

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

MAJOR JON MICHAEL SCOTT,

Plaintiff,

v.

THE CITY AND COUNTY OF DENVER,

Defendant.

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**COMPLAINT**

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Plaintiff Major Jon Michael Scott, by and through his attorneys, Fox & Robertson, PC, and The Center for Rights of Parents with Disabilities, hereby brings this Complaint against the City & County of Denver (the “City”).

**INTRODUCTION**

1. Twenty-one years after the Americans with Disabilities Act (“ADA”) was passed and almost 40 years after the Rehabilitation Act, the City fails to provide sign language interpreters and other accommodations to deaf and hard of hearing inmates and detainees, depriving them of effective communication.

2. Among the primary purposes of the ADA and the Rehabilitation Act is ensuring that individuals who are deaf or hard of hearing receive interpreter services and other auxiliary aids and services to ensure effective communication.

3. The City has systematically, knowingly, and intentionally discriminated against Plaintiff Scott and other deaf and hard of hearing individuals who have been detained or imprisoned at its city and county jails and detention centers.

### **JURISDICTION AND VENUE**

4. This action arises under the laws of the United States. Jurisdiction is conferred upon this court pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as all of the events giving rise to the claims occurred in the District of Colorado.

### **PARTIES**

6. Plaintiff Major Jon Michael Scott is currently and at all times relevant to this suit has been a resident of the State of Colorado. Plaintiff Scott is substantially limited in several major life activities, including hearing.

7. Defendant the City & County of Denver (“the City”) is a home rule municipality under Article XX, § 6 of the Colorado Constitution. As such, it is a public entity as that term is used in title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* The City is a recipient of federal financial assistance as that term is used in section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

### **FACTUAL ALLEGATIONS**

8. Plaintiff Scott is Deaf, and does not understand speech. His primary mode of communication is American Sign Language.

9. Like many individuals who are deaf since childhood, Plaintiff Scott does not read or write with fluency. American Sign Language, not English, is his native language.

10. In order to communicate effectively with strangers and/or in situations that call for more than very routine language, Plaintiff Scott requires the services of a qualified sign language interpreter. Specifically, he requires a sign language interpreter in situations of a legal or medical nature.

11. Plaintiff Scott was incarcerated at the City's Pre-Arrestment Detention Facility ("PADF") on at least one occasion between January 11, 2010 and the present.

12. Plaintiff Scott was incarcerated at the City's Downtown Detention Center ("DDC") on several occasions between January 11, 2010 and the present.

13. Plaintiff Scott was incarcerated at the Denver County Jail ("DCJ") on several occasions between January 11, 2010 and the present.

14. At all times relevant to this lawsuit, the City has been aware that Plaintiff Scott is Deaf.

15. Despite the fact that the City was aware that Plaintiff Scott was Deaf and could not communicate effectively without a sign language interpreter, he was repeatedly denied access to an interpreter during his detentions in City facilities during 2010 and 2011.

16. The City was on notice that Plaintiff Scott needed an interpreter, both because the need was obvious and because, on a number of occasions in 2010 and 2011, Plaintiff Scott requested one.

17. Despite the fact that the City was aware that Plaintiff Scott was Deaf and could not use a telephone, his requests to use a TTY or video phone were often rejected or delayed for hours or days. He was not permitted access to telephonic communications equal to that of hearing inmates.

18. The City was on notice that Plaintiff Scott needed a TTY or video phone, both because the need was obvious and because, on a number of occasions, Plaintiff Scott requested these accommodations.

19. The City failed to provide written materials to Plaintiff Scott in a format and language that he could understand.

20. The City denied Plaintiff Scott Access to other services, programs, and activities generally available to inmates in its detention facilities either on the basis of his disability or because they were unwilling to provide accommodations and/or auxiliary aids and services.

21. The actions described above discriminated against Plaintiff Scott on the basis of his disability.

22. Plaintiff Scott was harmed by the City's discrimination and failure to make its services, programs, and activities available to him on nondiscriminatory terms.

23. Plaintiff Scott was harmed by his inability to participate in the services, programs, and activities of the City's detention facilities to the same extent as hearing inmates.

24. Plaintiff Scott is currently on probation for a burglary conviction in 2007. His periods of incarceration in 2010 and 2011 were based on violations of probation, some of which were *de minimis* and/or due to failures on the part of other entities to provide auxiliary aids and services and effective communication. For these reasons, it is likely that Plaintiff Scott will in the future be detained by the City and will continue to experience harm and discrimination unless the City is ordered to comply with the ADA and Rehabilitation Act.

