determined that Geness was incompetent to stand trial and unlikely to improve. Later that month, a judge "ordered that [Geness] was not competent to stand trial and released him to be involuntarily committed to a Long Term Structured Residence ("LTSR"), there to remain without contact with the general public and to be returned to Fayette County Prison upon completion of his therapeutic program or upon a determination that he is competent to stand trial." App. 43 ¶ 48. On September 22, 2011, nearly five years after his arrest, Geness was transferred to a LTSR.

Approximately four years after that, with Geness's case all the while subjected to the monthly "call of the list," the Commonwealth "filed a proposed order for *nolle prosequi* all charges against the Plaintiff," stating that he "will never be competent for trial and that substantive evidentiary issues existed which would impair the Commonwealth's ability to meet its burden of proof." App. 43 ¶¶ 51, 53-54. On December 10, 2015, a judge entered the order *nolle prosequi* all charges against Geness. After nine years in custody without a trial, Geness was released.[2]

2. Throughout Geness's time in custody, his counsel filed four motions for habeas corpus and/or motions to dismiss the charge. No hearings were held or rulings made on those requests.

Appendix A

On June 17, 2016, Geness filed his original complaint against the County of Fayette, City of Uniontown, Jason Cox (formerly a Uniontown Police Department detective, now chief of police), and James and Jean McVey (owners of McVey Personal Care Home). He brought an Americans with Disabilities Act (ADA) and Fourteenth Amendment claim against the county and city, various civil rights claims under 42 U.S.C. § 1983 against all defendants, and an intentional infliction of emotional distress claim against Cox and the McVeys.

On March 6, 2017, Geness moved for leave to amend his complaint to add the Commonwealth of Pennsylvania as a party based on the same allegations. The District Court denied his motion for leave to amend, finding it barred by the *Rooker-Feldman* doctrine.

After various motions before the District Court, all defendants were dismissed except Detective Cox. Following discovery, Cox filed a motion for summary judgment, which the District Court granted on May 1, 2017. Geness appealed the summary judgment ruling on his § 1983 claims against Cox and the denial of his motion to amend his complaint to add the Commonwealth as a party.

On appeal, this Court affirmed the District Court's grant of Cox's summary judgment motion, reversed its denial of leave for Geness to amend his complaint to add the Commonwealth, and remanded for reinstatement of Geness's claim under Title II of the ADA and the Fourteenth Amendment.

Geness subsequently amended his complaint to add a Title II and Fourteenth Amendment claim against the Commonwealth. The Commonwealth then filed a motion to dismiss based on sovereign immunity, which the District Court denied. The Commonwealth did not appeal the denial. On March 27, 2019, Geness filed a Second Amended Complaint, the operative complaint, alleging Title II and Fourteenth Amendment violations against three state defendants—the Commonwealth, as well as AOPC and DHS.

AOPC moved to dismiss based on sovereign immunity, and the District Court denied its motion. AOPC timely appealed, and the District Court's denial of AOPC's motion to dismiss is now before us. This appeal does not involve Geness's claims against the Commonwealth or DHS; AOPC is the only appellant.

II. STANDARD OF REVIEW[3]

We review de novo a motion to dismiss based on sovereign immunity. *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 694 (3d Cir. 1996).[4] At the motion to

3. The District Court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, and we exercise jurisdiction under 28 U.S.C. § 1291.

4. Geness filed a motion for leave to file a supplemental appendix that contains materials that were not before the District Court. At this stage of the litigation, we are constrained to "the allegations contained in the complaint, exhibits attached to the complaint and matters of public record," and there is presently no reason to depart from this rule. *Pension Benefit Guar. Corp. v. White Consol. Indus.*,

dismiss stage, "we accept all well-pleaded allegations in the Complaint as true and draw all reasonable inferences in favor of the non-moving part[y]." *M.A. ex rel. E.S. v. State-Operated Sch. Dist. of City of Newark*, 344 F.3d 335, 340, 342 (3d Cir. 2003). To survive a motion to dismiss, factual allegations "must be enough to raise a right to relief above the speculative level," which "requires more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

III. DISCUSSION

The Eleventh Amendment renders States immune from any lawsuit "commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. While the Amendment's terms only apply to suits brought by citizens of another state, the Supreme Court has "repeatedly held that this immunity also applies to unconsented suits brought by a State's own citizens." *Tennessee v. Lane*, 541 U.S. 509, 517, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004). This immunity further extends to "entities that are considered arms of the state."[5] *Bowers v. NCAA*, 475 F.3d 524, 545 (3d Cir. 2007) (citing *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429, 117 S. Ct. 900, 137 L. Ed. 2d 55 (1997)).

Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). We therefore deny Geness's motion, which would improperly expand the record on appeal.

5. It is undisputed that AOPC is an "arm of the Commonwealth." Appellant's Br. 17.

Congress has the power to abrogate states' Eleventh Amendment immunity, thus permitting suits to proceed for specific claims, when it "unequivocally" expresses an intent to do so and validly exercises this power within the bounds of its authority under § 5 of the Fourteenth Amendment. *Id.* at 550. "When Congress seeks to remedy or prevent unconstitutional discrimination, § 5 authorizes it to enact prophylactic legislation proscribing practices that are discriminatory in effect, if not in intent, to carry out the basic objectives of the Equal Protection Clause." *Id.* at 551 (quoting *Lane*, 541 U.S. at 520).

Congress unequivocally expressed its intent to abrogate sovereign immunity for claims brought under Title II of the ADA. *United States v. Georgia*, 546 U.S. 151, 154, 126 S. Ct. 877, 163 L. Ed. 2d 650 (2006) (quoting 42 U.S.C. § 12202, which states that "a State shall not be immune under the eleventh amendment to the Constitution of the United States from an action . . . for a violation of this chapter."). The Title's purpose, in part, is "to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b)(4); *see also Bowers*, 475 F.3d at 550 (acknowledging Congress's clear intent to abrogate sovereign immunity for Title II claims).

While Congress "must have a wide berth in devising appropriate remedial and preventative measures" under § 5 of the Fourteenth Amendment, its power is not "unlimited." *Lane*, 541 U.S. at 519. The Supreme Court in

Lane held that Congress validly abrogated state sovereign immunity for claims brought under Title II "as it applies to the class of cases implicating the fundamental right of access to the courts." *Id.* at 533-34. That claim was brought by paraplegic individuals, one of whom was required to appear in a second-floor courtroom in a building with no elevator. *Id.* at 513. He crawled up the stairs of the courthouse to attend his first court appearance. *Id.* For his second appearance, he refused to crawl or be carried by officers. *Id.* He was "consequently arrested and jailed for failure to appear." *Id.* The Court reiterated the principle that "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard." *Id.* at 532 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)). But it limited its holding to Title II lawsuits that implicate "accessibility of judicial services," deliberately leaving unanswered whether Congress validly abrogated sovereign immunity for "Title II's other applications," for example, "failing to provide reasonable access to hockey rinks, or even to voting booths." *Id.* at 530-31.

Subsequently, in *Georgia*, the Court made clear that courts analyzing whether Congress validly abrogated sovereign immunity for a Title II claim against a state or state entity must conduct a "claim-by-claim" analysis. 546 U.S. at 159. It accordingly established a three-part test for courts to determine whether sovereign immunity has been abrogated in a particular case: "(1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but

did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid." *Id.*

Here, we must apply this three-part test to determine whether Congress validly abrogated sovereign immunity for Geness's claim against AOPC (and thus whether the claim may proceed). Before we apply *Georgia*, we will first examine the extent to which our Court's prior precedential opinion in this matter is controlling here, and we will examine the District Court's decision on remand. Pursuant to *Georgia*, we will reverse the District Court's judgment and hold that AOPC retains its sovereign immunity because Geness has not stated a Title II claim against it.

