

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

DISABILITY RIGHTS FLORIDA, INC.,

Plaintiff,

vs.

CASE NO. 4:16-cv-47-RH-CAS

JULIE JONES, in her official capacity as
Secretary of the Florida Department of
Corrections,

Defendant.

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PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Florida Department of Corrections (FDOC) has systemically failed to comply with the federal laws protecting incarcerated people with disabilities, including the Americans with Disabilities Act, the Rehabilitation Act, the Eighth Amendment, and the Due Process Clause of the Fourteenth Amendment. Testimony from dozens current and former prisoners, the reports of expert site inspections, and the FDOC's own records reveal a disturbing pattern of violations and a failure to take affirmative steps to ensure compliance. While this case is large and complex, there are numerous issues for which a sufficient record has been adduced to conclude, as a matter of law, that the FDOC has been violating these laws, and that an injunction is necessary to ensure future compliance. Ruling on these issues will enable the parties to craft a remedial plan. Therefore, Plaintiff Disability Rights Florida (DRF) respectfully requests that summary judgment be entered in its favor on the issues outlined below.

Background

Plaintiff Disability Rights Florida

Congress has created a nationwide Protection and Advocacy (P&A) System to protect the legal and human rights of people with disabilities. *See* 29 U.S.C. § 794e. Each state has a designated P&A organization; Plaintiff Disability Rights Florida (DRF) serves as the P&A for the state of Florida. *See Alabama Disabilities Advocacy Program v. SafetyNet Youthcare, Inc.*, 65 F. Supp. 3d 1312, 1321 (S.D. Ala. 2014) (describing the P&A system). DRF has authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of people with disabilities. 29 U.S.C. § 794e(f)(3); 42 U.S.C. § 15043(a)(2)(A)(i)f. *See Doe v. Stincer*, 175 F.3d 879, 884 (11th Cir. 1999) (describing the standing of DRF’s predecessor organization).

The Mistreatment of Incarcerated People with Disabilities

The number of incarcerated people with disabilities nationwide is staggering. The Bureau of Justice Statistics (BJS) estimates that approximately 30% of prisoners have some kind of disability (including cognitive disabilities)—more than three times the rate in the general population.¹ The BJS found that 7% of prisoners reported a vision disability versus 2.1% in the general population, 6.2% reported a hearing disability versus 2.6% in the general population, and 10.1% reported an ambulatory disability versus 5.1% in the general population. *Id.* at 3. The numbers are similar in Florida: The FDOC has identified 2,323 prisoners with physical (367 who are deaf or hard of hearing, 327 who are blind or have low vision, 1,707 who have mobility

¹ BUREAU OF JUSTICE STATISTICS, *Disabilities Among Prison and Jail Inmates, 2011-12*, December 2015, at 1 (Exhibit 1). Available at <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf> (“BJS Report”).

impairments, and 636 who use wheelchairs).² FDOC Impairment Rating Spreadsheet, Ex. 2.

Unsurprisingly, prisoners with disabilities are more likely than non-disabled prisoners to experience serious psychological distress. BJS Report at 6. They are also subject to more abuse by guards and other prisoners.³ *See also United States v. Georgia*, 546 U.S. 151, 161–62 (2006) (Stevens, J., concurring) (describing evidence in Congressional record detailing the mistreatment of prisoners with disabilities). Despite these numbers, there is still widespread noncompliance with disability laws in prisons and jails across the country, and Florida is no different.⁴

Finally, as this Court is aware, the United States Department of Justice (DOJ)—the federal agency responsible for enforcing the ADA and RA—is seeking to intervene in this case because it has similarly concluded that the FDOC has failed to comply with these laws. *See* D.E. 53. This action is the culmination of a years-long effort by the DOJ to assess the FDOC’s

² Because prisoners may have multiple disabilities, there is overlap in these numbers. Also, as demonstrated below in the section on failure to identify prisoners with disabilities, these numbers are almost certainly too low.

³ *See* Ridgeway, James & Casella, Jean, *Deaf Prisoners in Florida Face Abuse and Solitary Confinement*, SOLITARY WATCH, May 21, 2013, available at <http://solitarywatch.com/2013/05/21/deaf-prisoners-in-florida-face-brutality-and-solitary-confinement/>.

⁴ *See, e.g.*, Erika Eichelberger, *Punished Twice: Prisons basically ignore the Americans with Disabilities Act, leaving a third of inmates facing abuse and neglect*, VICE NEWS, December 28, 2016, available at <https://news.vice.com/story/prisons-basically-ignore-the-americans-with-disabilities-act>; AMPLIFYING VOICES OF INMATES WITH DISABILITIES (AVID), *Making Hard Time Harder: Programmatic Accommodations for Inmates with Disabilities Under the Americans With Disabilities Act*, June 22, 2016 (Exhibit 3) available at <http://avidprisonproject.org/Making-Hard-Time-Harder/assets/making-hard-time-harder---pdf-version.pdf>; CENTER FOR AMERICAN PROGRESS, *Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America’s Jails and Prisons*, July 2016 (Exhibit 4) available at <https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf>; AMERICAN CIVIL LIBERTIES UNION, *Caged In: Solitary Confinement’s Devastating Harm on Prisoners with Physical Disabilities*, January 2017, at 12 (Exhibit 5) available at https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf (“ACLU Report”).

compliance, despite the FDOC's steadfast refusal to permit the DOJ to conduct a compliance review. *See* DOJ-FDOC Letters, Ex. 6. Over three years later, the DOJ announced its conclusion that it had "determined that FDOC has violated and continues to violate Title II [of the ADA] and Section 504 [of the RA]." *Id.*

Legal Framework

The Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA) contain broad commands requiring all public entities to ensure that their operations are meaningfully accessible to all persons with disabilities. *See Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir. 2011) (en banc; citations omitted) ("The ADA is a 'broad mandate' of 'comprehensive character' and 'sweeping purpose' intended 'to eliminate discrimination against disabled individuals, and to integrate them into the economic and social mainstream of American life.'"). Specifically, Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Similarly, the RA provides that "[n]o otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. 794(a). "With the exception of its federal funding requirement, the RA uses the same standards as the ADA, and therefore, cases interpreting either are applicable and interchangeable." *Badillo v. Thorpe*, 158 F. App'x 208, 214 (11th Cir. 2005).⁵

While the ADA does not explicitly define "services, programs, or activities," the RA,

⁵ The FDOC receives federal financial assistance. *See* Answer, D.E. 37, ¶ 8.

which must be “interpreted *in pari materia* with the ADA, defines a ‘program or activity’ as ‘all of the operations of ... a local government.’” *Frame*, 657 F.3d at 225 (citing 29 U.S.C. § 794(b)(1)(A)). Indeed, “the phrase ‘services, programs, or activities’ encompasses virtually everything a public entity does.” *Anderson v. City of Blue Ash*, 798 F.3d 338, 356 (6th Cir. 2015) (citation omitted). And even if that were not clear, the final clause of the ADA’s antidiscrimination provision is not tied to any service, program, or activity, but rather “is a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context.” *Bledsoe v. Palm Beach Cty. Soil & Water Conservation Dist.*, 133 F.3d 816, 822 (11th Cir. 1998) (citation omitted). Thus, everything a public entity does—including the operations of its prisons, *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998)—must be done in a way that is accessible to persons with disabilities. See 28 C.F.R. § 35.152(b)(1) (“Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”).

Moreover, the DOJ has promulgated regulations which give effect to these broad provisions by imposing more specific obligations. See 28 C.F.R. parts 35 and 42, *et seq.* “Because Congress explicitly authorized the Attorney General to promulgate regulations under the ADA, see 42 U.S.C. § 12134(a), the regulations ‘must [be given] legislative and hence controlling weight unless they are arbitrary, capricious, or plainly contrary to the statute.’” *Shotz v. Cates*, 256 F.3d 1077, 1080 (11th Cir. 2001) (quoting *United States v. Morton*, 467 U.S. 822, 834 (1984)). The DOJ has also issued a Technical Assistance Manual (TAM) and Appendices to the regulations, which further elaborate on the meaning of the regulations. “Like the ADA

regulations, the agency's interpretations in the TAM are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Schwarz v. The Villages Charter Sch., Inc.*, 165 F. Supp. 3d 1153, 1182 (M.D. Fla. 2016) (citing *Bragdon v. Abbott*, 524 U.S. 624, 646 (1998)).

The regulations confirm that the access provided to persons with disabilities must be both *meaningful and equal* to that received by non-disabled persons. Indeed, "[a] violation of Title II . . . does not occur only when a disabled person is completely prevented from enjoying a service, program, or activity. The regulations specifically require that services, programs, and activities be 'readily accessible.'" *Shotz*, 256 F.3d at 1080 (citing 28 C.F.R. § 35.150). This means public entities must ensure that individuals with disabilities are provided the same opportunities and the same benefits, with the ability to achieve the same results, as non-disabled individuals. *See* 28 C.F.R. § 35.130(b)(1).

