

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT FRANKFORT**

**OSCAR ADAMS AND MICHAEL KNIGHTS** )  
    **on behalf of themselves and** )  
    **all others similarly situated,** )  
  ) )  
    **Plaintiffs** ) )  
  ) )  
    v. ) )  
  ) )  
**COMMONWEALTH OF KENTUCKY, et al.** ) )  
  ) )  
    **Defendants.** ) )  
\_\_\_\_\_ )

Case No. 3:14-cv-00001-GFVT

**First Semi-Annual Report by the Settlement Monitor**

**February 2, 2016**

Margo Schlanger  
Settlement Monitor  
625 So. State Street  
Ann Arbor, MI 48109

## I. INTRODUCTION

Pursuant to the Court's order dated June 24, 2015, this is the first semi-annual report to the Court and the Parties concerning the status of compliance with the Settlement Agreement, which comprehensively governs how the Kentucky Department of Corrections ("Department") deals with inmates who are deaf or hard-of-hearing ("Deaf").

I thank the Department's personnel, both at headquarters and at the various affected institutions, for their work on implementing the improvements that are required by the Settlement Agreement. The Department has made a significant start towards compliance during the Agreement's first seven months. In particular, each institution that houses one or more Deaf inmates now has an ADA Coordinator and a videophone.

However, much remains to be done. Most notably, the Department has failed to make any progress with respect to staff training, which the Agreement required to be provided by October 2015. In addition, I have not yet assessed progress towards many Agreement provisions, but the inmate interviews I have conducted demonstrate that, at least at some institutions, Kentucky's Deaf inmates feel they are continuing to struggle to get interpreters, auxiliary aids and services, and effective communication more generally. I look forward to more comprehensively evaluating compliance across the Department, over the next months and the Agreement's full term.

Note: The Agreement included heading numbers, but not every paragraph and provision is clearly numbered. To facilitate reference to specific paragraphs, I have numbered them all, and attach the agreement with that as the only change, as Exhibit B to this report. In this report, I refer to the settlement provisions using these numbers.

This report has five Exhibits:

- A) Margo Schlanger CV
- B) Settlement Agreement with additional numbering
- C) Compliance reporting form for Agreement items with deadlines (Jan. 4, 2016)
- D) Quarterly Compliance reporting form (Jan. 18, 2016)
- E) Summary of common themes in inmate interviews

## II. TIMELINE

The Settlement was filed with the Court on May 29, 2015, and ordered by the Court on June 24, 2015. The Settlement Agreement specified that its effective date would be 30 days after filing. Accordingly, the pertinent deadlines for the agreement are:

- June 28, 2015            Effective date
- July 28, 2015           Effective date plus 30 days
- Aug. 27, 2015           Effective date plus 60 days
- Sept. 26, 2015          Effective date plus 90 days

In order to line up the Agreement's various reporting deadlines with the State's quarterly calendar, I have shifted those deadlines a few days or weeks. Quarterly reports will therefore cover the ordinary quarters (using calendar years, not fiscal years), with reports due two weeks after the close of the quarter.

- 1st Quarter: Jan. 1 to Mar. 31; reporting due Apr. 14
- 2nd Quarter: Apr. 1 to June 30; reporting due July 14
- 3rd Quarter: July 1 to Sept. 30; reporting due Oct. 14
- 4th Quarter: Oct. 1 to Dec. 31; reporting due Jan. 14

The Agreement does not specify precise timing for my Semi-Annual Reports, but barring some reason to do otherwise, I plan to file them in February and July.

### **III. COMPLIANCE WITH SETTLEMENT AGREEMENT ITEMS WITH SPECIFIED DEADLINES.**

#### **A. Items with deadlines in the first 90 days.**

##### *1. Designation and information re. ADA Coordinators.*

The Agreement required the designation of ADA Coordinators for each facility, along with notice to me and Deaf Inmates, physical posting of the information in a secure area in any housing unit in which a Deaf inmate is held, and web-posting. All this was to be complete by July 28, 2015. (II.B.1, II.B.2)

**Status: Nearly compliant.** I received timely notice of this information from KDOC for each institution. All but one of the Deaf inmates I have communicated with knew the identity of their ADA Coordinator. And I received photographs of the physical posting of the information. The web-posting is here: <http://corrections.ky.gov/depts/AI/Pages/ADA.aspx>. As of today (February 2, 2016), the webpage is nearly complete; it is missing the Department's newest facility, the Ross-Cash Center. In addition, the online information for the Western Kentucky Correctional Complex is not up to date; a change in ADA Coordinator that occurred sometime before December 7, 2015, is not reflected.

#### **Necessary compliance steps:**

- Add Ross-Cash Center and update Western Kentucky Correctional Complex on <http://corrections.ky.gov/depts/AI/Pages/ADA.aspx>.
- Implement a system to ensure timely updating of the webpage and report that system to me.

##### *2. Videophone installation.*

The Agreement (IX.D.3.a) required that Deaf inmates at all institutions have access to videophones by the end of August 2015. The Department has reported to me that this has been accomplished in every facility. Deaf inmates at five institutions have used the videophones to

discuss with me (via a law student assistant) their observations about compliance with the agreement.

**Status: Apparently compliant.**

It is worth noting that the videophone requirement does not exhaust all the Settlement Agreement's provisions governing access to telephone services. For example, the Agreement, also requires ready access to a TTY for all Deaf inmates (IX.D.1). This is a topic for future reporting, but I have been informed that the Deaf inmate at the Ross-Cash Center does not sign well enough to be able to use the videophone; instead, she uses a TTY. The Ross-Cash Center is currently able to borrow a TTY from Western Kentucky Correctional Complex, which is co-located with it, but apparently does not have its own TTY for its inmates' more ready use.

3. Videophone access.

The Agreement (IX.D.3) is clear that videophone and TTY usage must be cost-free for Deaf inmates, and that Deaf inmates must have at least as much access to videophones as non-Deaf inmates have to conventional telephones. In particular, it provides "videophones . . . will not require permission for use to the same extent that conventional telephones do not require permission for use."

I have been told by one inmate that because the phone is in another housing area, he needs to request special permission and an escort (and that time under escort is counted against his limited phone time), whereas non-Deaf inmates have access to phones in their own housing areas and without special request. In a compliance reporting form that covered the 90-day requirements of the Agreement, attached as Exhibit C, I asked the ADA Coordinators to self-report on this issue. Most of their responses indicate that phones are accessible, but are not entirely clear about the need for escort. For the Western Kentucky Correctional Complex (WKCC), the self-report was that Deaf inmates are charged for the use of videophones, and that they "have to have staff set up the system for them on an individual basis upon their request." WKCC does not (as of the latest report) house any Deaf inmates, but it used to house one; she was transferred to another facility. WKCC's self-report is inconsistent with this Agreement provision.

It is important that the videophones be as available to Deaf inmates as conventional phones are to non-Deaf inmates—including in the same unit, if that is the arrangement for other inmates. In addition, the time it takes to set up a videophone or transport Deaf inmates to it should be counted against their allocated phone time.

In future reports, I will examine this issue in more depth.

**Status: Unclear.**

**Necessary compliance steps:**

- Ensure that Deaf inmates are not charged for videophone use

- Give Deaf inmates access to videophones at least equal to non-Deaf inmates' access to conventional phones (in the same unit, if that's the arrangement for conventional phones).
- Transport and set-up time for the videophones should not be taken from Deaf inmates' phone time.

4. Informational materials for Deaf Inmates.

The Agreement required that by the end of September 2015, all Deaf inmates be provided with "materials providing information about the Auxiliary Aids and Services available to Deaf Inmates and instructions for how to obtain, request, or use those Auxiliary Aids and Services." The language of these materials is required to be "designed to be accessible to each Deaf Inmate." (III.F.1) The same deadline applied, as well, to a Settlement Agreement requirement that Deaf Inmates be given "a schedule showing when Qualified Interpreters and/or other Auxiliary Aids and Services are available." (IV.B)

In response to my questions (see Exhibit C), several institutions provided me the written notice they shared with Deaf inmates. ADA Coordinator self-reports indicate that most inmates have received this documentation. (The Kentucky Correctional Institution for Women's coordinator stated only that both its Deaf inmates are aware of the available services. The Ross-Cash Center's ADA Coordinator stated "Auxiliary Aids and services are done by are medical staff. Interpreter is available through Purple phone." No written documents were provided by either; I infer that notification to the inmates may have been oral rather than written.)

When provided, the content of the informational materials is not ideal:

- For many of the institutions, the notice does not use "language designed to be accessible." For example, two of the notices state: "This memorandum serves as notification to you of an auxiliary aide available for your use," but never explain what an auxiliary aid is.
- The best of the informational handouts is the one for the Roederer Correctional Complex, which specifies the circumstances in which interpretation services are provided. Others do not have this detail, which is important.
- All of the information focuses on telephone equipment (TTY and videophone). There is nothing in any of the materials that informs Deaf inmates that they are entitled to other auxiliary aids and services, including:
  - Hearing aids (and how to get them)
  - Computer-aided transcription services
  - Assistive listening systems
  - Closed caption decoders
  - Open and closed captioning (for example for shared televisions or video provided by the institution)
  - Non-auditory alert or alarm systems
  - Bed shakers
  - Other medically-necessary devices
  - TVs that support open- or closed-captioning (at the inmate's expense)

- No information tells inmates that they can ask to purchase devices such as vibrating clocks and in-line amplifiers, even if not deemed medically necessary.

**Status: Partially compliant.**

**Necessary compliance steps:**

- Written notification to all Deaf inmates
- Improvement of written materials so that they satisfy the following criteria:
  - They explain in clear and simple terms *what an auxiliary aid is*.
  - They explain in clear and simple terms *how to request an auxiliary aid or qualified interpretation*.
  - They list *the occasions when interpretive services are available, and when such services may be by video or in-person*.
  - They explain *how to use a TTY and a videophone*.
  - They explain *what non-telephonic auxiliary aids are available, under what circumstances, and how to request them*. This should especially include hearing aids, open- or closed-captioning, non-auditory alerts, bed shakers, etc. It should cover which items are free of charge, and which are available only at the inmate's expense.

5. *Qualified Interpreters for unscheduled medical emergencies.*

Starting at the end of September 2015, the Agreement (VI.C.4) requires the Department to provide a Qualified Interpreter via Video Remote Interpreting (“VRI”) for unscheduled medical emergencies. Using the form attached as Exhibit C, I asked the ADA Coordinators at facilities with at least one Deaf inmate to self-report if any such situation has arisen, and what arrangements their facility has made to be ready for this obligation, if the time does come. All reported no emergencies so far. They also each reported some preparation, usually by informing medical staff about the availability of a VRI laptop and the like. However, the self-reports do leave some compliance questions unanswered:

- At Roederer Correctional Center, the ADA Coordinator reported that use could be scheduled—which leaves unanswered the question about unscheduled medical emergencies. I note, as well, that the Agreement (VI.A) actually provides for in-person rather than video interpretation for scheduled medical appointments.
- At the Kentucky Correctional Institution for Women, the ADA Coordinator reported, “We will inform the off site provider and let them know they would be coming and the estimated arrival time.” This again leaves unanswered the question of effective communication both on-site and if the provider is not prepared to meet the need.
- At the Ross-Cash Center, the ADA Coordinator reported that discussions with a provider are ongoing.

**Status: Unclear.**

**Necessary compliance steps: Unclear.**

6. Training.

The Agreement includes very substantial provisions governing training, which was supposed to be provided by the end of September 2015 on numerous specified topics to “KDOC employees who interact with the Inmate population.” (XIII.A.1) In addition, the Agreement requires that ADA Coordinators be “trained on the requirements of federal and state law regarding the contents of this Agreement and the KDOC’s obligations to provide full and equal access to, and enjoyment of, its services, privileges, facilities, advantages, and accommodations to Deaf Inmates.” (II.B.1) There are procedural requirements, as well: the Department is required to receive input from the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) and from me. (XIII.A.1)

Unfortunately, the Department as a whole has made no evident progress towards implementing this crucial aspect of the Settlement Agreement. Apparently even scheduling a meeting with the KCDHH has been challenging. This is not a sufficient excuse for failing to at least develop a draft on which to receive input.

I note, however, that the ADA Coordinator at the Kentucky State Reformatory has developed a useful PowerPoint training offering tips on communication with Deaf inmates. I do not know whether that training has been delivered, or to whom. It does not cover all the needed topics, but it is a start.

**Status: Non-compliant.**

**Necessary compliance steps:**

- Confer with KCDHH and with me
- Develop and deliver training for ADA Coordinators and for prison staff.

7. Disciplinary hearings without a Qualified Interpreter.

The Agreement specifies: “If, as of the Effective Date of this Agreement, a Deaf Inmate is being punished or is scheduled to be punished for a disciplinary infraction as the result of a hearing in which he or she did not waive his or her right to a Qualified Interpreter, then the disciplinary hearing must be re-heard at a time that a Qualified Interpreter can be present.” (VII.B.3) I have requested a list of any inmates who, as of June 28, 2015 (the Agreement’s effective date), met these criteria. But KDOC has not provided me with a list. Therefore, I do not know if KDOC is or is not in compliance with this provision.

**Status: Unclear.**

**Necessary compliance steps:**

- Identify any inmates covered, and redo their disciplinary hearings if need be.

8. Payments to plaintiffs and their counsel.

The Settlement Agreement required payment of a total of \$253,077.62 to plaintiffs and their counsel (mostly counsel). Plaintiffs' counsel report to me that these payments have been made in full.

**Status: Compliant.**

9. Routine reporting.

*Grievances:* The Agreement requires that the Department provide me, quarterly, a written summary of grievances filed by Deaf Inmates that relate to the Agreement. (XIV.3) There are very few such grievances, so mostly this provision requires negative reports. I received summaries for the first relevant period (July 2015) by several emails from Department headquarters. For the next reporting period, I received individual emails from ADA Coordinators. In order to facilitate this reporting, I then created a web-based reporting form (and aligned the reporting with ordinary quarters). A PDF version of the form is attached as Exhibit D. For the 2015 4th Quarter reports, covering October 1 to December 31, 2015, I sent a link to it to each of the ADA Coordinators on Monday, January 18, 2016, and requested it be filled out by Thursday, January 28. Unfortunately, as of close of business the following Monday, February 1, there remained two institutions (out of thirteen) that had not yet reported. It remains my hope that use of this form will considerably facilitate reporting. (There have so far been just a handful of grievances reported to me; I will be examining their resolution on my site visit to Kentucky State Reformatory, later this month.)

