



Criminal Justice and the ADA

Presented by Equip for Equality
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1

1

Outline of Today's Webinar

- Background
- Law Enforcement
- Criminal Proceedings
- Correctional Facilities
- Re-Entry Issues
- Questions

Available with your materials:

- **Legal Brief:** Criminal Justice & the ADA
- Brief has additional cases and analysis



2

2

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3

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Background

4

Criminal Justice is an Issue of Critical Importance

- People with disabilities are significantly overrepresented in prisons and jails
 - ❖ Percentage of people with disabilities in **prison** is nearly 3x higher than outside of prison
 - ❖ In **jails** – nearly 4x higher than outside of prison
- Essential to understand applicable federal laws
 - ❖ Americans with Disabilities Act (ADA)
 - ❖ Section 504 of the Rehabilitation Act (Rehab Act)
- ADA and Section 504 apply across criminal justice system

5

ADA and Rehab Act

- **General non-discrimination requirements**
 - ❖ Provide equal access to programs, services, and activities to people with disabilities
- **Specific non-discrimination requirements**
 - ❖ Provide legally required architectural and programmatic access
 - ❖ Make reasonable modifications of policy
 - ❖ Provide auxiliary aids necessary to ensure effective communication
 - ❖ Provide programs and services in the most integrated setting

6



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ADA & Law Enforcement



7

7

Legal Question: Does the ADA apply to all arrests?

According to the Department of Justice → YES

- **DOJ:** ADA applies to law enforcement personnel in nearly every facet of their work, including interrogating witnesses, booking and holding suspects, enforcing laws, operating 911 centers, and arrests
 - ❖ **Commonly Asked Questions about the ADA and Law Enforcement (DOJ document)**
 - www.ada.gov/q&a_law.htm
 - ❖ **Statements of interest: *Sage v. City of Winooski, 16-cv-00116 (D. Vt. Jan. 18, 2017)***
 - www.ada.gov/briefs/winooski_soi.pdf
 - Cites broad scope of Title II, legislative history, court cases
 - ❖ **Statement of Interest: *Robinson v. Farley, 15-cv-00803 (D.D.C. filed June 20, 2016)***
 - www.ada.gov/briefs/robinson_soi.pdf



8

8

Legal Question: Does the ADA apply to all arrests?

According to the vast majority of courts → YES

- ***Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014) rev'd on other grounds, — U.S. —, 135 S. Ct. 1765, 191 L.Ed.2d 856 (2015)** (“We agree with the majority of circuits to have addressed the question that Title II applies to arrests.”)
- ***Seremeth v. Bd. of Cty. Comm’rs Frederick County*, 673 F.3d 333, 339 (4th Cir. 2012)** (“[N]othing in the text of the ADA suggests that a separate exigent-circumstances inquiry is appropriate.”)
- ***Gray v. Cummings*, 917 F.3d 1, 16–17 (1st Cir. 2019)** (noting that “[o]ther circuits ... have charted a different course, holding that Title II [of the ADA] applies without exception to ad hoc police encounters”)

Legal Question: Does the ADA apply to all arrests?

According to a small group of courts, mostly in the 5th Cir. → NO

Hainze v. Richards

207 F.3d 795 (5th Cir. 2000)

- Woman called 911 asking for help transporting Hainze, her nephew, to the hospital for mental health treatment
- Told police that Hainze threatened suicide or “suicide by cop”, was under the influence of alcohol and anti-depressants, and had a knife
- Police arrived – saw Hainze with a knife talking to people in a truck
- Officer drew his weapon and ordered Hainze to walk away
- Hainze responded with profanities, walked toward the officer
- Again ordered to stop. Hainze did not and was shot twice in the chest. He survived.

Legal Question: Does the ADA apply to all arrests?