To ensure equal and meaningful access, public entities must also make reasonable modifications⁶ in policies, practices, and procedures to avoid discrimination on the basis of disability, 28 C.F.R. § 35.130(b)(7), furnish appropriate auxiliary aids and services where necessary to ensure equal participation and benefits, 28 C.F.R. § 35.160(b)(1), and give primary consideration to the requests of individuals with disabilities in determining what auxiliary aids and services are necessary. 28 C.F.R. § 35.160(b)(2).

In sum, the ADA and RA prohibit not only "traditional" forms of discrimination, but also the lack of access caused by "thoughtlessness and indifference." *Alexander v. Choate*, 469 U.S. 287, 295 (1985). To combat this, "[i]n addition to their respective prohibitions of disability-

⁶ "Title II's use of the term 'reasonable modifications' is essentially equivalent to Title I's use of the term 'reasonable accommodation.'" *Robertson v. Las Animas County Sheriff's Dep't.*, 500 F.3d 1185, 1195 n. 8 (10th Cir. 2007).

based discrimination, both the ADA and the Rehabilitation Act impose upon public entities an *affirmative obligation* to make reasonable accommodations for disabled individuals. Where a defendant fails to meet this affirmative obligation, the cause of that failure is irrelevant.” *Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 454–55 (5th Cir. 2005) (emphasis added). *See also Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 910 (6th Cir. 2004) (“Title II imposes affirmative obligations on public entities and does not merely require them to refrain from intentionally discriminating against the disabled.”).

* * *

Plaintiff’s argument is divided into four sections: three corresponding to the types of disabilities that are at issue in this case (deaf/hard of hearing, mobility, and blind/low vision) and a fourth on issues that are applicable to all disabilities. Although the bulk of Plaintiff’s claims are based on the ADA and RA, Plaintiff will indicate where an Eighth Amendment or Due Process claim is being made as well.

VIOLATIONS REGARDING PRISONERS WHO ARE DEAF AND HARD OF HEARING

Deaf individuals are a linguistic and cultural minority that has been, and continues to be, communicatively disadvantaged by the hearing and speaking majority. Cokely Report (Exhibit 7) at 4. The vast majority do not attain competence in written or spoken English. Contrary to popular belief, most deaf individuals cannot lip-read English, and for those that can, the method is ineffective because only a small percentage of information can be communicated through lip-reading. *Id.* Neither lip-reading nor written communication is a substitute for effective communication. *Id.* at 4 & 35.

Rather, American Sign Language (ASL) is the primary method by which deaf individuals communicate. *Id.* at 12. ASL is its own language, with its own grammar and syntax. It is not a

word-for-word translation of any spoken language (including English). *Id.* For those who use it, ASL is the only means of communication that enables effective, efficient, and reliable communication. *Id.* at 10.

Plaintiff's expert, Dr. Dennis Cokely—a nationally renowned expert on deaf language and culture—conducted extensive site reviews of ten FDOC prisons and interviewed 30 deaf and hard-of-hearing prisoners. He has concluded that the FDOC denies deaf and hard of hearing inmates effective communication and access to the services and technology that make effective communication possible, that the FDOC has restricted access to services, programs, and communication, and that these problems are widespread throughout the FDOC. *Id.* at 5.

The FDOC Fails to Provide Qualified Interpreters During Critical Events

In addition to the broad command of making all operations meaningfully and equally accessible to persons with disabilities, the ADA and RA regulations contain specific requirements of ensuring that communications are effectively conveyed. *See, e.g.*, 28 C.F.R. §§ 35.160(a)(1); 42.502(e). As relevant here, “[a] public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R. §35.160(b)(1). *See also* 28 C.F.R. § 42.503(f). “The term ‘auxiliary aids and services’ includes—(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments” 42 U.S.C. § 12103(1); 28 C.F.R. § 35.104.

FDOC prisoners regularly encounter critical situations where interpreters are necessary to ensure effective, meaningful, and equal access. They include medical appointments, mental health appointments, meetings with classification officers, education programs, substance abuse

programs, intake and orientation, disciplinary hearings, religious services, and any other important presentation such as those required by the Prison Rape Elimination Act (PREA). A person who is deaf or hard of hearing will, at best, not receive equal and meaningful access to these interactions, and at worst, be completely excluded from them. Indeed, “[t]he clear reality is that the only practical way for Deaf people and for many deaf people to participate effectively in these types of ‘high stakes’ one-to-one interactions, and in any small or large group interaction, is to employ the services of a qualified sign language interpreter.” Cokely Report at 24. The ADA and RA therefore the FDOC to provide qualified interpreters at these critical interactions. *See Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 275 (D.D.C. 2015) (granting summary judgment for plaintiff and holding that failure to provide sign language interpreter at various prison interactions violated ADA and RA); *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1046 (S.D.N.Y. 1995) (failure to provide ASL interpreters at classification and reception violates ADA and RA); *Chisolm v. McManimon*, 275 F.3d 315, 329 (3d Cir. 2001) (acknowledging that correctional facility may have to provide ASL interpreters at critical points, including intake, medical evaluations, and classification).

But the FDOC systemically fails to do this. Numerous FDOC prisoners are consistently forced to attend these events without interpreters being provided. *See* Cokely Report at 39. For instance, in November 2016, ██████████ had an important legal call with his criminal appeal attorney cancelled because no interpreter was provided, even though he requested one in advance. ██████████ Dec. ¶ 11 (Ex. 8). Similarly, after ██████████ was sexually assaulted, staff wrote in his file, “came to cell door but unable to communicate due to being deaf and mute.” ██████████ Dec. ¶ 4 (Ex. 9). These are not isolated incidents. *See* ██████████ Dec. ¶¶ 4 & 8 - 11 (medical and mental health appointments, programs and legal calls); ██████████ Dec. ¶¶

3 - 5 (Ex. 10) (processing, medical, mental health, classification, religious, fatherhood classes, GED); [REDACTED] Dec. ¶¶ 4-9, 11-13, & 18 (Ex. 11) (never received an ASL interpreter during her entire incarceration, specifically lacking at church, mental health, RTC drug program, medical, rape prevention); [REDACTED] Dec. ¶¶ 3-5 & 8 (Ex. 12) (medical, classification, mental health, church, education, Horizon program); [REDACTED] Dec. ¶¶ 5 - 6 & 24 (Ex. 13) (no oral interpreter for all programs, medical, classification, dental, mental health, investigations); [REDACTED] Dec. ¶ 5 (Ex. 14) (medical and mental health); [REDACTED] Dec. ¶¶ 4-7 (Ex. 15) (medical, dental, psychological, classification, church, training); [REDACTED] Dec. ¶¶ 7 - 9 & 14) (Ex. 16) (mental health, meetings with Securus to obtain telephone access); [REDACTED] Dec. ¶¶ 19-20 (Ex. 17) (no oral interpreter for church, meetings, medical); [REDACTED] Dec. ¶¶ 3 - 6 (medical, disciplinary hearing, mental health, reporting crime); [REDACTED] docs at 52457 (Ex. 18) (denied interpreter for medical appointments); [REDACTED] docs at 5446 (Ex. 19) (no interpreter at medical appointment); [REDACTED] docs at 16422 & 16409 (Ex. 20) (no interpreter at orientation for psychiatric and psychological emergency procedure, school, or church); [REDACTED] docs at 13424, 13194-96 (Ex. 21) (no interpreter at mental health screening, health care, mental health, dental, church and other meetings); [REDACTED] docs at 95488, 95527-95540 (Ex. 22) (disciplinary hearing), 95543, 95548, 96033(request for sign language interpreter to help with school work denied, DR resulted).

Moreover, there have been numerous instances where the FDOC's failure to provide an interpreter required the postponement of a critical event. *See, e.g.*, [REDACTED] Dec. ¶¶ 7 - 9 (mental health evaluation delayed for several days, then proceeded without interpreter); [REDACTED] docs at 5245 (delay for nearly a month); [REDACTED] Dec. ¶11 (legal calls repeatedly canceled). Even if those appointments were able to be rescheduled, this pattern of

failures still violates the ADA, because “auxiliary aids and services must be provided . . . in a timely manner.” 28 C.F.R. § 35.160(b)(2). Forcing deaf and hard-of-hearing prisoners to wait weeks or months longer for medical and other appointments is not equal and meaningful access. The FDOC’s obligation is to be proactive to ensure accessibility on the front end, not simply to respond to grievances or Reasonable Modification or Accommodation Requests (RMARs), which takes months to resolve.⁷

Even if FDOC staff believe that an interpreter is not required for a particular interaction, the ADA and RA do not permit them to simply make that decision unilaterally. Rather, in determining the type of auxiliary aid or service is necessary, “a public entity shall give primary consideration to the requests of individuals with disabilities.” 28 C.F.R. § 35.160(b)(2). This means that “[t]he public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice,” and that “[t]he public entity *shall honor the choice* unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under §35.164.” 28 C.F.R. part 35, app. A (emphasis added). *See also Bircoll v. Miami-Dade Cty.*, 480 F.3d 1072, 1082 (11th Cir. 2007) (“Further, the Appendix to DOJ Regulation § 35.160 states that ‘[t]he public entity shall honor the [disabled individual’s] choice [of auxiliary aid] unless it can demonstrate another effective means of communication exists or that use of the means chosen would not be required under §

⁷ Proceeding through the grievance or RMAR system is often futile. For instance, according to one report, between January 2013 and January 2015, 792 grievances were filed by FDOC prisoners with disabilities, but only 44 were resolved during this time period. *See* ACLU Report at 8. And even when RMARs are granted, there are unnecessary delays. *See* RMAR Documents (Ex. 23) 2801-2802 (request for headphones delayed 6 months); 2914-2916 (request for large print delayed 5 months); 3066-3077 (request for headphones delayed 4 months); 3075-3077 (request for volume booster delayed 4 months); 3346-3348 (request for shower chair delayed 3 months); 3748-3751 (request for key lock delayed 4 months); 3854-3855 (request for interpreter delayed 3 months); 4624-4631 (request for ASL interpreter delayed 4 ½ months).

