

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

EBONI EL, ANDREW HASKELL, SUNG	:
JOO LEE, AKEEM WILLS, CHARLES	:
GAMBER, DAVID KRAH, on behalf of	:
themselves and all persons similarly situated,	:
Petitioners,	
v.	:
:	
38 TH JUDICIAL DISTRICT, Hon.	:
CAROLYN CARLUCCIO, President Judge	No. 376 MD 2021
(in her official capacity), KATHLEEN	:
SUBBIO, Chief Adult Probation and Parole	Class Action
Officer (in her official capacity), and	Original Jurisdiction
MICHAEL R. KEHS, Court Administrator (in	:
his official capacity),	:
Respondents.	
:	

**PETITIONERS' MOTION TO DISCONTINUE WITHOUT NOTICE TO THE
PUTATIVE CLASS PURSUANT TO RULE OF CIVIL PROCEDURE 1714(b)**

Petitioners Andrew Haskell, Akeem Wills, Charles Gamber, and David Krah hereby move to discontinue this action without prejudice pursuant to 231 Pa. Code R. 1714(b).¹ No class has been certified. Following months of hard-fought mediation, Respondents voluntarily and without a settlement agreement instituted significant changes to the policies and practices that Petitioners challenged in this suit, and provided several rounds of data to Petitioners regarding how those changes operated in practice. Because there is no agreement binding them, discontinuance would not prejudice absent putative class members or any claims they may have, now or in the future. Consequently, Petitioners request that the Court approve the discontinuance without notice to the putative class since the concerns underlying Rule 1714 are not present here. Respondents consent to the relief sought in this motion.

¹ Plaintiffs' counsel have simultaneously herewith moved to withdraw as counsel for Eboni El and Sung Joo Lee, whom counsel have been unable to reach after diligent efforts.

BACKGROUND

On October 26, 2021, Petitioners, individually and as representatives of a putative class of current and future people on probation or parole (“supervision”) in Montgomery County, filed suit against the 38th Judicial District and certain of its employees challenging their policies and practices of automatically and indiscriminately incarcerating individuals accused of supervision violations. Respondents incarcerated virtually everyone subjected to supervision revocation proceedings—more than 3,300 people between January 1, 2019, and May 18, 2021, alone—regardless of the nature of the alleged violation. *See* Pls.’ Motion for Prelim. Injunction at 3; Decl. of Nori Mehta, dated Dec. 9, 2021, in Support of Petitioners’ Motion for Prelim. Injunction ¶ 33 (“Mehta Decl.”). Respondents imprisoned these individuals for an average of 70 days before holding *any* court hearing whatsoever. Mehta Decl. ¶ 35. Respondents provided no timely opportunity to be heard as to whether there was probable cause to believe they violated the terms of their supervision, and no chance *ever* to be heard as to whether such detention was appropriate or necessary. Approximately 92 percent of people received no initial hearing at all. *Id.* ¶ 38.

Petitioners alleged these policies and practices violated the due process guarantees of the Pennsylvania and United States Constitutions. They moved for a preliminary injunction and to certify the class. On May 19, 2022, before ruling on either motion, the Court granted the parties’ joint request for referral to mediation and stayed this litigation. The parties engaged in mediation before the Honorable Judge Leadbetter on August 24, 2022; January 10, 2023; March 21, 2023; and April 30, 2024.

After settlement negotiations began, Respondents voluntarily implemented fundamental changes to the challenged policies and practices. The new policies and practices include the introduction of the Detention/Gagnon Hearing Officer Program (“DHO Program”), which took

effect in July 2023. *See generally* Ex. 1.² The DHO Program permits detention of individuals accused of supervision violations only when “no available condition or combination of conditions of release can ensure the safety of the community, including the safety of the victim, and the protection of the defendant from immediate risk of substantial self-harm, or ensure the appearance of the defendant at any future hearings.” *Id.* at 1.

As relevant here, for those who are detained, the DHO Program requires two hearings before the final adjudication of whether the individual violated the terms of their supervision. First, it requires a “detention hearing … to determine whether the defendant can be released on any available conditions[.]” *Id.* at 2. Detention hearings must “be held … within 5 business days of detention … or the lodging of the detainer.” *Id.* Second, it requires a “Gagnon I” hearing “to determine whether probable cause exists to believe that a violation has been committed, and if so, if the defendant can be released on any available conditions prior to” the final hearing. *Id.* at 4. Even if a court finds probable cause, “the DHO must still consider the issue of release[.]” *Id.* at 4-5. The Gagnon I hearing must be held “within 10 calendar days after the detention hearing,” absent a postponement request from the detained individual. *Id.* at 4. Since enactment of the DHO Program, Respondents have provided detention hearings within five business days for 95% of cases with a scheduled detention hearing.

