

SETTLEMENT AGREEMENT BETWEEN DEFENDANTS THE COMMONWEALTH  
OF KENTUCKY ET AL. AND PLAINTIFFS OSCAR ADAMS AND MICHAEL  
KNIGHTS

**I. DEFINITIONS**

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).
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.
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).
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.
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)).
6. "Effective Date" means thirty (30) days after this Agreement is filed with the Court.
7. "Inmate" means any person in the custody of the KDOC.
8. "KCDHH" means the Kentucky Commission on the Deaf and Hard of Hearing.

9. "KDOC" means Kentucky Department of Corrections.
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.
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.
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.
13. "Off-site Medical Care" means medical care that is provided at a location not owned or operated by the KDOC.
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.
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.
16. "Plaintiffs" means, for purposes of this Agreement, Oscar Adams (inmate #243676) and Michael Knights (inmate #233021).
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.
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.

19. "Section 504" means Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 701 et seq. (2014).
20. "Settlement Monitor" means Margo Schlanger, whose *curriculum vitae* is attached as Exhibit 1.
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.
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).
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

### 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.

### B. ADA Coordinator

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.

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.

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**

#### **A. General Policy**

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.

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).

#### **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.

**C. Auxiliary Aids and Services Assessment**

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.

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.

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.

**D. Ensuring Staff Awareness Through Identification Cards**

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.

All KDOC staff having regular contact with any Deaf Inmate will be trained on the meaning of the distinct ID cards.

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.

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.

**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.

**F. Creation and Interpretation of Rights Materials**

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.

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**

**A. General Policy**

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.

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.

**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**

### **A. General Policy**

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.

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.

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.

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.

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.

### **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.

**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**

**A. General Policy**

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.

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.

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.

**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.

**C. On-site Medical Care**

**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.

**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.

**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.

**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.

**D. Off-site Medical Care**

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.

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.

**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:

**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)).

**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)).

**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.

**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.

**G. Religious Services**

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.

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.

To the extent that the KDOC provides any religious services, now or in the future, the KDOC shall provide a Qualified Interpreter.

**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.

**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.

**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**

### **A. Qualified Interpreters For Disciplinary Proceedings**

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.

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.

**B. Miscellaneous**

If any Deaf Inmate is a witness at a disciplinary hearing, the KDOC will provide a Qualified Interpreter at the hearing.

The KDOC must hold disciplinary hearings for Deaf Inmates within the same time frame as it holds disciplinary hearings for non-Deaf Inmates.

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**

**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.

**B. Relaying Information**

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.

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.

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.

**C. Non-Auditory Alarms and Emergency Evacuation**

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.

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**

**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.

**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.

**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.



**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.

**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.

**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.

**3. 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.

Videophones will allow voice carry-over features.

**E. Responsibility for Maintaining Equipment and Training Staff**

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.

The KDOC will ensure that KDOC employees are adequately trained in the operation of the technology.

**X. MEDIA**

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.

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**

**A. General Policy**

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.

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.

#### **B. Off-site Medical Care**

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.

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.

#### **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**

#### **A. General Policy**

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.

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.

#### **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**

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.

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.

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**

##### **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.

**B. The Settlement Monitor's Investigation**

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:

- 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.
- 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.
- 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.
- 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.
- 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.

- 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.

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.

The Settlement Monitor may hire other persons as the Settlement Monitor determines to be necessary to carry out the Settlement Monitor's duties.

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.

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**

### **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.

**B. Dismissal**

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.

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

**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.

**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.

**E. Enforcement Powers**

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.

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**

### **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.

### **B. Private Settlement Agreement**

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

### **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.

### **D. Entire Agreement**

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.

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.

### **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.

### **F. Binding**

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

### **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.

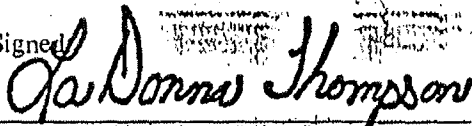
**H. Severability**

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.