A. Our Court's Prior Precedential Opinion

On August 28, 2018, our Court, *inter alia*, reversed the District Court's denial of Geness's motion for leave to amend his complaint to add the Commonwealth as a defendant. We remanded the case for amendment of the Complaint and reinstitution of his Title II and Fourteenth Amendment claim.

In addressing whether the District Court should have permitted Geness to amend his Complaint, we analyzed whether his proposed Title II and Fourteenth Amendment claim against the Commonwealth would be futile, thus applying the same standard as a motion to dismiss (as

we do here).[6] We held that Geness's proposed claim was not futile and should be permitted. In the course of the analysis, we addressed each requirement of a Title II claim:

> To state a claim under Title II of the ADA, Geness must establish: "(1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability."

Geness, 902 F.3d at 361 (quoting *Haberle v. Troxell*, 885 F.3d 171, 178-79 (3d Cir. 2018) and citing 42 U.S.C. § 12132).

We found that Geness met all four requirements of a cognizable Title II claim against the Commonwealth. Specifically, we noted that

> [r]egulations promulgated under the ADA require that the Commonwealth "*shall* ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals," 28 C.F.R. § 35.152(b)(2) (emphasis added),

6. "The standard for assessing futility is the 'same standard of legal sufficiency as applies under [Federal] Rule [of Civil Procedure] 12(b)(6).'" *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175 (3d Cir. 2010) (quoting *Shane v. Fauver*, 213 F.3d 113, 115 (3d Cir.2000)).

> and "[s]hall not place inmates or detainees with disabilities in inappropriate security classifications because no accessible cells or beds are available," *id.* § 35.152(b)(2)(i).

Id. at 361-62 (discussing several procedural protections "designed to avoid undue delays and safeguard the fair and efficient functioning of the criminal justice system," the denial of which gives rise to a cognizable ADA claim).

With respect to the Title II claim, we concluded that "[a]s alleged, these multiple, protracted, and inexcusable delays in the handling of Geness's examinations, transfers, and motions—resulting in nearly a decade of imprisonment and civil commitment before a hearing was finally held on his habeas petition—are more than sufficient to state a claim under the ADA." *Id.* at 362.

We went on to find that the same circumstances gave rise to a claim under the Fourteenth Amendment:

> [T]he constitutional claims Geness seeks to bring against the Commonwealth as to both the length of his pretrial imprisonment and the length of his civil commitment would not be futile. After his first psychological evaluation indicated that he "remain[s] incompetent to stand trial," . . . Geness was incarcerated for an additional three years before civil commitment proceedings and a second examination were even *requested*. And once institutionalized, Geness was left to languish for another four

> years before he was granted a hearing on his habeas petition and the charges against him were dismissed. There is no question this exceeded the "reasonable period of time necessary" under *Jackson* to ascertain whether there was a substantial probability Geness would attain competency in the foreseeable future.

Id. at 363-64 (citation omitted).

When we published this opinion, however, AOPC was neither a party nor a contemplated party. Thus, it is our task to square our prior holding that Geness stated a Title II and Fourteenth Amendment claim against the *Commonwealth* with Geness's pleadings against *AOPC*.[7]

B. District Court on Remand

The District Court held that Geness sufficiently pleaded a Title II and Fourteenth Amendment claim against AOPC and that AOPC's sovereign immunity was validly abrogated (*i.e.*, that Geness's claim could proceed). It stated that "[a]t this preliminary stage and mindful Mr. Geness is not challenging judicial decision making but rather failures in court administration practices[,]" it would not dismiss his claim. *Geness v. Commonwealth*, 388

7. The law of the case doctrine instructs that "one panel of an appellate court generally will not reconsider questions that another panel has decided on a prior appeal in the same case." *In re City of Phila. Litig.*, 158 F.3d 711, 717 (3d Cir. 1998). We are thus bound by our prior opinion to the extent it bears upon the matter before us.

F. Supp. 3d 530, 534 (W.D. Pa. May 28, 2019). And it noted that discovery may help clarify "the potential liability and damages among allegedly responsible state actors [AOPC, DHS, and the Commonwealth]." *Id.* ("AOPC's argument of no involvement, or the more central involvement of the Department of Human Services, is based on facts requiring discovery on relative culpability.").

In reaching this conclusion, the District Court found convincing Geness's general allegation that "AOPC is responsible for '[e]nsuring accessible and safe courts for all citizens' by '[e]nsuring that the courts of the Commonwealth comply with Title II.'" *Id.* at 534 (quoting Second Am. Compl. ¶ 7 (App. 36 ¶ 7)). It also noted the following more specific allegations from his Second Amended Complaint: Geness alleged that AOPC "makes regular inquiries of each county's ADA coordinator with regard to cases involving criminal defendants who are pretrial detainees whose cases have not been called to trial in a timely fashion," App. 45 ¶ 66, and that even though "AOPC repeatedly contacted the Fayette County court administrator directly to inquire about the Plaintiff's case and the reasons for [his] extended incarceration without trial," App. 45 ¶ 67, AOPC failed to take "any action designed to provide the Plaintiff with his right to be brought to trial on the charges that he faced," App. 45 ¶ 67. Further, Geness alleged that the Fayette County Court administrator, who serves as the ADA coordinator for Fayette County, received a daily list of prisoners that showed their length of incarceration—and that his name appeared on this list.

The District Court also focused on AOPC's duties pursuant to the Pennsylvania Rules of Judicial Administration. These rules task AOPC with (1) "review[ing] the operation and efficiency of the system and of all offices related to and serving the system and, when necessary . . . report[ing] to the Supreme Court or the Judicial Council with respect thereto," (2) "examin[ing] the state of the dockets and practices and procedures of the courts and of the magisterial district judges and mak[ing] recommendations for the expedition of litigation," and (3) "prepar[ing] educational and training materials for system and related personnel and to conduct educational and training sessions." *Geness*, 388 F. Supp. 3d at 534 (quoting Pa.R.J.A. Nos. 505(1), (6), (12) (alterations in original)).

Considering all of this, the District Court concluded that "Mr. Geness plausibly pleads the AOPC could have helped him by exercising its duty to monitor the status of dockets and make recommendations to expedite litigation, ensure ADA compliance at a systemic level in the courts of the Commonwealth, and reporting to the Pennsylvania Supreme Court." *Id.* The District Court did not, however, explain how or at what point AOPC could or should have exercised these duties, given Geness's acknowledgement that AOPC "repeatedly contacted the Fayette County Court administrator directly to inquire about the Plaintiff's case and the reasons for the Plaintiff's extended incarceration without trial," App. 45 ¶ 67, and that Geness "is not challenging judicial decision making," *Geness*, 388 F. Supp. 3d at 532.

In summary, the District Court found that Geness had stated a viable Title II and Fourteenth Amendment claim because AOPC allegedly failed to take unspecified action to expedite his case and failed to take initiative to report the status of his case to the Pennsylvania Supreme Court. The District Court thus concluded that it could not rule out AOPC's Title II and Fourteenth Amendment liability as a matter of law and that AOPC therefore was not immune from suit.[8]

C. *Georgia* Analysis

To determine whether Congress validly abrogated sovereign immunity for Geness's Title II and Fourteenth Amendment claim against AOPC, we must apply the three-part *Georgia* test.[9] The District Court, without explicitly noting that it was applying *Georgia*, concluded that the first and second inquiries were satisfied, thus permitting the claim against AOPC to proceed. Pursuant to the analysis below, we disagree with the District Court and conclude that Geness has failed to satisfy the first requirement of *Georgia* because he failed to

8. The District Court also addressed whether AOPC possessed quasi-judicial immunity and found that it did not. *Id.* at 536-38. AOPC does not appeal this ruling.