*Deaf inmates.* The Agreement requires that the Department provide me, every six months, a current and up-to-date list of Deaf inmates in the KDOC's custody, identifying the inmates' names, DOC numbers and institutions. Of the Department's thirteen adult institutions, I understand seven to have one or more Deaf inmates. I received the first set of these reports from a central administrative contact at the Department; the second set came to me via individual emails from different ADA Coordinators, and required numerous email reminders. Even then, three institutions did not provide their lists. To make this reporting requirement easier in the future, I will use the web-based reporting form just discussed. (The 2015 Quarter 4 version does not include this question, because it is required only every other quarter.)

**Status: Compliant, but difficult.**

**Necessary compliance steps:**

- Ensure timely and complete responses to the reporting forms I provide by all ADA Coordinators.

10. Situational reporting.

The Agreement specifies five situations in which the Department is supposed to notify me promptly. They are:



- When a Deaf Inmate is barred from a program or activity because the Department has determined that participation would present a “Direct Threat of injury or death to Deaf Inmates.” (II.A)
- When a Deaf Inmate is barred from a work assignment because that assignment would “present a Direct Threat of injury or death to a Deaf Inmate or others” (VI.F)
- When the Department is considering a non-auditory alert system that will notify Deaf Inmates, in real time, of prison-wide events and emergencies, and events specific to that inmate (VIII.B.1; VIII.B.3; VIII.C)
- When the Department has determined that it is appropriate to adjust the number of minutes afforded Deaf Inmates to make TTY and videophone calls. (IX.C)
- When the Department has made a determination to allow or disallow a Deaf Inmate to use devices such as vibrating clocks or in-line amplifiers, if those devices are not deemed medically necessary. (XII)

I have not received any such notices. In order to ascertain whether any of these situations has arisen, I included questions about these five situations in the quarterly reporting form already discussed, and attached as Exhibit D. Most of the Department’s institutions have responded to that form. Of those, several institutions have considered a non-auditory alert system, and may have made determinations to allow or disallow various covered devices, without providing me the required notice.

**Status: Partially non-compliant.**

**Necessary compliance steps: Train ADA Coordinators as to their prompt situational reporting obligations.**

#### **IV. DEFENDANT’S OTHER OBLIGATIONS**

The Settlement Agreement is 24 pages long and includes many other requirements not discussed in this report. But those requirements do not specify a date for achievement. The Agreement’s term is five years.

Two interpretations of the absence of a date seem plausible: Perhaps when no date is specified, the requirement should be considered effective immediately. Or perhaps the Department is required to implement the requirement moving with reasonable speed. (I don’t think it is plausible to interpret the absence of a date as leaving the implementation time frame completely to the discretion of the Defendant.)

Before beginning to monitor compliance with all the provisions that have no dates, I asked the Department to inform me when its institutions will be compliant, in its view. I felt that that if the Department specified a reasonable date, it would be appropriate to delay site visits and the monitoring they enable until after that date. I asked, as well, for particular attention to be paid to compliance at the Kentucky State Reformatory (KSR), since it houses several dozen Deaf Inmates, with only about eight others spread among a handful of other institutions.

The Department informed me that it would be in compliance with the Agreement at KSR by the middle of February. Therefore, I have scheduled a site visit to KSR for February 24 and 25, 2016. In advance of that visit, I am completing a draft Compliance Instrument, which I will share with plaintiffs' counsel and with the Department.

In order to keep abreast on issues at other institutions, I have made contact with each of the Deaf inmates who is *not* at KSR; a law student assistant has interviewed nearly all of them about their experiences with matters covered by the Settlement Agreement. Those experiences are referenced in this report, and their common themes are summarized in Exhibit E.

**Status: Unclear**

**Necessary compliance steps:** The Department should specify reasonable dates for full compliance at each institution, which will allow my site visits to be as useful as possible.

**V. CONCLUSION, AND SUMMARY OF NECESSARY COMPLIANCE STEPS.**

The Kentucky Department of Corrections has made a significant start towards compliance with the Settlement Agreement since the Agreement became effective on June 28, 2015. Much remains to be done; I will report in more depth in the next report.

**Summary of Necessary Compliance Steps**

1. Designation and information re. ADA Coordinators.
  - Add Ross-Cash Center and update Western Kentucky Correctional Complex on <http://corrections.ky.gov/depts/AI/Pages/ADA.aspx>.
  - Implement a system to ensure timely updating of the webpage and report that system to me.
2. Videophone installation.
  - None
3. Videophone access.
  - Ensure that Deaf inmates are not charged for videophone use.
  - Give Deaf inmates access to videophones at least equal to non-Deaf inmates' access to conventional phones (in the same unit, if that's the arrangement for conventional phones).
  - Transport and set-up time for the videophones should not be taken from Deaf inmates' phone time.
4. Informational materials for Deaf Inmates.
  - Written notification to all Deaf inmates
  - Improve materials so that they satisfy the following criteria:
    - They explain in clear and simple terms *what an auxiliary aid* is.
    - They explain in clear and simple terms *how to request an auxiliary aid or qualified interpretation*.
    - They list *the occasions when interpretive services are available, and when such services may be by video or in-person*.
    - They explain *how to use a TTY and a videophone*.

- They explain *what non-telephonic auxiliary aids are available, under what circumstances, and how to request them*. This should especially include hearing aids, open- or closed-captioning, non-auditory alerts, bed shakers, etc. It should cover which items are free of charge, and which are available only at the inmate's expense.
- 5. Qualified Interpreters for unscheduled medical emergencies.
  - Unclear
- 6. Training.
  - Confer with KCDHH and with me
  - Develop and deliver training for ADA Coordinators and for prison staff.
- 7. Disciplinary hearings without a Qualified Interpreter.
  - Identify any inmates covered, and redo their disciplinary hearings if need be.
- 8. Payments to plaintiffs and their counsel.
  - None.
- 9. Routine reporting.
  - Ensure timely and complete responses by all ADA Coordinators to the reporting forms I provide.
- 10. Situational reporting.
  - Train ADA Coordinators as to their prompt situational reporting obligations.
- 11. Defendant's other obligations.
  - Specify reasonable dates for full compliance at each non-KSR institution.

**Dated: February 2, 2016**

**Respectfully submitted,**



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## **First Semi-Annual Report by the Settlement Monitor (Feb. 2, 2016)**

### **Exhibits**

- A) Margo Schlanger CV
- B) Settlement Agreement with additional numbering
- C) Compliance reporting form for Agreement items with deadlines (Jan. 4, 2016)
- D) Quarterly Compliance reporting form (Jan. 18, 2016)
- E) Summary of common themes in inmate interviews

Exhibit A: Margo Schlanger CV

**MARGO SCHLANGER**  
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## EMPLOYMENT

**Henry M. Butzel Professor of Law**, University of Michigan (2009–present; on leave 2010 and 2011).  
**Director**, Civil Rights Litigation Clearinghouse, <http://clearinghouse.net>. Visiting Professor of Law, Fall 2009.

**Settlement Monitor**, Adams & Knights v. Kentucky Department of Corrections (3:14-cv-00001, E.D. Ky.), June 2015–present. Court-appointed monitor in settlement of state-wide case about deaf prisoners.

**Counsel to the Secretary**, U.S. Department of Homeland Security (Special Government Employee, part-time, 2012-2013). Advised Secretary of Homeland Security on civil rights matters.

**Officer for Civil Rights and Civil Liberties**, U.S. Department of Homeland Security (Presidential appointment, 2010 & 2011). (Chair, Privacy, Civil Rights, and Civil Liberties Subcommittee of the federal Information Sharing Environment’s Information Sharing and Access Interagency Policy Committee; Chair, Interagency Coord. Council on Emergency Preparedness and Individuals with Disabilities; Member, U.S. Delegation, Universal Periodic Review.)

**Visiting Professor of Law**, University of California, Los Angeles (Spring 2009).

**Professor of Law**, Washington University in St. Louis (2004–2009); **Director**, Civil Rights Litigation Clearinghouse. Elected 2008 “David M. Becker Professor of the Year” by law students.

**Faculty Fellow**, Harvard University Center for Ethics and the Professions (2001/02).

**Assistant Professor of Law**, Harvard Law School (1998–2004).

**Senior Trial Attorney**, U.S. Dept. of Justice, Civil Rights Division, Special Litigation Section (1995–1998). Division Special Achievement Awards, 1996 and 1997.

**Law clerk**, Justice Ruth Bader Ginsburg; Supreme Court of the United States (1993–1995).

**Fact-checker**, *The New Yorker* (1989–1990).

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## OTHER APPOINTMENTS

Member, Department of Homeland Security Family Residential Center Federal Advisory Committee, Nov. 2015–present.

Reporter, American Bar Association task force on Standards relating to the Legal Status of Prisoners (2007–Jan. 2010). See [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_treatmentprisoners.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html).

Commissioner, Commission on Safety and Abuse in America’s Prisons (2006–2008). See <http://www.prisoncommission.org>.

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## EDUCATION

**Yale Law School**, J.D. 1993.

Book Reviews Editor, *Yale Law Journal* (Vol. 102); Vinson Prize for excellence in clinical casework.

**Yale College**, B.A. 1989.

Honors: *magna cum laude*, distinction in the History major, National Merit Scholar.

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## COURSES TAUGHT

Torts; Prisons and the Law; Constitutional Equality; Constitutional Law. Seminars include Police and Surveillance Reform; Sexual Orientation, Gender Identity and the Law; Civil Rights and Homeland Security; Empirical Inquiries into Civil Litigation; Institutional Reform Litigation.

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## SCHOLARLY PUBLICATIONS, forthcoming and published (for links, see margoschlanger.net)

*The Just-Barely-Sustainable California Prisoners' Rights Ecosystem*, forthcoming, ANNALS OF THE AM. ACAD. POL. & SOC. SCI. (2016).

*No Reason To Blame Liberals (Or, The Unbearable Lightness of Perversity Arguments)*, THE NEW RAMBLER REVIEW (online, June 15, 2015) (reviewing NAOMI MURAKAWA, THE FIRST CIVIL RIGHT: HOW LIBERALS BUILT PRISON AMERICA).

*Against Solitary Confinement: Jonah's Redemption and Our Need for Mercy*, 16 RUTGERS J. LAW & RELIGION 345 (2015) (symposium: People of the Book).

*Stealth Advocacy Can (Sometimes) Change the World* (review of ALISON L. GASH, BELOW THE RADAR: HOW SILENCE CAN SAVE CIVIL RIGHTS (2015)), 113 U. MICH. L. REV. 897 (2015).

*Trends in Prisoner Litigation as the PLRA Enters Adulthood*, 5 U.C. IRVINE L. REV 153 (2015).

*Prisoners' Rights Lawyers' Strategies for Preserving the Role of the Courts*, 69 U. MIAMI L. REV. 519 (2015).

*Intelligence Legalism and the National Security Agency's Civil Liberties Gap*, 6 HARV. NAT. SEC. L.J. 112 (2015).

*Offices of Goodness: Influence Without Authority within Federal Agencies*, 36 CARDOZO L. REV. 53 (2014).

*The Equal Employment Opportunity Commission and Structural Reform of the American Workplace* (with Pauline Kim), 91 WASH. U. L. REV. 1519 (2014).

*Prison Segregation: Symposium Introduction and Preliminary Data on Racial Disparities*, 18 MICH. J. RACE & LAW 241 (2013).

*Plata v. Brown and Realignment: Jails, Prisons, Courts, and Politics*, 48 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 165 (2013).

*Women Behind the Wheel: Gender and Transportation Law, 1860-1930*, in Tracy A. Thomas & Tracey Jean Boisseau, eds., FEMINIST LEGAL HISTORY: ESSAYS ON WOMEN AND LAW (2011).

*Regulating Segregation: The Contribution of the ABA Criminal Justice Standards on the Treatment of Prisoners*, 47 AM. CRIM. L. REV. 1421 (2010)

*Against Secret Regulation: Why and How We Should End the Practical Obscurity of Injunctions and Consent Decrees*, 59 DEPAUL L. REV. 515 (2010).

*How to Study District Judge Decision-Making*, 29 WASH. U. J. LAW & POL'Y 83 (2009) (with Pauline Kim, Christina Boyd, Andrew D. Martin).

*Preserving the Rule of Law in America's Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. PENN. J. CONST. LAW 139 (2008) (with Giovanna Shay).

*Jail Strip-Search Cases: Patterns and Participants*, 71 LAW & CONTEMP. PROB. 65 (2008).

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*Operationalizing Deterrence: Claims Management (in Hospitals, a Large Retailer, and Jails and Prisons)*, 2 JOURNAL OF TORT LAW (Aug. 2008).

*Hedonic Damages, Hedonic Adaptation, and Disability*, 60 VAND. L. REV. 745 (2007) (with Samuel Bagenstos).

*The Washington University Civil Rights Litigation Clearinghouse: Using Court Records for Research, Teaching, and Policymaking*, 75 UMKC L. REV. 153 (2006) (Symposium: Federal Civil Court Records of the National Archives: Opportunities for Empirical, Historical and Legal Research and Curriculum Design) (with Denise Lieberman).

*What We Know and What We Should Know About American Trial Trends*, 2006 J. DISP. RES. 35 (2006) (Vanishing Trial Symposium).

*Civil Rights Injunctions Over Time: A Case Study of Jail and Prison Court Orders*, 81 N.Y.U. L. REV. 550 (2006). Reprinted in 23 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Steven Saltzman, ed., 2007).

*Second Best Damage Action Deterrence*, 55 DEPAUL L. REV. 517 (2006) (Clifford Symposium on Tort Law and Social Policy).

*Determinants of Civil Rights Filings in Federal District Court by Jail and Prison Inmates*, 1 J. EMPIRICAL LEG. STUD. 79 (2004) (with Anne Piehl).

*The Reliability of the Administrative Office of the U.S. Courts Database: An Initial Empirical Analysis*, 78 NOTRE DAME L. REV. 1455 (2003) (with Theodore Eisenberg) (symposium issue)

*Inmate Litigation*, 116 HARV. L. REV. 1555 (2003).