**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



Kentucky Department of Corrections

5/15/15

Date

Attorney for Plaintiffs

Date

Michael Knights  
Printed Name  
Michael Knights  
Signature  
5/18/15  
Date

Printed Name  
Signature  
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Oscar D. Adams  
Printed Name

Oscar D. Adams  
Signature

5-18-15  
Date

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Signature

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Signature

Date



Approved as to ¶XVI(c)  
WEIL, GOTSHAL & MANGES LLP

By: [Signature] for Ralph I. Miller with permission  
Date: 5/15/15

Approved as to ¶XVI(c)  
WASHINGTON LAWYERS' COMMITTEE

By: [Signature] for Deborah M. Golden with permission  
Date: 5/15/15

Approved as to ¶XVI(c)  
BELZLEYBATHURST ATTORNEYS

By: [Signature] for Greg Belzley with permission  
Date: 5/15/15

# EXHIBIT 1

**MARGO SCHLANGER**

<http://margoschlanger.net>

[mschlan@umich.edu](mailto:mschlan@umich.edu)

734-615-2618

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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.

**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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## COURSES TAUGHT

Torts; Constitutional Law; Prisons and the Law; Constitutional Equality. Seminars include Civil Rights and Homeland Security; Empirical Inquiries into Civil Litigation; Institutional Reform Litigation.

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## OTHER APPOINTMENTS

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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**SCHOLARLY PUBLICATIONS, forthcoming and published**

*Intelligence Legalism and the National Security Agency's Civil Liberties Gap*, forthcoming HARV. NAT. SEC. L.J. (2015), available at <http://ssrn.com/abstract=2495844>.

*Trends in Prisoner Litigation as the PLRA Enters Adulthood*, forthcoming, U.C. IRVINE L. REV. (2015), available at <http://ssrn.com/abstract=2506378>.

*How Prisoners' Rights Lawyers are Preserving the Role of the Courts*, forthcoming, U. Miami L. Rev. (2015), available at <http://ssrn.com/abstract=2478884>.

*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), forthcoming WASH. U. L. REV. (2014) (draft available at <http://ssrn.com/abstract=2309514>).

*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).

*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).

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Schlanger cv, page 3 of 7 (10/27/2014)

*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

*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.

*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.

*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; California Realignment in the Counties

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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 (New Orleans, LA, Feb. 2014).  
Chair, Prison Litigation: A Workshop for Plaintiffs' Attorneys (Washington, DC, Mar. 2008);

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

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

Chair, Senate Advisory Committee on University Affairs, Committee on Civil Liberties

Member, Law School Curriculum Committee (2014/2014)

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

Chair, University of Michigan Committee on Civil Liberties (2014/2015), Member (2013/2014)

Faculty Advisor, Journal of Race & Law Symposium on Solitary Confinement (2013)

Convenor, Prison Law & Scholarship Roundtable (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)

### *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. 2014)
- University of Iowa Law School Faculty Workshop (Nov. 2014)
- University of Michigan Law School Legal Theory Workshop
- 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)

### *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)

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*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)

Schlanger cv, page 7 of 7 (10/27/2014)

*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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# APPENDIX A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT FRANKFORT

CIVIL ACTION NO. 3:14-CV-00001-GPVT

ELECTRONICALLY FILED

OSCAR ADAMS and MICHAEL KNIGHTS,

PLAINTIFFS

v.

AFFIDAVIT OF JAMES ERWIN

COMMONWEALTH OF KENTUCKY, et al.,

DEFENDANTS

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Comes now the Affiant, James Erwin, and having been duly sworn and cautioned, states the following:

1. I, James Erwin, am the Deputy Commissioner for Adult Institutions for the Department of Corrections, Commonwealth of Kentucky.
2. In my official capacity, I am familiar with Corrections Policy and Procedure for the Kentucky Department of Corrections.
3. I have reviewed Corrections Policy and Procedure ("CPP") 9.14 (a secured policy), that addresses, among other matters, hospital security protocol.
4. CPP 9.14 provides that, typically, inmate patients admitted to a hospital are secured using arm bed restraints and leg bed restraints.
5. The use of arm bed restraints rather than handcuffs allows hand movement which should make it possible for Deaf inmates who need their hands to communicate, to do so.
6. While this should be the typical protocol, the Department as always has the responsibility to safe-guard officers, inmates, the public, etc., which could require an escalation of security depending upon the inmate and the situation.



## General Information

<b>Court</b>	United States District Court for the Eastern District of Kentucky; United States District Court for the Eastern District of Kentucky
<b>Federal Nature of Suit</b>	Prisoner Petitions - Prison Condition[555]
<b>Docket Number</b>	3:14-cv-00001
<b>Status</b>	Closed