9. As noted above, this test requires courts to examine "(1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid." *Georgia*, 546 U.S. at 159.

set forth a plausible claim that AOPC violated Title II. Because Geness's allegations fail to satisfy *Georgia*'s first requirement, we need not address the second and third requirements.

To state a claim under Title II of the ADA, in satisfaction of the first *Georgia* requirement, a party must sufficiently plead that "(1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability."[10] *Geness*, 902 F.3d at 361 (quoting *Haberle*, 885 F.3d at 178-79); 42 U.S.C. § 12132.[11] In our prior precedential opinion, we concluded that the first and second requirements were satisfied, as well as the third and fourth requirements as they relate to the Commonwealth. *Id.* at 361-62. We must now determine whether *AOPC* denied Geness "the benefits

10. It is undisputed that AOPC is a "public entity." *See* 42 U.S.C. § 12131(1)(B) (stating that public entities include "any department, agency, special purpose district, or other instrumentality of a State or States or local government").

11. A plaintiff seeking compensatory damages under the ADA must also sufficiently allege that the public entity intentionally discriminated against him or her. *Haberle*, 885 F.3d at 181. To satisfy this element of intentional discrimination, a plaintiff must allege at least "deliberate indifference," which requires "(1) knowledge that a federally protected right is substantially likely to be violated . . . and (2) failure to act despite that knowledge." *Id.* (quoting *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 265 (3d Cir. 2013)) (alteration in original); *see also Geness*, 902 F.3d at 362 n.13. We will not address deliberate indifference here because we hold that Geness's allegations fail to satisfy Title II's other requirements.

of [its] services, programs, or activities . . . by reason of his disability." *Id.*

The following are Geness's allegations regarding AOPC, drawn directly from his Second Amended Complaint:[12]

- "Defendant AOPC is a subsidiary unit of the Commonwealth of Pennsylvania and as such acts as an agent of the Commonwealth in various matters related to supervision and administration of the Pennsylvania Unified Judicial System. The Pennsylvania Unified Judicial System includes

12. Geness's Second Amended Complaint also links AOPC's alleged wrongdoing to the conduct of judges in their disposition of his case. *See, e.g.*, App. 43 ¶ 52 ("The above-described Judges continued to permit Plaintiff's case to be listed for trial, despite their actual knowledge of his incompetency."). Allegations of wrongdoing based on judicial conduct are omitted here because AOPC's administrative functions and the independent role of the judiciary must not be conflated. *See Figueroa v. Blackburn*, 208 F.3d 435, 440 (3d Cir. 2000) ("The doctrine of judicial immunity is founded upon the premise that a judge, in performing his or her judicial duties, should be free to act upon his or her convictions without threat of suit for damages."). The parties do not present and we are not aware of any legal authority that would permit AOPC to be found liable based on judicial conduct. Further, Geness acknowledges that AOPC cannot be held liable based on judges' decision-making. Appellee's Br. 25 ("The AOPC does not have oversight over criminal cases and the decisions that are required in each such case to the extent that those are duties to be performed by the Judges of the Common Pleas Court. . . . AOPC does in fact have the duty to oversee the actions of those Judges to ensure that, among other things, the courts comply with the rights of disabled individuals.").

judges of the Court of Common Pleas of the various Pennsylvania counties, including Fayette County. In its capacity as a subsidiary unit of the Commonwealth, AOPC administers the Pennsylvania Unified Judicial System and is responsible for the prompt and proper disposition of all business of the courts of the Commonwealth of Pennsylvania. Among the duties and responsibilities of the AOPC is insuring accessible and safe courts for all citizens. The duties of the AOPC include insuring that the courts of the Commonwealth comply with Title II of the [ADA]. The AOPC attempts to insure compliance with the ADA through interaction with ADA coordinators in each county of the Commonwealth. For Fayette County, Pennsylvania, the role of AOPC ADA coordinator is filled by the deputy court administrator, who reports directly to the court administrator." App. 36 ¶ 7.

- "AOPC, through the Fayette County Court of Common Pleas . . . discriminated against [him] because of his disability by depriving him of the administration of judicial services and the normal benefits of criminal procedure and due process of the law." App. 44 ¶ 61.

- "As part of its effort to fulfill its responsibility to insure the Commonwealth's compliance with the ADA, Defendant AOPC makes regular inquires of each county's ADA coordinator with regard to cases involving criminal defendants who are pretrial

detainees whose cases have not been called to trial in a timely fashion according to Pennsylvania law." App. 45 ¶ 66.

- "Defendant AOPC repeatedly contacted the Fayette County court administrator directly to inquire about the Plaintiff's case and the reasons for the Plaintiff's extended incarceration without trial. Notwithstanding that those inquiries were made by Defendant AOPC, neither the AOPC, nor any other agent of AOPC, including the AOPC's local ADA coordinator in Fayette County, took any action designed to provide the Plaintiff with his right to be brought to trial on the charges he faced." App. 45 ¶ 67.

- "During the period of Plaintiff's incarceration, the Fayette County ADA coordinator was the assistant court administrator. At all times relevant to this case, the assistant court administrator reported directly to the court administrator." App. 45 ¶ 68.

- "During the period of Plaintiff's incarceration . . . , the Fayette County court administrator received from the Fayette County Prison a daily list of prisoners incarcerated in the Fayette County Prison. This list included various information about each incarcerated individual, including the date that the individual was incarcerated, as well as the minimum and maximum incarceration dates for each prisoner." App. 45-46 ¶ 69.

- "On each of the daily lists sent from the prison to the court administrator, Plaintiff Craig Geness appeared together with information about his incarceration described above." App. 46 ¶ 70.

- The AOPC's conduct, described above, "deprived [Geness] of his right to the justice system, which is protected by the Fourteenth Amendment of the United States Constitution." App. 47 ¶ 82.

Identifying AOPC's "services, programs, or activities" at the foundation of Geness's Title II claim is a necessary first step to determining whether his claim is cognizable. *See Disability Rights N.J., Inc. v. Comm'r, N.J. Dep't of Human Servs.*, 796 F.3d 293, 301-03 (3d Cir. 2015). "[T]he phrase 'service, program, or activity' under Title II . . . is 'extremely broad in scope and includes anything a public entity does.'" *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 289 (3d Cir. 2019) (quoting *Disability Rights*, 796 F.3d at 301).

In *Disability Rights*, this Court identified the alleged "service, program, or activity" as a judicial hearing before a mentally ill person can be forcibly medicated in a nonemergent situation. *Id.* at 303-04, 307 (holding that "judicial process before the nonemergent administration of psychotropic drugs is *not* a 'service, program, or activity' of New Jersey from which the civilly committed are excluded). In *Furgess*, this Court concluded that a prison's "provision of a shower is a service, program, or activity." 933 F.3d at 291 (holding that Furgess adequately alleged a Title II claim based on the prison's failure to

accommodate his need for a shower). In *Bowers*, the University of Iowa's program was its provision of athletic scholarships. 475 F.3d at 553 (holding that Bowers stated a claim under Title II).

Based on Geness's Second Amended Complaint and his arguments before this Court, and because Geness concedes that AOPC's liability cannot be premised on judicial decision-making, *see supra* note 12, the only "services, programs, or activities" at issue are AOPC's administrative duties to (1) "intervene directly with the Fayette County Court to ensure that the Plaintiff's case moved forward," and (2) "seek intervention for such result by the Pennsylvania Supreme Court." Appellee's Br. 22. Geness argues that Title II requires AOPC to provide him these two services from which he was excluded based on his disability.[13] AOPC counters that its "enumerated powers" do not authorize it to meddle in "specific litigation." Appellant's Br. 33.