35.164.” (quoting 28 C.F.R. pt. 35, app. A)). Thus, the FDOC has an obligation to “consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.” *See* TAM § II-7.1100.

The failure to conduct this inquiry alone violates the ADA. *See Wright v. N.Y. State Dep’t of Corr.*, 831 F.3d 64, 77 (2d Cir. 2016) (failure to engage in individualized inquiry for prisoner with mobility impairment violates ADA and RA); *Pierce*, 128 F. Supp.3d at 254 (finding that state denied a deaf inmate “meaningful access to prison services” where prison employees “did nothing to evaluate [plaintiff’s] need for accommodation” and did not “engage in any meaningful assessment of his needs”).

But, as demonstrated above, the FDOC fails to engage in this process. Rather, it simply issues denials based on the assessment of FDOC staff and medical personnel, which is an inadequate method of judging someone’s communication skills. Cokely Report at 44 (explaining that a valid assessment of communication skills cannot simply be a medical assessment of hearing level, it must include evaluation by someone versed in ASL or other communication methods). *See also* RMAR Documents at 4263-4266 (request for oral interpreter denied because inmate has hearing aids); 4642-4647 (request for hearing aids and vibrating watch denied because does not meet criteria); 3917-3919 (request for hearing aids denied because not medically necessary).

Although the FDOC’s written policy allows for sign language interpreters in certain circumstances, in practice they are almost never provided. And the policy actually imposes a *blanket denial* of interpreters in certain situations, stating that “[i]nterpreter services will not normally be required for the following: aa. Regular sick call, or bb. Job assignment.” FDOC

Procedure 604.101, Ex. 24 at 1696. A “regular sick call” appointment is when a prisoner first sees medical staff to describe what he or she is experiencing. This will likely entail describing symptoms, providing a history, and answering other questions the nurse may have—in short, one of the most important appointments in the prisoner’s course of treatment. There is no way a deaf person could meaningfully communicate these matters in a bi-directional way without an interpreter, and the FDOC’s blanket refusal to provide one violates the ADA and RA. *See* 28 C.F.R. part 35, app. A (“[A]n individual who is deaf or hard of hearing may need a qualified interpreter to communicate with municipal hospital personnel about diagnoses, procedures, tests, treatment options, surgery, or prescribed medication (e.g., dosage, side effects, drug interactions, etc.), or to explain follow-up treatments, therapies, test results, or recovery.”).

The written policy is also insufficient because it places the responsibility of requesting a sign language interpreter with the disabled individual, when it is the FDOC’s obligation to proactively ensure that interpreters are provided. *See* Ex. 24 at 1695. As explained above, the ADA and RA prohibit more than just intentional discrimination; they impose affirmative obligations on public entities to ensure equal and meaningful access. *See Bennett-Nelson*, 431 F.3d at 454–55. “Where a defendant fails to meet this affirmative obligation, the cause of that failure is irrelevant.” *Id.* *See also Clemons v. Dart*, 168 F. Supp. 3d 1060, 1068 (N.D. Ill. 2016) (“Title II of the ADA requires affirmative, proactive accommodations necessary to ensure meaningful access to public services and programs, not accommodation upon request.”); *Pierce*, 128 F. Supp. 3d at 272. And, the requirement of making the request sufficiently in advance results in long delays. *See Wright*, 831 F.3d at 73–74 (requirement that prisoner using wheelchair request a mobility “well in advance” violated ADA). And, in many instances, the FDOC *already knew* that the prisoner was deaf, because they were identified as such in the

FDOC's electronic coding system, thus putting the burden on the FDOC to at least inquire as to what accommodation would be necessary. Simply leaving the decision of whether to provide an interpreter to the discretion of FDOC staff (and only allowing interpreters "on a case-by-case basis") violates the ADA. Ex. 24 at 1695. The FDOC must honor the disabled individual's request unless it can convincingly demonstrate why it is unable to do so. See 28 C.F.R. § 35.160(b)(2) & app. A.

Indeed, the FDOC's patchwork process clearly violates the ADA's commands:

[T]his Court holds that prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison's programs and services, without regard to whether or not the disabled individual has made a specific request for accommodation and without relying solely on the assumptions of prison officials regarding that individual's needs.

Pierce, 128 F. Supp. 3d at 272. The FDOC policies and procedures are akin to those that were rejected in *Pierce*, and they should be declared unlawful here.

Using Other Prisoners or FDOC Staff as "Interpreters" Does Not Satisfy the ADA and RA

The FDOC sometimes requires other prisoners or FDOC staff to serve as sign language "interpreters" for other prisoners. In the first place, this contravenes the ADA and RA's command that the burden of providing the interpreter falls with the public entity, not the disabled individual. See 28 C.F.R. § 35.160(c) (prohibiting public entities from requiring individuals to bring others to interpret for them). But more importantly, this practice does not satisfy the FDOC's obligation to provide *qualified* interpreters. See 42 U.S.C. § 12103(1); 28 C.F.R. § 35.014. A "qualified interpreter" is "an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. § 35.014.

As explained in the appendix to the regulations, this means the type and skill level of the interpreter must be tailored to the characteristics and needs of the person with the disability and the particular situation where the interpreter is needed. “For example, in a medical setting, a sign language interpreter must have the necessary skills to understand the grammar and syntax used by an ASL user (receptive skills) and the ability to interpret complicated medical information—presented by medical staff in English—back to that individual in ASL (expressive skills).” 28 C.F.R. pt. 35, app. A. Moreover, “someone with only a rudimentary familiarity with sign language or finger spelling is not qualified, nor is someone who is fluent in sign language but unable to translate spoken communication into ASL or to translate signed communication into spoken words.” *Id.* See also TAM § II-7.1200 (“Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.”).

Courts have recognized the requirement that interpreters be qualified in the prison setting. See *Williams v. Hayman*, 657 F. Supp. 2d 488, 500 (D.N.J. 2008) (unqualified sign language interpreter for educational program in prison could be ADA violation); *Clarkson v. Coughlin*, 145 F.R.D. 339, 341 (S.D.N.Y. 1993) (“A qualified sign language interpreter is one who has obtained certification from the National Registry of Interpreters for the Deaf...”); *DeLong v. Brumbaugh*, 703 F.Supp. 399, 403 (W.D. Pa. 1989) (“[q]ualified interpreters are available from the Registry of Interpreters for the Deaf, Inc.”); *Pyles v. Kamka*, 491 F. Supp. 204, 205 (D. Md. 1980) (approving consent decree in which prison officials agreed that an interpreter shall be deemed qualified if he or she is certified by an appropriate credentialing authority).

Using other prisoners to “interpret” falls far short of these standards. Cokely Report at 41-42. First, the FDOC has no process for assessing a prisoner’s proficiency in ASL, and even if it did, it has no way of then identifying those prisoners who may be qualified to interpret.⁸ Even if an inmate-interpreter were familiar with ASL, they certainly would not possess the necessary skills and vocabulary to interpret receptively and expressively in a specialized situation like a medical appointment (which would require, of course, being able to hear, understand, and speak English). As both the regulations and Dr. Cokely make clear, there is a difference between “social signing” and interpreting. Cokely Report at 41-42. FDOC policy even prohibits the use of inmate and staff interpreters in most situations, thereby recognizing that doing so is inadequate. *See* Ex. 24 at 1696. Yet the FDOC routinely fails to adhere to this policy. *See* Cokely Report at 41; ██████████ Dec. ¶¶ 8 - 11; ██████████ Dec. ¶ 6 (was repeatedly forced to interpret for others); ██████████ Dec. ¶ 6; ██████████ Dec. ¶ 5; ██████████ Dec. ¶¶ 5-6 (FDOC employee used for DR hearing who could not sign or understand Mr. ██████████); ██████████ Dec. ¶¶ 5,7-8, & 18; ██████████ Dec. ¶ 8; ██████████ docs at 5257-5258 (inmate interpreter did not want to interpret and advised that ██████████ was unable to write and could only read a little bit; medical staff nonetheless proceeded with appointment); ██████████ Dec. ¶ 5.