5th Circuit holding = ADA does not apply to an officer's on-the-street responses to reported disturbances prior to securing the scene and ensuring that there is no threat to human life

- Given need for law enforcement to “instantaneously identify, assess, and react to potentially life-threatening situations,” it would pose an “unnecessary risk to innocents” to require officers to comply with the ADA “in the presence of exigent circumstances” prior to “securing the safety of themselves, other officers, and nearby civilians.”
- Congress could not have intended the goals of the ADA to be attained at the expense of public safety
- Cited other remedies for relief (Section 1983 or state law)

***But see Wilson v. Southlake*, 936 F.3d 326 (5th Cir. 2019)**
(questioning whether *Hainze* was properly decided)

Framework for ADA Cases Involving Arrests

Courts generally recognize two types of ADA claims:

- **Wrongful arrest**
 - ❖ Where police arrest someone based on conduct that stems from their disability, not criminal activity
- **Reasonable accommodation**
 - ❖ Where police properly arrest someone, but fail to reasonably accommodate their disability during the investigation or arrest

Wrongful Arrest Claims

Leibel v. City of Buckeye

364 F. Supp. 3d 1027 (D. Ariz. 2019)

- 14-year-old boy with autism was in the park; officer asked what he was doing in a park; said he was “stimming” with a piece of string
 - ❖ Stimming = common symptom of autism
- Officer mistook it for drug use – physical altercation
- Altercation ended after adult and another officer arrived
- **Court:** Case can move forward (denied/granted motion to dismiss)
 - ❖ Stated a claim for wrongful arrest
 - Officer knew or should have known that the boy had autism
 - Arrested because the effects of his disability were misperceived as criminal activity
 - ❖ No failure-to-accommodate claim as arrest itself was not lawful

Reasonable Modifications During Arrests

Vos v. City of Newport Beach

892 F.3d 1024 (9th Cir. 2018)

- Man with schizophrenia was acting erratically and holding a pair of scissors at 7-Eleven
- Screaming “kill me already, dog”; pretending to have a gun
- Eight other officers arrived on scene; made a “v” formation
- Officers had canine unit; “less-lethal” device; handgun; rifle
- Man opened door and ran with object over his head
- Officers yelled to drop weapon; he didn’t, kept running
- Two officers fired rifles
- Shot four times and died from wounds
- About 20 minutes between officers on scene and shooting
- Parents filed suit for excessive force and ADA/Rehab Act

Reasonable Modifications During Arrests

9th Circuit: Found for parents (reversed/remanded MSJ)

- Officers had time and opportunity to modify standard practices
 - ❖ Could have assessed the situation; used accommodations of de-escalation, communication, or specialized help
 - ❖ Police outnumbered him 8:1; did not have gun; officers had less-lethal methods available like canine unit
 - ❖ Had 15+ minutes to create a perimeter, assemble less-lethal means, coordinate a plan for use of force
 - ❖ Man was “mentally unstable, acting out” and inviting officers to use deadly force on him – all indications of mental illness

***Vos v. City of Newport Beach*, 2020 WL 4333656 (C.D. Cal. June 8, 2020)**
(finding it “undisputed” that the plaintiff was currently engaging in the illegal use of drugs, but denying summary judgment because defendants’ action may have been on the basis of plaintiff’s schizophrenia, not drug use).

Effective Communication with Law Enforcement

Lange v. City of Oconto

2020 WL 1032240 (E.D. Wis. Mar. 3, 2020)

- Deaf woman sued police departments for failing to provide ASL interpreters for arrests, investigations involving herself or family
- Police regularly used her children to interpret or written notes
- **Court: Rejected City’s arguments about why its conduct was reasonable, denying motion for summary judgment**
 - ❖ No threat to safety requiring plaintiff’s immediate removal
 - ❖ ADA regulations prohibit using children – especially here where plaintiff’s dispute was with her children
 - ❖ Question of fact about whether written note was effective
 - ❖ Title II is not limited to arrests – includes all communications

Effective Communication with Law Enforcement

DOJ Settlement with City of Philadelphia Police Department

www.ada.gov/ppd_sa.html (August 2018)