First, regarding AOPC's alleged failure to directly intervene with the Fayette County Court of Common Pleas, Geness acknowledged in his Second Amended Complaint that AOPC "repeatedly" made inquiries about

13. To the extent Geness additionally alleges that AOPC had a duty to ensure his motions for habeas corpus relief and motions to dismiss the charge against him were heard and ruled upon in a timely manner, we conclude that these allegations are both dependent on judicial conduct and too speculative to sustain his claim because they are not linked to any alleged service, program, or activity of AOPC under Pennsylvania Rule of Judicial Administration 505 or otherwise. *See supra* note 12; *Twombly*, 550 U.S. at 555.

the length of his detention to the court administrator. App. 45 ¶¶ 66-67. But, he alleged, AOPC failed to take "any action" beyond those inquiries that would "provide [him] with his right to be brought to trial." App. 45 ¶ 67. He neither identifies in his Complaint nor argues before us what further action AOPC should have or could have taken. And it is difficult to imagine what action it could have taken in light of Geness's concession that AOPC is not liable for judges' decision-making in individual cases. *See supra* note 12. Thus, Geness's allegation of AOPC's failure to directly intervene with the county court in some unspecified manner, beyond its repeated inquiries to the court administrator, cannot sustain his claim under Title II of the ADA. *See Twombly*, 550 U.S. at 555 (stating that allegations must be more than "speculative" or "conclusory").

This leaves only Geness's argument that AOPC failed to seek intervention from the Pennsylvania Supreme Court. He does not make this allegation anywhere in his Second Amended Complaint. It stems from AOPC's "powers and duties" enumerated in the Pennsylvania Rules of Judicial Administration. Pa.R.J.A. No. 505. We will take judicial notice of the Pennsylvania Rules of Judicial Administration, as they are "matters of public record," which the District Court considered as well. *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) (quoting 5B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed. 2004)). AOPC's duties include, in relevant part:

> (1) To review the operation and efficiency of the system and of all offices related to and serving the system and, when necessary, to report to the Supreme Court or the Judicial Council with respect thereto. . . .
>
> (6) To examine the state of the dockets and practices and procedures of the courts and of the district justices of the peace and make recommendations for the expedition of litigation.

Pa.R.J.A. No. 505(1), (6).

The "service, program, or activity" requirement under Title II is "extremely broad in scope and includes anything a public entity does." *Furgess*, 933 F.3d at 289 (finding that "a prison's provision of showers to inmates fits within this expansive definition"). Nonetheless, the "service, program, or activity" must be one that the entity actually provides. *See, e.g., Lane*, 541 U.S. at 531 (holding that access to court proceedings is a service provided by the state). This is an obvious but important limitation. For example, in *Disability Rights*, we held that "the provision of judicial process before the [forcible] nonemergent administration of psychotropic drugs is not a 'service, program, or activity' of New Jersey from which the civilly committed are excluded." 796 F.3d at 305, 307 (stating that this was not a "public service, program, or activity to which nondisabled individuals have access").

Our dissenting colleague cites Pa.R.J.A. No. 505(1), (6) as the basis of his opinion that Geness has stated a viable Title II claim against AOPC. These provisions, however, do not suffice to establish a Title II claim against AOPC. They charge AOPC with "review[ing] the operation and efficiency of the system" and reporting to the Supreme Court "when necessary"—and with "examin[ing] the state of the dockets and practices and procedures of the courts . . . and mak[ing] recommendations for the expedition of litigation." Pa.R.J.A. No. 505(1), (6). These rules unambiguously require AOPC to facilitate an "efficien[t]" and "expeditio[us]" system, in line with its role as an administrative body. They do not task AOPC with policing potential civil rights violations in particular cases—to do so would task the AOPC with making legal determinations and recommendations. The AOPC is not, and should not be, a judicial back-seat driver. *See supra* note 12.

Geness argues that AOPC's failure to "seek intervention by the Pennsylvania Supreme Court" impacted his ability to be "timely [tried] on the charges that he faced." Appellee's Br. 11. This argument requires some unpacking. First, he was never competent to stand trial throughout his years of detainment—and subjecting him to trial would have violated his due process rights. *See Cooper v. Oklahoma*, 517 U.S. 348, 354, 116 S. Ct. 1373, 134 L. Ed. 2d 498 (1996) ("We have repeatedly and consistently recognized that the criminal trial of an incompetent defendant violates due process." (internal quotation marks omitted)). Secondly, Geness neither alleges nor attempts to argue that AOPC had any control over whether he was housed in a prison versus a long-

term care facility while deemed incompetent. Thus, with his argument properly distilled, Geness is effectively urging this Court to hold that AOPC had a duty to seek intervention of the Pennsylvania Supreme Court to have his case dismissed before it languished for nine years while he remained incompetent and—for reasons both unclear and inexcusable—remained imprisoned for much of that time. He makes this argument despite acknowledging that he had representation and access to the court throughout the years he was imprisoned and civilly committed. *See* App. 40 ¶¶ 30-31 (stating that Geness's public defender "made no attempt to have [his] case removed from the trial list, despite [his] known incompetency to stand trial" and despite having "the authority and the opportunity to intervene with the Court"); App. 40 ¶¶ 26-27 (stating that Geness's case was subject to the court's "call of the list," whereby his counsel, a district attorney, and a judge evaluated the status of his case on a monthly basis).

By Geness's argument, in order for AOPC to comply with Title II, it had to suggest to the Pennsylvania Supreme Court that his case be dismissed because he was not competent to stand trial. AOPC would "in effect . . . be required to closely monitor, deeply evaluate, and consider intervening in every criminal case pending in the Commonwealth." Appellant's Reply 1. In a case such as this, AOPC argues, "even if aware of the procedural status," it "would not have known whether the extended delay was part of a strategic course by defense counsel, the thoughtful deliberative process of the judge, or some other factor peculiar to that specific case." Appellant's Br. 41. We find AOPC's arguments persuasive.

Further, AOPC's powers do not allow it to actually hold a criminal trial, which Geness alleges it denied him. Appellee's Br. 15, 25, 26 n.22. Even had AOPC reported to the Pennsylvania Supreme Court or the Fayette County Court of Common Pleas about the delay in Geness's case, it remained the exclusive power of the courts to actually do something about it.

Relatedly, since Geness was not competent to stand trial, a court's decision regarding whether a case should be dismissed depends on the evidence and law underlying the charge and the basis for dismissal. Weighing such matters is indisputably a judicial function. This brings us full circle to Geness's acknowledgement that AOPC does not have a duty to meddle with judicial decision-making. *See supra* note 12. Because judicial decision-making is not a service AOPC provides to either disabled or nondisabled individuals, Geness was not excluded from this service based on his disability. *See Disability Rights*, 796 F.3d at 305.

Further, Title II requires not only that a public entity "excluded" a disabled individual from a service it provides but also that such an exclusion was "by reason of his disability." *Geness*, 902 F.3d at 361 (quoting *Haberle v. Troxell*, 885 F.3d 171, 178-79 (3d Cir. 2018) and citing 42 U.S.C. § 12132). Neither Geness nor the dissent sets forth a plausible allegation or argument regarding how AOPC neglected to report the delay in his case to the Pennsylvania Supreme Court "by reason of his disability." *Id.* While his case appears to have languished due to his disability (*i.e.*, while he was incompetent to stand trial), AOPC had no power over the disposition of his case, and there is simply no allegation or argument before

us regarding how AOPC's alleged failure to contact the Supreme Court connects to Geness's disability.

For the reasons set forth above, Geness's allegations against AOPC fail to satisfy the first requirement of *Georgia*—setting forth a plausible Title II claim. We therefore hold that Congress has not validly abrogated AOPC's sovereign immunity regarding this particular claim. In conclusion, we will reverse the District Court's judgment and remand this case for dismissal of the claim against AOPC. Though we exclude AOPC as a potentially responsible party, the human suffering endured by Geness due to the mishandling of his case cannot be overstated. This opinion does not impact Geness's claims against the Commonwealth and DHS, which are not currently before us.