⁸ Procedure 403.011(15)(b)(1), (Exhibit 25) at 1685, specifies that the FDOC should complete evaluations of inmate assistants to assess their level of competency in ASL and documents the evaluation in writing. Plaintiff requested all such evaluations and the FDOC objected. *See* FDOC’s Response to Plaintiff’s Second Request for Production (Exhibit 26) #10: “Objection. See above. This is overly burdensome. Any such evaluations of competency would only be stored in the medical files of particular individuals who were former inmates, or present inmates who received training as an impaired inmate assistant. There were many hundreds of these individuals since January 1, 2013. Also, since the DOC does not have a database that would reflect any such evaluations for particular individuals, the medical files for all those who were trained as impaired inmate assistants during a certain period of time would need to be separately searched.”

Finally, “[i]n order to be effective, auxiliary aids and services must be provided . . . in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. § 35.160(b)(2). Requiring other inmates or staff to interpret does not meet this standard. Patients will be less candid with medical staff if other prisoners or FDOC staff are in the room, thus compromising the effectiveness of the medical appointment. Further, “[a] breach of this [medical] privacy right is especially problematic in the prison setting where an inmate’s possession of confidential information about another inmate can be used in threatening and dangerous ways.” *Clarkson*, 898 F. Supp. at 1041. *See also* Elaine Gardner, *The Legal Rights of Inmates with Physical Disabilities*, 14 St. Louis U. Pub. L. Rev. 175 (1994) (“The ADA definition of qualified interpreter should rule out, for the most part, the use of fellow inmates as interpreters.”).

Eighth Amendment. The Eighth Amendment “does not allow a prisoner to be exposed to an objectively unreasonable risk of serious damage to his future health.” *Brooks v. Warden*, 800 F.3d 1295, 1303 (11th Cir. 2015) (quotations/citations omitted). It also prohibits prison officials from being deliberately indifferent to prisoners’ serious medical needs. *Gilmore v. Hodges*, 738 F.3d 266, 274-75 (11th Cir. 2013). But the failure to provide interpreters in medical situations does both. It presents the unreasonable risk that deaf prisoners will not be provided with the medical care needed to prevent future damage to their health, and prison officials have known about this lack of interpreters through numerous grievances but have failed to do anything to correct the problem, thereby exhibiting deliberate indifference. Further, the isolation caused by the lack of communication also “deprive[s] inmates of the minimal civilized measure of life’s necessities” and “are violative of the ‘contemporary standard of decency’ that the Eighth Amendment demands.” *Brooks*, 800 F.3d at 1303–04 (quotations omitted).

Due Process. The retention or loss of “good time” (or “gain time” as they are called in Florida) credits affects the length of a prisoner’s sentence, and therefore creates a liberty interest under the Due Process Clause of the Fourteenth Amendment. *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). Constitutionally adequate procedures are therefore required before gain time credits are revoked. *Id.*; see also Answer, D.E. 37, ¶ 482. Accordingly, the FDOC holds disciplinary hearings to determine whether prisoners are guilty of an infraction. See F.A.C. 33-601.307.

However, sign language interpreters are not provided to deaf prisoners at these hearings. See [REDACTED] Dec. ¶ 7; [REDACTED] Dec. ¶ 7; [REDACTED] Dec. ¶ 14; [REDACTED] Dec. ¶¶ 4-6; [REDACTED] Dec. ¶¶ 19-20. In October 2016, [REDACTED] was denied an interpreter at a DR hearing, and was also handcuffed behind his back, making communication impossible. [REDACTED] Dec. ¶ 10. [REDACTED] had a similar experience. [REDACTED] Dec. ¶ 14. The hearings are useless if the deaf prisoners cannot understand the proceedings; it is therefore tantamount to providing no hearing at all, in violation of the Due Process Clause. See *Bonner v. Arizona Dep’t of Corr.*, 714 F. Supp. 420, 425 (D. Ariz. 1989) (failure to provide sign language interpreter for disciplinary hearing violates due process); *Clarkson*, 898 F. Supp. at 1050 (“Declaratory judgment and injunctive relief will issue to the effect that Defendants’ failure to provide interpretive services or other assistive devices to class members during disciplinary, grievance and parole proceedings is a violation of their due process rights and of the ADA and the Rehabilitation Act.”).⁹

⁹ As noted by Dr. Cokely, an effective and less expensive method of providing interpreters would be Video Remote Interpreting (VRI) Services. Cokely Report at 45.

The FDOC Fails to Provide Other Auxiliary Aids and Services to Deaf and Hard of Hearing Prisoners

In addition to qualified interpreters, the FDOC must also provide other auxiliary aids and services, including “(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions.” 42 U.S.C. § 12103(1). The regulations specify that aids and services can include telephone handset amplifiers; assistive listening devices; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones; and many others. 28 C.F.R. § 35.104.

The FDOC Fails to Provide and Maintain Hearing Aids

One of the most critical auxiliary aids needed by deaf and hard-of-hearing prisoners is a hearing aid. An operable, properly fitted hearing aid allows a hard-of-hearing prisoner to safely navigate throughout their environment, and allows them to have conversations, especially when there is loud ambient noise (a common occurrence in prison). But the FDOC often fails to provide this much-needed device, and when it is provided, the FDOC fails to make timely repairs to them, forcing prisoners to go long periods without them. *See* Cokely Report at 52; ██████ Dec. ¶¶ 3 – 13 (Ex. 27) (three year journey of fighting to get hearing aids and repairs); ██████ Dec. ¶ 11 (repairs take a long time, provided one but needs two aids); ██████ Dec. ¶ 3 (has never been able to get one); ██████ Dec. ¶¶ 10 - 13 (could not obtain hearing aid, then would not repair them); ██████ Dec. ¶¶ 7 & 18 (could not obtain, keeping them working and batteries); ██████ Dec. ¶¶ 10 & 16 - 18 (could not obtain, not properly fitted); ██████ Dec. ¶ 5 (trouble getting, only got one hearing aid needed two);

█ docs at 5425 (difficulty obtaining proper battery for hearing aid); █ docs at 7109 & 93878 (Ex. 28) (asked for hearing aid for left ear and was told that “[o]ne hearing aid is issued per inmate”; received defective hearing aid in May 2015, which was sent out for repair and was lost as of January 2016).

Moreover, the FDOC’s written hearing aid policy is facially insufficient in several ways. First, it disallows hearing aids altogether unless the inmate has bilateral (both ears) hearing loss, and permits inmates to have only one hearing aid, even if they have bilateral hearing loss. *See* Health Service Bulletin 15.03.27, Ex. 29 at 1594-95. This bright-line rule violates the ADA’s requirement of conducting an individualized inquiry into each request for an accommodation. A person who is deaf in only one ear still has a disability and may still need a hearing aid, whether it be for localizing sound or to hear conversations in places with loud ambient noise. Second, the policy only permits the replacement of a hearing aid every four years. *See id.* at 1595. This means when a hearing aid breaks—as they frequently do—the FDOC refuses to repair it until the next four-year mark. As demonstrated by the evidence above, this policy has resulted in many hard of hearing prisoners struggling for long periods without their much needed hearing aids. *See Bryant v. Dart*, No. 13 C 3608, 2013 WL 5818810, at *3 (N.D. Ill. Oct. 29, 2013) (denying motion to dismiss ADA claim of confiscating and failing to replace hearing aid in jail).

Eighth Amendment. Further, the Eleventh Circuit has squarely held that the failure to provide a prisoner with a hearing aid constitutes deliberate indifference to serious medical needs, in violation of the Eighth Amendment. *Gilmore*, 738 F.3d at 274-75. The FDOC’s practices present the significant risk of, and have actually resulted in, numerous inmates being denied much-needed medical care, despite the FDOC’s knowledge of that need. *See Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985).

The FDOC Fails to Provide Equal and Meaningful Telecommunications Access

One of the most important aspects of prison life is being able to effectively communicate with family, friends, loved ones, and lawyers outside of prison. However, deaf and hard of hearing prisoners cannot use a regular phone, and require some kind of auxiliary aid or service to be able to communicate. Recognizing this, the regulations require that, when public entities communicate by telephone with “applicants and beneficiaries, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.” 28 C.F.R. § 35.161(a). *See also Chisolm*, 275 F.3d at 330 (refusal to promptly provide telecommunication device for the deaf to deaf prisoner without engaging in individualized inquiry could state ADA violation); 28 C.F.R. §35.160(a)(1) (“A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”).