- **Providing effective communication in an exigent situation**
 - ❖ If an emergency involving an **imminent threat** to the safety or welfare of an individual (including police or public) **and** there is **insufficient time** to make available appropriate auxiliary aids and services
 - ❖ **Then** law enforcement personnel will use **whatever** auxiliary aids and services are **most effective** under the circumstances **consistent** with an appropriate law enforcement response to the imminent threat

Effective Communication with Law Enforcement

When there is no longer a threat (or was never a threat)

- Assess/provide appropriate auxiliary aids and services to ensure effective communication
- **Communication cards for routine, non-complex interactions**
- **Develop a communication assessment process and form**
 - ❖ Gives “primary consideration” to expressed preference
 - ❖ Interpreter provided asap (within one hour of identified need)
 - ❖ Requires maintaining contract with qualified interpreter agencies to ensure services will be available on a priority basis
 - ❖ Update electronic detainee tracing system to notify personnel of a detainee’s disability and preferred auxiliary aids
- Develop a training program for personnel
- Monetary payment of \$97,500



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Criminal Proceedings



19

19

Legal Issue: Sovereign Immunity

Tennessee v. Lane

541 U.S. 509 (2004)

- Two individuals brought an action against the State of Tennessee for failing to provide physically accessible courtrooms and facilities
 - ❖ **Beverly Jones:** Court reporter who was denied work opportunities because she could not enter several courtrooms
 - ❖ **George Lane:** Compelled to appear on the second floor of an inaccessible courthouse to answer to criminal charges
 - 1st visit: Crawled up stairs
 - 2nd visit: Refused to crawl, arrested/jailed for failure to appear



20

20

Legal Issue: Sovereign Immunity

- **State argued:** Immune from suits under the 11th Amendment / sovereign immunity
- **Supreme Court:**
 - ❖ Congress had clearly intended to abrogate states' Eleventh Amendment immunity when it enacted Title II of the ADA
 - ❖ Congress had authority to abrogate immunity
 - ❖ Title II was an appropriate response to a long history of discrimination against people with disabilities in the criminal justice system
 - ❖ Emphasized that its holding applied only to the “class of cases implicating the accessibility of judicial services.”
 - ❖ Money damages may be awarded for lack of courtroom access

Courtroom Access: Effective Communication

Prakel v. Indiana

100 F. Supp. 3d 661 (S.D. Ind. 2015)

- Plaintiff is deaf and uses ASL as his primary language
- His mother was a criminal defendant
- He wanted to attend his mother's criminal proceedings and made multiple requests for interpreters
- Hearings included fact-finding hearing, sentencing hearing, and a hearing to address his request for a sign language interpreter
- State argued that these hearings were not “judicial services” because they were not part of formal trial proceedings
- **Court:** Found for Prakel - ADA applies to all gov't operations
 - ❖ Any public judicial proceeding/trial is a judicial service

Courtroom Access: Effective Communication

- State denied interpreter request, in part, because Prakel was not a witness or criminal defendant
- **Issue:** Who is entitled to effective communications in courtroom?
- **Court:** Found for Prakel
 - ❖ Cited plain language of Title II
 - “A public entity shall take appropriate steps to ensure that communications with applicants, participants, **members of the public**, and companions with disabilities are as effective as communications with others.”
 - ❖ Members of the public may participate in criminal proceedings
- **Note:** *Prakel* and *Lane* helped to firmly establish the right of all people to participate in every stage of criminal proceedings

23

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Correctional Facilities

24

Title II Applies to Correctional Facilities

Yeskey v. Pennsylvania Dep't of Corrections

524 U.S. 206 (1998)

- The U.S. Supreme Court resolved any dispute about Title II's applicability to state prisons
- **Held:** Title II of the ADA applies "to any department, agency . . . or other instrumentality of a State" including state prison

Note: Opportunities for recovery are limited by the Prison Litigation Reform Act (PLRA)

- PLRA requires prisoners to exhaust administrative remedies before filing in federal court
- See [42 U.S.C. § 1997e](#)

Architectural Access: Defining Program & Service

Furgess v. Penn. Dep't of Corrections

933 F.3d 285 (3d Cir. 2019)

- Plaintiff has a neuromuscular disease that inhibits his ability to see, walk, speak and lift – requested accommodations
- He was then transferred to the RHU – a restrictive housing unit – that lacked accessible showers
- **Dist. Ct:** No ADA violation because showers were not a program
- **3rd Cir:** Found for plaintiff (vacated and remanded)
 - ❖ Provision of showers is a program, service or activity under the ADA and Rehab Act given breadth of laws
 - ❖ DOJ guidance: provision of hygiene part of the ADA
 - ❖ "Irrelevant" that plaintiff was in RHU because of misconduct

Access to Mobility Devices

Cadena v. El Paso County

946 F.3d 717 (5th Cir. 2020)

- Jail gave plaintiff, who was recovering from knee surgery, crutches instead of a wheelchair; she fell while carrying a food tray
- **5th Cir:** Found for plaintiff (reversed MSJ)
 - ❖ Disabled inmate's right to mobility is well-established
 - ❖ ADA does not typically remedy negligent medical treatment but mobility aids can be disability accommodations

See also *Wright v. New York State Department of Corrections*, 2016 WL 4056036 (2nd Cir. July 29, 2016) (finding ban on motorized chairs in prison due to safety concerns effectively prevented the plaintiff from enjoying a wide range of prison services, and therefore, the prison was required to allow for exceptions to this policy when appropriate)



27

27

Architectural Access: Results in Denial of Programming

Cook v. Illinois Dept. of Corrections

2018 WL 294515 (N.D. Ill. Jan. 4, 2018)

- Plaintiff was ordered to participate in substance abuse program
- Only two accessible facilities offered such program
- Plaintiff's transfers were cancelled due to inaccessible facilities
- Eventually transferred and participated in program for four months before released – program typically longer than that
- **Court: Found for plaintiff (denied IDOC's MSJ)**
 - ❖ Rejected argument that IDOC accommodated plaintiff because he participated in and graduated from program
 - ❖ Prison services must be provided on "same basis"
 - ❖ Here, program was substantially shorter and less comprehensive when compared to non-disabled inmates



28

28

Reasonable Modification for Prisoners

Richard v. Pfister

2020 WL 5210829 (N.D. Ill. Sept. 1, 2020)

- Prisoner with multiple conditions, including COPD, emphysema, asthma that required 24/7 oxygen and a CPAP machine at night
- IDOC policy prohibited him from bringing oxygen tank on the regular transfer bus – provided no alternatives leaving plaintiff stuck at receiving center for almost a year (others leave after 1-2 weeks)
- **Court:** Denied IDOC’s motion for summary judgment
 - ❖ Jury could find plaintiff was denied access to the programs and services available to him at a parent facility due to failure to accommodate him in the transfer process, such as outlets for CPAP, fan, TV or programming or out-of-cell time
 - ❖ Transportation itself could be a “service”

Most Integrated Setting Possible

DOJ Settlement: Union Parish Detention Center

www.ada.gov/union_parish_sa.html (March 22, 2018)

- DOJ investigation revealed that UPDC held a detainee with HIV in isolated, segregated housing for six months because he has HIV
- “Segregation of detainees with HIV is medically unnecessary”
- Settlement Agreement:
 - ❖ No longer segregate detainees based on HIV status
 - ❖ Adopt non-discrimination policies
 - ❖ Designate ADA coordinator
 - ❖ Establish ADA complaint procedure
 - ❖ Advise staff about agreement
 - ❖ Train staff annually about HIV and nondiscrimination
 - ❖ Damages of \$27,500 to complainant

Effective Communication in Prison: Affirmative Evaluation

Pierce v. D.C.

128 F. Supp. 3d 250 (D.D.C. 2015)

- Prison staff never assessed Deaf plaintiff's communication needs
- Prison assumed lip-reading and written notes were sufficient while plaintiff asserted he asked for an interpreter for medical intake, health services and various classes
- **Court:** Violated ADA/504 as a matter of law by failing to evaluate plaintiff's need for accommodation when taken into custody
- Prisons have an *affirmative duty* to assess the accommodation needs of inmates with known disabilities and provide accommodations necessary to access programs/services "without regard to whether or not the disabled individual has made a specific request ... and without relying solely on the assumptions of prison officials regarding that individual's needs."

Effective Communication

Themes in case law brought by Deaf/hard of hearing prisoners

- Broad range of issues
- ASL interpreters are required
- Accessible telecommunications—focus on video phones
- Accessible notification systems
- Throughout all – balance with security needs

McBride v. Michigan Dep't of Corrections

294 F.Supp.3d 695 (E.D. Mich. 2018)

- Class action of deaf and hard of hearing inmates – asserted systemic failure to provide auxiliary aids/services
- **Court:** Found for class (granted motion for summary judgment)
- MDOC violated ADA by failing to provide ASL interpreters

ASL Interpreters

- **Ordered:** Provide necessary auxiliary aids to participate equally in programs, including ASL interpreters for all “high-stakes” interactions, including religious services (even if voluntary)
- High Stakes Interactions included:
 - ❖ Unexpected medical emergencies, hospital visits, psychological evaluations, offender treatment programs, disciplinary/investigative proceedings, religious activities, and educational courses and evaluations

See also *Holmes v. Baldwin*, www.equipforequality.org/wp-content/uploads/2018/09/Holmes-Settlement-Agreement-all-attachments.pdf (settlement requires, including other provisions, that prisoners whose primary language is ASL receive ASL interpreters for all “high stakes interactions”)

Video Remote Interpreting

DOJ Settlement: Arlington County Sheriff

www.ada.gov/arlington_co_sheriff_sa.html (Nov. 2016)

- Deaf complainant incarcerated for 40 days and requested ASL interpreters many times; Sheriff instead used unqualified staff
- **Agreement:** Broad injunctive relief + \$250,000 to complainant
- **VRI requirements:** States regulatory requirements
- **VRI limitations:** Cannot be used if ineffective due to person’s limited ability of person to move head, hands, arms; vision or cognitive issues; significant emotional distress/pain; space limits
- **Broken technology:** If VRI is not functioning properly and staff cannot get it to work within 30 minutes of the malfunction, it will call an on-site interpreter

Video Phones

Rogers et al v. Colo. Dep't of Corrections

2019 WL 4464036 (D. Colo. Sept. 19, 2019)

- Deaf plaintiffs brought lawsuit seeking access to videophones
- During litigation, CDOC installed videophones (VPs)
- **Ct: Ordered CDOC to install VPs, adopt policies/procedures**
- Even though CDOC installed some VPs, case is not moot
 - ❖ CDOC has no policy to ensure access, VPs were provided in response to this litigation, CDOC continues to state that VPs are not required by the ADA
- Plaintiffs cannot communicate effectively without VPs
 - ❖ TTY technology is old and becoming obsolete; analogous to have hearing prisoners use a fax machine; curtails expression given differences between ASL and English

Accessible Notification Systems

Bearden v. Clark County

2016 WL 1158693 (W.D. Wash. March 24, 2016)

- Includes claims that jail's alert system was not accessible
- One example: Prisoner missed call for medicine because his name was announced over the loud system
- **Court:** Granted summary judgment on specific claims
 - ❖ While there is no binding authority mandating a visual notifications system in jails, there must be some accessible notification system
- **Holmes:** Tactile alert system to notify prisoners about fires, emergencies, evacuations, meals, showers, yard time, doctor or counselor appointments
- **DOJ Settlement with South Carolina DOC**
www.ada.gov/south_carolina_doc_sa.html (2018) : Similar requirements

Effective Communication for Blind Prisoners

Brown v. Dept. of Public Safety and Corr. Svcs. 17-cv-945 (D. Md. settlement 2019)

- **Complaint:** Blind prisoners lacked equal access to prison services and privileges because had to rely on others for help with all print materials (mail, commissary, grievances, asking for medical help, educational information, and more)
- **Settlement Highlights:** Will provide equally effective access to all print materials and information in an accessible format
 - ❖ Assistive technology will be available to access information in the library, classrooms, job locations or cells, as appropriate
 - ❖ Plaintiffs who prefer a reader/scribe can choose a fellow inmate who has been trained and meets certain requirements
 - ❖ Different process for confidential/sensitive documents

Solitary Confinement

Andrews v. Rauner

2018 WL 3748401 (C.D. Ill. Aug. 6, 2018)

- Incarcerated woman had a number of mental health conditions and regularly engaged in acts of self-harm
- Medical professionals noted importance of “out of cell time” to engage in activities like socializing and writing
- Instead, placed in solitary after she tried to hurt herself
 - ❖ Ex: 2015 suicide attempt – stripped naked in crisis cell instead of transfer to an inpatient hospital for mental health care
 - ❖ When in segregation, asked questions about mental health through cell door; psychiatrist visit for 30 minutes/week
- Case brought under the ADA and Section 504 (plus Constitution)
 - ❖ Discrimination and failure to accommodate

Solitary Confinement

- **IDOC argued:** Can't bring ADA/504 claim for inadequate mental health treatment – just disagreement with care
 - ❖ “Access to human interaction” is not a program, service or activity under Title II
- **Court:** Found for plaintiff (denied motion to dismiss)
 - ❖ Plaintiff's claim is about deprivation of access to services, programs and activities
 - ❖ Denied access to hospitalization outside of the prison while prisoners with physical disabilities or illnesses were sent to an outside hospital for treatment
 - ❖ Denied long list of activities (education, programming, recreation, exercise, mental health treatment) due to disability and segregation-status (so no need to decide human interaction)

Gender Dysphoria

Doe v. Massachusetts Dept. of Corrections

2018 WL 1156227 (D. Mass. Mar. 5, 2018) (preliminary injunction)

2018 WL 2994403 (D. Mass. June 14, 2018) (motion to dismiss)

- Doe is a transgender woman with Gender Dysphoria (GD)
- Requested transfer to women's prison and other injunctive relief (ex: injunction against strip searches by male officers, showering in presence of men, treating her differently than other women)
- **DOC:** Motion to dismiss - GD is not a disability under the ADA
- **Court:** Found for plaintiff (denied motion to dismiss)
- **GD is not categorically exempt from the ADA**
 - ❖ While the ADA excludes “gender identity disorders not resulting from physical impairments,” GD may result from physical causes—namely, hormonal and genetic drivers

Gender Dysphoria

- **Motion to Dismiss: Doe adequately pled elements of claim**
 - ❖ Denied access to programs that correspond with gender identity
 - ❖ DOC's biological sex-based assignment policy has a disparate impact on inmates with gender dysphoria
 - ❖ Denied accommodation of transfer to a women's prison and being addressed consistent with her gender identity
- **Preliminary Injunction: Ordered certain relief**
 - ❖ Use female correctional officers when conducting strip searches, consistent w/ staffing concerns, union agreements
 - ❖ Absent exigent circumstances, house the plaintiff in an individual cell with separate shower times
 - ❖ When possible, ensure male inmates do not enter the shower
- **Per court's urging, parties reached agreement where she was transferred to women's facility**

Opioid Use Disorder

Smith v. Aroostook County

376 F. Supp. 3d 146 (D. Me. 2019), *aff'd*, 922 F.3d 41 (1st Cir. 2019)

- Plaintiff with a history of opioid use disorder (OUD) was prescribed buprenorphine (part of MAT) – due to be incarcerated for 40 days
- Policy = No MAT. Must experience and be treated for withdrawal
- Doctor opined that forced and immediate withdrawal would cause painful symptoms and increased risk of relapse, overdose, death
- **Court: Found for plaintiff (granted preliminary injunction)**
 - ❖ Require the jail to provide her medication upon incarceration
 - ❖ Likely to prevail on disparate treatment theory in light of the jail's apparent stigma against MAT (decision based on stereotypes)
 - ❖ Alternatively, likely to prevail on reasonable accommodation theory (exception to practice prohibiting MAT)