Appendix A

AMBRO, *Circuit Judge*, dissenting

The blink response to a suit against a clerk's office is that this cannot be. It is simply counterintuitive. Thus I easily understand why my colleagues believe it correct to reverse Judge Kearney's decision. *See Geness v. Pennsylvania*, 388 F. Supp. 3d 530 (W.D. Pa. 2019) (emphasis omitted). But at the motion-to-dismiss stage in this Les Misérables scenario, I am persuaded by his well-reasoned analysis. Thus I would affirm and hold that Craig Geness has pled facts sufficient to abrogate the sovereign immunity of the Administrative Office of Pennsylvania Courts ("AOPC") for purposes of his claims under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131, *et seq.*, and the Fourteenth Amendment.

The majority opinion recites well the tragic facts in this case. Mr. Geness languished in custody without a trial for over nine years before the case against him was dropped because he would never be competent to stand trial and substantial evidentiary issues impaired the Commonwealth's prosecution. This came after it was determined early on that he was incompetent and unlikely to improve, and while four separate motions for habeas corpus relief and motions to dismiss were pending (without a hearing or ruling on any of them). To say that Mr. Geness suffered a grave injustice at the hands of the system for justice is inadequate. There are no words.

My colleagues in the majority conclude that Mr. Geness has failed to satisfy the first requirement of the three-prong test outlined in *United States v. Georgia*, 546 U.S. 151, 126 S. Ct. 877, 163 L. Ed. 2d 650 (2006). They hold that he did not state a plausible Title II claim because he

did not allege that the AOPC denied him "the benefits of [its] services, programs, or activities . . . by reason of his disability." *Geness v. Cox*, 902 F.3d 344, 361 (3d Cir. 2018) (quoting *Haberle v. Troxell*, 885 F.3d 171, 178-79 (3d Cir. 2018), and citing 42 U.S.C. § 12132).

In my view, Mr. Geness clearly identifies the provisions of Pennsylvania law that tasked the AOPC with monitoring the criminal docket and reporting failures directly to the Commonwealth's Supreme Court. And he alleges that the AOPC's failure to perform those tasks substantially, if not exclusively, led to his unconscionable and lengthy pretrial detention. I rely on the same law and portions of Mr. Geness's Second Amended Complaint as my colleagues to reach this opposite conclusion.

Sections (1) and (6) of Rule 505 of the Pennsylvania Rules of Judicial Administration ("Pa. R.J.A.") charge the AOPC with "review[ing] the operation and efficiency of the system and of all offices related to and serving the system and, when necessary . . . [,] report[ing] to the [Commonwealth] Supreme Court or the Judicial Council with respect thereto," Pa. R.J.A. No. 505(1), and "examin[ing] the state of the dockets and practices and procedures of the courts and of the magisterial district judges and mak[ing] recommendations for the expedition of litigation," *id.* No. 505(6).

Mr. Geness alleges that the AOPC "makes regular inquiries of each county's ADA coordinator with regard to cases involving criminal defendants who are pretrial detainees whose cases have not been called to trial in a timely fashion," App. 45 ¶ 66, and that it in fact "repeatedly contacted the Fayette County court administrator directly

to inquire about [Mr. Geness's] case and the reasons for the . . . extended incarceration without trial," App. 45 ¶ 67. It, however, took no further action "designed to provide [him] with his right to be brought to trial on the charges that he faced." *Id.* Additionally, he alleges that during his incarceration "the Fayette County court administrator received . . . a daily list of prisoners incarcerated in the Fayette County Prison . . . , including the date that [each] individual was incarcerated, as well as the minimum and maximum incarceration dates for each . . . ." App. 45-46 ¶ 69. Mr. Geness appeared on each list. App. 46 ¶ 70.

Based on the directives in the Pennsylvania Rules of Judicial Administration and Mr. Geness's allegations that the AOPC failed to provide him the services of monitoring the docket and reporting the delay in his case to the Commonwealth Supreme Court directly, he has plausibly pled a claim based on Title II of the ADA. "[T]he phrase service, program, or activity under Title II . . . is extremely broad in scope and includes anything a public entity does." *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 289 (3d Cir. 2019) (citation and internal quotation marks omitted). My colleagues do not explain why monitoring the criminal dockets and reporting issues up to the Supreme Court does not satisfy this definition of "service," nor why they discount Mr. Geness's allegations that he was denied the service of having the AOPC flag the extreme delay in his case directly to that Supreme Court.

Mr. Geness does not propose that the AOPC had to guarantee specific results, or dictate to Commonwealth judges how to rule in any particular case, or grant him any form of judicial relief. He asserts that the AOPC had the duty to monitor the state of the dockets, which it did, and

seek intervention by the Supreme Court, which it failed to do. Neither the AOPC nor my colleagues cite to any case or provision of law that would have barred the AOPC from fulfilling its obligations under the Pennsylvania Rules of Judicial Administration. Rule 505 provides the basis for the AOPC to ring the alarm in cases like the one before us. And to say that it had an obligation to make a recommendation to expedite litigation where there was a nearly decade delay is not the same as arguing that the AOPC has an obligation to intervene in every pending criminal case. There was nothing ordinary about the procedural posture of this case.[1]

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1. My colleagues also conclude that Mr. Geness failed to allege that the AOPC intentionally discriminated against him "by reason of his disability," as is required to state an ADA claim. *Geness v. Cox*, 902 F.3d 344, 361 (3d Cir. 2018) (quoting *Haberle*, 885 F.3d at 178-79 and citing 42 U.S.C. § 12132). They acknowledge that the element of intentional discrimination is met when a plaintiff alleges "deliberate indifference," which requires "(1) knowledge that a federally protected right is substantially likely to be violated . . . and (2) failure to act despite that knowledge." *Haberle*, 885 F.3d at 181 (citation omitted). But they do not explain how it is that Mr. Geness did not sufficiently plead knowledge by the AOPC that his rights were being violated when he in fact alleges that during the period of his incarceration the court administrator received a daily list of prisoners that included his name, the duration of his incarceration, and the status of his case, App. 45-46, and that the AOPC repeatedly inquired about the status of his case, App. 45. Nor do they explain why Mr. Geness did not sufficiently plead failure to act when he does allege that the AOPC, despite knowledge of the delay in his case, failed to intervene with the Supreme Court on his behalf as it was authorized to do under Pennsylvania's Rules of Judicial Administration. *Id.*

The argument that the AOPC had no power over the disposition of Mr. Geness's case, and thus did not cause the delay, misses the

Any concern about whether the AOPC actually had the ability to take further action on behalf of Mr. Geness is a matter for discovery. As the District Court pointed out, "a developed factual record may show, as a matter of fact, the AOPC could not have done more." *Geness*, 388 F. Supp. 3d at 535. But how can we say at this stage that the AOPC does not in fact have mechanisms and procedures in place to ensure that cases like the one before us do not slip through the cracks? How can we say that it did not, in the past, alert up the chain on behalf of other criminal defendants but failed to do so in Mr. Geness's case?

We are to construe complaints so "as to do substantial justice." *Alston v. Parker*, 363 F.3d 229, 234 (3d Cir. 2004) (quoting Fed. R. Civ. P. 8(f)). Mr. Geness's allegations more than suffice at this stage, and given the harrowing ordeal he endured at the hands of the judicial system, it would be a further injustice not to allow his suit against the AOPC (the very agency with the duty to monitor the dockets and report up any issues) to continue. To do otherwise is to define adequacy down. I respectfully dissent.