Some FDOC dorms have a teletypewriter (TTY), an archaic device that allows the users to type messages back and forth instead of speaking. Cokely Report at 13. A TTY user can communicate with a person using a regular telephone via a relay service, which is a third party intermediary that relays the messages back and forth between the parties by typing and speaking. TTYs are obsolete, and are not used anymore by the vast majority of the deaf community. Cokely Report at 47. But the FDOC even fails to make this consistently available. First, many deaf and hard-of-hearing prisoners are not housed in dorms with operable TTYs. Second, in many dorms the TTY is kept in a locked officers’ station, and to use it a prisoner must ask to check it out (often resulting in long wait times or outright refusals). *See Ex. 24* at 1696 (requiring TTY to be in a locked box). In contrast, the non-deaf prisoners can simply use the

regular phone at any point during the allowed times, thereby providing unequal access to the deaf and hard of hearing prisoners. *See Tanney v. Boles*, 400 F. Supp. 2d 1027, 1043 (E.D. Mich. 2005) (policy of keeping prison TTY locked in office with limited access could violate ADA). Third, the TTYs are often broken, or officers don't know how to work them. *See* 28 C.F.R. § 35.133(a) (requiring public entities to maintain in operable working condition the features required to ensure that programs, services, and activities are readily accessible). Fourth, although FDOC policy allows more time to use the TTY, the policy is routinely ignored, and deaf prisoners are denied the time they need. *See* Cokely Report at 47-48. *See also* [REDACTED] Dec. ¶¶ 9 - 10 (TTY doesn't work, can't make collect calls, as of December 27, 2016 still cannot call out); [REDACTED] Dec. ¶ 17; [REDACTED] Dec. ¶ 10; [REDACTED] Dec. ¶¶ 8 - 11 (denied use, broken TTY, can't call through relay, as of December 27, 2016 still unable to make calls); [REDACTED] Dec. ¶¶ 11 - 15 (his family is deaf, no videophones, calls take long time, blocked calls, can't call Video Relay System); [REDACTED] Dec ¶¶ 14 - 17 (TTY broken, no TTY in dorm, forced to sign out, forced to wait, 15 min limit); [REDACTED] Dec. ¶¶ 15 - 16; [REDACTED] Dec. ¶¶ 6 - 7 (TTY cord broken); [REDACTED] Dec. ¶¶ 8 - 17 (could not call out, forced to use relay service to call deaf family, length of calls, blocked calls); [REDACTED] Dec. ¶ 7 (TTY broken, denied videophone); [REDACTED] Dec. ¶¶ 7 - 9 (denied use, limited call time, place in inaccessible location for him as wheelchair user); [REDACTED] docs at 52455 (TTY not available at Columbia Annex); [REDACTED] docs at 110322 (denied access to TTY); [REDACTED] docs at 15962 (Ex. 63) (denied access to TTY); [REDACTED] docs 95633, 96025-96031, 96043 (TTY system and Rape Hotline not working, inmates denied access to and use of TDD/TTY).

There are other problems as well. Calls cannot be made to certain numbers, such as the

TIPS line, to anonymously report abuse or other misconduct. *See* [REDACTED] Dec. ¶¶ 8 - 17 (can't call TIPS); [REDACTED] Dec. ¶¶ 15 - 16 (still can't access as of Jan 11, 2017). In addition, prisoners and their families are charged more money to use the TTY. *See* [REDACTED] Dec. ¶¶ 13 - 14 (one bill for over \$1000 for his grandfather); Cokely Report at 47-48.

Because the TTY is obsolete, it has become increasingly unlikely that family members of deaf prisoners will own one. It also requires knowledge of written English and typing, which many deaf people whose first language is ASL do not have. The most current form of communication is the videophone, which is similar to Skype or videoconferencing. *Id.* at 49-50. Videophones would allow ASL users to communicate in sign language directly with their loved ones, or to communicate through an interpreter with someone who does not sign, without any standard phone charges. Currently, Maryland, Maine, Vermont, Virginia, and Wisconsin, provide videophones in prisons, and other states are moving in that direction.¹⁰ *Id.* at 51. As explained by Dr. Cokely, they are vastly superior to other methods of communication and should be installed in prisons where deaf or hard of hearing prisoners are housed.

The FDOC Fails to Provide Adequate Alert Systems for Deaf and Hard of Hearing Prisoners

The FDOC does not have a system in place to ensure that deaf and hard-of-hearing prisoners are adequately alerted for critical events such as medical and legal call-outs, meal and recreation times, and others. Cokely Report at 36-39. In most instances, an officer simply shouts the prisoner's name into the dorm; if a deaf prisoner doesn't hear and doesn't respond, the call-out is cancelled and the prisoner may miss an important event. *See* [REDACTED] Dec. ¶ 11 (won't flash the lights for call-outs); [REDACTED] Dec. ¶ 15; [REDACTED] Dec.

¹⁰ *See* Bambocci, Anthony, "How Technology Is Changing Deaf Inmates' Ability to Connect with the Outside World," September 19, 2016, Morning Consult. Available at <https://morningconsult.com/opinions/technology-changing-deaf-inmates-ability-connect-outside-world/>.

¶¶ 16 - 17 (missed breakfast, wake up, other calls); ██████████ Dec. ¶¶ 14 - 18 (can't hear food cart, shower calls in confinement, can't hear any call-outs after moved to non-impaired dorm); ██████████ Dec. ¶¶ 19 - 22 (missed call outs, meals, order to return kitchen items, resulting in a DR, received corrective consult because was in bathroom when count called and he couldn't hear); ██████████ Dec. ¶ 6 (guards not flash lights for call out, chow, wake up); ██████████ Dec. ¶ 12 (no wake up calls); ██████████ Dec. ¶¶ 19 - 20 (officers failed to flash lights for wake up, chow, and other events, woke him up by kicking his bed).

The responsibility to provide effective alerts is subsumed within the FDOC's responsibility to ensure that information is conveyed in accessible methods. *See* 28 C.F.R. §35.163(a) ("A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities."); *Clarkson*, 898 F. Supp. at 1047 (absence of visual alerts violates ADA and RA).

The solution, as explained by Dr. Cokely, is simply to install visual alert systems. Cokely Report at 38-39.

Other Auxiliary Aids and Services for Deaf and Hard of Hearing Prisoners

The FDOC has failed to provide other auxiliary aids and services, such as specialized radios, telecoils, vibrating watches, headphones, and closed captioning. *See* ██████████ Dec. ¶ 13 (amplifiers); ██████████ Dec. ¶ 19 (ubi duo device, vibrating watch); ██████████ Dec. ¶¶ 4 - 6 (headphones with volume boosters); ██████████ Dec. ¶¶ 11 - 12 & 16 (radio and accessories, pocket talker); ██████████ docs at 33971-72 (Ex. 30) (denied radio and headphone for two years). Some aids are not provided because prisoners are not housed at facilities that are equipped for their needs. For example, some dorms and prisons have television

with closed captioning, or have transmitters that allow the TV audio to be transmitted to the specialized headphones. But many deaf and hard-of-hearing prisoners are not housed in these locations. And those that are housed in the proper locations often are not provided with the radio receivers and telecoils that are required to receive the audio transmissions. *See* Cokely Report at 51-52; ██████████ Dec. ¶ 13 (no transmitter on TV for radio use). Moreover, the FDOC does not ensure that the closed captioning is turned on and operative all the time. *See* ██████████ Dec. ¶ 13 (captions off, too far away to see them); ██████████ Dec. ¶ 9 (captions off, guards do not help); ██████████ Dec. ¶ 9 (not always on); ██████████ Dec. ¶ 21 (captions off, plus too far away to see them); ██████████ Dec. ¶ 15. *See Chisolm*, 275 F.3d at 330 (failure to provide closed captioning could support ADA violation).

VIOLATIONS REGARDING PRISONERS WITH MOBILITY IMPAIRMENTS

The FDOC Fails to Maintain Wheelchair-Accessible Facilities

Public entities are required to make their facilities physically accessible to those with mobility impairments and those who use wheelchairs. The specific building guidelines vary depending on the date the structure was built and whether alterations were made. *See* 28 C.F.R. § 35.150 & 35.151. Correctional systems are specifically required to “implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards, so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.” 28 C.F.R. § 35.152(b)(3). *See also Clemons*, 168 F. Supp. 3d at 1069 (granting summary judgment for plaintiff and holding that housing inmate using wheelchair in cell that was not compliant with accessibility standards violated ADA and RA); *Casey v. Lewis*, 834 F. Supp. 1569, 1581 (D. Ariz. 1993) (“Disabled inmates must be provided with physical accommodations necessary

because of their disabilities, including adequate toilet and shower facilities.”); *Shariff v. Coombe*, 655 F. Supp. 2d 274, 298-99 (S.D.N.Y. 2009) (inability of wheelchair-using prisoners to access restrooms amounted to Eighth Amendment violation).

As demonstrated in the attached report of Plaintiff’s ADA architectural expert Mark Mazz, several facilities are not compliant with the applicable standards in numerous ways. *See* Mazz Report (Exhibit 31).¹¹ Mr. Mazz has conducted site inspections of 14 of the 40 facilities that the FDOC has designated as wheelchair-accessible (his attached report covers 10 of those). The institutions vary by type, mission, security classification, and region; he can therefore draw system-wide conclusions based on his work.¹² Moreover, those conclusion can be adapted to other prisons with the same design layout.