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43

43

Participation in Work Release Program

Beckhorn v. New York State Department of Corrections
2019 WL 234774 (W.D.N.Y. Jan. 16, 2019)

- NYDOC has a program for inmates with histories of substance abuse – includes transfer to a work release facility
- Also has Merit Time Program, provides time off sentence
- Beckhorn had a left shoulder injury and received workers comp
- Temporary Release Committee hearing, Chairman commented on risk (hypothetical about his falling off of chair)
- He was restricted from participating in program due to disability
 - ❖ As a result, also denied Merit Time Program
- **ADA case – asked for a preliminary injunction**
 - ❖ Denied access to temporary release program, resulting in revocation of his merit time and continued incarceration



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44

44

Participation in Work Release Program

- **Court:** Found for plaintiff (granted preliminary injunction ordering immediate reinstating revoked merit time and parole hearing)
- **Likelihood of success on the merits**
 - ❖ He is a qualified person with a disability – permanent limitations in the range of motion in his left shoulder
 - ❖ Denied benefits due to disability: Committee acted with discriminatory intent in recommending against his work release. Statements show specific link.
- **Irreparable harm:** Continued incarceration / deprivation of liberty
- **Balance of equities and public interest** favored Beckhorn

See also DOJ Settlement: Hawaii Dep't of Public Security:
www.ada.gov/hawaii_dps_sa.html

Participation in Work Release Program

Marks v. Colorado Dep't of Corrections

958 F.3d 1001 (10th Cir. 2020)

- Plaintiff was serving a prison term – obtained entry to a community corrections program operated by Intervention
- As part of program, she needed to remain employed
- After she aggravated her spinal stenosis, Intervention deemed her unable to work and returned her to prison
- **Issue:** Can plaintiff sue the state for Intervention's decision?
10th Cir: Yes – case can move forward
 - ❖ **Rehab Act:** Relevant question is whether the state receives federal funds, not Intervention
 - ❖ **ADA:** Fact finder could reasonably regard the program as the state's given the state's control over the program

Discharge Planning

U.S. v. Los Angeles County

2016 WL 2885855 (C.D. Cal. May 17, 2016)

- U.S. filed a complaint for violations of the Civil Rights of Institutionalized Persons Act and the Violent Crime Control and Law Enforcement Act with settlement agreement
- Individuals intervened to challenge settlement – said portions about discharge planning violate the ADA
 - ❖ Argued: Without meaningful discharge planning, intervenors were denied **access to public benefits**, including transportation, shelter, medical care, psychiatric care, and other services
- County argued: Not discrimination b/c all inmates treated equally
- **Court:** Denied Defendant's judgment on pleadings
 - ❖ Lack of planning disproportionately impacts PWD

Discharge Planning

- Settlement agreement: Inmates with an “intense need for assistance” referred to an Institution for Mental Disease (IMD)
- Intervenors: Agreement conflicts with the ADA’s requirement that public entities to “administer services, programs, and activities in the **most integrated setting appropriate**” and **Olmstead**
- **Court:** Denied Defendant’s judgment on pleadings
- **Court:** Also emphasized importance of meaningful re-entry programs and referenced cycle of **homelessness and recidivism**
 - ❖ Some individuals have been arrested “hundreds of times”
 - ❖ Inmates w/ MI often “released onto the streets...in a more vulnerable, less stable state than when they entered the jail”
 - ❖ Many ex-inmates with mental illness will end up back in prison *if* released without proper access to services

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49

49

QUESTIONS



50



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51

51



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52

52