*Gender Matters: Teaching a Reasonable Woman Standard in Personal Injury Law*, 45 ST. LOUIS U. L.J. 769 (2001).

*Beyond the Hero Judge: Institutional Reform Litigation as Litigation*, 76 MICH. L. REV. 1994 (1999).

*Injured Women Before Common Law Courts, 1860-1930*, 21 HARV. WOMEN'S L.J. 79 (1998).

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## NON-SCHOLARLY PUBLICATIONS

*Class-Action Suit Brings Sweeping Changes to Solitary Confinement in New York*, Prospect.org, Dec. 23, 2015 (with Amy Fettig), available at <http://prospect.org/article/class-action-suit-brings-sweeping-changes-solitary-confinement-new-york>.

*Solitary Reform Milestones*, Solitary Watch (with Amy Fettig), available at <http://solitarywatch.com/milestones>.

*Eight Principles for Reforming Solitary Confinement*, American Prospect, Fall 2015 (with Amy Fettig), available at <http://prospect.org/article/eight-principles-reforming-solitary-confinement-0>.

With one decision, Obama and Lynch could reshape the criminal justice system, WashingtonPost.com, Aug. 3, 2015 (with Robert Ferguson & Judith Resnik), available at <https://www.washingtonpost.com/posteverything/wp/2015/08/03/with-one-decision-obama-could-totally-reform-the-criminal-justice-system/>.

A Civil Rights Vision for Countering Violent Extremism, The Hill (Congress Blog), July 14, 2015, available at <http://thehill.com/blogs/congress-blog/civil-rights/247769-a-civil-rights-vision-for-countering-violent-extremism>.



*The Declining Prisoner Docket*, Alliance for Justice Blog, Feb. 25, 2015, available at <http://www.afj.org/blog/the-declining-prison-litigation-docket>.

U.S. Intelligence Reforms Still Allow Plenty of Suspicionless Spying on Americans, JustSecurity.org, Feb. 13, 2015, available at <http://justsecurity.org/20033/guest-post-intelligence-reforms-plenty-suspicionless-surveillance-americans/>.

When is it Ok to Racially Profile? Politico Magazine, Dec. 18, 2014, available at <http://justsecurity.org/20033/guest-post-intelligence-reforms-plenty-suspicionless-surveillance-americans/>.

Intelligence Legalism and the Torture Report, JustSecurity.org, Dec. 17, 2014, available at <http://justsecurity.org/18510/intelligence-legalism-torture-report/>.

Infiltrate the NSA, Democracy (Issue #35, Winter 2015); Dec. 15, 2014 and TheAtlantic.com, Dec. 30, 2014, available at <http://www.democracymagazine.org/35/infiltrate-the-nsa.php>.

A Civil Rights Lawyer Explains Why Obama's Immigration Order is an Even Bigger Deal than it Seems, TheNewRepublic.com, Nov. 25, 2014, available at <http://justsecurity.org/17117/cult-rules-origins-intelligence-legalism/>.

The Problem with Legalism in the Surveillance State, JustSecurity.org, Nov. 7, 2014, available at <http://justsecurity.org/17163/problem-legalism-surveillance-state/>.

A Cult of Rules: The Origins of Legalism in the Surveillance State, JustSecurity.org, Nov. 5, 2014, available at <http://justsecurity.org/17117/cult-rules-origins-intelligence-legalism/>.

Justice Alito Would Be Just Fine if Congress Undid Yesterday's Landmark Privacy Decision, TheNewRepublic.com, June 26, 2014, available at <http://www.newrepublic.com/article/118403/justice-alito-privacy-reading-his-concurring-opinion-privacy>.

The Bigger No Fly List Problem, JustSecurity.org, June 25, 2014, available at <http://justsecurity.org/12215/guest-post-no-fly-list-problem/>.

*The Supreme Court Gives a Subtle Boost to Free Speech*, The New Republic, May 28, 2014, available at <http://www.newrepublic.com/article/117925/wood-v-moss-subtle-victory-free-speech>.

*Even Conservative Judges Can't Deny the Constitutional Logic of Same-Sex Marriage*, Daily Beast, May 18, 2014, available at <http://www.thedailybeast.com/articles/2014/05/18/even-conservative-judges-can-t-deny-the-constitutional-logic-of-same-sex-marriage.html>.

*In the Story of Jonah, an Urgent Lesson About the Dangers of Solitary Confinement*, TABLET MAGAZINE, Sept. 11, 2013, available at <http://www.tabletmag.com/jewish-life-and-religion/143081/jonah-solitary-confinement>.

*ABA Criminal Justice Standards on the Treatment of Prisoners*, CRIM. JUSTICE MAG., Summer 2010, at 14 (with Margaret Colgate Love & Carl Reynolds).

*Prison Litigation Reform Act Update*, in THE STATE OF CRIMINAL JUSTICE, 2007-2008 (American Bar Association, Criminal Justice Section, Apr. 2008).

*Professor Notes PLRA Flaws: Will Congress Act to Correct Them?*, CORRECTIONAL LAW REP., Feb./Mar. 2008, at 65 (reprints testimony before the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security: *Review of the Prison Litigation Reform Act: A Decade of Reform or an Increase in Prison Abuses* (Nov. 2007)).

*The Political Economy of Prison and Jail Litigation*, PRISON LEGAL NEWS, June 2007, at 1.

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*Preserving the Rule of Law in America's Prisons: The Case for Amending the Prison Litigation Reform Act*, American Constitution Society Issue Brief, Mar. 28, 2007 (with Giovanna Shay).

*National Prison Commission Begins Work*, CORRECTIONAL LAW REP., June/July 2005, at 1, and PRISON LEGAL NEWS, July 2005, at 17.

*Inmate Litigation: Results of a National Survey*, NATIONAL INSTITUTE OF CORRECTIONS LARGE JAIL NETWORK EXCHANGE, July 2003, at 1.

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## OTHER WORKS IN PROGRESS

Executive Order 12,333 and civil liberties; Racial housing in the California prison system; Crimigration and the Equal Protection Clause.

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## GRANTS

National Science Foundation SES-0718831 (co-PI, with Pauline Kim and Andrew Martin), "The Litigation Process in Government-Initiated Employment Discrimination Suits" (2007), \$213,999.

Harvard University William F. Milton Fund (with Anne Morrison Piehl), "Litigated Intervention in the Management of Correctional Facilities" (2002), \$33,607.

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## SERVICE AND MEMBERSHIPS

### Professional

Bar admissions: New York, District of Columbia (inactive), Missouri; Supreme Court; 9th Cir., Eastern District of Missouri.

Organizing committee member, Prisoners' Advocates Conference (Los Angeles, Sept. 2016; New Orleans, Feb. 2014). Chair, Prison Litigation: A Workshop for Plaintiffs' Attorneys (Washington, DC, Mar. 2008).

Counsel for amici curiae former corrections officials, *Prison Legal News v. Florida* (11th Cir. 2015)

Member, expert advisory committee on data collection and confidential reporting, Prison Rape Elimination Act Commission (2007).

Drafter, ABA Litigation Section Project, *The Rule of Law in Times of Calamity* (2006).

Counsel of record for amici curiae ACLU and other prison advocacy organizations, *Woodford v. Ngo*, 05-416 (U.S. Supreme Court, filed Feb. 2, 2006).

### General Academic

Member, Editorial Board, *Journal of National Security Law & Policy* (2015-present)

Co-editor (with Sharon Dolovich), SSRN abstracting "journal," *Corrections & Sentencing Law & Policy* (2006-2009, 2012-present). See <http://ssrn.com>.

Chair, American Association of Law Schools, Remedies Section (2014)

Chair, American Association of Law Schools, Section on Law & the Social Sciences (2007/08).

Member, Law & Society Association Dissertation Prize Committee (2007).

Member, Law & Society Association.

University of Michigan

Member, Provost's Faculty Advisory Committee

Chair, Senate Advisory Committee on University Affairs, Committee on Civil Rights and Liberties (2014-16), Member (2013/2014)

Member, Law School Curriculum Committee (2014-2016)

Member, Law School Tenure Committee (2015/16, 2012/2013); Chair (2013/2014)

Faculty Advisor, Journal of Race & Law symposia: criminalization of poverty (2016); solitary confinement (2013)

Convenor, Prison Law & Scholarship Roundtable (2014, 2012)

Washington University in St. Louis

Member, Law School Promotions Committee (2007/08)

Advisory Board, Washington University Center for Empirical Research in the Law (2007/08)

Standing participant: Workshop on Empirical Research in Law (2004-2009)

Chair, Law School Lateral Appointments Committee (2006/07)

Chair, Law School Dean's Advisory Group on Improving Student Career Prospects (2005/06)

Chair, Law School Rules and Petitions Committee (2005/06)

Chair, Law School Ad Hoc Committee on Tenure Standards and Process (2004/5)

Member, University Committee on Senate By-Laws (2004/5)

Member, Law School Clerkship Committee (Fall 2004)

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**PRESENTATIONS (2004-present)**

U. Mich. American Constitution Society, Is This When Mass Incarceration Ends (Nov. 2015)

U. Mich. Women Law Students Association, Incarcerated Women (Oct. 2015)

Panelist/Discussant (2015/16):

- 9th Circuit Corrections Summit, Grievances and Gripes: A Problem Solving Approach for All Stakeholders (Nov. 2015)
- U. Mich. Institute for Research on Women and Gender, Incarcerated Women: A Conversation about Realities (Oct. 2015)
- Society for Empirical Legal Studies annual conference. Discussant for Aziz Huq, The Predicates of Military Detention at Guantanamo: The Role of Individual Acts and Affiliations; Chang, Chen & Lin, Attorney and Judge Experience in Torts Litigation: An Empirical Study (Oct. 2015)

*Studying Injunctions Quantitatively*, Center for Political Studies, Interdisciplinary Workshop on Politics and Policy (Mar. 2015)

*Intelligence Legalism and the NSA's Civil Liberties Gap*

- Association of American Law Schools, Annual Conference, National Security Law Section (chosen in call for papers) (Jan. 2015)
- University of Iowa Law School Faculty Workshop (Nov. 2014)
- University of Michigan Law School Legal Theory Workshop (Sept. 2014)
- 7th Annual National Security Law Workshop (May 2014)

*Offices of Goodness: Influence without Authority in Federal Agencies*

- Emory Law School (Mar. 2014)

- Cardozo Law School (Feb. 2014)
- Law & Society Ass'n (May 2013)

Panelist/Discussant (2014/15-)

- Brennan Center: Strengthening Intelligence Oversight--Executive Branch Oversight (May 2015)
- Michigan Department of Education, Teaching the Movement in Michigan: Civil Rights Education Forum (May 2015)
- Clifford Symposium (DePaul Law): The Supreme Court, Business and Civil Justice--Civil Procedure (Apr. 2015)
- Columbia University, Deliberate Resistance: LGBT Prisoner Rights 20 Years After Farmer v. Brennan (Nov. 2014)
- 9th Circuit Court of Appeals Pro Se Conference--the Prison Rape Elimination Act (Sept. 2014)

*The Equal Employment Opportunity Commission and Structural Reform of the American Workplace*

- EEOC Datanet Conference (May 2014)
- Labor Law Research Network (June 2013)
- Stanford Law Faculty Workshop (Oct. 2009)
- Brooklyn Law School Faculty Workshop (Sept. 2009)
- Building Theory Through Empirical Legal Studies, Berkeley Center for the Study of Law & Society (April 2009)
- UCLA Law Faculty Workshop (Feb. 2009)
- University of Arizona Law Faculty Workshop (Feb. 2009)

*The Prison Litigation Reform Act and Litigation Dynamics*

- Loyola University New Orleans College of Law, Prisoners' Advocates Conference (Feb. 2014)

*The Present and Future of Institutional Reform Litigation: Current Trends in Prisoner Cases*

- U.C. Irvine Law School, Prisoners Access to Justice Symposium (Feb. 2014)
- University of Miami Law School, Leading from Below Symposium (Feb. 2014)

*Marriage Equality and the Constitution*, Alma College Constitution Day Speaker (Sept. 2013)

*Plata v. Brown and Realignment: Jails, Prisons, Courts, and Politics*,

- Law & Society Ass'n (May 2013) (as discussant in panel on *Plata v. Brown*)
- University of Illinois faculty workshop (Mar. 2013)

*Race and civil rights injunctions*, Ass'n of American Law Schools, Remedies Section (Jan. 2013)

Chair/discussant, panel on Immigration, Law & Society Association Conference (June 2012)

*Operationalizing Deterrence: Claims Management (in Hospitals, a Large Retailer, and Jails and Prisons)*

- University of Michigan Law Faculty Workshop (Sept. 2008)
- Insurance & Society Seminar, Boston (May 2008)
- Southern Methodist University Law Faculty Workshop (Jan. 2008)
- Law & Society Ass'n, Berlin (July 2007)
- University of North Carolina Law Faculty Workshop (Nov. 2006)
- Law & Society Ass'n, Baltimore (July 2006)

*Seminar teaching*

- Ass'n of American Law Schools, Workshop for New Law Teachers (June 2008)
- Ass'n of American Law Schools, Workshop for New Law Teachers (June 2007)

*Hedonic Damages, Hedonic Adaptation, and Disability*

- University of Illinois Law School, Seminar on Law, Psychology & Economics (Apr. 2008)
- Washington University Law Faculty Workshop (Aug. 2006)

*Civil Rights Injunctions Over Time: A Case Study of Jail and Prison Court Orders*

- University Management Team, Washington University in St. Louis (Apr. 2008)
- Prison Litigation: A Workshop for Plaintiffs' Attorneys (Washington, D.C., Mar. 2008)
- Law and Society Ass'n (Las Vegas, NV, June 2005)
- Junior Scholars Empirical Legal Studies conference, Cornell Law School (Oct. 2004)

The Prison Litigation Reform Act

- *Preserving the Rule of Law in America's Prisons: The Case for Amending the PLRA*, Symposium, Penn. J. of Constitutional Law, Litigating the Eighth Amendment (Feb. 2008)
- Witness, National Prison Rape Elimination Comm'n, *The Role of Courts and Litigation in Regulating Prison and Jail Prevention of Sexual Violence and Misconduct* (Dec. 2007)
- Witness, House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security, hearing: *Review of the Prison Litigation Reform Act: A Decade of Reform or an Increase in Prison Abuses* (Nov. 2007)
- Congressional staff briefing, proposed amendments to the PLRA (Sept. 2007)
- *Preserving the Rule of Law in America's Prisons: The Case for Amending the PLRA* American Constitution Society issue brief presentation, Washington DC (Apr. 2007)
- *The Past and Future of the PLRA*, National Association of Attorneys General, Baltimore, MD (Feb. 2007)
- Witness, ABA Criminal Justice Section Council, on proposed ABA policy to amend the Prison Litigation Reform Act (Nov. 2006).