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point. Under our case law, a successful ADA claim only requires the plaintiff to show but-for causation. *CG v. Pa. Dep't of Educ.*, 734 F.3d 229, 236 n.11 (3d Cir. 2013). Mr. Geness does not have to allege or ultimately prove that the AOPC alone caused the rights violation he suffered. *See Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 291 n.25 (3d Cir. 2019). At the pleading stage, he has more than sufficiently alleged that the AOPC's failure to act on his behalf substantially caused and contributed to the delay in his case. And what ultimately transpired internally at the AOPC with respect to Mr. Geness's case is something he should have the opportunity to determine through discovery. That, however, remains a mystery, as we now cut short his case against that agency.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 16-876

CRAIG GENESS

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*

MEMORANDUM

KEARNEY, J. **May 28, 2019**

Craig Geness, a life-long mentally impaired man once living in an adult group home, now seeks damages under the Americans with Disabilities Act alleging the Commonwealth of Pennsylvania discriminated against him by holding him in custody in Fayette County Prison for 3,309 days without a trial before finally dismissing charges against him.

Mr. Geness struggles to timely sue a responsible party. We dismissed his civil rights and state law claims against the arresting detective as untimely. Our Court of Appeals affirmed on those claims but remanded for us to consider the Commonwealth's liability under the

Americans with Disabilities Act (ADA). After we found Mr. Geness plead an ADA claim, the Commonwealth argued it can only be sued through its agencies and officials. Mr. Geness responded by adding two Commonwealth agency defendants, the Administrative Office of Pennsylvania Courts (AOPC) and Pennsylvania Department of Human Services. Mr. Geness alleges the AOPC can be liable under the ADA both for the conduct of its agent judges in administering dockets and for systemic failures to ensure accessible courts.

The AOPC, repeating some of the Commonwealth's failed arguments, moves to dismiss arguing Mr. Geness fails to plead it violated the ADA, it is shielded by sovereign immunity and quasi-judicial immunity, and Mr. Geness's claims are time barred. At this preliminary stage and mindful Mr. Geness is not challenging judicial decision making but rather failures in court administration practices touted to ensure accessibility for mentally impaired persons, Mr. Geness may proceed in challenging the AOPC's alleged failures in the second amended complaint. Discovery may allow us to understand the potential liability and damages among allegedly responsible state actors under the ADA.

I. Allegations.

The Commonwealth criminal justice system's treatment of Mr. Geness is fully described in our May 1, 2017 Memorandum[1] and our Court of Appeals' August

1. *Geness v. Cox*, No. 16-876, 2017 U.S. Dist. LEXIS 65616, 2017 WL 1653613 (W.D. Pa. May 1, 2017).

28, 2018 Opinion.[2] As the specific conduct relating to the dismissed arresting detective and failures of prosecutors and defense lawyers are not before us today, we do not repeat the often-inexplicable litany of what our Court of Appeals described as "multipoint failures in the criminal justice system."[3] In response to the Commonwealth's arguments it cannot be held liable because it is an improper party (notwithstanding the Court of Appeals' direction on remand), Mr. Geness responded with a second amended complaint adding the AOPC and the Pennsylvania Department of Human Services.

Mr. Geness pleads at least two theories of liability against the AOPC: (1) under an agency theory, the Fayette County judges' unexplained failure to proceed with hearings, rulings or direction violate the ADA; and, (2) under a direct liability theory, the AOPC systemically failed to monitor and impose policies to ensure access to the courts for mentally impaired persons.

In support of his agency theory, Mr. Geness pleads:

- Over the course of his detention, Mr. Geness filed four Motions for *habeas corpus* relief and/or Motions to dismiss charges.

- Despite numerous opportunities to do so over his 3,309 days in custody, the Pennsylvania courts held no hearings or

2. *Geness v. Cox*, 902 F.3d 344 (3d Cir. 2018)).

3. *Id.* at 365.

issued rulings on those motions despite the judges and AOPC's actual knowledge of Mr. Geness's unchanging mental state and prolonged detention in Fayette County Prison and his later detention.

- Judges repeatedly adjourned trial dates despite knowing Mr. Geness's permanent inability to stand trial.

- The Fayette County Prison Warden made numerous complaints to the assigned trial judge asking the criminal justice system to "do something" to remove Mr. Geness from prison.

- The Commonwealth through AOPC's failure to monitor judges' docket management exhibited deliberate indifference to Mr. Geness's right to be provided statutory safeguards for the protection of disabled persons, and exhibited deliberate indifference to Mr. Geness's rights.

On his direct liability theory, Mr. Geness pleads:

- AOPC supervises and administers the judicial branch of the Commonwealth and acted by and through its officials. AOPC is a subsidiary unit of the Commonwealth and acts as an agent related to supervision and administration of the Pennsylvania

Unified Judicial System. The Pennsylvania Unified Judicial System includes judges of the Court of Common Pleas of the various Pennsylvania counties, including Fayette County. In its capacity as a subsidiary unit of the Commonwealth, AOPC administers the Pennsylvania Unified Judicial System and is responsible for the prompt and proper disposition of all businesses of the courts of the Commonwealth of Pennsylvania.

- Among the duties and responsibilities of the AOPC is ensuring accessible and safe courts for all citizens. The duties of the AOPC include ensuring the courts of the Commonwealth comply with the ADA. The AOPC attempts to ensure compliance with the ADA through interaction with ADA coordinators in each county. For Fayette County, the deputy court administrator, who reports directly to the court administrator, is the ADA coordinator.

- As part of its effort to fulfill its responsibility to ensure the Commonwealth's compliance with the ADA, the AOPC regularly inquires of each county's ADA coordinator about cases involving criminal defendants who are pretrial detainees whose cases have not been timely called to trial under Pennsylvania law.

- AOPC repeatedly contacted the Fayette County court administrator directly to inquire about Mr. Geness's case and the reasons for extended incarceration without trial. Notwithstanding those inquiries, neither the AOPC, nor any other agent of AOPC, including the AOPC's local ADA coordinator in Fayette County, acted to provide Mr. Geness with his right to be brought to trial on the charges he faced.

- During the period of Mr. Geness's incarceration from in or about November 2006 through in or about December 2015, the Fayette County court administrator received from the Fayette County Prison a daily list of prisoners incarcerated in the Fayette County Prison. This list included various information about each incarcerated individual, including the date the individual was incarcerated, as well as the minimum and maximum incarceration dates for each prisoner.

- Mr. Geness appeared on this list every day.

- The AOPC's actions are part of an unlawful pattern and course of conduct intended to harm Mr. Geness with reckless disregard and/or deliberate indifference to his rights.

II. Analysis

A. Mr. Geness continues to plead an ADA claim.

In our February 1, 2019 Memorandum explaining why we denied the Commonwealth's motion to dismiss, we found "Mr. Geness 'sufficiently pleaded' a claim under Title II of the ADA,"[4] pleaded "conduct 'that *actually* violate[d] the Fourteenth Amendment,'"[5] and properly "amended to include specific allegations of deliberate indifference."[6] Mr. Geness repeats the same allegations. He adds the AOPC as a responsible party. AOPC's argument of no involvement, or the more central involvement of the Department of Human Services, is based on facts requiring discovery on relative culpability.

The issue is whether the AOPC is immune from this type of ADA claim.

B. The AOPC, like the Commonwealth, has not shown a basis for sovereign immunity.

In our February 1, 2019 Memorandum, we found sovereign immunity poses no bar to Mr. Geness's claim against the Commonwealth,[7] because "insofar as Title II

4. *Geness v. Pennsylvania*, 364 F. Supp. 3d 448, 456 (W.D. Pa. 2019) (quoting *Geness*, 902 F.3d at 361).