Petitioners surrendered no rights in exchange for adoption of these new policies, and no petitioner received monetary compensation (or any compensation) for the delays they experienced in the scheduling of revocation hearings. *See* Ex. 2, Dec. 15, 2025 Decl. of W. Walczak.

² Detention/Gagnon Hearing Officer Program (May 2024), available at <https://www.montgomerycountypa.gov/ArchiveCenter/ViewFile/Item/5976>.

ARGUMENT

Pennsylvania Rule of Civil Procedure 1714(a) provides that a class action may not be discontinued without the approval of the court. 231 Pa. Code R. 1714(a). Prior to certification, “the representative party may discontinue the action without notice to the members of the class if the court finds that the discontinuance will not prejudice the other members of the class.” *Id.* 1714(b). The primary purpose of this rule is to prevent a settlement that benefits only named plaintiffs and may have “prejudicial and binding” effects for absent class members. *Smalls v. Gary Barbera’s Dodgeland*, 2001 WL 1807869, at *1 (Pa. Com. Pl. Apr. 30, 2001) (quoting *Silver Spring Twp. v. Pennsy Supply, Inc.*, 613 A.2d 108, 111 (1992)). Thus, courts contemplating discontinuance in class actions must ensure “that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights.” *Id.* (quoting *Dauphin Deposit Bank & Trust Co. v. Hess*, 698 A.2d 1305, 1308 (Pa. Super. Ct. 1997)); *see also Milkman v. Am. Travellers Life Ins. Co.*, 2001 WL 1807376, at *11 (Pa. Com. Pl. Nov. 26, 2001); *Greer v. Fairless Motors, Inc.*, 2000 WL 33711065, at *1 (Pa. Com. Pl. Dec. 20, 2000).

Petitioners request approval of the discontinuance of this putative class action.

First, putative class members will not be prejudiced. This discontinuance is not the product of Petitioners receiving any particular benefit or “private compensation” as “a consideration for ... discontinuance of the action.” *Greer*, 2000 WL 33711065, at *1 (quoting Rule 1714, Explanatory Note—1987). To the contrary, Petitioners’ request for discontinuance is a product of the significant revisions Respondents have made to their detention practices by adopting the DHO Program. As described above, people detained pending revocation proceedings now receive an opportunity to seek release within five business days of their detention, and—if still incarcerated—can seek release again at their initial revocation hearing. These improvements will benefit Petitioners and putative class members alike.

Second, discontinuance of this action neither binds nor impairs the interest of any absent putative class members. Respondents voluntarily adopted the DHO Program, and neither Petitioners nor absent putative class members have released any claims. Putative class members thus did not “surrender” their “litigation rights,” *Smalls*, 2001 WL 1807869, at *1, and remain free to bring suit challenging their own detention or Respondents’ related policies and practices (including the DHO Program) on any grounds as they see fit. Notice to putative class members is unnecessary because the discontinuance does not affect their rights in any way.

Because discontinuance will not prejudice or bind putative class members, Petitioners respectfully request that this Court approve the discontinuance of this matter.

CONCLUSION

The Court should grant Petitioners’ motion to discontinue this case without notice to the putative class members.

Respectfully submitted,

/s/ Lori A. Martin

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Date: December 22, 2025

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CERTIFICATION OF COMPLIANCE

I, Lori A. Martin, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: December 22, 2025

/s/ Lori A. Martin
Lori A. Martin (Pa. 55786)

VERIFICATION

I, Lori A. Martin, hereby verify that the statements set forth in the foregoing Motion to Discontinue Without Notice to The Putative Class Pursuant to Rule of Civil Procedure 1714(b) are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: December 22, 2025

/s/ Lori A. Martin
Lori A. Martin (Pa. 55786)

CERTIFICATE OF SERVICE

I, Lori A. Martin, hereby certify that on December 16, 2025, a true and correct copy of the foregoing document entitled Motion to Discontinue Without Notice to The Putative Class Pursuant to Rule of Civil Procedure 1714(b) was served upon all counsel of record by and through this Court's electronic filing system.

Date: December 22, 2025

/s/ Lori A. Martin
Lori A. Martin (Pa. 55786)

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	:	
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	:	

**[PROPOSED] ORDER GRANTING MOTION TO DISCONTINUE WITHOUT NOTICE
TO THE PUTATIVE CLASS PURSUANT TO RULE OF CIVIL PROCEDURE 1714(b)**

AND NOW, this _____ day of _____ 2025, upon consideration of Petitioners' Motion to Discontinue, it is hereby **ORDERED** that said Motion is **GRANTED**.

BY THE COURT:
