IN THE SUPREME COURT OF THE STATE OF ALASKA

Mark Andrews, Appellant v. **Jennifer Winkelman, Timothy Ballard, and James Milburn, in their official capacities for the State of Alaska, Department of Corrections,** Appellees	Supreme Court No. S-19453

Trial Court No. 3AN-23-05725CI

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE DANI CROSBY, JUDGE

BRIEF OF THE APPELLANT MARK ANDREWS

/s/ Natalie Cauley
Natalie Cauley, AK Bar No. 2405038
Doron Levine, AK Bar No. 2101002
Ruth Botstein, AK Bar No. 9906016
American Civil Liberties Union of Alaska
1057 W. Fireweed Ln. Suite 207
Anchorage, AK 99503
Tel: (907) 263-2008
dlevine@acluak.org
courtfilings@acluak.org

Filed in the Alaska Supreme Court
this 15th day of September 2025.

Meredith Montgomery, Clerk

By: Julia A. Kentch
Deputy Clerk

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Regulations

Other Authorities

PRINCIPAL AUTHORITIES

Constitutional Provisions

Alaska Constitution Article I § 1. Inherent Rights

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Alaska Constitution Article I § 7. Due Process

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Alaska Constitution Article I § 22. Right of Privacy

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

Alaska Regulations

22 AAC 05.122: Involuntary administration of psychotropic medication

(a) Except as provided in (b) - (d) of this section, unless treatment or medication has been ordered by a court a prisoner retains the right to informed consent and to refuse psychological or psychiatric treatment including the administration of psychotropic medication.

(b) If facility health care personnel diagnose a prisoner as being in imminent danger of harming himself or herself, or others, as a result of illness, and the prisoner has refused to make an informed consent for treatment, psychotropic medication may be involuntarily administered in accordance with procedures established by the commissioner, if the prisoner

(1) has been evaluated by a physician who has reviewed pertinent

records and information regarding the prisoner and has prescribed the psychotropic medication as part of a therapeutic medical treatment plan;

(2) is apparently capable of, but refuses to give informed consent after being advised of the elements of informed consent;

(3) has had less restrictive alternative forms of treatment such as soft restraints or housing in a restrictive setting applied, without satisfactory therapeutic result;

(4) continues to manifest symptoms that indicate that treatment is necessary to prevent the prisoner from endangering himself or herself, or others; and

(5) has been evaluated by a second physician who concurs in the involuntary administration of psychotropic medication.

(c) Notwithstanding (b) of this section, if, in the opinion of the facility physician, a prisoner presents such an immediate danger to himself or herself, or others, that the informed consent process under (a) of this section, or the informed consent review process under (b) of this section cannot be completed in a timely fashion, the prisoner may be involuntarily administered psychotropic medication. The involuntary administration must be followed by

(1) a medical review as set out in (b) of this section within 72 hours after the emergency administration of medication; and

(2) regular and timely follow-up monitoring by the prescribing physician, incorporating safeguards consistent with prudent standards of medical care.

(d) If, in the opinion of facility health care personnel, a prisoner requires the administration of psychotropic medication as part of the therapeutic medical treatment plan but is not capable of giving informed consent, the following standards apply:

(1) emergency cases must be treated as set out in (c) of this section; and

(2) non-emergency cases must be considered for transfer to a psychiatric facility under 22 AAC 05.253 or referred to the Department of Law for assistance in seeking a court order for treatment.

STATEMENT OF JURISDICTION

The final order in the superior court was entered and distributed on April 22, 2025. [Exc. 187-200] A timely notice of appeal was filed on May 2, 2025. This Court has jurisdiction over this appeal pursuant to AS 22.05.010(b).

ISSUE PRESENTED

Does the Alaska Constitution require a judicial hearing and appointed counsel before an incarcerated person can be forced to take mind-altering psychotropic medication against their will on a long-term basis?

STATEMENT OF FACTS

Introduction

Mark Andrews, a sentenced prisoner now incarcerated at Palmer Correctional Center, was forcibly medicated with psychotropic medication[1] by the Alaska Department of Corrections (DOC) on numerous occasions between 2018 and 2024. At times, he was forcibly held down and injected with the medication. For nearly four years, DOC did not provide any hearing to review his forced medication, contrary to DOC's written policy and the Alaska

[1] Psychotropic medication, also known as antipsychotic medication, is one type of psychiatric medication; psychotropic medication affects how the brain works and causes changes in mood, awareness, thoughts, feelings, and behavior. *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 241-42 (Alaska 2006).

Constitution. Once occasional hearings began, DOC repeatedly misapplied its own policies. DOC consistently failed to provide Mr. Andrews with notice of why he should be medicated. Based on little or no evidence, DOC regularly changed its justification for his medication. Ultimately, evidently because of this litigation, DOC stopped Mr. Andrews's forced medication. But DOC may forcibly medicate him again through the same empty process at any time.

The strong due process protections of the Alaska Constitution mandate that long-term involuntary medication of incarcerated patients like Mark Andrews be supervised by the courts, not just by DOC, just as Alaska's courts supervise all other forced medication in the criminal justice system and civil commitment process.

I. Forced Medication of Mark Andrews

Mark Andrews is serving a 99-year sentence in the Alaska Department of Corrections. [Exc. 77] During the early years of his incarceration, around 2000 to 2001, Mr. Andrews displayed signs of serious mental illness. He was suicidal and cut his wrists, then used the blood to write on the walls of his cell. [R. 151-53] At some point, he was diagnosed with schizoaffective disorder and medicated with antipsychotics. [Exc. 209-10] Mr. Andrews did not actively object to taking antipsychotic medication for the next 15 years.

In 2016, Mr. Andrews started experiencing severe daily abdominal pain. [Exc. 128] He suspected that the psychotropic medication he was on —

Clozapine[2] — was causing the pain, so he asked DOC to take him off the medication or to provide a lower dosage. [Exc. 209-10, 212] DOC did not take him off the medication and has never explained why. In April 2017, Mr. Andrews began actively refusing the medication because of the side effects. [Exc. 208] DOC did not immediately try to forcibly medicate him and he was relatively stable off medication for some time. [Exc. 207]

A. October 10, 2018 Forced Medication Hearing

In October 2018, DOC personnel reported that Mr. Andrews was not retrieving meals, showering, or communicating with staff. [Exc. 231] (Per Mr. Andrews, his inability to retrieve meals and shower was largely due to the constant abdominal pain he was suffering. [Exc. 129]) A DOC psychiatrist, Dwight Stallman, DO, requested a long-term forced medication order under former Department of Corrections Policy 807.16. [Exc. 293]

At the time of Dr. Stallman's request, DOC's policy about forced medication was a version of Policy 807.16 that had been in place since 1995. [Exc. 27-35] The Policy implemented 22 AAC 05.122, a regulation promulgated

[2] Clozapine (which also goes by the brand name Clozaril) is a type of antipsychotic medication that works by regulating the levels of dopamine and serotonin in the brain. Side effects of Clozapine include blood clots, stomach pain, heart rhythm changes, seizures, stroke, and uncontrolled and repetitive body movements, among others. *Clozapine Tablets*, CLEVELAND CLINIC, https://my.clevelandclinic.org/health/drugs/19561-clozapine-tablets (last visited Jul. 8, 2025).

by the Department of Corrections in 1987 that remains in effect. Under the regulation, DOC allowed itself to involuntarily administer psychotropic medication "if facility health care personnel diagnose a prisoner as being in imminent danger of harming himself or herself, or others, as a result of illness, and the prisoner has refused to make an informed consent for treatment[.]"[3]

Former Policy 807.16 provided that, when a DOC psychiatrist believed an incarcerated person should be forcibly medicated for longer than 72 hours,[4] the doctor would submit a request to DOC's Mental Health Review Committee, which consisted of two DOC mental health professionals. [Exc. 30-31] The DOC Committee was then supposed to hold what the Policy termed a "due process hearing" to assess whether "the prisoner suffers from a mental disorder," "the medication is in the best interest of the prisoner for medical reasons," and "the prisoner is gravely disabled or poses a likelihood of serious harm to self, others, or the property of others."[5] [Exc. 29] The Policy provided that the hearing

---

[3] 22 AAC 05.122(b). The regulation states that it draws its authority from AS 33.30.011 (outlining the duties of the DOC Commissioner), AS 33.30.021 (allowing the Commissioner to adopt regulations to implement chapter AS 33.30), and AS 44.28.030 (allowing the Commissioner to adopt regulations to carry out the duties of the Department). No Alaska statute states that DOC must internally administer procedures for involuntary medication.

[4] The Policy allowed emergency medication with psychotropics for up to 72 hours, excluding weekends and holidays. [Exc. 29-30] The emergency medication procedures are not at issue in this lawsuit.