5. *Id.* (alteration in original) (quoting *United States v. Georgia*, 546 U.S. 151, 159, 126 S. Ct. 877, 163 L. Ed. 2d 650 (2006)).

6. *Id.*

7. *See Geness*, 364 F. Supp. 3d at 456.

creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity."[8] The AOPC nonetheless argues it is entitled to sovereign immunity even though the Commonwealth of which it is "an arm" is not shielded by such immunity.[9] This argument is unavailing. Mr. Geness plausibly alleges the AOPC's conduct violated Title II of the ADA[10] and the Fourteenth Amendment's due process protections, so "Title II validly abrogates state sovereign immunity."[11]

The AOPC argues liability cannot attach because it does "not [have] a duty to micromanage case filings."[12] But Mr. Geness does not allege the AOPC must act as standby legal counsel for all Pennsylvania citizens or supplant the crucial role of Pennsylvania trial or appellate judges. Mr. Geness instead alleges the AOPC is responsible for "[e]nsuring accessible and safe courts for all citizens" by "[e]nsuring that the courts of the Commonwealth comply with Title II of the Americans with Disabilities Act."[13]

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8. *Georgia*, 546 U.S. at 159; *see also Tennessee v. Lane*, 541 U.S. 509, 533-34, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004) (holding "Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' § 5 authority to enforce the guarantees of the Fourteenth Amendment").

9. ECF Doc. No. 188 at 16 of 33.

10. 42 U.S.C. § 12131 *et seq.*

11. *Georgia*, 546 U.S. at 159.

12. *Gay v. Pines*, 835 A.2d 402, 404 (Pa. Commw. Ct. 2003).

13. ECF Doc. No. 183 at ¶ 7.

Mr. Geness plausibly pleads the AOPC's failure to discharge its duties with respect to ADA compliance substantially — even if not exclusively — caused his lengthy pretrial detention. Mr. Geness alleges the AOPC discharges its critical ADA compliance duties by "mak[ing] regular inquiries of each county's ADA coordinator with regard to cases involving criminal defendants who are pretrial detainees whose cases have not been called to trial in a timely fashion according to Pennsylvania law."[14] In Fayette County, Pennsylvania, the deputy court administrator holds "the role of AOPC ADA coordinator" and "reports directly to the court administrator."[15]

As to his own case, Mr. Geness alleges "the Fayette County court administrator received from the Fayette County Prison a daily list of prisoners incarcerated in the Fayette County Prison," and Mr. Geness appeared on this list along with key "information about his incarceration."[16] Mr. Geness alleges the "AOPC repeatedly contacted the Fayette County court administrator directly to inquire about [Mr. Geness's] case and the reasons for [his] extended incarceration without trial."[17] But "neither the AOPC, nor any other agent of AOPC, including the AOPC's local ADA coordinator in Fayette County, took any action designed to provide [Mr. Geness] with his right to be brought to trial on the charges that he faced."[18]

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14. ECF Doc. No. 183 at ¶ 66.

15. *Id.* at ¶ 7.

16. *Id.* at ¶ 69-70.

17. *Id.* at ¶ 67.

18. *Id.*

Seemingly looking beyond these plausible allegations, the AOPC claims *as a matter of law* it could not have acted to help Mr. Geness. The Pennsylvania Rules of Judicial Administration suggest otherwise. Among numerous duties, these Rules charge the AOPC with "review[ing] the operation and efficiency of the system and of all offices related to and serving the system and, when necessary . . . report[ing] to the Supreme Court or the Judicial Council with respect thereto"[19]; "examin[ing] the state of the dockets and practices and procedures of the courts and of the magisterial district judges and mak[ing] recommendations for the expedition of litigation"[20]; and "prepar[ing] educational and training materials for system and related personnel and to conduct educational and training sessions."[21] Mr. Geness plausibly pleads the AOPC could have helped him by exercising its duty to monitor the status of dockets and make recommendations to expedite litigation, ensure ADA compliance at a systemic level in the courts of the Commonwealth, and reporting to the Pennsylvania Supreme Court.

We are again guided by our Court of Appeals' finding "the[] multiple, protracted, and inexcusable delays in the handling of [Mr.] Geness's examinations, transfers, and motions — resulting in nearly a decade of imprisonment and civil commitment before a hearing was finally held on his habeas petition — are more than sufficient to state a

19. Pa.R.J.A. No. 505(1).

20. Pa.R.J.A. No. 505(6).

21. Pa.R.J.A. No. 505(12).

claim under the ADA,"[22] and "[t]hese same circumstances are also sufficient to sustain [Mr.] Geness's claim that he was depr[ived] ... of normal benefits of criminal procedure and due process of law, both as to his protracted incarceration without prompt transfer to a mental health facility, and his protracted institutionalization without a realistic prospect of trial."[23]

Of course, a developed factual record may show, *as a matter of fact*, the AOPC could not have done more. The question may then be left to our jury. But Mr. Geness's claim is plausible and we cannot resolve fact disputes at this stage. For the same reason we cannot now resolve

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22. *Geness*, 902 F.3d at 362.

23. *Id.* at 363 (third alteration in original) (internal citation and quotation marks omitted). Our Court of Appeals' findings undermine the AOPC's reliance on *King v. Indiana Supreme Court*, in which the district court in Indiana, as relevant here, dismissed the plaintiff's ADA claim against the court administrator because the plaintiff failed to allege a person or entity aside from the court "took part in the actual decision to deny his request for an [American Sign Language] interpreter." No. 14-01092, 2015 U.S. Dist. LEXIS 58388, 2015 WL 2092848, at *15 (S.D. Ind. May 5, 2015). After the court later awarded damages to the plaintiff following a bench trial, the United States Court of Appeals for the Seventh Circuit reversed the judgment, finding Title II of the ADA "does not abrogate sovereign immunity" because the "case has no constitutional dimension at all." *King v. Marion Circuit Court*, 868 F.3d 589, 593 (7th Cir. 2017), *cert. denied sub nom. King v. Marion Cty. Circuit Court*, 138 S. Ct. 1582, 200 L. Ed. 2d 768 (2018). Here, by contrast, Mr. Geness alleges the specific involvement of the AOPC in his case and its systemic failure and our Court of Appeals has already described in detail the plausibility of Mr. Geness's constitutional claims.

the AOPC's argument the Pennsylvania Department of Human Services is the party solely or more responsible for Mr. Geness's harm. The AOPC, however, may pursue this argument through a cross-claim against the Department of Human Services.

C. The AOPC cannot shield itself in quasi-judicial immunity.

The AOPC also fails to demonstrate quasi-judicial immunity categorically bars Mr. Geness from proceeding to discovery. "Quasi-judicial immunity, as one might guess, evolved out of its well-known namesake, judicial immunity,"[24] which "is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability."[25] Because "[t]he fair administration of justice depends not only on judges,"[26] "[q]uasi-judicial absolute immunity attaches when a public official's role is 'functionally comparable' to that of a judge.'"[27]

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24. *Russell v. Richardson*, 905 F.3d 239, 247 (3d Cir. 2018).

25. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435, 113 S. Ct. 2167, 124 L. Ed. 2d 391 (1993).

26. *Russell*, 905 F.3d at 247.

27. *Hamilton v. Leavy*, 322 F.3d 776, 785 (3d Cir. 2003) (quoting *Butz v. Economou*, 438 U.S. 478, 513, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978)); *see also Dotzel v. Ashbridge*, 438 F.3d 320, 325 (3d Cir. 2006) ("As its name suggests, 'quasi-judicial' immunity is a doctrine under which government actors whose acts are relevantly similar to judging are immune from suit.").