The FDOC has been on notice for quite a while about the lack of compliance, not only from prisoner grievances, but from other cases. For instance, in *Martinetti v. Tucker*, 11-CV-81146 (S.D. Fla.), an incarcerated man complained in 2011 that the prisons in which he was housed were not wheelchair accessible. A settlement was reached in early 2013, but the plaintiff was forced to bring two motions to enforce it over the course of three years, after the FDOC failed to bring the prisons into compliance. *See Martinetti* Motions to Enforce (Exhibit 32). The *Martinetti* case brought to light that there are 188 confinement cells spread across the FDOC that

¹¹ Mr. Mazz’s full report contains thousands of pictures, which are not attached because of their file size. The pictures have been provided to Defendant and will be provided to the Court under seal.

¹² The facilities surveyed by Mr. Mazz were chosen from the list of prisons that have been designated as wheelchair-accessible by the FDOC, which was provided in response to an interrogatory. At one point during this litigation, the FDOC indicated that it would be changing this list. Not wanting to waste resources on surveying facilities that would no longer house wheelchair-using prisoners, Plaintiff asked for the new list, but FDOC refused provide it. This matter was discussed at the October 27, 2016, case management conference, wherein the Court declined to compel the FDOC to produce the new list. *See* D.E. 47. The FDOC has not supplemented its interrogatory response.

are out of compliance with ADA standards because the grab bars are positioned at a 45 degree angle from the toilet, which the FDOC conceded is not ADA-compliant. *See Martinetti Response Motion to Enforce* (Exhibit 33); *Grizzard Affidavit* (Exhibit 34). More recent litigation in the case of *McAninch v. Crews*, 12-CV-00899 (M.D. Fla.) has confirmed that the problem still exists. Expert site inspections in that case revealed several areas of noncompliance at Columbia Correctional Institution Annex and Northwest Florida Reception Center Annex, including the issue with the 45-degree angle grab bars. *See Norkunas Reports* (Exhibit 35). The FDOC again conceded that this configuration is not ADA-compliant. *See Grizzard Dep.*, Ex. 36, at 36-38. Thus, there are currently at least 188 confinement cells that the FDOC has conceded are not compliant.

In addition to noncompliance with the architectural requirements, there are other impediments that result in prisoners with disabilities receiving unequal access to the facilities, or being excluded from them altogether. For example, bathrooms and showers are often inaccessible because a) there is an insufficient number of wheelchair-accessible toilets and showers for the number of inmates in the dorm, b) shower wands or seats are frequently broken, c) the accessible shower—unlike the other showers—is exposed to the dorm, providing no privacy to the user, and d) FDOC staff allow non-disabled prisoners to use the accessible toilet and shower. *See* [REDACTED] Dec. ¶¶ 5 – 7 (Ex. 37) (at Columbia CI Annex, inaccessible cell without elevated footlocker, sinks without enough clearance underneath to fit his wheelchair and insufficient space between bunks to maneuver wheelchair); [REDACTED] documents (Ex. 38) (at Columbia CI Annex insufficient space between bunks to maneuver wheelchairs, insufficient number of accessible toilets and inmates in wheelchairs do not have equal access to recreational activities); [REDACTED] Dec. ¶¶ 7 – 8 (Ex. 39) (insufficient number of accessible toilets and

showers at Mayo CI Annex; no privacy screen on accessible shower at Mayo CI Annex until six months ago); [REDACTED] Dec. ¶¶ 5 & 7 (Ex. 40) (insufficient number of accessible toilets at Suwannee CI Annex; no privacy screens on accessible shower at Suwannee and [REDACTED] told they are not required); [REDACTED] Dec. ¶¶ 3 & 5 (Ex. 41) (insufficient number of accessible toilets and showers at Mayo CI Annex, no working shower wand at Mayo CI Annex); [REDACTED] Dec. ¶ 7 (Ex. 42) (has been forced to jump out of wheelchair and shower on floor; insufficient number of accessible toilets and showers at Suwannee CI Annex); [REDACTED] Dec. ¶ 27 (Ex. 43) (problems getting shower wands at many prisons, currently has no shower wand at RMC); [REDACTED] docs (Ex. 44) (lack of ADA cells at Columbia CI Annex so had to be transferred for necessary protective custody on 6/27/15; no privacy in ADA showers at Suwannee CI); [REDACTED] docs (Ex. 45) at 2729-30 & 33284-85 (request for shower hose in N-1 Dorm at Wakulla Annex denied). [REDACTED], a paraplegic prisoner, received very few accommodations at all throughout his incarceration. *See* [REDACTED] Dec. ¶¶ 6 - 8 (Ex. 46) (insufficient space under tub to accommodate wheelchair lift, insufficient shower hoses in infirmary at Dade CI, RMC, Zephyrhills, Suwanee, CFRC, Union; essentially put in isolation in a hallway at Dade because facility could not accommodate him).

Further, dining halls and forms have insufficient wheelchair-accessible seating. *See* [REDACTED] Dec. ¶ 9 (insufficient wheelchair seating at Mayo CI Annex dining hall); [REDACTED] Dec. ¶¶ 11, 14 (insufficient wheelchair seating at Suwannee CI Annex dining hall, television rooms at Suwannee CI Annex do not have sufficient space to accommodate wheelchairs); [REDACTED] Dec. ¶ 10 (insufficient wheelchair seating in dining hall); [REDACTED] Dec. ¶ 12 (no accessible scale in medical department at Mayo CI Annex to obtain proper weight); [REDACTED] Dec. ¶¶ 4 & 6 (insufficient wheelchair seating at Mayo CI Annex dining hall and

television area).

Eighth Amendment. In addition to violating the ADA and RA, these practices also expose inmates to conditions that deprive them of the minimal civilized measure of life's necessities, and constitutes deliberate indifference to serious medical needs, in violation of the Eighth Amendment. *Brooks*, 800 F.3d at 1303. *See also LaFaut v. Smith*, 834 F.2d 389, 394 (4th Cir. 1987) (three months of being held in inaccessible cell violated Eighth Amendment); *Simmons v. Cook*, 154 F.3d 805, 808 (8th Cir. 1998) (confining paraplegic inmate in non-accessible cell is deliberate indifference in violation of the Eighth Amendment).

The FDOC Fails to Provide and Maintain Wheelchairs

As noted above, the FDOC must furnish appropriate auxiliary aids and services to ensure that facilities are meaningfully accessible. 28 C.F.R. § 35.160. As with hearing aids, this includes operable and properly fitted wheelchairs. Without them, every facet of prison life is not equally accessible to someone with a mobility impairment. *See* 28 C.F.R. § 35.137(a) (requiring public entities to permit individuals to use wheelchairs and other mobility aids); *Dinkins v. Corr. Med. Servs.*, 743 F.3d 633, 634 (8th Cir. 2014) (putting paralyzed inmate in administrative segregation without a wheelchair, forcing him to crawl and to eat meals on the floor, stated ADA and RA violation); *Casey*, 834 F. Supp. at 1581 (“Further, mobility impaired inmates must be provided with wheelchairs and other mobility aids.”). However, the FDOC fails to provide wheelchairs to prisoners who need them, and allows them to be confiscated by staff. *See* [REDACTED] Dec. ¶¶ 5 – 10 & 14 (Ex. 47) (confiscated wheelchair in 2014 at Santa Rosa and made written requests to get it returned 1/2015, 6/2015, 9/2015, 11/2015, 12/2015, 1/2016 and did not receive until mid-2016, removed from ADA list in response); [REDACTED] Dec. ¶¶ 16 - 17 (confiscated wheelchair in 2/2016 and has not been to chow hall in almost one year as it is too

difficult to get there; went to sick call approximately 10 times during 2016 to get passes renewed but was denied); [REDACTED] Dec. ¶¶ 19 - 22 (confiscated his electric wheelchair; lost his \$9,000 manual wheelchair in 2016; broke his expensive, manual wheelchair in 2006 or 2008; prison-issued wheelchairs are often broken, not properly repaired).

Requests for wheelchairs are often denied based on a judgment that the prisoner's medical condition is not serious enough to warrant a wheelchair. *See, e.g.,* [REDACTED] docs (Ex. 48) at 116267-68 (denied walker because “[t]his is not an ADA issue.”). In doing so the FDOC fails to give primary consideration to the wishes of the individual with the disability, in plain violation of the ADA regulations. 28 C.F.R. § 35.160(b)(2). Rather, the FDOC simply relies on generalizations and false stereotypes about the level of the person's impairment, without ever consulting them. *See Wright*, 831 F.3d at 78 (blanket ban on motorized wheelchair in prison violates ADA and RA).