*The Civil Rights Litigation Clearinghouse: Using Court Records for Research, Teaching, and Policymaking*

- Association of American Law Schools annual conference, Washington University Law breakfast (Jan. 2008)
- Presentation to social studies coordinators, Missouri Cooperating School Districts (Feb. 2007)
- Conference presentation ("Federal Civil Court Records of the National Archives: Opportunities for Empirical, Historical and Legal Research and Curriculum Design"), University of Missouri at Kansas City & National Archives and Records Administration (Oct. 2005)

Moderator/discussant, panel on Race, Empirical Legal Studies Conference (Nov. 2007).

*Fault and the Constitutional Law of Equality.* Invited response to David Strauss, Childress Lecture (Little Rock and the Legacy of *Brown*), Saint Louis University (Oct. 2007)

*Teaching the Equal Protection Clause.* Presentation to high school teachers, Street Law (Oct. 2007)

*The Plaintiffs' Bar and the Conceptualization of Litigation*

- Law & Society Ass'n, Berlin (July 2007)
- Washington University Law Faculty Workshop (May 2007)
- Conference presentation (The Plaintiff's Bar), New York Law School (Mar. 2006)

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*The Litigation Process in Government-Initiated Employment Discrimination Suits* (hypotheses and preliminary evidence). Duke Law School Faculty Workshop (Apr. 2007)

Discussant, Katherine Barnes et al., *Life and Death Decisions: Prosecutorial Discretion and Capital Punishment in Missouri*, St. Louis U. conference (Mar. 2007).

Discussant, J.J. Prescott, *Empirical Evidence of Prosecutorial Charging Manipulation: And What it Tells Us About What Prosecutors are Trying to Do*, Empirical Legal Studies Conference, Austin Texas (Oct. 2006).

Moderator, panel on *Empirical Inquiries in Criminal Justice*, Law and Society Ass'n (July 2006).

*Women and the New Supreme Court*: University of Missouri–St. Louis, Sue Shear Institute for Women in Public Life (Jan. 2006).

Moderator, panel discussion of *Problems and Solutions in American Criminal Justice*, in conjunction with hearing held at Washington University in St. Louis by the Commission on Safety and Abuse in America's (Oct. 2005).

*What We Know and What We Could Know About the Vanishing Trial*: Featured Comment on Marc Galanter, "A World Without Trials," University of Missouri at Columbia, Distinguished Lecture on Alternative Dispute Resolution (Sept. 2005).

*Incarceration, Reform, and Politics*: presentation to undergraduate student groups (Apr. 2005).

*Second Best Damage Action Deterrence*

- University of Missouri at Columbia (Apr. 2005).
- Clifford Conference on Torts and Social Policy, DePaul University College of Law (Apr. 2005).
- UCLA faculty workshop (Mar. 2005)

*Collateral Consequences of Incarceration: Background on the Scope of the Carceral System*:

Symposium on Poverty, Wealth and the Working Poor: Clinical and Interdisciplinary Perspectives (Apr. 2005).

Respondent to James B. Jacobs, *The Future of Imprisonment: Leadership, and Prison Reform*, St. Louis University Ass'n of Criminal Justice and Sociology (Oct. 2004).

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## Exhibit B: Settlement Agreement with Numbering



**SETTLEMENT AGREEMENT BETWEEN DEFENDANTS THE COMMONWEALTH OF KENTUCKY ET AL. AND PLAINTIFFS OSCAR ADAMS AND MICHAEL KNIGHTS [NUMBERED FOR USE IN COMPLIANCE MONITORING]**

**I. DEFINITIONS**

- [I.]1. “ADA” means the Americans with Disabilities Act, codified at 42 U.S.C. § 12101 et seq., as amended by the ADA Amendments Act of 2008 (P.L. 110-325).
- [I.]2. “Auxiliary Aids and Services” include, but are not limited to, “Qualified Interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,” 42 U.S.C. § 12103, such as hearing aids, computer-aided transcription services, assistive listening systems, closed caption decoders, open and closed captioning, “TDDs” or “TTYs” as defined below, videotext displays, written materials (*see* 28 C.F.R. § 35.104); as well as Videophones, access to telephone relay services, visual alert or alarm systems, and bed shakers.
- [I.]3. “Deaf Inmates” means Inmates who are unable to hear well enough to rely on their hearing as a means of processing information, who rely on Auxiliary Aids and Services to Effectively Communicate and who qualify as individuals with disabilities under the ADA, including deaf, hard of hearing, or hearing impaired persons. *See* 42 U.S.C. § 12102(4). .
- [I.]4. “Direct Threat” means a significant risk to the health or safety of one or more Deaf Inmates or others that cannot be reduced or eliminated by reasonable accommodation. A finding of Direct Threat must be based on and supported by objective evidence.
- [I.]5. “Effective Communication” and “Effectively Communicate” means communication with Deaf Inmates that is substantially as effective as communication with the general Inmate population (*see* 28 C.F.R. § 35.160(a)) and will, when necessary, include the provision of appropriate Auxiliary Aids and Services, such as Qualified Interpreters. Effective Communication affords Deaf Inmates an opportunity to participate in, and enjoy the benefits of, the KDOC’s services, programs, or activities in a way that is substantially equal to the opportunity provided to a similarly situated non-Deaf Inmate. In determining what form of Auxiliary Aids and Services is necessary, primary consideration shall be given to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)).
- [I.]6. “Effective Date” means thirty (30) days after this Agreement is filed with the Court.
- [I.]7. “Inmate” means any person in the custody of the KDOC.



- [I.]8. “KCDHH” means the Kentucky Commission on the Deaf and Hard of Hearing.
- [I.]9. “KDOC” means Kentucky Department of Corrections.
- [I.]10. “KDOC program” means any program or activity, or aid, benefit, or service as defined by the ADA and Section 504 (*see* 28 C.F.R. § 35.130, § 41.51) available to Inmates of KDOC for which the KDOC does more than only provide physical space at its facilities, including but not limited to, programs, activities, aids, benefits, or services mandated by law, qualifying for educational or early release credits, and/or ordered as part of an Inmate’s sentence.
- [I.]11. “KDOC employees,” “KDOC staff,” and “KDOC personnel” each and collectively include all employees, contractors, agents, and other staff of the KDOC whose job responsibilities place them on a regular basis in contact with Deaf Inmates, and the supervisors of those employees, contractors, agents, or other staff.
- [I.]12. “KDOC Adult Institution” means any facility owned or operated by the KDOC for the care and custody Inmates, including but not limited to Bell Country Forestry Camp, Blackburn Correctional Complex, Eastern Kentucky Correctional Complex, Green River Correctional Complex, Kentucky Correctional Institute for Women, Kentucky State Penitentiary, Kentucky State Reformatory, Little Sandy Correctional Complex, Luther Luckett Correctional Complex, Northpoint Training Center, Roederer Correctional Complex, and Western Kentucky Correctional Complex.
- [I.]13. “Off-site Medical Care” means medical care that is provided at a location not owned or operated by the KDOC.
- [I.]14. “On-site Medical Care” means medical care that is provided at a KDOC facility, including medical care provided by third parties in facilities owned or operated by the KDOC.
- [I.]15. “Parole hearing” means any hearing or meeting during which an Inmate is being offered the opportunity to be released from KDOC custody on parole.
- [I.]16. “Plaintiffs” means, for purposes of this Agreement, Oscar Adams (inmate #243676) and Michael Knights (inmate #233021).
- [I.]17. “Plaintiffs’ Counsel” means attorneys-of-record for Plaintiffs in *Oscar Adams and Michael Knights, et al., v. Commonwealth of Kentucky, et al.*, Case No. 3:14-cv-00001 (E.D. Ky.) at the time this Agreement is signed.
- [I.]18. “Qualified Interpreter” means a person who is able to interpret effectively, accurately, and impartially, both receptively and expressively, with an individual Deaf Inmate using any necessary specialized vocabulary. *See* 28 C.F.R. §35.104.

A Qualified Interpreter could include an ASL interpreter, a sign language interpreter using more English-based signs, an oral interpreter, a cued speech transliterator or a tactile interpreter for a Deaf Inmate who is also blind. For sign language interpreters, a Qualified Interpreter is one who holds current, valid certifications and licensure by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

A Qualified Interpreter may be provided by the KDOC either in person, or via Video Remote Interpreting, videoconferencing or other similar means that provide Effective Communication.

[I.]19. “Section 504” means Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 701 et seq. (2014).

[I.]20. “Settlement Monitor” means Margo Schlanger, whose *curriculum vitae* is attached as Exhibit 1.

[I.]21. “TTYs” or “TDDs” means teletypewriters or telecommunications devices for the Deaf, which are devices used with a telephone to communicate with persons who are Deaf by typing and reading communications.

[I.]22. “Video Remote Interpreting” or “VRI” means a video-telecommunication interpreting service, which uses Qualified Interpreters and is delivered over a high-speed Internet connection. *See* 28 C.F.R. § 35.160(d).

[I.]23. “Videophone” means a telephone with a camera and screen for visual, real-time communications. The term Videophone as used in this Agreement is limited to Videophones intended for the use by Deaf Inmates within the custody of the KDOC, and does not include Videophones within KDOC Adult Institutions intended for the use of the general Inmate population.

## II. GENERAL POLICIES

### [II.]A. Non-discrimination Based on Disability

The KDOC will ensure that Deaf Inmates have full and equal access to and enjoyment of all services, privileges, facilities, advantages, and accommodations available to similarly situated non-Deaf Inmates. The KDOC shall provide Deaf Inmates with access to services, privileges, facilities, advantages, and accommodations substantially equivalent to those offered to similarly situated non-Deaf Inmates. The KDOC retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf Inmates and therefore may not be able to provide such Deaf Inmates full and equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination.

## **[II.]B. ADA Coordinator**

**[II.B.1.]** Within thirty (30) days after the Effective Date of this Agreement, the KDOC will assign a staff member at each KDOC Adult Institution the title, duties, and responsibilities of ADA Coordinator. The KDOC will maintain the ADA Coordinator position at each KDOC Adult Institution as required by law. The ADA Coordinator responsibilities will be a part of the official duties assigned to the person in this role. The ADA Coordinator shall be trained on the requirements of federal and state law regarding the contents of this Agreement and the KDOC's obligations to provide full and equal access to, and enjoyment of, its services, privileges, facilities, advantages, and accommodations to Deaf Inmates.

**[II.B.2.]** Within thirty (30) days of the Effective Date of this Agreement, the KDOC will notify the Settlement Monitor of the identity of each KDOC employee assigned the title, duties and responsibilities of ADA Coordinator. The name and contact information for each ADA Coordinator will be displayed and regularly updated on the KDOC's website. The name and contact information of each KDOC Adult Institution's ADA Coordinator will be communicated to all Deaf Inmates incarcerated in each respective KDOC Adult Institution, and will also be prominently posted in a secure area in any housing unit in which Deaf Inmates are held.

**[II.B.3.]** ADA Coordinators will assist with providing, coordinating, and overseeing Auxiliary Aids and Services for Deaf Inmates and for implementing this Agreement. The ADA Coordinators will be provided with and responsible for knowing the contents of this Agreement, and will assist with implementing this Agreement. The ADA Coordinators will be available to assist with various aspects of accommodating Deaf Inmates. In such situations, ADA Coordinators will ensure Effective Communication for the Deaf Inmates.

## **III. INITIAL CLASSIFICATION, ASSESSMENT, AND ASSIGNMENT**

### **[III.]A. General Policy**

**[III.A.1.]** The KDOC will provide Deaf Inmates at initial intake, assessment, and classification with Effective Communication. The purpose is to facilitate communication between the Deaf Inmate and KDOC personnel (or other persons) during medical, psychological, and educational testing and evaluation, as well as to provide an explanation of prison policies and procedures, including Inmate discipline, grievances, and how to utilize the TTY, Videophone and other Auxiliary Aids and Services.

**[III.A.2.]** As of the date of this Agreement, initial intake, assessment, and classification for male Inmates occurs at Roederer Correctional Complex (RCC) and for female Inmates at the Kentucky Correctional Institution for Women (KCIW).

### **[III.]B. Hearing Assessment**

As part of the initial intake, assessment, and classification, medical staff will assess and, if necessary, test all persons who may be a Deaf Inmate for Deafness. If medical staff determines that an Inmate is Deaf, medical staff will note the disability in the Inmate's institutional file, and

will promptly notify the appropriate ADA Coordinator. Any Deaf Inmate who was not assessed at the initial intake, assessment, and classification will be assessed at the annual classification review.

### **[III.]C. Auxiliary Aids and Services Assessment**

**[III.C.1.]** After medical staff determine that an Inmate is Deaf, the KDOC will presume that Auxiliary Aids and Services in the form of Qualified Interpreters, visual notifications, telecommunication devices, and other aids and services set forth in this Agreement are necessary to ensure Effective Communication and substantially equal services, privileges, facilities, advantages, and accommodations.

**[III.C.2.]** If any Deaf Inmate indicates that he or she does not require any or all of the Auxiliary Aids and Services set forth in this Agreement, he or she will sign a Waiver of Auxiliary Aids and Services and that document will be kept in the Inmate's institutional file.

**[III.C.3.]** If an Inmate is not found to have a hearing impairment at his or her initial intake, assessment, and classification, initially refuses, or does not request Auxiliary Aids and Services, but later believes that Auxiliary Aids and Services are necessary to ensure Effective Communication, he or she will fill out a Request for Auxiliary Aids and Services Form. KDOC will provide the Inmate who was initially not found to have a hearing impairment with a hearing assessment if so ordered by medical staff. If that individual is found to be Deaf, KDOC will follow the procedures set forth in this section.