Appendix B

When considering a claim of quasi-judicial immunity, our Court of Appeals directs our focus to an official's duties rather than mere title. "Regardless of his job title, if a state official must walk, talk, and act like a judge as part of his job, then he is as absolutely immune from lawsuits arising out of that walking, talking, and acting as are judges who enjoy the title and other formal indicia of office."[28] Quasi-judicial immunity also protects "a range of judicial actors" performing functions integral to the judicial process.[29]

Before we can consider the AOPC's functions under this framework, however, we cannot avoid the AOPC's failure to clear a more fundamental hurdle to its claim of quasi-judicial immunity: it is not a public official acting in an individual capacity. It is not a *public official* at all. It is an entity. And courts across the country — including our Court of Appeals — have routinely declined to extend the "strong medicine"[30] of quasi-judicial and other absolute immunities to non-persons. Our Court of Appeals' analysis in *Lonzetta Trucking & Excavating Co. v. Schan*[31] is instructive. In *Lonzetta*, a civil rights case stemming from a zoning dispute, our Court of Appeals acknowledged precedent finding zoning board members "ruling on a zoning permit

28. *Dotzel*, 438 F.3d at 325.

29. *Russell*, 905 F.3d at 247.

30. *Forrester v. White*, 484 U.S. 219, 230, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988) (quoting *Forrester v. White*, 792 F.2d 647, 660 (7th Cir. 1986) (Posner, J., dissenting)).

31. 144 F. App'x 206 (3d Cir. 2005).

for a particular piece of property are performing a quasi-judicial function" for purposes of quasi-judicial immunity.[32] But our Court of Appeals clarified an important distinction applicable here. Although the officials "would be entitled to absolute immunity in their *individual* capacities if they were performing 'quasi-judicial' functions[,] . . . the zoning officials in their *official* capacities, the Hazle Township Zoning Board, and the Hazle Township are not entitled to absolute immunity. The planning board as a governmental agency has no immunity whatsoever."[33]

In *Dotzel v. Ashbridge*, our Court of Appeals again recognized quasi-judicial immunity shields only individual actors "from suit in their individual capacities."[34] In *Dotzel*, members of the Board of Supervisors of Salem Township, Pennsylvania claimed quasi-judicial immunity in a suit for alleged constitutional violations stemming from their denial of a permit for a conditional use of a piece of land.[35] Our Court of Appeals held "[t]he Board members here were acting in a quasi-judicial capacity, and are absolutely

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32. *Id.* at 210; *see also Bass v. Attardi*, 868 F.2d 45, 51 (3d Cir. 1989) ("Thus in this case, the suit naming the members of the Planning Board in their official capacities in effect makes the Planning Board a defendant. The Planning Board as a governmental entity has no immunity whatsoever.").

33. *Lonzetta*, 144 F. App'x at 211; *see also Teed v. Hilltown Twp.*, No. 03-6040, 2004 U.S. Dist. LEXIS 9477, 2004 WL 1149486, at *7 (E.D. Pa. May 20, 2004) ("Governmental entities are not entitled to quasi-judicial immunity from a suit under § 1983.").

34. *Dotzel*, 438 F.3d at 327.

35. *Id.* at 322-23.

immune from suit in their individual capacities."[36] Our Court of Appeals described "zoning disputes" as "among the most fractious issues faced by municipalities, and the risk of threats and harassment is great," and found, among other things, the township zoning proceedings bear the "hallmarks of adversarial proceedings."[37] But our Court of Appeals limited its finding of quasi-judicial immunity solely to "[a]ny actions against [the members] *in their individual capacities*."[38] "The remaining substantive due process claim against the Township and the Board members in their official capacities," our Court of Appeals clarified, "is not affected by our decision in this appeal."[39]

Our Court of Appeals is not alone in finding quasi-judicial immunity inapplicable to entities — and for good reason. The United States Court of Appeals for the Seventh Circuit described "[o]fficial immunities (judicial, legislative, absolute, qualified, quasi, and so on) a[s] personal defenses designed to protect the finances of public officials whose salaries do not compensate them for the risks of liability under vague and hard-to-foresee constitutional doctrines," and "[t]hat justification does not apply to suits against units of state or local government, which can tap the public fisc."[40]

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36. *Id.* at 327.

37. *Id.* at 325, 327.

38. *Id.* at 327.

39. *Id.* at n.5.

40. *Hernandez v. Sheahan*, 455 F.3d 772, 776 (7th Cir. 2006), *cert. denied*, 552 U.S. 974, 128 S. Ct. 437, 169 L. Ed. 2d 305 (2007);

Although our research primarily yielded cases discussing official immunity doctrines in the context of 42 U.S.C. § 1983, the parties do not address how, if at all, quasi-judicial immunity might apply differently under Title II of the ADA. We note ADA' s focus on equal access to public services would be rendered toothless if every state agency could derivatively claim quasi-judicial immunity and avoid its obligation to ensure equal access to courtroom. Such an expansion of the quasi-judicial immunity doctrine to entities free to draw from the public fisc would disregard, and likely perpetuate, what our Supreme Court in *Tennessee v. Lane*, described as the "long history" of "unequal treatment of disabled persons in the administration of judicial services."[41] We decline to do so here.

But even if the AOPC's status as an entity did not preclude it seeking quasi-judicial immunity, the AOPC is not entitled to such immunity. As we have already described, the Pennsylvania Rules of Judicial Administration detail the AOPC's various administrative duties.[42] The AOPC lacks authority to exercise judicial decision-making powers or sit as an adjudicative body.[43]

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see also VanHorn v. Oelschlager, 502 F.3d 775, 779 (8th Cir. 2007) (finding "[c]ase law from our sister circuits also supports the conclusion that absolute, quasi-judicial immunity only extends to claims against defendants sued in their individual — not official — capacities").

41. *Lane*, 541 U.S. at 531.

42. *See* Pa.R.J.A. No. 505.

43. *See Pines*, 835 A.2d at 404.

The AOPC does not hear cases or apply precedent. Nor does it have a duty to "micromanage case filings" or "prosecute any action on behalf of members of the general public."[44] The United States Supreme Court has instructed "[a]dministrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts."[45] The AOPC articulates no compelling explanation of how it is, or why it must be, "insulat[ed] from political influence."[46] To the extent Mr. Geness premises liability on the AOPC's failure to conduct its duty to monitor and address "system-wide problems," the AOPC does not enjoy the broad shield of quasi-judicial immunity.[47] And as we have quoted at length above, Mr. Geness specifically pleads liability based on the AOPC's role in managing ADA compliance.

D. We already held Mr. Geness's claims are timely.

We decline to revisit our February 1, 2019 finding Mr. Geness's claims are timely. They remain so.

III. Conclusion

The Administrative Office of Pennsylvania Courts cannot rely upon fact-based arguments of "not me"

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44. *Id.* at 404-05.

45. *Forrester v. White*, 484 U.S. 219, 228, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988).

46. *Cleavinger v. Saxner*, 474 U.S. 193, 202, 106 S. Ct. 496, 88 L. Ed. 2d 507 (1985).

47. *Pines*, 835 A.2d at 404.

when Mr. Geness pleads its role in managing access to courts including through an ADA coordinator in Fayette County. It has not shown a basis for immunity for systemic failures in policy-making to ensure ADA compliance. Mr. Geness's claims are not time-barred based on the plausible allegations of a continuing and "connected pattern of indifference."[48]

48. *Geness*, 364 F. Supp. 3d at 454.

APPENDIX C — ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, DATED OCTOBER 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2253

CRAIG A. GENESS,

v.

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS; COMMONWEALTH OF PENNSYLVANIA; PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES,

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS,

Appellant.

D.C. No. 2-16-cv-00876

SUR PETITION FOR REHEARING

Before: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, *Circuit Judges*

Appendix C

The petition for rehearing filed by appellee in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ L. Felipe Restrepo
Circuit Judge

Date: October 29, 2020
PDB/cc: All Counsel of Record