When wheelchairs are provided, they often go unrepaired for long periods of time. *See* [REDACTED] Dec. ¶¶ 13 - 15 (requested new wheels in January 2012 and did not receive them for almost six months; brakes on wheelchair broken and wheelchair approximately ten years old despite requests since 2014 for new chair; DOC will not allow custom wheelchair due to “security issues” even though DOC issued wheelchairs do not support [REDACTED]' paralysis); [REDACTED] Dec. ¶¶ 9 - 10 (forced to use a broken wheelchair for more than four months before being provided a replacement; has been issued an inappropriately sized wheelchair); [REDACTED] Dec. ¶¶ 20 - 21 & 23 (FDOC fails to repair broken wheelchairs, issues inappropriately sized wheelchairs); [REDACTED] Dec. ¶¶ 4-5 (broke his electric wheelchair and didn't repair it when he was released; refused to pad his manual wheelchair with padding from his electric wheelchair); [REDACTED] Dec. at 4901 & 4890 (requested new cushion in 2014

and 2015 because metal coming through seat); [REDACTED] Dec. ¶ 13 (front wheelchair wheels flat and brakes broken in excess of one year). There is no consistency because some facilities do not respect passes given at other facilities. See [REDACTED] Dec. ¶ 13 (received grievance response saying that each facility has its own requirements for passes and he was not guaranteed wheelchair pass). These delays also result in a lack of meaningful access.

Eighth Amendment. The failure to provide medically necessary wheelchairs also violates the Eighth Amendment's prohibition on deliberate indifference to serious medical needs. See *Schmidt v. Odell*, 64 F. Supp. 2d 1014 (D. Kan. 1999) (forcing inmate who was double amputee to crawl around jail floor to access jail facilities was sufficient to proceed to jury on Eighth Amendment claim); *Lavender v. Lampert*, 242 F. Supp. 2d 821, 849 (D. Or. 2002) ("To unnecessarily deny the use of a wheelchair to someone who obviously has an injury, and who lacks mobility without it, would constitute deliberate indifference to a serious medical need."); *Weeks v. Chaboudy*, 984 F.2d 185, 187 (6th Cir. 1993) (refusal to permit paraplegic inmate to use wheelchair violated Eighth Amendment).

The FDOC Fails to Provide, Train, and Monitor Wheelchair Assistants

The FDOC assigns other inmates to work as wheelchair pushers. However, the FDOC fails to ensure that the program is operating properly. Wheelchair assistants are often unavailable, assigned to different dorms, or in confinement. Many assistants are insufficiently vetted or trained, and are not monitored by FDOC to ensure that they are completing their responsibilities. See [REDACTED] Dec. ¶ 13 (during 2014 and 2015 filed more than 20 inmate requests regarding problems with wheelchair pushers); [REDACTED] Dec. ¶¶ 23 & 25 (denied pusher); [REDACTED] Dec. ¶¶ 15-16 (inmate assistants are unreliable/in gangs and untrained); [REDACTED] Dec. ¶ 13 (no pusher to go library, filed grievance in April and May

of 2016, both returned without action); [REDACTED] Dec. ¶¶ 11 (frequently went without wheelchair pusher, took months to get pusher assigned). A wheelchair-using prisoner is then forced to go through the grievance process to complain about it, which often results in months-long delays in getting a replacement assistant. Failing to properly administer this system in an effective manner violates the ADA and RA. *See Wright*, 831 F.3d at 74 (“[B]y requiring inmates to make a formal request in advance for an aide, DOCCS has created a system which fails to provide inmates with mobility assistants in situations where their need to move cannot be contemplated in advance.”).

The FDOC Confiscates and Fails to Repair Prosthetic Devices

Prosthetic devices are critical for those who need them. They allow a level of mobility and independence that is comparable to non-disabled individuals. Moreover, not using a prosthetic device for long periods causes the muscles of the injured limb to atrophy or calcium to build up in the joint, thus making it impossible to use the device later without the appropriate physical therapy or requiring additional amputation or further surgery. The limb can also lose shape, causing the prosthesis to no longer fit, resulting in cuts, sores, ulcers, and scarring.

But the FDOC confiscates these necessary prosthetic devices, causing prisoners to go long periods without them, and also refuses to repair them when broken. *See* [REDACTED] Dec. ¶¶ 5 - 6 (not permitted to keep both wheelchair and prosthetic devices until injured in 2014; FDOC refuses to timely repair ill-fitting prosthetic devices); Villanueva Verified Complaint (Ex. 49) (confiscated prosthetic leg); [REDACTED] docs (Ex. 50) at 114667 (confiscated prosthesis). The failure to provide these devices results in nearly every facet of prison life being inaccessible.

Eighth Amendment. Failing to provide and maintain necessary prosthetic devices also

violates the Eighth Amendment's prohibition on deliberate indifference to serious medical needs. *See Gilmore*, 738 F.3d at 274-75 (“We have, however, long held that deprivation of needed eyeglasses or prosthetic devices stated an Eighth Amendment violation because the unavailability of eyeglasses or prostheses may lead to severe harm.”).

VIOLATIONS REGARDING BLIND AND VISUALLY IMPAIRED PRISONERS

People who are blind or have low vision face unique challenges, both in and out of prison. Not only do they face difficulties in safely navigating their environment, they often face skepticism and confusion from sighted individuals who are unfamiliar with how a low vision person may function. A blind person's vision may regularly fluctuate, and may change depending on the ambient lighting and what in particular is being viewed. For instance, a person with low vision may be able to read normal print indoors, but be totally blind in sunlight. *See Schroeder Report (Exhibit 51) ¶ 8. See also [REDACTED] Dec. ¶ 11* (guards don't believe he is vision impaired because he has some sight, guard waved middle finger at him and asked if he could see it).

Plaintiff's expert Dr. Fredric Schroeder conducted site inspections of five FDOC prisons and interviewed 33 blind and visually impaired prisoners. He has concluded that the FDOC is failing to meet its obligations under the ADA and RA. *Schroeder Report at ¶ 1.* Dr. Schroeder found that the FDOC's “dysfunctional Call Out system, denial of reasonable accommodations, capricious application of procedures, lack of access to education, inconsistent and poor access to library services, lack of access to recreation and so on, suggests a failure on the part of the DOC to take seriously the human and civil rights of blind and visually impaired inmates and their specific rights under the ADA.” *Id.* at ¶ 26.1.

The FDOC Fails to Provide Auxiliary Aids and Services to Blind and Visually Impaired Prisoners

As noted above, the FDOC must furnish appropriate auxiliary aids, services, and program modifications to ensure blind and visually impaired prisoners are afforded equal and meaningful access. *See* 28 C.F.R. §35.160(b)(1). Some specific accommodations include qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; large print materials; and accessible electronic and information technology. 28 C.F.R. § 35.104. *See also Kruger v. Jenne*, 164 F. Supp. 2d 1330, 1337–38 (S.D. Fla. 2000) (denying blind inmate an aide, a cane, an electric shaver, and a audiobook book player stated ADA claim); *Mason v. Correctional Medical Services, Inc.*, 559 F.3d 880, 886 (8th Cir. 2009) (quoting 35.104).

But the FDOC fails to provide even the most basic auxiliary aids and services, such as Braille, large print, and talking watches. *See* Schroeder ¶ 17.9; ██████████ Dec. ¶ 23 (Ex. 53) (denied talking watch because he couldn't afford one). Likewise, blind prisoners do not have access to recording devices, so they must rely on other prisoners to send and receive letters from their family and loved ones. *See* Schroeder at ¶ 23.3; ██████████ Dec. ¶ 5 (denied a tape recorder to dictate letters); ██████████ Dec. ¶ 17 (Ex. 54) (denied a tape recorder or a Braille machine to compose letters); ██████████ Dec. ¶ 17 (Ex. 55) (denied voice recorder). Similarly, Call Out lists are not printed in large print. Schroeder ¶ 15.5. Forcing blind and visually impaired prisoners to rely on the goodwill of other prisoners for such basic services is dangerous and exposes them to unnecessary risk of abuse. *See Armstrong v. Brown*, 857 F. Supp. 2d 919, 933 (N.D. Cal. 2012) (“Reliance on other prisoners for access to basic services, such as food, mail, showers and toilets by prisoners with disabilities leaves them vulnerable to exploitation and is a dangerous correctional practice.”).

Moreover, inmates with cataracts and other conditions that make them sensitive to light or totally blind in bright light do not have consistent access to dark-tinted glasses and/or hats. *See* Schroeder at ¶ 9.3; ██████████ Dec. ¶ 10 (denied prescription dark tinted glasses); ██████████ Dec. ¶ 19 (has trouble seeing anything in bright sunlight but has not been issued dark-tinted glasses or a hat). Visually impaired prisoners have been denied the magnifiers they need to read and write independently. Schroeder ¶ 25.5; *see also* ██████████ Dec. ¶ 7 (magnifier was lost and never replaced); ██████████ Dec. ¶ 15 (denied a magnifier after repeatedly asking for one). Prisoners are also not provided with key locks, so that they can secure their property like sighted prisoners do with combination locks. Schroeder at ¶ 15.3 & 17.6. *See also* RMAR Documents (Ex. 23) at 2320-2322, 4648-4654, 4632-4637, 4391-4393, 4394-4398, 4411-4422, 3795-3798, 3851-3853, 2264-2267, 4671-4677 (all denying requests for key locks because FDOC deemed not medically necessary). The failure of the FDOC to provide these basic accommodations has forced some blind prisoners to spend the entire day sitting in their cell, afraid to go outside safely. *See* Schroeder at ¶ 17.2; ██████████ Dec. ¶¶ 18 - 19.