### **[III.]D. Ensuring Staff Awareness Through Identification Cards**

**[III.D.1.]** The KDOC will take appropriate steps to ensure that all KDOC personnel having regular contact with any Deaf Inmate are made aware of such Inmate's need for Auxiliary Aids and Services so that Effective Communication with, and the safety of, the Deaf Inmate will be ensured. Upon identifying an Inmate as Deaf during initial intake, assessment, and classification, the Deaf Inmate will receive a distinct identification (ID) card that clearly identifies him or her as a Deaf Inmate. The ID card will signify to the KDOC personnel that the Inmate is Deaf, may not respond to verbal commands, and may require Auxiliary Aids and Services. If any KDOC staff takes any Deaf Inmate's ID card, the Deaf Inmate will be given another official indicator of his or her Deaf status.

**[III.D.2.]** All KDOC staff having regular contact with any Deaf Inmate will be trained on the meaning of the distinct ID cards.

**[III.D.3.]** The KDOC will post at the entrance to all KDOC Adult Institutions housing Deaf Inmates a notice clearly stating that the KDOC Adult Institution houses Deaf Inmates and that the Deaf Inmates carry an ID card or other official indicator with them. The notice will include a picture of the ID card and other official indicator carried by Deaf Inmates. The Notice will also be posted outside each housing unit where Deaf Inmates are held.

**[III.D.4.]** If any Deaf Inmate indicates that he or she does not wish to wear an ID card identifying him or her as Deaf as set forth in this Agreement, he or she will sign a Waiver of Deaf Inmate ID Card and that document will be kept in the Inmate's institutional file. If any Deaf Inmate signs a Waiver of Deaf Inmate ID Card but later requests to wear an ID card identifying him or her as Deaf as set forth in this Agreement, he or she will promptly be provided an opportunity to fill out a Request for Deaf Inmate ID Card form. The KDOC will then promptly provide the Inmate with a Deaf Inmate ID card and update the Deaf Inmate's institutional file.

**[III.]E. Interpretation of Materials**

The KDOC will provide the Deaf Inmate materials it provides to all Inmates. In providing these materials, the KDOC agrees to Effectively Communicate with the Deaf Inmate. *See, e.g.*, 28 CFR 35.160(b)(2). At the request of the Deaf Inmate, the KDOC will provide that Deaf Inmate with a meaningful opportunity to meet with a KDOC staff member and a Qualified Interpreter to ask any questions regarding the written or interpreted materials.

**[III.]F. Creation and Interpretation of Rights Materials**

**[III.F.1.]** Within ninety (90) days of the Effective Date of this Agreement, the KDOC will provide each Deaf Inmate with materials providing information about the Auxiliary Aids and Services available to Deaf Inmates and instructions for how to obtain, request, or use those Auxiliary Aids and Services. The KDOC will create these materials using language designed to be accessible to each Deaf Inmate. The KDOC will provide these materials to Deaf Inmates with the orientation materials provided to all other Inmates at initial intake, assessment, and classification.

**[III.F.2.]** In providing these materials, the KDOC agrees to Effectively Communicate with the Deaf Inmate. *See, e.g.*, 28 CFR 35.160(b)(2). At the request of the Deaf Inmate, the KDOC will provide that Deaf Inmate with a meaningful opportunity to meet with a KDOC staff member and a Qualified Interpreter to ask any questions regarding the written or interpreted materials.

**IV. HOUSING**

**[IV.]A. General Policy**

**[IV.A.1.]** The KDOC has the discretion to house Deaf Inmates at whatever KDOC Adult Institution it deems appropriate. *See, e.g.*, KY Corrections Policy and Procedure 18.7.

**[IV.A.2.]** Wherever a Deaf Inmate is housed, that Deaf Inmate retains all rights as required by this Agreement, the U.S. Constitution, the ADA, Section 504, and Kentucky laws, along with any other applicable federal and state laws, and this Agreement.

**[IV.]B. Schedule of Accommodations**

Within ninety (90) days of the Effective Date of this Agreement, KDOC personnel at those KDOC Adult Institutions where Deaf Inmates are housed shall provide each Deaf Inmate with a schedule showing when Qualified Interpreters and/or other Auxiliary Aids and Services are available. When the schedule of accommodations changes, including when a Qualified Interpreter will be available, an updated schedule of accommodations will be given to all Deaf Inmates.

**V. PROVISION OF AUXILIARY AIDS AND SERVICES**

**[V.]A. General Policy**

**[V.A.1.]** In order to ensure substantial equality for Deaf Inmates, the KDOC will provide appropriate Auxiliary Aids and Services, as required by this Agreement, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws. This substantial equality will extend to include KDOC programs for or to Deaf Inmates provided by third party vendors, contractors, or state-funded entities, such as community colleges.

**[V.A.2.]** Appropriate Auxiliary Aids and Services, including Qualified Interpreters, will be made available so that Deaf Inmates may have an equal opportunity to participate in all services, privileges, and programs offered to other similarly situated Inmates in the KDOC's custody. These services, privileges, and programs will include, but not be limited to: orientation; medical evaluations; On-site Medical Care and healthcare appointments; classification and transfer hearings; grievance, disciplinary, and Parole hearings; and rehabilitative, educational, work, or transitional KDOC programs offered to other similarly situated Inmates in the KDOC's custody.

**[V.A.3.]** In those instances where the KDOC permits volunteers to provide activities (religious or otherwise)—including programs, services, or meetings—to Inmates in KDOC Adult Institutions where Deaf Inmates are housed, the KDOC will allow the volunteer organization or individual to bring a Qualified Interpreter, subject to the KDOC Adult Institution's security requirements, and will work with the volunteer organization or individual in an effort to have a Qualified Interpreter at the volunteer-provided activities. Such an accommodation must be initiated by request from the Deaf Inmate to the volunteer organization or individual. The responsibility for finding the interpreter will not rest with the KDOC, and proper notice allowing the KDOC to conduct appropriate security clearances must be provided. To the extent the KDOC provides, now or in the future, any religious activities at facilities housing Deaf Inmates, the KDOC shall provide a Qualified Interpreter at such activities upon the request of any Deaf Inmate.

**[V.A.4.]** The KDOC retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf Inmates and may therefore choose not to provide such Deaf Inmates substantially equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations. The KDOC will promptly notify the Settlement Monitor whenever any

such determination is made and explain the reasoning in support of such determination.

**[V.A.5.]** The KDOC will provide instructions for the use of all Auxiliary Aids and Services to ensure Deaf Inmates' full use and enjoyment of the Auxiliary Aids and Services.

**[V.]B. Medical Devices**

All Auxiliary Aids and Services required by this Agreement, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws, which are deemed medically necessary, will be provided promptly upon request, free of charge, to Deaf Inmates subject to a co-payment for that medical device, just as non-Deaf Inmates are charged a co-payment for other medical appliances or devices. This co-pay shall not apply, however, to hearing aid batteries or for any Deaf Inmate who is deemed indigent pursuant to Kentucky Corrections Policy and Procedure 15.7.

**[V.]C. Maintenance of Auxiliary Aids and Services**

The KDOC shall maintain all Auxiliary Aids and Services in its custody in good working condition at all times.

**VI. QUALIFIED SIGN LANGUAGE INTERPRETERS**

**[VI.]A. General Policy**

**[VI.A.1.]** The KDOC will provide Qualified Interpreters as required by this Agreement, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws. The KDOC agrees that Deaf Inmates in need of interpreter services will receive a Qualified Interpreter able to facilitate Effective Communication with that particular Deaf Inmate. The KDOC shall provide an in-person Qualified Interpreter at KDOC Adult Institutions where Deaf Inmates are incarcerated in the following circumstances:

- communications concerning medical care and attention, including dental, vision, audiological, and mental health care;
- disciplinary hearings in which the Deaf Inmate may be a suspect of or charged with a rule infraction;
- transfer and classification processes that impact on the Deaf Inmate's status;
- transitional programming;
- rehabilitative programming, including, but not limited to, Alcoholics Anonymous (AA) and Narcotics Anonymous (NA); and
- educational programming.

**[VI.A.2.]** The KDOC shall also provide an in-person Qualified Interpreter at KDOC Adult Institutions where Deaf Inmates are incarcerated as circumstances warrant. The KDOC will be responsible for scheduling and overseeing the provision of Qualified Interpreters.



**[VI.A.3.]** When a Deaf Inmate is scheduled to appear at a Parole hearing, the appropriate ADA Coordinator will notify the Kentucky Parole Board of the Deaf Inmate's need for, and the Kentucky Parole Board's duty to provide, Auxiliary Aids and Services for Effective Communication. This notice shall be given no later than seven (7) days before the Deaf Inmate's scheduled Parole hearing. In the event that the Deaf Inmate will be physically present at a KDOC Adult Institution for the Parole hearing, the KDOC will work with the Kentucky Parole Board to ensure that any appointed Qualified Interpreter obtains security clearances in a timely manner.

**[VI.]B. Other Means of Communication**

KDOC employees will communicate with Deaf Inmates for such purposes, and to the same extent, as they would communicate with non-Deaf Inmates using all available means of communication. This provision in no way lessens the KDOC's obligation to provide Qualified Interpreters in certain situations and in a timely manner.

**[VI.]C. On-site Medical Care**

**[VI.C.]1. General Policy**

The KDOC will provide Effective Communication for all scheduled appointments between Deaf Inmates and medical personnel at KDOC facilities, including, but not limited to, review of medical history, medical appointments, follow up meetings or appointments, and treatment meetings. The parties agree that for many Deaf Inmates, a Qualified Interpreter may be a necessary means of providing Effective Communication in these circumstances.

**[VI.C.]2. Informing Appropriate Medical Staff**

The KDOC will ensure that all medical staff are made aware of an Inmate's Deafness. For each Deaf Inmate, the medical staff will note, in bold marking, the Deaf Inmate's disability on the medical file cover and in the Deaf Inmate's medical file.

**[VI.C.]3. Scheduling Medical Appointments with Qualified Interpreters**

The KDOC will provide Deaf Inmates with the ability to request Auxiliary Aids and Services to ensure Effective Communication at medical appointments. The KDOC will provide space on any forms used to request medical appointments for Deaf Inmates to request Auxiliary Aids and Services. Appointments for Deaf Inmates requiring Auxiliary Aids and Services will be scheduled within the same time period from the initial request as those for similarly situated non-Deaf Inmates.

**[VI.C.]4. Emergency Events**

Within ninety (90) days of the Effective Date of this Agreement, the KDOC will provide a Qualified Interpreter via VRI service for use in unscheduled medical emergencies. If VRI



services are not appropriate in the situation, KDOC personnel will work in conjunction with medical staff to attempt to secure an in-person Qualified Interpreter as soon as possible. Lifesaving medical care should never be delayed because no interpretation services are available.

**[VI.]D. Off-site Medical Care**

**[VI.D.1.]** As early as practicable, the KDOC will inform all off-site medical providers that a Deaf Inmate requiring a Qualified Interpreter or other Auxiliary Aid or Service will be seeking medical care from those off-site medical providers at a particular date and time.

**[VI.D.2.]** In the case of an emergency, the KDOC will, as soon as possible, inform an off-site medical provider that a Deaf Inmate requiring a Qualified Interpreter or other Auxiliary Aid or Service is being transported to the off-site medical provider. Notification will include the Deaf Inmate's estimated time of arrival.

**[VI.]E. Educational, Vocational, and Rehabilitative Programming**

The KDOC shall provide appropriate Auxiliary Aids and Services for all KDOC programs, which are offered at KDOC Adult Institutions and which Deaf Inmates are qualified for, admitted into, or in which Deaf Inmates are actively participating. The following appropriate Auxiliary Aids and Services will be provided:

**[VI.E.]1. Educational Programs**

The KDOC will provide Deaf Inmates with written materials and open- or closed-captioned education materials where available. In addition, the KDOC will provide Effective Communication for educational KDOC program classes. The educational program classes include, without limitation, literacy, adult basic education, GED preparatory, and technical education and certification classes. In determining what form of Auxiliary Aids and Services are necessary, the KDOC shall give primary consideration to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)).

**[VI.E.]2. Vocational/Work Programs**

The KDOC will provide Deaf Inmates with written materials and open- or closed-captioned vocational/work materials where available. In addition, and as necessary, the KDOC will provide Effective Communication for vocational/work KDOC programs. In determining what form of Auxiliary Aids and Services is necessary, the KDOC shall give primary consideration to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)).

**[VI.E.]3. KDOC Rehabilitative, Counseling, Therapeutic, Substance Abuse, and Evidence-Based Programs**

The KDOC will provide Deaf Inmates with written materials and open- or closed-captioned materials where available. In addition, and as necessary, the KDOC will provide Effective Communication for rehabilitative, counseling, therapeutic, substance abuse, and evidence-based

KDOC programs. In determining what form of Auxiliary Aids and Services is necessary, the KDOC shall give primary consideration to the request of the Deaf Inmate for such Auxiliary Aids and Services (*see* 28 C.F.R. § 160(b)(2)). The KDOC will provide Qualified Interpreters for Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) programs. (

**[VI.]F. Work Assignments**

The KDOC will provide Deaf Inmates opportunities for institutional work assignments that are consistent with the opportunities for the same assignments given to similarly situated non-Deaf Inmates. The KDOC retains the discretion to determine that certain work assignments present a Direct Threat of injury or death to a Deaf Inmate or others and may therefore choose not to provide the Deaf Inmate a substantially equal opportunity to those work assignments. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination.

**[VI.]G. Religious Services**

**[VI.G.1.]** The KDOC shall encourage outside volunteers providing religious services to provide Effective Communication for Deaf Inmates as long as the volunteer meets the same security requirements that are imposed on all other outside volunteers.

**[VI.G.2.]** No Deaf Inmate will be required to attend a religious service where a Qualified Interpreter is not provided in order to receive any religious meal, diet, or otherwise offered religious accommodation.

**[VI.G.3.]** To the extent that the KDOC provides any religious services, now or in the future, the KDOC shall provide a Qualified Interpreter.