[5] The Policy defined "gravely disabled" as "[a] condition in which the prisoner, as a result of a mental disorder: (1) is in danger of serious physical harm

should be "tape recorded" and that, after the hearing, the DOC Committee should issue a written decision containing "a summary of the hearing," including "the evidence presented" and "the rationale for approving, modifying, or disapproving the involuntary administration of the psychotropic medication." [Exc. 31, 33]

In Mr. Andrews's case, following Dr. Stallman's request, the DOC Committee held a hearing on October 10, 2018. It decided that DOC could forcibly medicate Mr. Andrews based on "Grave Disability" and "Danger to self." [Exc. 225] The "Hearing Findings" provided by DOC solely repeat the criteria from the Policy, and do not include any individualized information about Mr. Andrews such as a summary of the hearing, the evidence presented, or the rationale for approving the forced medication, even though these were all mandatory under DOC's own Policy. [*Id.*[6]] And DOC did not produce a recording of the hearing, as the Policy required.

For some time following the hearing, Mr. Andrews refused to take the medication orally. As a result, DOC medical staff forcibly injected the

---

resulting from his or her failure to provide for essential human needs of health or safety, or (2) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety." [Exc. 28]

[6] The Hearing Findings indicate they are "Page 2 of 2", but no Page 1 was provided in discovery, and it is unclear what that page would have contained.

medication into his buttocks. [Exc. 290-92] Eventually, Mr. Andrews acquiesced and began ingesting the medication orally to avoid the forced injections. [Exc. 129]

After an initial order to forcibly medicate an individual, the DOC Policy in effect from 2018 to 2022 required the DOC Committee to "conduct a hearing and review the need for continued involuntary medications every six months if the involuntary administration of the medication continues[.]" [Exc. 35] Forced medication was not supposed to continue after six months if a review hearing did not occur. [*Id.*] Despite this Policy, DOC did not conduct *any* six-month review hearings for the next four years.[7] Instead, Dr. Stallman submitted requests to continue Mr. Andrews's forced medication, and these were approved without convening a hearing. [Exc. 294-97]

During these years, Mr. Andrews repeatedly complained to DOC about his symptoms, especially his increasingly severe abdominal pain and his belief that these symptoms were caused by the psychotropic medication. [Exc. 202, 228-30] Eventually, in 2020, Mr. Andrews filed *pro se* in the superior court

[7] In its order granting summary judgment, the superior court mistakenly wrote that DOC "conducted only one review hearing for Mr. Andrews between 2018 and 2022." [Exc. 189] But there is no documentation of *any* review hearings during this time. There was one hearing during this period, in March 2021, but that was about whether DOC could perform involuntary blood draws on Mr. Andrews. It was not about involuntary medication. [Exc. 302-03]

concerning his forced medication.[8] [R. 1372-77] (Further detail on the progression of litigation is discussed *infra* at 17-19.)

In July 2022, after Mr. Andrews filed this lawsuit, DOC changed its forced medication policy to the current version of Policy 807.16. [Exc. 36-51] Under the current Policy, to initiate long-term involuntary medication of a prisoner, a treating psychiatrist within DOC submits a request for an "Involuntary Medication Hearing" before the "Involuntary Medication Committee." [Exc. 43-44] (In emergency situations, the Policy allows involuntary psychotropic medication to be administered for up to three 72 hour-periods, excluding weekends and holidays, without a hearing. [Exc. 41-43] These procedures are not at issue in this lawsuit.) Prior to the Committee's meeting, an "independent third-party psychiatrist" must evaluate the patient "to determine the use of involuntary medication[.]" [Exc. 44]

The Involuntary Medication Committee is comprised of three DOC staff licensed as mental health professionals. [Exc. 40] To determine whether to forcibly medicate someone, the Committee decides whether the "prisoner poses and [*sic*] imminent risk of harming self or others without immediate intervention and that imminent risk is a result of mental illness" or whether

---

[8] Mr. Andrews filed a Motion to Enforce pursuant to *Cleary v. Smith* (3AN-81-05274CI), a court case governing some prison conditions in the Alaska Department of Corrections. His case was later severed from *Cleary* and given its own case number. [R. 1177-79]

"the prisoner is gravely disabled and due to the inability to care for self, risk of harm is imminent"; whether the "prisoner has refused to make an informed consent for treatment"; and whether "[l]ess restrictive alternatives for treatment have been used without satisfactory therapeutic result." [Exc. 43]

If the Committee decides that forced medication is appropriate under these criteria, the Policy permits DOC to forcibly medicate the patient for up to six months. If DOC wishes to forcibly medicate someone for longer, the Committee must hold review hearings every six months to determine whether involuntary medication should continue. [Exc. 51] The review hearing must follow the same procedures as the initial hearing. [*Id.*]

The current Policy provides incarcerated patients with certain rights at both the initial medication and review hearings: The patient must receive notice of the hearing 24 hours in advance; the patient is allowed to attend the hearing unless their attendance "poses a substantial risk of harm to self and/or others;" a DOC staff member known as the "Staff Advisor" is supposed to help the patient in the hearing; and the patient may present evidence and confront evidence presented against them, though the patient is not allowed to review evidence ahead of the hearing. [Exc. 45-46]

The Committee's decision is made by majority vote. [Exc. 48] After the hearing, the Committee must issue a written summary of the evidence, along with the Committee's hearing findings and conclusion. [Exc. 48-49] The

individual may appeal by submitting a written appeal form within 48 hours of receipt of the Committee's decision. The appeal is considered by the Medical Advisory Committee (a separate committee comprised of nine DOC employees [Exc. 40]), who must issue a written decision on the appeal within five working days. [Exc. 49] The Policy does not provide for any further appeal.

After the current forced medication Policy took effect in July 2022, Mr. Andrews had four review hearings. None occurred within six months of the prior one, contrary to policy. [Exc. 51]

B. August 18, 2022 Review Hearing

Per Policy 807.16, the notice provided to the patient prior to a forced medication hearing should include the "reason for referral." [Exc. 44-45] The notice provided to Mr. Andrews in advance of his first review hearing in August 2022 stated only, "Renewal hearing needed according to policy." [Exc. 222] It did not explain why the provider believed involuntary psychotropic medication was necessary — *i.e.*, whether DOC believed Mr. Andrews was a danger to himself, a danger to others, or gravely disabled.

At the hearing, the treating psychiatrist, Dr. Stallman, spoke about Mr. Andrews's diagnosis, current medications, and the 2018 finding that Mr. Andrews was gravely disabled. [CTr.[9] 5-8] The only question the Committee

[9] References to the transcript of the DOC hearings will be abbreviated "CTr." for "Confidential Transcript" to distinguish the pages from the transcript of the

asked Dr. Stallman was to clarify Mr. Andrews's current medications. [CTr. 8-9] Mental Health Clinician Tiffany Becker spoke about Mr. Andrews's continued distrust of medical staff and his "assaultive behaviors" — but the only specific example she gave was an incident where he assaulted another inmate in 2011, eleven years prior. [CTr. 9-10] Institutional Probation Officer Hinders stated that Mr. Andrews had not received any recent disciplinary write-ups. [CTr. 15]

Officer Hinders further stated that Mr. Andrews had not requested any witnesses to be present. [CTr. 14] Mr. Andrews spoke up and clarified that he did request his attorneys' presence.[10] [CTr. 14]

Committee Chair Doug Zock then asked Mr. Andrews if he wished to make a statement. Mr. Andrews responded that he did not want to speak without his attorney present, but he did say he would not take the medication if the order was discontinued and that he does not believe he has a mental illness that affects his functioning. [CTr. 15-16] Mr. Zock then informed Mr. Andrews that the Committee was going off record to decide. [CTr. 17]

After DOC took Mr. Andrews out of the hearing room, the Committee went back on record because it had forgotten to read into the record the report

---

oral argument (abbreviated "Tr.").

[10] Superior Court Judge Matthews appointed the Public Defender Agency to represent Mr. Andrews in May 2022. [R. 1342-43]

of William Worrall, MD, the second psychiatric provider who assessed Mr. Andrews. [CTr. 17-20] The Committee members could not ask any questions of Dr. Worrall because he was not present, and neither was Mr. Andrews.

When they went off record again, the DOC Committee decided that Mr. Andrews posed an "[i]mminent risk of harm to others" and that DOC could continue forcibly medicating him. [Exc. 305-06] The summary from the hearing stated that the Committee believed medication was justified because "patient has been given several opportunities to stop medications in the past and all resulting in patient displaying aggressive behavior towards others, paranoia regarding beliefs that others were trying to harm him resulting in the patient assaulting others." [*Id.*] Mr. Andrews appealed this determination to the Medical Advisory Committee (MAC), noting that his attorneys could not attend the hearing, that this was the first medication review hearing ever held for him, and that there were no recent reports of him being violent toward others. [Exc. 220-21] Three weeks later, the MAC denied his appeal, noting that he displayed "aggressive behavior" and tried to "assault[]" others" when off his medication. [Exc. 298] The MAC did not mention any examples.

C. May 9, 2023 Review Hearing

The next medication review hearing took place on May 9, 2023. [CTr. 21-38] The notice prior to the hearing stated that the "Reason for Referral" was "6 month review of involuntary psychotropic medications." [Exc. 304] The section

of the form for stating the purported justification for forced medication was again left blank.

At the hearing, Committee Chair Zock asked Officer Thompson whether Mr. Andrews had requested witnesses. [CTr. 24] Officer Thompson said he had not, and Mr. Andrews interjected to clarify that he had requested to speak with his attorneys first. [CTr. 24]

Next, Mr. Andrews's new treating provider, Geraldo Olivera, MD, provided his opinion that Mr. Andrews needed to remain on involuntary medication because of his history of schizophrenia,[11] his continued paranoia, and his apparent response to internal stimuli and voices. [CTr. 25-26] When asked if Mr. Andrews presents a danger to himself or others, Dr. Olivera responded, "I believe that anybody that is psychotic can become a danger to himself or [] others." [CTr. 26-27]

Committee Chair Zock asked Mr. Andrews if he had questions for the provider. Mr. Andrews stated, "I don't hear voices. I never heard voices." [CTr. 27-28] No one responded to this statement.

After the providers spoke, Mr. Andrews stated, "I'm doing good. I completed the classes, pretty much all of them, in Echo Mod.[12] I further think

---

[11] Mr. Andrews actually has a diagnosis of schizoaffective disorder, which is a different psychiatric condition. [Exc. 188, 210, 224]

[12] Echo Mod is the mental health-specific housing unit at Spring Creek Correctional Center, where Mr. Andrews was housed at the time. Prior to this

I don't need the [psychotropic medication]." [CTr. 33]

Committee Chair Zock then read into the record the "third-party" psychiatric evaluation completed by Dr. Stallman.[13] [CTr. 34-37] Dr. Stallman's report agreed with the current treating provider. [CTr. 37]

Following deliberations, the Committee ordered Mr. Andrews's continued forced medication based on "imminent risk of harm to others." [Exc. 206[14]] When Mr. Andrews tried to appeal within the 48-hour window allotted by DOC Policy, he was told he needed to submit the appeal form to his Institutional Probation Officer (PO). [Exc. 134] Per Mr. Andrews, he could not find the PO, as he seemed to have taken the day off. Eventually, Mr. Andrews slid the appeal form under the closed door of the PO's office. Mr. Andrews never heard back about his appeal. [*Id.*]

D. December 12, 2023 Review Hearing

The written notice for the next medication review hearing again failed to

---

hearing, Mr. Andrews had been transferred out of Echo Mod and into General Population. [CTr. 30]

[13] Dr. Stallman was not really an "independent" medical provider. As noted earlier, he had recommended that Mr. Andrews be forcibly medicated in 2018, recommended that Mr. Andrews be medicated during the years without review hearings, and had been the treating psychiatrist at the prior review hearing.

[14] This document is the internal medical record of the decision to medicate Mr. Andrews. It is not clear if the Committee ever wrote the decisional document entitled Involuntary Medication Hearing Summary, as required by the Policy. [Exc. 48-49, 305] None was provided in discovery.

specify the basis for forcibly medicating Mr. Andrews; the relevant section was left blank. [Exc. 204-05]

At the hearing, treating psychiatrist Dr. Olivera recommended that Mr. Andrews remain on medication because of what Dr. Olivera believed to be paranoia, a lack of insight into his mental illness, and a history of schizoaffective disorder. [CTr. 42] Dr. Olivera expressed his belief there is a need for medications "at this time and indefinitely." [CTr. 42]

Mental Health Clinician Kristopher Staples expressed his support for involuntary medication, noting his fear that Mr. Andrews would engage in "violent behavior" and the "assaultive behavior that he initially went on the involuntary meds for." [CTr. 44-45] When asked by the Committee about the "specifics of the aggressive behavior that caused Mr. Andrews to go on involuntary medication," Clinician Staples did not remember. [CTr. 45] (In fact, Mr. Andrews was *not* medicated for being "violent" or "assaultive" — DOC first forcibly medicated him in 2018 because they found he was at risk of "Grave Disability" and "Danger to self." [Exc. 225])

Committee Chair Zock then read the evaluation of a second psychiatrist, Dr. Worrall, into the record. The evaluation concurred with Dr. Olivera's recommendation to continue forced medication. [CTr. 47-56] The evaluation also noted that Mr. Andrews showed signs of tardive dyskinesia, a side effect of psychotropic medication that involves uncontrollable muscle movements of

the face and body.[15] [CTr. 52] Mr. Andrews was permitted to ask questions but was not given an opportunity to make his own statement during the hearing, contrary to policy. [Exc. 45-46]

Following the hearing, Mr. Andrews received the Committee's findings, which stated they found forced medication justified based on "Grave Disability" and "Danger to Others." [Exc. 203] No information to support these findings was provided.[16] Further, the Committee had never given Mr. Andrews notice that it was considering the "grave disability" justification. Aside from the original decision to forcibly medicate him in 2018, over five years prior, the DOC Committee had only justified Mr. Andrews's medication based on "imminent risk of harm to others." [Exc. 206, 305] There is no written record of why the Committee made this new finding, and it does not appear one was ever provided to Mr. Andrews.

Mr. Andrews appealed. [Exc. 299-300] The Medical Advisory Committee (MAC) upheld the decision to forcibly medicate him, but only on the ground of "grave disability." The MAC stated it "**did not find evidence for danger to others (or danger to self)**." [Exc. 301 (emphasis added)]

---

[15] *Tardive Dyskinesia,* CLEVELAND CLINIC, https://my.clevelandclinic.org/health/diseases/6125-tardive-dyskinesia (last visited July 8, 2025).

[16] Once again, it does not appear the Committee ever wrote the decisional document entitled Involuntary Medication Hearing Summary, as required by the Policy. [Exc. 48-49, 305] None was provided in discovery.

E. June 19, 2024 Review Hearing

Mr. Andrews's next involuntary medication hearing on June 19, 2024 followed a familiar pattern: Mr. Andrews received a written notice prior to the hearing, but the portion of the form with the justification for forced medication was left blank. [Exc. 136-37] During the hearing, the officer serving as Staff Advisor was not present in person with Mr. Andrews. [CTr. 59-60] DOC treating psychiatrist Dr. Olivera recommended that Mr. Andrews continue on involuntary medication because he believed that Mr. Andrews posed an imminent risk of harm to himself and others. [CTr. 62] A Committee member asked Dr. Olivera and Mental Health Clinician Staples if there were any recent incidents of self-harm or harm to others. [CTr. 62-63, 66] Both providers stated there were not. [CTr. 63, 66] There was no discussion of the Medical Advisory Committee's finding following the last hearing that it "did not find evidence for danger to others (or danger to self)." [Exc. 301] And, despite the MAC's finding, the Involuntary Medication Committee decided that continued forced medication was justified because Mr. Andrews was an "imminent risk of harm to self" and "imminent risk of harm to others." [Exc. 307[17]]

Mr. Andrews filed an appeal. [*Id.*] He never heard back. A few months

[17] This citation references Mr. Andrews's appeal form, which DOC had marked with the justification for medication. Again, it does not appear that an Involuntary Medication Hearing Summary was created, as required by the Policy. [Exc. 48-49, 305] None was provided in discovery.

later, assisted by counsel, Mr. Andrews filed his summary judgment motion in this litigation, arguing that the Alaska Constitution entitles him to a judicial hearing and appointed counsel before he may be forcibly medicated with psychotropic medication by the government. [Exc. 70-126] In the motion, he noted that DOC had failed to respond to his June 2024 appeal. [Exc. 91] As a result, DOC looked for his appeal form and found a scan of the form in a former employee's email inbox. [Exc. 261, 309]

Because DOC had not responded to the appeal, DOC took Mr. Andrews off psychotropic medication on October 4, 2024. [Exc. 261] Since then, DOC providers have not asked to put Mr. Andrews back on psychotropic medication, and DOC has transferred Mr. Andrews to a lower security facility, Palmer Correctional Center. [Tr. 4-5]

II. Independent Medical Examination & Summary Judgment Briefing

After the intermittent medication review hearings began in August 2022, the American Civil Liberties Union of Alaska entered an appearance for Mr. Andrews [R. 1262-63], filed an Amended Complaint [Exc. 1-26, R. 1258-61], and moved for an Independent Medical Examination (IME). [R. 1227-40] The superior court accepted the Amended Complaint and granted the motion for an IME. [R. 318-323, 1177-79]

Dr. Sriharsha Gowtham, an internal medicine physician, conducted an

IME on June 27, 2023, and referred Mr. Andrews to Dr. Douglas Haghighi, a gastroenterologist. [R. 951-54] Dr. Haghighi diagnosed Mr. Andrews with Barrett's Esophagus, a condition caused by chronic acid reflux where the hydrochloric acid from the stomach causes the normal cells of the esophagus to be replaced by cells that are predisposed to cancer development. [R. 952] Dr. Gowtham concluded that Mr. Andrews's gastrointestinal pain may be caused by the psychotropic medication. [R. 954]

In July 2024, Mr. Andrews moved for summary judgment on his claim that due process entitles him to a judicial hearing, rather than an internal DOC hearing, and appointed counsel before he may be forcibly medicated. [R. 574-631] DOC moved under Civil Rule 56(f) for an extension of time for filing its opposition so it could depose Dr. Gowtham. [R. 562-68] Mr. Andrews opposed this motion on the ground that his legal arguments for a judicial hearing and counsel do not depend on Dr. Gowtham's findings. [R. 531-45] The superior court permitted Mr. Andrews to re-submit his motion without reference to Dr. Gowtham's findings. [R. 520-21] Mr. Andrews filed a Revised Motion for Summary Judgment as directed. [Exc. 70-126]

DOC then filed an Opposition and Cross-Motion for Summary Judgment. [Exc. 233-289] After the cross-motions were fully briefed,[18] the superior court

[18] *See* Exc. 138-170 (Reply on Plaintiff's Revised Motion for Summary Judgment and Opposition to Defendants' Cross-Motion for Summary

held oral argument on February 14, 2025. [Tr. 1-28] On April 22, 2025, the court issued an order granting summary judgment for DOC. [Exc. 187-200]

The trial court ruled that disciplinary proceedings within DOC provided the "best guidance" on the procedural rights that should be afforded to Mr. Andrews, because incarcerated people have "diminished liberty interests" on account of their incarceration. [Exc. 192-94] The trial court concluded that the DOC procedures provided Mr. Andrews with sufficient due process under *Mathews v. Eldridge*.[19] [Exc. 194-98] The court believed that Mr. Andrews has a "strong private interest" in avoiding forced medication with psychotropics, but that the current procedures do not create a high risk of erroneous deprivation of that interest. [Exc. 194-95]

The superior court next assessed the government's interest in maintaining the current procedures, including the interest in "preserving safe correctional facilities." [Exc. 196] The court wrote that DOC's Policy "gives correctional providers the latitude to quickly intervene when an inmate poses a risk of harm to themselves or others." [Exc. 197] The court did not address the existence of emergency medication procedures, which this suit does not challenge. The court wrote that "fiscal and administrative burdens would

---

Judgment), Exc. 172-186 (Reply in Support of Cross-Motion for Summary Judgment).

[19] 424 U.S. 319 (1976).

accompany judicial hearings" because prisoners might have to be segregated while waiting for hearings and that delays and costs would arise from appointing counsel. [*Id.*] Finally, the trial court stated it "will not review Mr. Andrews' federal due process argument" because "he has not pled a cause of action alleging a federal due process violation."[20] [Exc. 199] Based on this reasoning, the superior court granted summary judgment for DOC.

STANDARD OF REVIEW

In interpreting the Alaska Constitution, the Court applies its "independent judgment" and adopts the "rule of law that is most persuasive in light of precedent, reason, and policy."[21]

ARGUMENT

Introduction

When a person is forcibly medicated with psychotropics, they are physically held down, often strapped to a bed, and injected via syringe — usually in their buttocks. The medication that enters their blood stream is

---

[20] The trial court fundamentally misunderstood Mr. Andrews's reference to federal caselaw in his summary judgment briefing. Mr. Andrews reviewed *Washington v. Harper*, 494 U.S. 210 (1990), a case about what the federal Constitution requires for forced medication of prisoners, because federal law creates the floor for constitutional rights under the Alaska Constitution. *See Baker v. City of Fairbanks*, 471 P.2d 386, 401-02 (Alaska 1970). [Exc. 121-24] Mr. Andrews was not attempting to raise a federal due process claim.

[21] *Wetherhorn v. Alaska Psychiatric Inst.*, 156 P.3d 371, 375 (Alaska 2007) (citing *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979)).

intended to change their thoughts, behaviors, and perception of the world. It achieves this effect by changing the chemical balance in the brain, thereby exposing the person to a multitude of side effects, from uncontrollable twitching to fainting to insomnia.[22] That is why one court has described forced medication as "one of the earmarks of the gulag."[23]

Like the act of incarceration, forced medication is a massive invasion of an individual's right to liberty and personal autonomy. Also like incarceration, there are times when that invasion is necessary, not only for the protection of other people, but for the protection of the patient himself.

The question is who gets to decide whether this kind of massive invasion is justified. The Department of Corrections answers, "We do." But by its conduct in this case, the Department has proven itself a poor steward of the power it seeks to wield. At nearly every turn, DOC failed to follow even its own internal rules and procedures, much less the due process prescriptions of the Alaska Constitution.

For the reasons explained here, Mark Andrews asks this Court to hold

---

[22] *See* Texas Health and Human Services, *List of Psychotropic Medications and Side Effects* (Apr. 2023), https://www.hhs.texas.gov/sites/default/files/documents/List-of-Psychotropic-Medications-and-Side-Effects.pdf (last visited Jul. 30, 2025).

[23] *Keyhea v. Rushen*, 178 Cal. App. 3d 526, 542 (Cal. App. 1986) (holding state prisoners are entitled to judicial determination of their competency to refuse treatment before they may be subjected to long-term involuntary medication).

that the Alaska Constitution's due process provisions require a judicial hearing and appointed counsel before the State may forcibly medicate the patients it holds in its prisons.

Procedural due process "requires that adequate and fair procedures be employed when state action threatens protected life, liberty, or property interests."[24] "The crux of due process is an opportunity to be heard and the right to adequately represent one's interests."[25] "Due process includes the right to a neutral and unbiased decision-maker who presides over proceedings that are fair and that have the appearance of fairness."[26]

Alaska courts employ the *Mathews v. Eldridge*[27] test to determine whether state action violates procedural due process.[28] *Mathews* requires courts to balance three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or

---

[24] *In re 2021 Redistricting Cases*, 528 P.3d 40, 58 (Alaska 2023) (quoting *Doe v. State, Dep't of Pub. Safety*, 444 P.3d 116, 124-25 (Alaska 2019)).

[25] *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999) (citing *Keyes v. Humana Hosp. Alaska, Inc.*, 750 P.2d 343, 353 (Alaska 1988)).

[26] *Copeland v. Ballard*, 210 P.3d 1197, 1201 (Alaska 2009) (citing *State v. Lundgren Pac. Const. Co.*, 603 P.2d 889, 895-96 (Alaska 1979)).

[27] 424 U.S. 319 (1976).

[28] *See, e.g.*, *Native Vill. of Kwinhagak v. State, Dep't of Health & Soc. Servs.*, 542 P.3d 1099, 1120 (Alaska 2024); *Smith v. State, Dep't of Corr.*, 447 P.3d 769, 777 (Alaska 2019); *Midgett v. Cook Inlet Pre-Trial Facility*, 53 P.3d 1105, 1111 (Alaska 2002).

> substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[29]

Close analysis of these factors reveals that the current procedures for determining whether to forcibly medicate a prisoner fall far below what the Alaska Constitution requires and therefore violate Mr. Andrews's right to procedural due process. Such a conclusion necessarily flows from the stringent due process protections of the Alaska Constitution, including for incarcerated people and those subject to involuntary medication. These protections go beyond those of the federal Constitution. And because the interests at stake in these proceedings are so fundamental and the patients are alleged to be seriously mentally ill, counsel are necessary to protect patients' interests.

I. The *Mathews* balancing test requires a judicial hearing before incarcerated people may be forcibly medicated.

The three *Mathews* factors demand that Alaska prisoners like Mr. Andrews receive a judicial hearing before DOC can force them to take mind-altering medications.

A. Private interest at stake

As the trial court correctly concluded, the first *Mathews* factor, the private interest at stake, "indisputably weighs in Mr. Andrews' favor." [Exc.

[29] *Mathews*, 424 U.S. at 334-35.

198] Forced treatment with psychotropic medication defies the Alaska Constitution's guarantees of liberty and privacy.[30] These medications directly interfere with a person's access to their own mind, altering their mood, thoughts, perceptions, and behavior by affecting the chemical balance in their brain.[31] A person's mind is their most private place. Government interference with a person's thoughts and perceptions is profoundly invasive and dangerous. And when Mr. Andrews refuses to take the medication orally, he will be held down and forcibly injected. [Exc. 129, 290-92]

For decades, courts have recognized the importance of the right to refuse psychotropic medication.[32] In 2000, the Ohio Supreme Court wrote:

> The right to refuse medical treatment is a fundamental right in our country, where personal security, bodily integrity, and autonomy are cherished liberties. These liberties were not created by statute or case law. Rather, they are rights inherent in every individual.[33]

This Court in *Myers v. Alaska Psychiatric Institute* held that, "[g]iven the nature and potentially devastating impact of psychotropic medications—as well as the broad scope of the Alaska Constitution's liberty and privacy

---

[30] *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 245 (Alaska 2006) (citing Alaska Const. art. I, §§ 1, 7, 22).

[31] *Id.* at 241-42 (internal citations omitted).

[32] *See, e.g.*, *Jarvis v. Levine,* 418 N.W.2d 139, 148 (Minn.1988); *Keyhea v. Rushen*, 178 Cal. App. 3d 526, 542 (Cal. App. 1986).

[33] *Steele v. Hamilton Cty. Cmty. Mental Health Bd.*, 736 N.E.2d 10, 15 (Ohio 2000).

guarantees—we now similarly hold that the right to refuse to take psychotropic drugs is fundamental[.]"[34] In making this statement, the *Myers* Court pointed out it was "hardly the first court to reach this conclusion."[35]

Ten years after *Myers*, the Connecticut Supreme Court further explained why forcible injection of psychotropics is an extreme deprivation of liberty:

> It is well established that an individual has a constitutionally protected liberty interest in avoiding involuntary administration of antipsychotic drugs—an interest that only an essential or overriding state interest might overcome. This is because the forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty. Indeed, it has been observed that when the purpose or effect of forced drugging is to alter the will and the mind of the subject, it constitutes a deprivation of liberty in the most literal and fundamental sense.[36]

On top of the fact that psychotropic drugs are "literally intended to alter the mind," they "are known to cause a number of potentially devastating side effects."[37] As *Myers* recognized, "the likelihood [that psychotropic drugs will cause] at least some temporary side effects appears to be undisputed."[38] Devastating side effects can include Parkinsonian syndrome (consisting of

---

[34] 138 P.3d at 248.

[35] *Id.* at 247-48 (citing *Rogers v. Comm'r of Dep't of Mental Health*, 458 N.E.2d 308 (Mass. 1983); *Rivers v. Katz*, 495 N.E.2d 337 (N.Y. 1986); *Jarvis,* 418 N.W.2d 139).

[36] *State v. Wang*, 145 A.3d 906, 914 (Conn. 2016) (cleaned up).

[37] *Myers*, 138 P.3d at 241-42.

[38] *Id.* at 241 *(*citing *Jarvis*, 418 N.W.2d at 145) (alteration in *Myers*).

"muscular rigidity, fine resting tremors, a masklike face, salivation, motor retardation, a shuffling gait, and pill-rolling hand movements") and tardive dyskinesia (involving "slow, rhythmical, repetitive, involuntary movements of the mouth, lips, and tongue.")[39] Other known side effects abound, including "drowsiness, weakness, weight gain, dizziness, fainting, low blood pressure, dry mouth, blurred vision, loss of sexual desire, frigidity, apathy, depression, constipation, diarrhea, and changes in the blood."[40]

After *Myers*, multiple cases in Alaska have reiterated the importance of the right to refuse psychotropic medications. In *Bigley v. Alaska Psychiatric Institute*, this Court stated that "[t]he right to refuse psychotropic medications is a fundamental right protected by the Alaska Constitution's guarantees of liberty and privacy."[41] Other Alaska appellate decisions to make the same point include *Wetherhorn v. Alaska Psychiatric Institute* ("a respondent's fundamental rights to liberty and to privacy are infringed upon by involuntary commitment and involuntary administration of psychotropic medication proceedings"[42]) and *Kozevnikoff v. State* ("requiring a patient to ingest psychotropic medication infringes on a significant liberty and privacy

---

[39] *Id.* at 241-42 (internal citations omitted).

[40] *Id.* (citing *Jarvis*, 418 N.W.2d at 145).

[41] 208 P.3d 168, 187 (Alaska 2009) (internal citations omitted).

[42] 156 P.3d 371, 383 (Alaska 2007), *overruled on other grounds by Matter of Naomi B.*, 435 P.3d 918 (Alaska 2019).

interest"[43]).

Because of the fundamental privacy and liberty interests at stake, the first *Mathews* factor weighs heavily in favor of the strongest procedural protections before the government may forcibly inject a person with mind-altering substances, even when that person is incarcerated.

B. The risk of erroneous deprivation and the probable value of additional safeguards

Holding involuntary medication proceedings entirely within the Department of Corrections creates an unacceptable risk that incarcerated people like Mr. Andrews will be wrongfully medicated. The record in this case makes clear the rampant flaws in DOC's internal procedures.

1. Myers *outlined the risks of giving this authority to institutional decision-makers.*

This Court in *Myers* extensively outlined the problems inherent in allowing staff within an institution decide whether individuals inside that institution should be forcibly medicated.[44] In essence, this Court explained, staff decision-makers cannot be sufficiently neutral and unbiased because of institutional pressures:

> [There is an] inherent risk of procedural unfairness that inevitably arises when a public treatment facility possesses unreviewable power to determine its own patients' best interests. Many cases describe the

[43] 433 P.3d 546, 547 (Alaska App. 2018) (internal citations omitted).

[44] *Myers,* 138 P.3d at 249-52.

> unavoidable tensions between institutional pressures and individual best interests that can arise in this setting: "The doctors who are attempting to treat as well as maintain order . . . have interests in conflict with those of their patients who may wish to avoid medication. . . . Economic considerations may also create conflicts[.]" Courts and commentators alike have documented numerous instances in which these tensions have actually resulted in abuse "by those claiming to act in [a patient's] best interests."[45]

Thus, *Myers* held that involuntarily committed patients at API have a right to have a judge decide whether the institution may forcibly medicate the patient.

A prison environment greatly magnifies the institutional pressures on staff who make medication decisions. DOC regulations explicitly state that "security is the responsibility of every facility staff member regardless of job description or classification."[46] Thus, even DOC medical providers know that security is a key priority, which can inappropriately influence decisions about medical care. For example, providers might unfairly emphasize a disciplinary incident from decades prior — even when none of the context around that incident is still known.[47] Like API providers, DOC staff have a strong incentive

---

[45] *Id.* at 250 (quoting *Rogers v. Comm'r of Dep't. of Mental Health*, 458 N.E.2d 308, 317-18 n.19 (Mass. 1983)) (second and third alterations in original).

[46] 22 AAC 05.045.

[47] This can be seen in Mr. Andrews's case, where the providers in hearings highlighted a 2011 disciplinary incident with another prisoner. There were no records or other details produced from this incident, including whether Mr. Andrews was on or off medication at the time and whether he was reacting to some threat or provocation that a person without schizoaffective disorder might have reacted to similarly.

to forcibly medicate someone who will be considerably more subdued and sedate while on medication, even if the person poses no risk of harm to themselves or others without medication. And DOC is likely to hold many patients much longer than most patients remain at API; DOC medical providers often treat incarcerated patients for years, or even decades.[48] Such a protracted period of treatment creates a powerful workplace incentive — whether conscious or not — to medicate an incarcerated person to make DOC employees' jobs easier, even when this may not be in the best medical interest of the patient. This risk arises most in borderline cases, where DOC medical providers might err on the side of caution and control (*i.e.*, medication), when a judge might not. Judicial oversight is the only way to ensure that decisions affecting prisoners' constitutional rights are made by an objective outside decision-maker instead of by DOC employees with a stake in the outcome, either for themselves or their coworkers.

The U.S. Supreme Court decided in *Washington v. Harper* that a system of "independent administrative review" within a prison, like Mr. Andrews was

[48] This long period of treatment is also a reason that pharmaceutical companies have targeted correctional facilities for marketing of psychotropics. *See* Dorie E. Apollonio, *Marketing Antipsychotics to Correctional Facilities: A Review of Pharmaceutical Industry Documents*, 28(5) Journal of Correctional Healthcare 325, 327 (2022).

subjected to, is sufficient under the federal Constitution.[49] But, as detailed below, the Alaska Constitution can (and often does) go beyond its federal counterpart in providing due process protections. Moreover, "independent" holds a different meaning under the Alaska Constitution.

In *Harper,* the U.S. Supreme Court held that internal prison processes were sufficiently independent so long as the individuals on the forced medication committee were not "involved in the inmate's current treatment or diagnosis."[50] By contrast, the discussion in *Myers* indicates that the level of independence required by the Alaska Constitution's guarantee of due process is not satisfied if the people deciding whether to forcibly medicate someone work at the same government entity seeking permission to do so. This Court followed similar reasoning in *Native Village of Kwinhagak v. State, Department of Health and Social Services*.[51] In that case, this Court assessed a U.S. Supreme Court case that approved, under the federal Constitution, a Georgia law allowing a child to be admitted to a state-run mental hospital as long as there was a "clinical team" assessment and "periodic review" by an "independent medical group."[52] This Court held, under the Alaska

---

[49] 494 U.S. 210, 233 (1990).

[50] *Id*.

[51] 542 P.3d 1099, 1119 (Alaska 2024).

[52] *Id*. (citing *Parham v. J.R.*, 442 U.S. 584, 614-16 (1979)).

Constitution, that a judicial hearing is necessary to determine whether a child may be subject to long-term institutionalization; that is, the Alaska Constitution is not satisfied if decisions are made by institutional medical providers alone.[53]

In its order granting summary judgment, the superior court in this case analogized medication decisions in prisons to disciplinary decisions, noting that this Court has allowed prison staff to make disciplinary decisions. [Exc. 192-95] But the analogy is inapt. In a disciplinary hearing, the sole question is what occurred — did one inmate strike another, possess contraband, or disobey an order? The risk of a DOC staff member getting this determination wrong (in other words, the risk of erroneous deprivation) is relatively low.[54]

An involuntary medication hearing requires a very different analysis of legal factors; that legal determination mirrors the analysis judges across the state regularly perform in civil commitment proceedings. This Court explained the issue well in *Myers*, where it rejected API's argument that its medical providers were the proper arbiters of patients' best interests:

> [T]he issue is not one of medical competence or expertise. As we have

---

[53] *Id.* at 1124.

[54] There are also exponentially more disciplinary hearings, as all 4,400 people incarcerated in Alaska face the disciplinary process. Some individuals could even have multiple disciplinary hearings in a month. It is thus not tenable to have someone outside of DOC act as the decision-maker. By contrast, fewer than two dozen individuals are forcibly medicated by DOC. [R. 517-18]

> already seen, the right at stake here—the right to choose or reject medical treatment—finds its source in the fundamental constitutional guarantees of liberty and privacy. The constitution itself requires courts, not physicians, to protect and enforce these guarantees. Ultimately, then, whether Myers's best interests will be served by allowing the state to make a vital choice that is properly hers presents a constitutional question; and though the answer certainly must be fully informed by medical advice received with appropriate deference, in the final analysis the answer must take the form of a legal judgment that hinges not on medical expertise but on constitutional principles aimed at protecting individual choice.[55]

In the prison context, this Court has held that DOC staff are not appropriate decision-makers over constitutional questions. In *Walker v. State, Department of Corrections*, this Court considered whether prisoners must raise constitutional claims during internal disciplinary appeals to preserve the issue for judicial review.[56] The Court held they do not — in part because DOC "superintendents have no special expertise to address constitutional claims" and "DOC's regulations reflect prison superintendents' lack of expertise in constitutional matters."[57] The *Walker* decision tracks other caselaw from this Court that "administrative agencies have no jurisdiction to decide issues of

---

[55] *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 250 (Alaska 2006).

[56] 421 P.3d 74 (Alaska 2018).

[57] *Id.* at 80-81 (citing 22 AAC 05.480(f)); *see also Huber v. State, Dep't of Corr.*, 426 P.3d 969, 972 (Alaska 2018) (reiterating that "prison superintendents possess no special expertise to address the constitutional claim" raised on appeal of disciplinary proceeding) (internal quotations and modifications omitted).

constitutional law such as a violation of one's right to privacy."[58]

That same reasoning applies here: judges, not medical providers within DOC, are the appropriate decision-makers for questions requiring a constitutional analysis. Forced medication undoubtedly qualifies as such.[59]

2. *DOC does not even follow the procedures laid out in its own Policy.*

Another problem with letting DOC decide whether to forcibly medicate prisoners is that DOC has proven unwilling or incapable of following even the limited procedural protections that it expressly built into its internal medication process. DOC's struggle to follow its own procedures shows that an informal agency setting is not well suited for forced medication decisions and court oversight is necessary.

To start with one glaring example of DOC's inadequate process: this Court has repeatedly held that a fundamental aspect of procedural due process under the Alaska Constitution is "notice and opportunity for hearing

---

[58] *Dougan v. Aurora Elec., Inc.*, 50 P.3d 789, 795 n.27 (Alaska 2002) (citing *State, Dep't of Labor, Wage & Hour Div. v. Univ. of Alaska,* 664 P.2d 575, 580 (Alaska 1983)); *see also Alaska Pub. Int. Rsch. Grp. v. State*, 167 P.3d 27, 36 (Alaska 2007) (reiterating statement from *Dougan*).

[59] In its summary judgment briefing, DOC suggested that the current system allows judicial review through an administrative agency appeal from the DOC decision to forcibly medicate a prisoner. [Exc. 274-76] The trial court did not address this argument in its order. If DOC reprises this argument in Appellee's Brief, Mr. Andrews's Reply will address the many reasons such review is unavailable or insufficient under the Alaska Constitution.

appropriate to the nature of the case."[60] "Parties must have notice of the subject of proceedings that concern them so that they will have a reasonable opportunity to be heard."[61]

Under DOC's own rules, adequate hearing notice for each of Mr. Andrews's hearings should have included, at a minimum, the "reason for referral" — in other words, the treating psychiatrist's justification for involuntary medication (*i.e.*, whether Mr. Andrews was at risk of becoming a danger to himself, a danger to others, or gravely disabled [Exc. 43]), plus a factual basis for the justification for medication.[62] Without knowing this basic rationale for the involuntary medication request, a person cannot sensibly prepare a defense.

But Mr. Andrews *never* received evidence before a hearing that supported forced medication. And, after the initial hearing in 2018, none of the notices for subsequent hearings specified even the "reason" DOC believed Mr.

---

[60] *Price v. Eastham*, 75 P.3d 1051, 1056 (Alaska 2003) (compiling cases).

[61] *Id.* (internal quotations omitted).

[62] To provide Mr. Andrews with adequate opportunity to prepare for the hearings, the notices also should have provided the type of medication proposed, including dosage and side effects. But none of the hearing notices provided the medication dosage or side effects. [Exc. 136-37, 171, 204-05, 222, 304] Three of the five hearing notices did not specify the type of medication recommended. [Exc. 136-37, 204-05, 304] Individuals in civil commitment proceedings are given far more information in the notice they receive prior to a forced medication hearing. *See* AS 47.30.837(b), (d)(2).

Andrews needed to be medicated. [Exc. 136-37, 204-05, 222, 304] Nor would it have been obvious to Mr. Andrews what the purported reason was, since DOC repeatedly changed its justification.[63]

The hearing notices and changing justifications are just two examples of DOC's failure to abide by basic procedural protections, even ones required by DOC policy. Other failures appear throughout the record. To name just a few: between October 2018 and August 2022, DOC forcibly medicated Mr. Andrews without *any* review hearings;[64] at hearings held in August 2022 and after, DOC at various times presented evidence outside of Mr. Andrews's presence;[65] did not give Mr. Andrews an opportunity to make a statement;[66] characterized as an "independent, third-party" psychiatrist the same doctor who had repeatedly requested to medicate Mr. Andrews between 2018 and 2022;[67] and did not ensure that the Staff Advisor assigned to Mr. Andrews actually assisted him

---

[63] *See* Exc. 158 (forced medication request based on "Grave Disability" and "Danger to self" in October 2018); Exc. 240, 139 (requests based on "imminent risk of harm to others" in August 2022 and May 2023); Exc. 136 (request based on "Grave Disability" and "Danger to Others" in December 2023); Exc. 241 (request based on "Imminent risk of harm to self" and "Imminent risk of harm to others" in June 2024).

[64] See *supra* at 6.

[65] See *supra* at 10-11.

[66] See *supra* at 15.

[67] See *supra* at 13.

[Exc. 132-33] or even was in the same location during a hearing.[68] After the hearings, Mr. Andrews was rarely given any statement of reasons explaining the Committee's decision to allow forced medication, making it impossible for him to meaningfully challenge the Committee's decision on appeal.[69]

Finally, the record is clear that DOC's internal appeal process does not work. This is especially concerning, as appeals are a necessary tool to correct inevitable errors. This case illustrates the importance of a meaningful appeal. In January 2024, the Medical Advisory Committee overruled the Involuntary Medication Committee and found there was no evidence to support finding Mr. Andrews a danger to himself or others. [Exc. 301] Five months later, in June 2024, with no additional evidence, the Committee found medication justified on the grounds that Mr. Andrews was both a danger to himself and others. [Exc. 307] When Mr. Andrews attempted to appeal the June 2024 decision, DOC lost his paperwork. [Exc. 261, 309]

When the failure to respond to the appeal came to light as a result of this litigation, DOC took Mr. Andrews off psychotropic medication in October 2024. [Exc. 261] Mr. Andrews has now been unmedicated for nearly a year and has

---

[68] See *supra* at 16.

[69] *See Wilkinson v. Austin*, 545 U.S. 209, 225-26 (2005) (providing a factual basis in advance of a hearing and a short statement of reasons after the hearing "are among the most important procedural mechanisms for purposes of avoiding erroneous deprivations").

been transferred to a lower security facility.[70] [Tr. 4-5] This development speaks directly to the risk of erroneous deprivation in these hearings. Hearings to review forced medication are an important constitutional protection to ensure that forced medication does not continue for longer than necessary. But instead of assessing whether there is an up-to-date factual basis for forced medication at each hearing, the Involuntary Medication Committee consistently rubber stamped continuing involuntary medication based on its own prior conclusions.

Most of these due process failures occurred even after litigation began and DOC was aware that a court would be examining the sufficiency of its forced-medication procedures. This track record shows DOC cannot reasonably be expected to follow procedures adequate to the fundamental rights at stake.

C. The State's interest in avoiding enhanced procedures.

The final *Mathews* factor is "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional

---

[70] Although Mr. Andrews is not currently taking psychotropic medication, this issue is still ripe because he will remain in custody for the rest of his life and can be subject to DOC's forced medication procedures again at any time. *See Washington v. Harper*, 494 U.S. 210, 218-19 (1990) (declining to find mootness when prisoner was no longer medicated against his will, as prisoner was still diagnosed as suffering from mental illness, was still jailed, and the controversy could recur); *see also Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 245 (Alaska 2006) (applying same reasoning from *Harper* to hold claim about forced medication in civil commitment context was not moot even though the plaintiff had been released from API).

or substitute procedural requirement would entail."[71] Procedures provided by other states and other parts of the Alaska legal system show that any additional burden of holding judicial hearings, instead of internal DOC hearings, is reasonable.

1. *Judicial hearings would not significantly interfere with any legitimate correctional interests.*

Requiring a judicial hearing before any long-term forced medication order will not impair the administration of correctional facilities, including their safety or efficiency. DOC can continue to use its emergency medication procedure when there is an immediate risk to the safety of the patient or others. The current emergency procedures allow DOC to forcibly medicate a patient for up to three 72-hour periods, which totals between 11 and 14 days with the Policy's exclusion of weekends and holidays. [Exc. 41-42] This 1.5-to-2-week period gives a DOC psychiatrist ample time to submit a petition to a court requesting longer-term involuntary medication when the doctor believes that is justified. In civil commitment cases, the Alaska statutes treat three days as sufficient time to arrange for a contested court hearing.[72]

After DOC submits a petition requesting involuntary medication, a judge will assess whether an incarcerated person poses a risk of imminent danger to

---

[71] *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

[72] AS 47.30.715(g).

self or others, just as judges currently do for civil commitment petitions under AS 47.30.735. If the person is an imminent risk, the judge will approve involuntary medication, and safety and security of the facility will be protected. If the court finds the person is *not* a risk, then the safety and security of the facility is not in jeopardy.

While not ideal, Mr. Andrews concedes that due process would be fulfilled by allowing the incarcerated patient and witnesses to attend the judicial hearing via videoconference from a correctional facility. This would safeguard resources and promote security. The proposed judicial process will *lessen* the administrative burden on correctional facilities, because far fewer DOC staff would need to be involved in the hearing process than the current procedures require.

There is clear proof that such procedures are feasible: 18 other states (and the District of Columbia) provide for judicial oversight before involuntarily medicating prisoners with psychotropic medication.[73] The

---

[73] Treatment Advocacy Center, *The Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey* (2014), at 7, available at: https://www.treatmentadvocacycenter.org/reports_publications/the-treatment-of-persons-with-mental-ilnnes-in-prisons-and-jails-a-state-survey/ [sic in hyperlink]. Thirteen states require a judicial hearing before a prison may involuntarily medicate someone. Five states and Washington, DC, do not allow nonemergency involuntary medication of prisoners and instead require the individual be civilly committed to a psychiatric hospital for treatment (a process that requires a judicial hearing). *Id.* at 22. Some states provide such hearings through statute (*see, e.g.*, Fla. Stat. §§ 945.42(17), 945.485(4) (2025);

prevalence of judicial hearings in other states undercuts DOC's argument that hearings would interfere with DOC's ability to function, and demonstrates that it is perfectly reasonable for prisons to seek approval from a judge before forcibly medicating people in their custody on a long-term basis. If DOC has questions about how to implement this process, it has the benefit of many models to look to and learn from in other states.

2. *Courts can handle four additional hearings per month.*

Judicial oversight of involuntary medication would require hearings to take place within the courts, rather than within DOC. Alaska's courts are well-prepared to conduct such hearings. Because of *Myers,* substantive involuntary medication hearings must occur whenever API wishes to involuntarily medicate a person who has been civilly committed.[74] Because of rulings by the Court of Appeals in *Kozevnikoff v. State*[75] and *Love v. State*,[76] courts also conduct involuntary medication hearings before a person on probation can be

---

La. Stat. § 15:830.1 (2025)); through a state court case that held incarcerated people are entitled to the same medication procedures as civilly committed individuals (*see, e.g.*, *Keyhea v. Rushen*, 178 Cal.App. 3d 526, 542 (Cal. Ct. App. 1986); or through prison policy (*see, e.g.*¸ Haw. Dep't of Corr. & Rehab. Policy Cor.10.G.07 (January 01, 2024), available at https://dcr.hawaii.gov/wp-content/uploads/2024/06/COR.10.G.07-Court-Authorized-Involuntary-Psychiatric-Medications.pdf).

[74] 138 P.3d at 254.

[75] 433 P.3d 546, 547-48 (Alaska App. 2018).

[76] 436 P.3d 1058, 1060-61 (Alaska App. 2018).

required to take medication. And, because Alaska follows *Sell v. United States,*[77] court hearings are held before an incarcerated person may be forcibly medicated in competency restoration proceedings.[78]

The same kinds of procedures should apply for scheduling and conducting involuntary medication hearings for sentenced prisoners. Given that fewer than two dozen prisoners are currently subject to involuntary medication orders [R. 517-18], providing each a six-month review hearing in court would amount to about three or four hearings a month on average.

D. Balancing the *Mathews* factors

The final step of the *Mathews* analysis is to balance the three factors just discussed.[79] The balance in this case supports requiring a judicial hearing before forcibly medicating any person, even if they are in prison:

> (1) The private interests at stake are some of the most fundamental: the right to bodily autonomy and a person's right to control their own mind. This Court and others have recognized the profound weight of these individual rights.[80]

---

[77] 539 U.S. 166, 180-81 (2003).

[78] *See R.A. v. State*, 550 P.3d. 594 (Alaska App. 2024) (affirming *Sell* order).

[79] *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

[80] *See Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 241-42 (Alaska 2006); *State v. Wang*, 145 A.3d 906, 914 (Conn. 2016); *Steele v. Hamilton Cty. Cmty. Mental Health Bd.*, 736 N.E.2d 10, 15 (Ohio 2000); *Jarvis v. Levine*, 418 N.W.2d

(2) The current procedures expose Mr. Andrews to an unacceptably high risk of erroneous deprivation of these rights, as outlined in *Myers* and seen in the repeated failure of DOC to honor basic procedures;

(3) Providing additional procedures will burden the State to a degree — more the court system than DOC — but the burden is not large, and parallel infrastructure for involuntary medication hearings already exists.

Accordingly, this Court should conclude that the modest burden is strongly outweighed by the profound privacy and liberty interests at stake and the risk of erroneous deprivation of those interests. The scale points unmistakably toward a judicial proceeding to preserve Mr. Andrews's fundamental rights.

The California Court of Appeals discussed this balance when it held that judicial authorization is required for involuntary medication of prisoners:

> We conclude that state prisoners, like nonprisoners under the [California involuntary commitment] statutory scheme, are entitled to a judicial determination of their competency to refuse treatment before they can be subjected to long-term involuntary psychotropic medication. Mental health professionals and prison administrators may find this requirement cumbersome, but this is a price of life in a free society. Forced drugging is one of the earmarks of the gulag. It should be permitted in state institutions only after adherence to stringent substantive and procedural safeguards.[81]

139, 148 (Minn. 1988); *Rivers v. Katz*, 495 N.E.2d 337, 341 (N.Y. 1986).

[81] *Keyhea v. Rushen*, 178 Cal.App. 3d 526, 542 (Cal. Ct. App. 1986).

The trial court in this case erroneously reached the opposite conclusion. It believed that incarcerated people have "diminished liberty interests" before being forcibly medicated and that, as a result, prison disciplinary hearings provide "the best guidance" in determining the appropriate procedures for forced medication. [Exc. 192-94] In its analysis, the trial court placed great weight on a footnote in *Myers*, but that reliance was misplaced. In the *Myers* footnote, this Court responded to API's repeated citation to federal cases, such as *Washington v. Harper*, that limit due process rights under the federal constitution for prisoners potentially subject to forced medication.[82] The footnote states that API's references to those federal cases had little value to the issue at hand because of the reduced liberty interests of prisoners and the increased governmental interest in managing prisoners.[83]

This ancillary language from *Myers* should bear no weight here. The *Myers* Court was not deciding what process is due to prisoners. It had no evidence regarding the procedures available to prisoners and no briefing on how those procedures did or did not protect prisoners' due process rights. In this case, the Court has a record that shows the clearly deficient process and recurrent mistakes made by the Alaska Department of Corrections when

[82] *Myers*, 138 P.3d at 246 n.56.

[83] *Id.*

administering its own procedures. Given this track record, which is visible in Mr. Andrews's case but undoubtedly repeated across incarcerated patients, this Court should join many other states and provide a judicial hearing before an incarcerated person may be forcibly medicated.

II. The Alaska Constitution requires vigorous due process protections, including for incarcerated people and patients subject to involuntary medication, that go beyond the federal Constitution.

Mr. Andrews brings his claim under the Alaska Constitution. As already noted, in *Washington v. Harper*, the United States Supreme Court held that the federal Constitution does not require a judicial hearing prior to the forced medication of incarcerated patients.[84] But it is well-established that, when interpreting the Alaska Constitution, this Court is not bound by the United States Supreme Court's rejection of similar claims under federal constitutional law. This Court has a long history of expansively interpreting the constitutional rights of Alaskans.[85] This Court has been particularly protective

---

[84] 494 U.S. 210, 236 (1990).

[85] *See Club SinRock, LLC v. Municipality of Anchorage*, 445 P.3d 1031, 1037 (Alaska 2019) (holding Alaska's free speech clause is more protective than federal version); *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997) (same for right to abortion); *Swanner v. Anchorage Equal Rts. Comm'n*, 874 P.2d 274, 280 (Alaska 1994) (same for free exercise clause); *Lemon v. State*, 514 P.2d 1151, 1154 (Alaska 1973) (same for confrontation clause); *Breese v. Smith*, 501 P.2d 159, 168 (Alaska 1972) (same for children's right to decide personal appearance); *Roberts v. State*, 458 P.2d 340, 342-43 (Alaska 1969) (same for right to counsel).

of individual liberty and has repeatedly established procedures necessary to protect against unwarranted government interference with that liberty.[86] In particular, this Court has interpreted the Alaska Constitution more expansively to protect two groups of people relevant to this case: patients facing forced medication and people who are incarcerated.

In *Myers v. Alaska Psychiatric Institute*, this Court held that Alaska's due process clause requires more robust protections than federal due process for people whom the state seeks to forcibly medicate: "Although the federal constitution sets the minimum protections afforded to individual liberty and privacy interests, the Alaska Constitution often provides more protection."[87]

In *Myers*, this Court discussed its long history of interpreting the rights to privacy and individual liberty under the Alaska Constitution as more protective than their federal counterparts.[88] Drawing on that history, *Myers* held that the state may involuntarily medicate a person in the civil commitment context only after a judicial determination that this forced

---

[86] *See, e.g.*, *Doe v. State, Dep't of Pub. Safety*, 444 P.3d 116, 136 (Alaska 2019) (right to hearing on whether continued sex offender registration is justified); *Blue v. State*, 558 P.2d 636, 642 (Alaska 1977) (right to counsel at pre-indictment lineup); *Baker v. City of Fairbanks*, 471 P.2d 386, 401-02 (Alaska 1970) (right to jury trial extends to offenses not covered by federal right).

[87] 138 P.3d at 245 (citing *Valley Hosp. Ass'n v. Mat-Su Coalition*, 948 P.2d at 966-67).

[88] *Id.* at 245-46.

treatment is in the person's best interests and that no less intrusive course of treatment is available.[89] As discussed, the reasoning from *Myers* applies equally well to incarcerated people, and thus similar procedures — including a judicial determination and appointed counsel — must be employed to protect against wrongful forced medication.

This Court's history of providing stronger due process protection than the federal Constitution extends to incarcerated people. In *McGinnis v. Stevens*, this Court considered whether a then-recent decision by the U.S. Supreme Court "delineate[s] the full extent of due process rights which must be accorded prison inmates under Alaska's constitution."[90] This Court concluded it does not; incarcerated Alaskans are entitled to greater procedural protections than the U.S. Constitution provides.[91] Thus, this Court held that incarcerated people are entitled to additional rights in disciplinary proceedings within the Alaska DOC: the right to counsel when felony prosecution may result; the right to call witnesses and produce documentary evidence (subject to some limitations when the evidence would be repetitive, irrelevant, or clearly dangerous to present); the right to confront and cross-examine witnesses; and the right to have the entire hearing recorded for purposes of

---

[89] *Id.* at 254.

[90] 543 P.2d 1221, 1227 (Alaska 1975).

[91] *Id.*

appeal.[92]

When taken together, these holdings from *Myers* and *McGinnis* require the utmost procedural protections for incarcerated patients subject to forced medication, instead of the sloppy internal process DOC currently uses (and frequently ignores) before forcibly medicating people in its custody.

III. Counsel is necessary to protect the fundamental rights at stake.

Beside the right to a judicial hearing, due process also requires that prisoners subject to involuntary medication with psychotropic drugs be provided with counsel to represent their interests.

The right to counsel in involuntary medication proceedings is a natural outgrowth of the rights at stake. This Court made clear in *Wetherhorn v. Alaska Psychiatric Institute* that, because "a respondent's fundamental rights to liberty and to privacy are infringed upon by involuntary commitment and involuntary administration of psychotropic medication proceedings, the right to counsel in civil proceedings is guaranteed by the due process clause of the Alaska Constitution."[93] Representation by a lawyer is vital in an involuntary medication hearing because individuals subject to such hearings are alleged to

---

[92] *Id.* at 1227-36.

[93] 156 P.3d 371, 383 (Alaska 2007) (citing Alaska Const. art. I, § 7; *V.F. v. State*, 666 P.2d 42, 44-45 (Alaska 1983)), *overruled on other grounds by Matter of Naomi B.*, 435 P.3d 918 (Alaska 2019).

be seriously mentally ill. This could foreseeably interfere with their ability to articulate their position, understand the contours of medical testimony presented against them, explain side effects they are experiencing, and tailor their arguments to the legal standards that apply.[94] The U.S. Supreme Court has recognized the importance of counsel in these circumstances: "A prisoner thought to be suffering from a mental disease or defect requiring involuntary treatment probably has an even greater need for legal assistance, for such a prisoner is more likely to be unable to understand or exercise his rights. In these circumstances, it is appropriate that counsel be provided to indigent prisoners whom the State seeks to treat as mentally ill."[95]

It is not a barrier to this Court's ability to issue a constitutional ruling in this case that, at this time, the enabling statutes of the Public Defender Agency and the Office of Public Advocacy may not authorize those agencies to represent Mr. Andrews or others like him in an involuntary medication hearing.[96] In the short term, counsel for these hearings likely would need to be

---

[94] *See In re Saenz*, 299 Wis. 2d 486, 508 (Wis. App. 2007) ("It is not hard to imagine cases in which an inmate in Saenz's position would be patently incapable, for either physical or mental reasons, of opposing the Department [of Corrections'] petition without some assistance.").

[95] *Vitek v. Jones*, 445 U.S. 480, 496-97 (1980).

[96] *See* AS 18.85.100; AS 44.21.410. As Judge Terrell recently noted, the right to representation in hearings that take on a constitutional dimension "must prevail over any statute or regulation denying the appointment of counsel." *See Wilson v. State*, __ P.3d __, 2025 WL 2180093, at *7 (Alaska App. Aug. 1, 2025)

appointed under Administrative Rule 12(e), and there may be some financial and administrative burdens associated with such appointments. But those burdens do not undermine the importance of the right at stake. When this Court has held that new groups of litigants are entitled to counsel under Rule 12(e), its analysis has not turned on the availability or costs of private attorneys.[97] Rather, the Court has focused on the fundamental nature of the right at stake and the need for counsel to preserve that right — because that is the essential question and the state must allocate resources in a way that honors people's constitutional rights. For example, in *Matter of K.L.J.*, this Court determined that counsel must be appointed for indigent parents before their parental rights may be terminated.[98] It reasoned that the private interest at stake, the "right to direct the upbringing of one's child," was high.[99] And, with regard to the governmental interest, the Court held that, although "the state undoubtedly has a legitimate interest in avoiding the cost of appointed counsel and its consequent lengthening of judicial procedures," "the [s]tate's

---

(Terrell, J., concurring).

[97] *See Matter of K.L.J.*, 813 P.2d 276, 279 (Alaska 1991); *Flores v. Flores*, 598 P.2d 893, 898 (Alaska 1979); *Reynolds v. Kimmons*, 569 P.2d 799, 799 (Alaska 1977); *see also Gideon v. Wainwright*, 372 U.S. 335 (1963) (holding that appointed counsel is "fundamental and essential to a fair trial," with no mention of expected costs or availability of attorneys).

[98] 813 P.2d at 283-86.

[99] *Id.* at 279.

pecuniary interest . . . is hardly significant enough to overcome private interests as important as those here[.]"[100] That was the entire discussion of the costs involved in appointing counsel, as it should be when such a fundamental right is at stake.

Following a court ruling that counsel is required for involuntary medication court proceedings for incarcerated patients, the legislature may expand the enabling statutes, just as it did in 2022 when it expanded the Public Defender Agency's role in representing persons who are subject to commitment and involuntary medication proceedings in the civil context.[101]

CONCLUSION

This Court should reverse the trial court and hold that a judicial hearing and appointed counsel are required before Mark Andrews, or any incarcerated person, may be forced to ingest psychotropic medication.

Dated: September 2, 2025

Respectfully submitted,

/s/ Natalie Cauley
Natalie Cauley
AK Bar No. 2405038

[100] *Id.* at 280 (internal quotations omitted).

[101] 2022 SLA Ch. 41, § 11.