25. The City has been a defendant in the case of *Ulibarri v. City and County of Denver*, No. 07- cv-1814-ODM-MJW (D. Colo.), since August, 2007. Plaintiffs in that case

alleged and substantiated claims of three deaf plaintiffs who were denied sign language interpreters and other accommodations at the City's detention facilities in 2005 and 2007. The City has thus been on notice since at least that time of the deficiencies in its policies and practices for the provision of interpreters and other accommodations to deaf and hard of hearing detainees.

26. For this and other reasons, the City has acted with deliberate indifference to the strong likelihood that pursuit of its questioned policies and practices, and its discrimination and failure to provide accommodations and auxiliary aids and services to Plaintiff Scott would likely result in a violation of his federally protected rights.

**FIRST CLAIM FOR RELIEF**

(Violations of Section 504 of the Rehabilitation Act of 1973)

27. Plaintiffs incorporate the allegations set forth in the remainder of this Complaint as if fully set forth herein.

28. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability by recipients of federal financial assistance such as the City. 29 U.S.C. § 794.

29. The City and its Sheriff Department receive and benefit from federal financial assistance as that term is used in 29 U.S.C. § 794.

30. Plaintiff Scott is an individual with a disability within the meaning of the Rehabilitation Act of 1973.

31. The City has discriminated against Plaintiff Scott on the basis of disability in violation of 29 U.S.C. § 794 and its implementing regulations as more fully described above. Such discrimination includes but is not limited to failure to provide auxiliary aids and services.

32. Plaintiff Scott was qualified to participate in the services, programs, activities, and benefits provided to prisoners at the City's detention facilities within the meaning of the Rehabilitation Act of 1973.

33. The City denied Plaintiff Scott access to programs, benefits, and services provided to other inmates at City detention facilities solely on the basis of his disability, thereby violating the Rehabilitation Act of 1973.

34. Despite the clear provisions of the Rehabilitation Act of 1973, its knowledge of the deficiencies of its policies and practices, its knowledge of Plaintiff Scott's deafness and need for accommodation, the City persisted in imposing conditions and practices that discriminate against Plaintiff Scott and other persons who are deaf or hard of hearing.

35. As a direct and proximate result of the acts, omissions, and violations alleged above, Plaintiff Scott has suffered damages, including but not limited to pain and suffering, inconvenience, emotional distress, and impairment of quality of life.

36. Plaintiff Scott has been injured and aggrieved by and will continue to be injured and aggrieved by the City's discrimination.

**SECOND CLAIM FOR RELIEF**  
(Violations of the Americans with Disabilities Act)

37. Plaintiffs incorporate the allegations set forth in the remainder of this Complaint as if fully set forth herein.

38. Title II of the ADA prohibits discrimination on the basis of disability by public entities such as the City. 42 U.S.C. § 12132.

39. The City is a public entity as that term is used in title II of the ADA.

40. Plaintiff Scott is an individual with a disability within the meaning of the ADA.

41. The City has discriminated against Plaintiff Scott on the basis of disability in violation of title II of the ADA and its implementing regulations as more fully described above. Such discrimination includes but is not limited to failure to provide auxiliary aids and services.

42. Plaintiff Scott was qualified to participate in the services, programs, activities, and benefits provided to prisoners at the City's detention facilities within the meaning of title II of the ADA.

43. The City denied Plaintiff Scott access to programs, benefits, and services provided to other inmates at the City's detention facilities solely on the basis of his disability, thereby violating title II of the ADA.

44. Despite the clear provisions of the title II of the ADA, its knowledge of the deficiencies of its policies and practices, its knowledge of Plaintiff Scott's deafness and need for accommodation, the City persisted in imposing conditions and practices that discriminate against Plaintiff Scott and other persons who are deaf or hard of hearing.

45. As a direct and proximate result of the acts, omissions, and violations alleged above, Plaintiff Scott has suffered damages, including but not limited to pain and suffering, inconvenience, emotional distress, and impairment of quality of life.

46. Plaintiff Scott has been injured and aggrieved by and will continue to be injured and aggrieved by the City's discrimination.

WHEREFORE, Plaintiffs respectfully request:

1. That this Court assume jurisdiction;

2. That this Court declare the actions of Defendant described in this Complaint to be in violation of title II of the Americans with Disabilities Act and the Rehabilitation Act;

3. That this Court enter an injunction ordering Defendant to cease discrimination on the basis of disability against deaf detainees including but not limited to Plaintiff;

4. That this Court award Plaintiff compensatory damages;

5. That this Court award Plaintiff his reasonable attorneys' fees and costs; and

6. That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully submitted,

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