**[VI.]H. Transfer and Classification Matters**

The KDOC will provide a Qualified Interpreter for any hearings or meetings relating to a Deaf Inmate's transfer to another facility, change in security classification, or any other classification hearing involving the exchange of information between the Deaf Inmate and the KDOC personnel that could affect the Deaf Inmate's status.

**[VI.]I. Transitional Programming – Post-Release Supervision (Including Parole)**

Upon request, the KDOC will provide appropriate Auxiliary Aids and Services, which may include Qualified Interpreters, for Deaf Inmates under post-release supervision to Effectively Communicate with the individual supervising their post-release supervision.

**[VI.]J. Additional Communications**

The KDOC will provide Effective Communication, which may include Qualified Interpreters, for any significant communications between Deaf Inmates and KDOC staff that is not specifically discussed in this Agreement. A significant communication includes any

communication for which the Deaf Inmate requests an interpreter, subject to approval by the ADA Coordinator, the Warden, and/or the Warden's designee.

## **VII. DISCIPLINARY MATTERS**

### **[VII.]A. Qualified Interpreters For Disciplinary Proceedings**

**[VII.A.1.]** The KDOC must provide Deaf Inmates with a Qualified Interpreter in any disciplinary proceeding in which a Deaf Inmate is suspected of, charged with, or a witness to, a disciplinary infraction, including those proceedings carried out under Chapter 15 of the Kentucky Corrections Policy and Procedure and any other disciplinary policies and procedures now in force or subsequently adopted by the KDOC. A Qualified Interpreter must be available to a Deaf Inmate at the following stages of the above-described disciplinary proceedings:

- staff investigations involving the exchange of information between a Deaf Inmate and KDOC personnel, prior to filing a disciplinary report or equivalent;
- investigative interviews that involve the exchange of information between a Deaf Inmate and KDOC personnel (such as when an adverse party is interviewed);
- during any part of the preparation of the disciplinary report that involves the exchange of information between a Deaf Inmate and KDOC personnel;
- during any part of the shift supervisor's review of the disciplinary report that involves the exchange of information between a Deaf Inmate and KDOC personnel;
- during any part of the investigator's review of the disciplinary report that involves the exchange of information between a Deaf Inmate and KDOC personnel;
- giving Miranda warnings to a Deaf Inmate;
- advising a Deaf Inmate of his or her right to consult with an assigned legal aide;
- advising a Deaf Inmate of the anticipated date, time, and place of hearing; and
- during any part of the hearing, or re-hearing, before the Adjustment Committee, Adjustment Officer or Unit Hearing Officer that involves the exchange of information between a Deaf Inmate and KDOC personnel.

**[VII.A.2.]** Inmate or staff advisors will be provided and accessible to Deaf Inmates who are suspected of, charged with, or witnesses to a disciplinary infraction, on the same terms as they are provided to non-Deaf Inmates. To the extent that a Deaf Inmate has access to his or her advisor, a Qualified Interpreter shall be made available to the Deaf Inmate for any exchange of information between the Deaf Inmate and his or her advisor.

**[VII.]B. Miscellaneous**

**[VII.B.1.]** If any Deaf Inmate is a witness at a disciplinary hearing, the KDOC will provide a Qualified Interpreter at the hearing.

**[VII.B.2.]** The KDOC must hold disciplinary hearings for Deaf Inmates within the same time frame as it holds disciplinary hearings for non-Deaf Inmates.

**[VII.B.3.]** Nothing in this Agreement precludes any Deaf Inmate who is suspected of or charged with a disciplinary infraction from voluntarily waiving his or her right to a Qualified Interpreter and to proceed through any stage of a disciplinary proceeding without the benefits of a Qualified Interpreter. If, as of the Effective Date of this Agreement, a Deaf Inmate is being punished or is scheduled to be punished for a disciplinary infraction as the result of a hearing in which he or she did not waive his or her right to a Qualified Interpreter, then the disciplinary hearing must be re-heard at a time that a Qualified Interpreter can be present.

**VIII. NON-AUDITORY ALERT NOTIFICATIONS**

**[VIII.]A. General Policy**

Deaf Inmates incarcerated at KDOC facilities should not miss announcements, alarms, or any other information audibly conveyed from KDOC staff to the general Inmate population solely because of their disability.

**[VIII.]B. Relaying Information**

**[VIII.B.1.]** The KDOC shall provide an effective non-auditory alert system that will notify Deaf Inmates of both prison-wide events (including but not limited to announcements, visitations, and roll-calls) and events specific to Deaf Inmates. The non-auditory alert system must be capable of effectively alerting Deaf Inmates of such events in real time.

**[VIII.B.2.]** In addition, the KDOC will continue to publish the institution schedule in the handbook that every Inmate receives and to post promptly any schedule changes, which are done by memorandum from the Warden, in all dormitories, the library, and the gym at each KDOC Adult Institution in which a Deaf Inmate is housed. Further, the KDOC will provide all medically necessary hearing aids and assisting devices, including but not limited to, bed shakers.

**[VIII.B.3.]** The KDOC has the discretion as to which type of non-auditory alerts it shall employ and to change that system as it deems necessary. Nonetheless, the KDOC will promptly advise the Settlement Monitor and the KCDHH of all non-auditory alert systems that the KDOC is considering, and will consult with the Settlement Monitor and the KCDHH in determining whether such devices are acceptable for the stated purpose.

### **[VIII.]C. Non-Auditory Alarms and Emergency Evacuation**

**[VIII.C.1.]** The KDOC will provide Deaf Inmates with an effective non-auditory alert system that will advise them of an emergency evacuation or other emergency. Such non-auditory alert systems must be sufficient to effectively notify Deaf Inmates of emergencies in real-time and can include flashing strobe lights and bed shakers. The KDOC has the discretion as to which type of non-auditory alerts it shall employ and to change that system as it deems necessary. Nonetheless, the KDOC will promptly advise the Settlement Monitor and the KCDHH of the non-auditory alert systems that the KDOC is considering, and will consult with the Settlement Monitor and the KCDHH in determining whether such systems are acceptable for the stated purpose.

**[VIII.C.2.]** KDOC personnel shall be responsible for the evacuation or safe relocation of Deaf Inmates during an emergency. Therefore, during emergencies, KDOC employees will personally and Effectively Communicate adequate information about the emergency to Deaf Inmates.

## **IX. TELECOMMUNICATIONS**

### **[IX.]A. General Policy**

The KDOC will provide Deaf Inmates with access to telecommunication devices that enable them to have communication with people outside of the KDOC and that are substantially equivalent—in terms of the amount and quality of the information conveyed—to the communications that non-Deaf Inmates have with people outside of the KDOC using traditional telecommunication devices such as telephones.

### **[IX.]B. Monitoring Communications**

The KDOC may only provide for the monitoring of communications between Deaf Inmates and individuals outside of the KDOC to the same extent and with the same discretion applied to the monitoring of communications between non-Deaf Inmates and those outside of the KDOC.

### **[IX.]C. Additional Time for Communication**

The KDOC will implement a policy that allows Deaf Inmates at least twice as many minutes to complete a Videophone call, and at least three times as many minutes to complete a TTY call, as the number of minutes afforded to other non-Deaf Inmates to make calls using traditional telecommunication devices such as telephones. In the event the KDOC determines this usage arrangement results in less than equitable access to telephones and Videophones for non-Deaf Inmates and Deaf Inmates, after considering the needs and abilities of Deaf and non-Deaf Inmates, the KDOC may adjust the ratio of time provided for Videophone calls and TTY calls. The KDOC will document this determination, including the evidence and reasons in support thereof. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made, and will explain the reasoning in support of such determination.

**[IX.D.]D. Technology KDOC Will Provide**

The KDOC will make the following communications technologies available at KDCO Adult Institutions where Deaf Inmates are incarcerated to facilitate communication between Deaf Inmates and people outside of KDOC facilities. This list of technological equipment is not exhaustive. The KDOC will keep abreast of evolving technology and will consider adding additional equipment to reflect technological advances, as it deems appropriate or as required by applicable federal and state law. KDOC will provide a list of available communications equipment to Deaf Inmates upon their arrival at the KDOC Adult Institutions in which they are housed.

**[IX.D.]1. TTY or TDD**

The parties acknowledge that there may be reasonable concerns over the theft and destruction of the TTY/TDD device(s), and that the TTY/TDD device(s) therefore must be maintained in a secured location when not in use. The parties also acknowledge that access to the TTY/TDD device(s) will be made available at times that the KDOC will designate. Nonetheless, for every KDOC Adult Institution at which any Deaf Inmate is incarcerated, in no event will TTY/TDD access for Deaf Inmates be less than equal to the access non-Deaf Inmates have to conventional telephones, except to the extent that Deaf Inmates must request access to the otherwise secured TTY/TDD device(s). A reasonable request by a Deaf Inmate to access the TTY/TDD device(s) will be granted. TTY/TDDs will be located in areas substantially as accessible to Deaf Inmates as conventional telephones are accessible to non-Deaf Inmates. TTY/TDDs will be available for Deaf Inmate use during the same days and hours as conventional telephones. At each KDOC Adult Institution where any Deaf Inmate is incarcerated, the KDOC will ensure that an alternate TTY or TDD unit is available for use when the regular TTY or TDD is broken or otherwise unavailable.

**[IX.D.]2. Relay Services**

For every KDOC Adult Institution at which any Deaf Inmate is incarcerated, the KDOC will enable all TTYs and TDDs to access publicly available relay service phone numbers such as 711 and 1-800 numbers. Deaf Inmates will not be charged any more than similarly situated non-Deaf Inmates for the use of relay services.

**[IX.D.]3. Videophones**

**[IX.D.3.a.]** Within sixty (60) days of the Effective Date of this Agreement, Videophones shall be installed and accessible to Deaf Inmates in any KDOC Adult Institution that houses Deaf Inmates. Access to the Videophone will be made available at times that the KDOC will designate, but in no event will Videophone access for Deaf Inmates be less than equal to the access non-Deaf Inmates have to conventional telephones. Videophones will be located in areas as accessible to Deaf Inmates as conventional telephones are accessible to non-Deaf Inmates. Videophone will be available during the same days and hours as conventional telephones and will not require permission for use to the same extent that conventional telephones do not require permission for use. Deaf Inmates will not be charged for the use of Videophones.

[IX.D.3.b.] Videophones will allow voice carry-over features.

**[IX.]E. Responsibility for Maintaining Equipment and Training Staff**

[IX.E.1.] The KDOC will ensure that the technology used to permit communication between Deaf Inmates and people outside of KDOC Adult Institutions is in good working order. Further, the KDOC will ensure that all equipment under the KDOC's control that is used to accommodate Deaf Inmates is kept in good working order. KDOC staff shall attempt to resolve complaints about any malfunctioning equipment within a reasonable time of receiving that complaint. To the extent services, equipment, and resources that are outside KDOC's control are involved (for example services or equipment provided by cable, telephone, utilities, or various other companies), KDOC will agree to notify those providers/companies of any problems and, to the extent necessary or possible under the circumstances, work with them expeditiously to resolve the problem.

[IX.E.2.] The KDOC will ensure that KDOC employees are adequately trained in the operation of the technology.

**X. MEDIA**

[X.1.] The KDOC will ensure that all audio-visual media purchased for Inmate use in KDOC Adult Institutions housing Deaf Inmates includes open- or closed-captioning. Televisions purchased by the KDOC for Inmate use shall support open- or closed-captioning. Captioning will be turned on and remain on at any Deaf Inmate's request.

[X.2.] The KDOC will permit Deaf Inmates to purchase TVs, which reliably support open- or closed-captioning, with their own funds. In the event that the closed-captioning feature contained on TVs purchased through approved commercial channels malfunctions, KDOC personnel will work with the Deaf Inmate to the same extent that the KDOC works with other Inmates regarding malfunctioning personal property to address and resolve the problem within a reasonable time.

**XI. HAND RESTRAINTS**

**[XI.]A. General Policy**

[XI.A.1.] According to the KDOC's hand restraint policies, the KDOC will use hand restraints on Deaf Inmates only in the following circumstances:



- when transporting a Deaf Inmate to or from a KDOC Adult Institution;
- when transferring a Deaf Inmate into or out of the special management unit; and
- as needed in response to security threats.

[XI.A.2.] The applicable portions of the KDOC hand restraint policy, summarized above, have been reviewed to confirm when hand restraints are used on Inmates confined to KDOC Adult Institutions. While the policy does not specify the manner in which mechanical restraints are used during Off-site Medical Care, an Affidavit is included as Appendix A to this Agreement describing the two-point bed restraint system used during Off-site Medical Care. The two-point system would allow a Deaf Inmate to use his or her hands for communicating via sign language to some degree. KDOC training will include both the two-point system as well as the agreement that hand restraints will be removed from a Deaf Inmate when the Deaf Inmate is in a secure environment, when security is no longer a threat, or there are other security devices in place to allow the Deaf Inmate to Effectively Communicate.

#### **[XI.]B. Off-site Medical Care**

[XI.B.1.] During Off-site Medical Care, the KDOC shall use a two-point hand restraint system to allow for the Deaf Inmate's need for Effective Communication while considering the safety and security of the Deaf Inmate and those located at Off-site Medical Care facilities. The KDOC will include training on use of the two-point hand restraint system in its regularly scheduled training for new and existing employees.

[XI.B.2.] In the event a medical decision made by medical professionals or medical staff that requires or calls for removal or adjustment of hand restraints, the KDOC will follow its secured policy regarding the removal of mechanical restraints where necessary for treatment or emergencies.

#### **[XI.]C. On-Site Medical Care**

The KDOC's hand restraint policy, summarized above in Section XI.A., will be followed for On-site Medical Care.

## **XII. MISCELLANEOUS DEVICES AND AIDS**

Where devices such as vibrating clocks and in-line amplifiers are not deemed medically necessary, the KDOC agrees to consider on a case by case basis whether it will allow a particular Deaf Inmate the opportunity to purchase these devices at his or her own expense. The KDOC's decision in this regard will consider, among other issues, whether these devices pose a security risk. The KDOC will have the discretion to make the determination whether any of these devices, and the type of device, is permissible. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination. Deaf Inmates will be allowed to purchase alerting devices, vibrating clocks, telephone amplifications, headset amplifiers, and televisions that meet the particular needs of



their disability from an approved vendor so long as the items do not pose a security risk. The KDOC retains the discretion to limit purchases to devices that are available through the Commissary. Deaf Inmates may submit a request in writing to the ADA Coordinator responsible for the KDOC Adult Institution in which they are housed for devices not available from the Commissary. The KDOC will not deny any Deaf Inmate the right to purchase these devices except where they present an articulable security risk, which shall be documented. The ADA Coordinator will maintain written records of all Deaf Inmate requests for these devices and the disposition of the request.

### **XIII. TRAINING**

#### **[XIII.]A. General Policy**

**[XIII.A.1.]** The KDOC, with input from the KCDHH, will provide training as defined in Section XIII.B below to KDOC employees who interact with the Inmate population. The KDOC will incorporate this training into its regularly scheduled training for new and existing employees. This training will be included in current KDOC training within ninety (90) days of the Effective Date of this Agreement. The KDOC will update the training materials as required by law, including but not limited to, the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws.

**[XIII.A.2.]** The KDOC will provide any materials that may be used for training, as specified under Section XIV of this Agreement, to the Settlement Monitor for review prior to the first training session. In addition, the KDOC, with input from the KCDHH, will update and allow the KCDHH and the Settlement Monitor to review the training as defined in Section XIII.B. at least every two years.

#### **[XIII.]B. KDOC Employee Training**

Within ninety (90) days of the Effective Date of this Agreement, the KDOC will begin training KDOC employees on the following topics:

- best practices for communicating with Deaf individuals;
- the unique needs and problems encountered by Deaf and late-Deafened individuals;
- identification of communication needs of persons who are Deaf;
- the psychological implications of Deafness and its relationship to interaction with hearing corrections personnel;
- the proper use and role of Qualified Interpreters;
- directions about using TTYs, TDDs, Videophones and any other telecommunication equipment, and other Auxiliary Aids and Services, currently available at the facility that facilitate communication with Deaf people;

- disciplinary matters, described in Section VII, and grievance proceedings, described in Section XIV;
- the KDOC's anti-discrimination policy;
- all equipment, services, and accommodations available to Deaf Inmates;
- hand restraint policies in the context of Deaf Inmates; and
- the requirements of this Agreement.

#### **XIV. GRIEVANCES**

[XIV.1.] All KDOC grievance coordinators will inform Deaf Inmates who file a grievance of the option to share that grievance (or any responses or outcomes) with the ADA Coordinator of the KDOC Adult Institution in which the Deaf Inmate is housed. If the Deaf Inmate agrees to share the grievance (or any responses or outcomes) with the ADA Coordinator, the grievance coordinator will forward a copy of that grievance (or grievance response or outcome) to the ADA Coordinator for review.

[XIV.2.] A written record of all Deaf Inmates' grievances (and any responses and outcomes) will be maintained by the KDOC. For five years following the Effective Date of this Agreement, the Settlement Monitor may request the records of any Deaf Inmate's grievances, as long as the Deaf Inmate signs a waiver of confidentiality pursuant to KRS 197.023, and a copy of that Deaf Inmate's records will be provided, free of charge, to the Settlement Monitor.

[XIV.3.] Within thirty (30) days of the Effective Date of this Agreement, and every three months thereafter, the KDOC will provide the Settlement Monitor with a written summary of grievances filed by Deaf Inmates concerning access to Effective Communication, Auxiliary Aids and Services, or any other issues raised in this Agreement. This written summary will describe, for each grievance, the issue raised by the Deaf Inmate, the KDOC Adult Institution where the grievance was filed, a summary of KDOC's response, and whether and how the grievance was resolved.

#### **XV. MONITORING AND COMPLIANCE**

##### **[XV.]A. Plaintiffs' Counsels' Right of Access**

To the extent Plaintiffs' Counsel maintains a current or prospective attorney-client relationship with any Deaf Inmate, they shall be provided the same access to that Deaf Inmate and to the records relating to that Deaf Inmate, as any other attorney with a similar relationship to another non-Deaf Inmate.

**[XV.]B. The Settlement Monitor's Investigation**

**[XV.B.1.]** For a period of five years after the Effective Date, the following will apply to the extent necessary to permit the Settlement Monitor to thoroughly and objectively assess the KDOC's compliance with and implementation of this Agreement:

- **[XV.B.1.a]** The Settlement Monitor will have unlimited access to all records, files, and papers maintained by the KDOC that relate to the terms of this Agreement. The KDOC will provide a written explanation for any refusal by the KDOC to provide any requested records, files, or papers, and the KDOC and the Settlement Monitor will attempt to reach an agreement before either the KDOC or the Settlement Monitor seek assistance from the Court.
- **[XV.B.1.b]** The Settlement Monitor will have access to all other materials relating to the case *Adams, et al. v. Commonwealth of Kentucky, et al.*, Case no. 14-cv-00001, except for those materials protected by the attorney-client privilege and/or work product doctrine. Any requested materials protected by the attorney-client privilege or work product doctrine will be logged with information including the author, date, nature of the material, reason for the claim of privilege, and persons to whom the material was disseminated, and this log will be provided to the Settlement Monitor.
- **[XV.B.1.c]** The Settlement Monitor will have access to all pertinent staff members and employees of the KDOC. The Settlement Monitor may engage in both formal and informal conferences with staff members and employees, including confidential or group interviews, and such persons will cooperate with the Settlement Monitor fully and will respond to all reasonable inquiries and requests relating to compliance efforts. The Settlement Monitor will contact the Warden or the Warden's designee to schedule these conferences and/or interviews, which will be treated as attorney visits under CPP 14.4.
- **[XV.B.1.d]** The Settlement Monitor may conduct confidential interviews with any Deaf Inmate or with groups of Deaf Inmates incarcerated at Adult KDOC Institutions. Within thirty (30) days of the Effective Date of this Agreement, and every six months thereafter, the KDOC will provide the Settlement Monitor with a current and up-to-date list of Deaf Inmates in the KDOC's custody, which identifies the name, DOC numbers and the KDOC Adult Institution for each Deaf Inmate. The Settlement Monitor will contact the Warden or the Warden's designee to schedule these conferences and/or interviews, which will be treated as attorney visits under CPP 14.4.
- **[XV.B.1.e]** The Settlement Monitor may request KDOC staff members and employees to prepare, where appropriate, written responses to any questions by the Settlement Monitor related to the implementation of the Agreement or issues in this litigation, so long as the request does not interfere with security

obligations of KDOC staff members and employees. The KDOC will not refuse or fail to respond to reasonable requests. Responses to these requests shall be provided in a timely manner that is reasonable and shall not interfere in the security obligations of any KDOC staff members or employees. The KDOC will provide a written explanation for any refusal by the KDOC staff members or employees to provide any requested responses, and the KDOC and the Settlement Monitor will attempt to reach an agreement before either the KDOC or the Settlement Monitor seek assistance from the Court.

- **[XV.B.1.f]** The Settlement Monitor may visit each KDOC Adult Institution so long as the KDOC is provided notice a minimum of thirty (30) days prior to the visit. All visits will be supervised by a KDOC employee. Visits will be limited to only those areas of a KDOC Adult Institution that are affected by this Agreement. Absent Court order or a separate agreement, the Settlement Monitor may visit each KDOC Adult Institution only once in a calendar year. The KDOC will pay the cost of and associated with providing Qualified Interpreters for the Settlement Monitor's visits to KDOC Adult Institutions.

**[XV.B.2.]** The parties will not refuse reasonable requests for records, files, papers, or other materials or for access to people or other information. The Settlement Monitor will conduct the bulleted monitoring, above, in a reasonable manner to minimize interference with the daily operations of the KDOC. Absent a Court order requiring otherwise, the KDOC retains discretion to prohibit the Settlement Monitor from conducting the aforementioned monitoring on the buildings and premises under the control of the KDOC, but the KDOC will not unreasonably refuse requests for visits.

**[XV.B.3.]** The Settlement Monitor may hire other persons as the Settlement Monitor determines to be necessary to carry out the Settlement Monitor's duties.

**[XV.B.4.]** For a period of five years after the Effective Date of this Agreement, the Settlement Monitor will issue semi-annual reports to the Court and the parties detailing the parties' compliance with and implementation of this Agreement.

**[XV.B.5.]** The KDOC will not pay for the fees and expenses due to the Settlement Monitor for the Settlement Monitor's services under this section.

## **XVI. RELEASE AND SETTLEMENT OF CLAIMS**

### **[XVI.]A. Release**

In consideration of the representations, promises and agreements set forth herein, including the payments as set forth in this Agreement, the sufficiency of which is hereby acknowledged, the Plaintiffs, on their behalf and on behalf of their assignees, heirs, executors, family members, beneficiaries, administrators, successors, and anyone acting, or claiming to act, on their behalf, hereby releases and forever discharges the Commonwealth of Kentucky, Kentucky Justice and Public Safety Cabinet, KDOC, J. Michael Brown, Ladonna Thompson, Kimberly Potter-Blair,

Paula Holden, Jim Erwin, Randy White, Gregory Howard, Clark Taylor, Aaron Smith, Kathy Litteral, Steve Haney, Gary Beckstrom, Alan Brown, Janet Conover, Joseph Meko, Don Bottoms, Ravonne Sims, Steve Woodward, and Bobbie Underwood from any and all claims and causes of action, known and unknown, asserted and unasserted, direct and indirect, and of any kind, nature or description whatsoever, which they had on or before the date of the execution of this Agreement arising out of the facts set forth in the discrimination charge they filed with the U.S. District Court for the Eastern District of Kentucky, Frankfort Division.

**[XVI.]B. Dismissal**

**[XVI.B.1.]** The Plaintiffs agree to dismiss with prejudice all claims of the Amended Complaint filed with the U.S. District Court, Eastern District of Kentucky, Frankfort Division (the “Court”), Case Number 3:14-cv-00001.

**[XVI.B.2.]** The parties agree that the Court will retain jurisdiction over this Agreement as set out in Section XVI.E of this Agreement, below.

**[XVI.]C. Attorneys’ Fees, Costs, Disbursements and Expenses**

In settlement of all claims for attorneys’ fees and costs, any disbursements and expenses, including expert fees, incurred on behalf of Plaintiffs in this litigation up to and including the Effective Date, the parties agree that within ninety (90) days of the Effective Date of this Agreement, the KDOC shall pay \$250,000.00 as directed by Plaintiffs’ counsel.

**[XVI.]D. Damages**

Within ninety (90) days of the Effective Date of this Agreement, the KDOC shall directly pay (1) Plaintiff Oscar Adams \$1,500.00 in damages and (2) Plaintiff Michael Knights \$1,500.00 in damages. The KDOC also agrees to pay within ninety (90) days of the Effective Date of this Agreement Plaintiff Michael Knights \$77.62 to compensate for lien charges assessed against him for communications with Plaintiffs’ Counsel regarding this case and settlement.

**[XVI.]E. Enforcement Powers**

**[XVI.E.1.]** During the term of the Agreement, as set out in Section XVII.H, Plaintiffs may move the court for reinstatement of the lawsuit, or may elect to seek specific performance or institute an action for breach. An action to enforce this Agreement does not include any action for damages, except for enforcement of Section XVI.D. A Plaintiff seeking to enforce this Agreement can only seek to have a court order the KDOC to comply with the terms of this Agreement.

**[XVI.E.2.]** The lawsuit may not be reinstated, nor a claim for breach or specific performance of this Agreement brought, before a Plaintiff first notifies the KDOC of the nature of the alleged material non-compliance and gives the KDOC sixty (60) days to cure the alleged breach. The parties agree to non-binding mediation prior to any Plaintiff moving to reinstate the lawsuit or filing an enforcement action.

## **XVII. MISCELLANEOUS PROVISIONS**

### **[XVII.]A. Non-Admission**

It is understood and agreed that this Agreement is a compromise of disputed claims, facts, or allegations. Nothing in this Agreement constitutes an admission of any liability, wrongdoing, or violation of any law, or the admission of the validity of any defense.

### **[XVII.]B. Private Settlement Agreement**

This Agreement is a private settlement agreement within the meaning of 18 U.S.C. § 3626.

### **[XVII.]C. Confidentiality**

No part of this Agreement is or will be considered confidential by the parties. This Agreement will be made available by request under the Freedom of Information Act.

### **[XVII.]D. Entire Agreement**

**[XVII.D.1.]** This Agreement constitutes the entire Agreement between the parties. There were no inducements or representations leading to the execution of this document, except as stated within the document itself. The terms of this Agreement are contractual in nature.

**[XVII.D.2.]** All parties agree that the relief provided in this Agreement is narrowly drawn, extends no further than necessary, and is the least intrusive means necessary to correct the violation of Plaintiffs' federally protected rights.

### **[XVII.]E. Execution**

This Agreement may be executed in counterpart originals, all of which, when so executed and taken together, shall be deemed an original and all of which shall constitute one and the same instrument. Each counterpart may be delivered by email (as a .pdf attachment) or facsimile, and an email or facsimile signature shall have the same force and effect as an original signature.

### **[XVII.]F. Binding**

This Agreement is final and binding on the Parties. Each Party has a duty to so inform any such successor in interest.

### **[XVII.]G. Non-Waiver**

Failure by the Plaintiffs to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to other instances and provisions.

**[XVII.]H. Severability**

In the event that a court determines that any provision of this Agreement is unenforceable, such provision will be severed from this Agreement and all other provisions will remain valid and enforceable, provided however that if the severance of any such provision materially alters the rights and obligations of the Parties hereunder, the Parties will attempt, through reasonable, good faith negotiations, to agree upon such other amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

**[XVII.]I. Term of Agreement**

This Agreement shall remain in effect for five years from the Effective Date. The KDOC, however, will continue to provide all accommodations required under the law, including under the U.S. Constitution, the ADA, Section 504 of the Rehabilitation Act, and Kentucky laws, along with any other applicable federal and state laws, regardless of any term limit applicable to this Agreement.

Signed: /s/



Exhibit C: Compliance reporting form for Agreement items with deadlines (Jan. 4, 2016)

Form+



## Adams & Knights v. KDOC, compliance questions (1/4/2016)

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**In preparation of the first monitoring report, I am checking with each KDOC ADA Coordinator for facilities with Deaf Inmates about Settlement Agreement items that include a deadline on or before September 26, 2015. (The agreement was filed with the court on May 29, 2015. So that means that its effective date is June 28, 2015, 30 days later. Ninety days after that was September 26, 2015.)**

Please respond to the attached questions no later than January 15. Thanks for your assistance.

Margo Schlanger

Adams & Knights v. Kentucky DOC Settlement Monitor

Identifying information

Your name

Your phone number

Your email

Your institution

1. **Videophones: Within sixty (60) days of the Effective Date of this Agreement, Videophones shall be installed and accessible to Deaf Inmates in any KDOC Adult Institution that houses Deaf Inmates. Access to the Videophone will be made available at times that the KDOC will designate, but in no event will Videophone access for Deaf Inmates be less than equal to the access non-Deaf Inmates have to conventional telephones. Videophones will be located in areas as accessible to Deaf Inmates as conventional telephones are accessible to non-Deaf Inmates. Videophone will be available during the same days and hours as conventional telephones and will not require permission for use to the same extent that conventional telephones do not require permission for use. Deaf Inmates will not be charged for the use of Videophones. (IX.D.3.a)**

a. Are videophones installed and accessible to Deaf Inmates?

b. Are videophones located in areas as accessible to Deaf Inmates as conventional telephones are accessible to non-Deaf Inmates?

c) Are videophones available during the same days and hours as conventional telephones? What are those days and hours?

d) Are videophones available to use without particular permission to the same extent that conventional telephones are available to use without

particular permission?  
When is permission  
required?

e) Are Deaf Inmates  
charged for the use of  
Videophones?

**2. KDOC will provide each Deaf Inmate with materials providing information about the Auxiliary Aids and Services available to Deaf Inmates and instructions for how to obtain, request, or use those Auxiliary Aids and Services. The KDOC will create these materials using language designed to be accessible to each Deaf Inmate. (III.F.1)**

Please provide the  
materials described in  
this provision.

no file selected

Please explain whether  
these materials have  
been provided to each  
Deaf Inmate in your  
facility, and when.

**3. KDOC personnel at those KDOC Adult Institutions where Deaf Inmates are housed shall provide each Deaf Inmate with a schedule showing when Qualified Interpreters and/or other Auxiliary Aids and Services are available. (IV.B.)**

Please provide the  
schedule described in  
this provision.

no file selected

Please explain whether  
these materials have

been provided to each  
Deaf Inmate in your  
facility, and when.

**4. KDOC will provide a Qualified Interpreter via VRI service for use in unscheduled medical emergencies. (VI.C.4.)**

Please describe the  
arrangements made to  
be ready for this  
circumstance, should it  
occur.

Please provide a list of  
all such emergencies  
that have taken place  
since September 26,  
2015, and whether a  
Qualified Interpreter  
was or was not  
provided.

**5. The KDOC, with input from the KCDHH, will provide training as defined in the Agreement to KDOC employees who interact with the Inmate population. (It is my understanding that this training has been delayed.)**

This training	Has taken place
	Has not taken place

If the training has taken place, please provide the training materials, and details on the dates, times, trainers, and attendees of the training

Training materials	no file selected
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Details on dates, times,  
trainers, attendees

no file selected

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Exhibit D: Quarterly Compliance reporting form  
(Jan. 18, 2016)





## Adams v. KDOC, Quarterly Compliance Reporting (Jan. 2016)

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Jan. 18. **This reporting form will be used each quarter; in the future I will circulate it immediately at the close of the quarter, and ask for the information to be provided within 2 weeks. This time, I ask that you complete it by January 28. Thank you.**

Definition: Under the agreement, Deaf means unable to hear well enough to rely on hearing as a means of processing information. It includes deaf, hard of hearing, or hearing impaired.

### Your identifying information

Your name

Your institution

Your email

Your phone number

Are you the current  
ADA Coordinator? If

not, please list the name, phone number, and email of the current ADA Coordinator

**If your institution does not currently have any Deaf inmates, and has not had any Deaf inmates since July 2015, you can skip the rest of this form. Just say so here.**

Any Deaf inmates?

My institution does not have any current Deaf inmates, and has not had any since July 2015

**1) Grievances (Agreement XIV.3) In the fourth quarter of 2015 (October through December, 2015), did any Deaf Inmate file any grievance concerning access to Effective Communication, Auxiliary Aids and Services, or any other issues raised in this Agreement?**

Any grievances?

If yes, please upload a summary that describes, for each grievance, the issue raised, KDOC's response, and whether and how the grievance was resolved.

Grievance summary

no file selected

**2) Arrangements (contractual or otherwise) with qualified interpreters, to facilitate their availability when called for by the Agreement**

a. Do you have an arrangement with a

provider of in-person  
interpreter services?

If so, please name the  
provider(s) and  
describe the terms of  
the arrangement in  
detail.

b. Do you have an  
arrangement with  
provider of video  
interpretation services?

If yes, please name the  
provider(s) and  
describe the terms of  
the arrangement in  
detail.

### **Situational reporting under the Agreement**

For each of the following questions, I first provide you the relevant paragraph of the Agreement, and then ask whether the situation described has arisen, since July 1, 2015. If it has, I ask for the required documentation.

**3) Non-Discrimination Based on Disability (II.A): “The KDOC retains the discretion to determine that certain activities present a Direct Threat of injury or death to Deaf Inmates and therefore may not be able to provide such Deaf Inmates full and equal enjoyment of some of its services, privileges, facilities, advantages, and accommodations. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination.”**

a. Since July 1, 2015, have you at any point determined that any activities present a direct threat of injury or death to Deaf Inmates and therefore been unable to provide those inmates full and equal enjoyment of any facility services, privileges, facilities, advantages, and accommodations?

Direct threat  
determination?

b. If so, please upload documentation of: (1) the service, privilege, facility, advantage or accommodation; (2) the risk presented; (3) a list of inmate(s) affected.

Direct threat  
documentation

no file selected

**4) Work Assignments: (VI.F) “The KDOC retains the discretion to determine that certain work assignments present a Direct Threat of injury or death to a Deaf Inmate or others and may therefore choose not to provide the Deaf Inmate a substantially equal opportunity to those work assignments. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination.”**

a. Since July 1, 2015, have you at any point determined that a work assignment presented a Direct Threat of injury or death to a Deaf Inmate or others and therefore chosen not to provide the Deaf Inmate a substantially equal opportunity to that work assignment?\*

Work direct threat  
determination?

b. If so, please upload documentation of: (1) the work assignment(s); (2) the risk(s) presented; (3) the names of inmate(s) affected.

Work direct threat  
documentation

no file selected

**5) Non-Auditory Alert Systems (VIII.B.3; VIII.C) “The KDOC will promptly advise the Settlement Monitor and the KCDHH of all non-auditory alert systems that the KDOC is considering, and will consult with the**

Settlement Monitor and the KCDHH in determining whether such devices are acceptable for the stated purpose.”

a. Have you considered any non-auditory alert systems?

b. If so, what systems have been under consideration?

**6) Additional Time for Communication:** “The KDOC will implement a policy that allows Deaf Inmates at least twice as many minutes to complete a Videophone call, and at least three times as many minutes to complete a TTY call, as the number of minutes afforded to other non-Deaf Inmates to make calls using traditional telecommunication devices such as telephones. In the event the KDOC determines this usage arrangement results in less than equitable access to telephones and Videophones for non-Deaf Inmates and Deaf Inmates, after considering the needs and abilities of Deaf and non-Deaf Inmates, the KDOC may adjust the ratio of time provided for Videophone calls and TTY calls. The KDOC will document this determination, including the evidence and reasons in support thereof. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made, and will explain the reasoning in support of such determination.”

a. How much time are non-Deaf inmates allowed to use for phone calls? Time per call, and per day or week

b. How much time are Deaf inmates allowed to use for Videophone calls? Time per call and per day or week.

c. How much time are Deaf inmates allowed

to use for TTY calls? Time per call, and per day or week

d. Since July 2015, have you made any determination that the usage arrangements are inequitable?

e. If you have made such a determination, please provide documentation of the reasoning.

no file selected

**7) Miscellaneous Devices and Aids: (XII) “Where devices such as vibrating clocks and in-line amplifiers are not deemed medically necessary, the KDOC agrees to consider on a case by case basis whether it will allow a particular Deaf Inmate the opportunity to purchase these devices at his or her own expense. The KDOC’s decision in this regard will consider, among other issues, whether these devices pose a security risk. The KDOC will have the discretion to make the determination whether any of these devices, and the type of device, is permissible. The KDOC will promptly notify the Settlement Monitor whenever any such determination is made and explain the reasoning in support of such determination.”**

a. Since July 2015, have you made any determinations allowing or disallowing devices?

Considered a device

b. If you have considered a device—whether you granted or refused permission—please upload documentation of the device(s), the reasoning, and the names of affected inmate(s).

Documentation of  
devices granted or  
refused

no file selected

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Exhibit E: Summary of common themes in  
inmate interviews, November 2015—  
January 2016

**Exhibit E:** Notes from Kentucky Department of Corrections Inmate Interviews

My assistant, a third year law student, conducted seven inmate interviews between November 2015 and January 2016. Five interviews were conducted by videophone service. Two inmates preferred not to utilize the videophone service; she interviewed one by conventional telephone and one by TTY. The interviews covered five facilities, which is all but two of the facilities that house Kentucky’s deaf inmates. (For those two remaining facilities, one interview is scheduled and one inmate requested to communicate by letter, instead of phone.) Many additional interviews focusing on the Kentucky State Reformatory (KSR) will be reported separately, as part of the future report on a KSR site visit.

Where a denominator is reported in the right-hand column, it indicates how many inmates were asked the relevant question. No denominator means that the inmate volunteered the information, without a specific question that was also posed to other inmates.

<b>Topic</b>	<b>Inmates reporting</b>
<b>ADA Coordinators</b>	
1. Inmate knows the ADA coordinator at his/her facility and how to get in touch with the ADA coordinator	5/6
2. Inmate fears that reporting problems to the ADA coordinator will lead to the revocation of privileges or other disciplinary action	1
3. ADA coordinator is unwilling to accommodate inmate’s hearing impairment (for example, by writing back and worth or facing the inmate while speaking to facilitate lip-reading)	1
<b>Aids and Services</b>	
1. Inmate has not been provided information about how to request or obtain devices or services	6/6
2. Hearing aids—functionality	
Inmate’s hearing aid is in good working order	2/4
Inmate’s hearing aid is not in good working order	2/4
3. Hearing aid: repairs and replacements	
Inmate has been waiting for a month or longer for a new hearing aid, or repairs	3/4
Repairs to inmate’s hearing aid have been made quickly	2/4
4. Inmate did not have to pay for a hearing aid and/or repairs to an existing aid	3/3
5. Inmate did not have to pay for a hearing aid batteries	3/3
<b>Alert Systems</b>	
1. Has the prison installed a bed shaker and/or strobe light in the inmate’s cell?	
No	6/7
Yes	1/7
2. Inmate does not feel safe in case of an emergency	5/7

3. The prison has not provided an effective method to communicate day-to-day announcements to deaf inmates	6/7
<b>Closed Captioning</b>	
1. Closed captioning is available and turned on upon request	4/6
2. Closed captioning is not available or not turned on upon request	2/6
<b>Discipline</b>	
1. Inmate fears that requests for services or aids will lead to revocation of other privileges or other disciplinary measures	3
2. Inmate has been unable to understand why disciplinary proceedings were initiated due to ineffective communication with corrections staff. (Note: the timing of this issue is unclear, but at least one or two seem to be since the Agreement's effective date.)	3
3. Inmate faced disciplinary action as a result of being unable to hear commands or alerts. (Note: The timing of these reported issues is unclear, but at least one may have been since the Agreement's effective date)	3
<b>Effective Communication</b>	
1. Inmate does not feel communication with medical staff is effective	6/6
2. Inmate does not feel communication with corrections staff is effective	5/7
3. Corrections staff are unwilling to accommodate inmate's hearing impairment (for example, by writing back and forth or facing the inmate while speaking to facilitate lip-reading)	3
<b>Hand Restraints</b>	
1. Inmate has been placed in hand restraints (Note: the timing of these reported issues is unclear, but they may all have preceded the Agreement's effective date)	5/7
2. Hand restraints undermined inmate's ability to communicate	4/6
<b>Hearing Assessments</b>	
1. Inmate has never received a hearing assessment.	3/7
<b>Notification Regarding Deaf Inmates</b>	
1. Inmate was given a distinct identification card identifying him/her as deaf or hearing impaired or signed a waiver	7/7
2. Inmate misplaced the distinct identification card and requested a new one but has not yet received a replacement.	1
3. There is no sign outside the inmate's assigned dorm indicating that a deaf inmate is housed there	5/7
4. Inmates report a sign outside the assigned dorm, but because it says "hard of hearing," not "deaf," believe that COs therefore do not understand that they cannot hear at all and have unrealistic expectations of their abilities.	2

<b>Programming</b>	
1. Inmate is unable to participate effectively in classes due to communication or hearing issues	5/6
<b>Qualified Interpreters</b>	
1. Facility has not provided in-person qualified interpreters for medical appointments.	6/6
2. Facility has provided video interpretation (VRI) at medical appointments	2/6
3. Facility has not provided in-person qualified interpreters for classes and programming	6/6
4. Facility has provided VRI for some, if not all, classes and programming	2
5. Facility provided a VRI at intake	1
6. Inmate requested qualified interpreters at religious services and was denied	2
7. Inmate was not provided a schedule of when qualified interpreters or other aids/services would be available	5/6
8. The prison's VRI is not easily accessible because the process of requesting and acquiring it is time consuming.	2
<b>Work Assignments</b>	
1. Inmate's request for work assignments was denied due to the inmate's hearing disability. (Note: the timing of these reports is unclear; they may both predate the Settlement's effective date)	2/6
2. Inmate has not been denied a work assignment due to the inmate's hearing disability	4/6
<b>Videophones</b>	
1. A videophone is installed at the inmate's facility	6/6
2. The videophone is usually in good working order	6/6
3. Inmate is not charged to use the videophone	5/5
4. The videophone is located in a different dorm than the inmate is housed in, which creates barriers to access and reduces the amount of time the inmate is able to spend on the videophone	1
5. Inmate must request permission to use the videophone, a process not required for hearing inmates	1