Further, the FDOC has created unnecessary barriers to blind inmates accessing services and programs independently. For example, although FDOC policy allows grievances to be filed orally, in practice they are not accepted unless they are in writing. ██████████ Dec. ¶ 8 (tried lodging verbal grievances and reasonable modification request but told he was not allowed). Mr. Ealy also had trouble navigating the Disciplinary Report (DR) hearing and appeal process because the DR appeal had to be filed in writing. *Id.* at ¶ 24. Before a DR hearing, prisoners have the opportunity to request certain evidence be investigated. In order to do so, they have to read and sign forms, which he was unable to do independently. *Id.*

The FDOC Fails to Provide Equal and Meaningful Access to Reading Materials (the Talking Book Program) for Blind Prisoners

Talking Book services are free for blind people and others with documented print disabilities. Schroeder ¶ 19.2. In Florida, the Bureau of Braille and Talking Book Library provides such reading materials in Braille and recorded audio format to eligible residents. *Id.* Reading materials, including books and magazines, are sent to and from customers via a free mail program. *Id.* at ¶ 19.3. Excluding prisoners from the program violates the ADA. *See Barhite v. Trierweiler*, No. 2:13-CV-169, 2014 WL 5782638, at *3-12 (W.D. Mich. Nov. 6, 2014) (denying blind inmate access to accommodations, including talking books, stated ADA claim); *Brown v. Prelesnik*, No. 1:12-CV-873, 2013 WL 838289, at *13 (W.D. Mich. Mar. 6, 2013) (same); *Kruger*, 164 F. Supp. 2d at 1337–38 (same).

But prisoners are being excluded from the Florida's Talking Book program. *See* Schroeder at ¶ 19.4-19.11; *see also* ██████████ Dec. ¶¶ 12-13 & 17; ██████████ Dec. ¶¶ 10-12. Enrolling is difficult and requires multiple trips to sick call, resulting in \$5 copay charges each time. *See* Schroeder at ¶ 25.3. Even after enrolling, prisoners are subjected to unreasonable and inexplicable limitations. Namely, blind and visually impaired prisoners can only access three digital Talking Books at a time. Schroeder ¶ 19.3. In practice, this restriction results in blind prisoners having access to far fewer books than sighted prisoners, because when an individual is finished with a talking book, he must mail it back and wait for a replacement—a process that takes weeks or months. *Id.* at ¶ 19.6. In contrast, when a sighted inmate finishes a book, he may return it to the prison library and immediately check out another book. *Id.* at ¶ 19.6. Moreover, blind and visually impaired inmates are not allowed to select specific book titles and are only allowed to identify topic areas, and are not permitted to receive magazine

subscriptions. *Id.* at ¶ 19.8-19.10; ██████████ Dec. ¶ 11; ██████████ Dec. ¶ 31.¹³ These restrictions are irrational and result in unequal access. *See Mason*, 559 F.3d at 886.

Plaintiff's expert also found that confiscation of Talking Book players has been used by the FDOC as a form of punishment. Schroeder ¶ 19.14. ██████████ reported that he was denied Talking Books for four years because his family had sent him talking books through the mail. ██████████ Dec. ¶ 10. Denial of an accommodation is never a legitimate form of punishment. Schroeder ¶ 19.14.

White Canes

The white cane is the most commonly recognized symbol of blindness. Schroeder ¶ 16.1. White canes allow some measure of independence by ensuring a clear walking path, and also alerts other prisoners to a person's blindness, allowing those prisoners to avoid blocking their path and possibly providing assistance with minor tasks such as opening doors. Federal courts have found that denying prisoners white canes may be an ADA violation. *See Vandiver v. Prison Health Servs., Inc.*, No. 1:14-CV-350, 2014 WL 2115264, at *3 & 11 (W.D. Mich. May 21, 2014) (taking away a white cane from a visually impaired prisoner stated an ADA claim); *Armstrong*, 857 F. Supp. 2d at 932–33 (noting that taking away cane from a blind jail detainee violated his rights); *Rickerson v. Gills*, No. 5:11-CV-279-MP-GRJ, 2012 WL 1004733, at *1 (N.D. Fla. Feb. 8, 2012) (taking away a cane and other accommodations from a blind prisoner stated an ADA claim).

But the FDOC fails to consistently provide white canes. Some have been given some kind of stick as a substitute. Some had canes but had them confiscated or lost during prison

¹³ In some circumstances, blind prisoners don't even receive books in their chosen topic areas. For example, ██████████ has asked for Christian books and has been repeatedly sent books depicting sex and violence. Schroeder ¶ 19.8.

transfers. Some were told they could only have a white cane of a shorter length. Schroeder ¶ 16.2; *see also* ██████████ Dec. ¶ 16 (issued tap sticks that were too short and was denied a white cane for a period of time). Almost all prisoners interviewed by Plaintiff’s expert who had been able to get a white cane reported that they were far too short. *See* Schroeder ¶ 16.2, n.3. Moreover, many prisoners reported being denied white canes altogether. *Id.*; ██████████ ██████████ Dec. ¶¶ 5 & 8 - 9. ██████████ had to wait five or six years to be issued a white cane. ██████████ Dec. ¶ 5. ██████████ had to wait nine years to get his. Schroeder ¶ 16.2, n.3. Denying a blind or visually impaired inmate a white cane constitutes “a serious breach of the human and civil rights of blind and visually impaired inmates and, by extension, a denial of their right to reasonable accommodations.” Schroeder ¶ 16.2.

Blindness Skills Training

The term “blindness skills training” encompasses a wide range of skills and techniques that help blind or visually impaired individuals achieve maximum independent functioning. Schroeder ¶ 11.1. Blindness skills include self-care, such as learning to shave, independently administer medication, and function in the home; learning to use a white cane to travel independently in the home and community; and learning to use a wide range of assistive technology. *Id.* at ¶ 11.1. As Dr. Schroeder explains, accommodations for blind prisoners are in some cases not useful unless the prisoners receive training on how to use them. Simply giving an inmate a white cane without providing training on its use is analogous to giving someone a car but not teaching the individual how to drive. *Id.* at ¶ 10.3. But the FDOC fails to provide any training at all. *Id.* at ¶¶ 11.2-11.4. This failure amounts to a failure to provide the accommodations themselves, and thus violates the ADA and RA.

The FDOC Fails to Properly Administer the Impaired Inmate Assistant Program for Blind or Visually Impaired Inmates

The FDOC sometimes assigns other prisoners to assist blind prisoners, but the program is not properly administered. Specifically, inmate assistants are selected by prison officials without the involvement of the blind or visually impaired inmate; selected without having to demonstrate minimum skills (ability to read aloud, ability to follow basic instructions, etc.); are inconsistently and poorly trained; are untrained on the impact of additional disabilities on the needs and functioning of blind inmates; are often unwilling and/or unable to provide needed support; are working without a written job description or performance standards; are handling blind or visually impaired inmate's sensitive and personal material with no guarantee of confidentiality; and are transferred without notice, resulting in periods of time during which the blind or visually impaired inmate is without assistance. Schroeder ¶¶ 11.4, 12.1 - 12.3, & 13.1-13.6; *see also* ██████████ Dec. ¶¶ 5 - 9 (getting an inmate assistant to help him with reading, writing, and legal work was a "constant battle" and he would often be without an inmate assistant for weeks or months at a time, filed 51 grievances about this in 2014 and had to beg and pay other prisoners to help file the grievances); ██████████ Dec. ¶¶ 9 - 10 & 14 (untrained and unreliable inmate assistants placed him in harm's way causing him to need emergency medical treatment on 10/19/12, 8/8/14 and 9/2/14; had more than five different assistants at Franklin CI and frequently went without assistance despite numerous requests to address problem in 2014 and 2015). Moreover, some blind and visually impaired inmates are simply denied an inmate assistant altogether and left to fend for themselves without any blindness skills training or other necessary auxiliary aids and accommodations. *See* ██████████ Dec. ¶ 15 (repeatedly asked for an impaired inmate assistant but was never assigned one); ██████████ Dec. ¶ 7 (denied an inmate assistant multiple times).

The FDOC's written policy on inmate assistants for blind and visually impaired prisoners is insufficient. Schroeder ¶¶ 13.1-13.6. It does not permit blind and visually impaired inmates to be actively involved in the selection of their assistant. *Id.* at ¶ 13.1. The training protocols do not include sufficient guidelines on guiding visually impaired inmates; orienting the blind or visually impaired inmate to his environment; assisting the blind or visually impaired inmate to engage in recreational activities; following instructions related to reading aloud letters and other printed materials, including legal materials; assisting the blind inmate at mealtimes; and assisting blind inmates who have additional disabilities that affect balance or other functions. Schroeder ¶ 13.5. The training provided to assistants is inadequate. *Id.* at ¶ 13.6.

The FDOC Fails to Ensure Equal and Meaningful Access to the Law Library for Blind or Visually Impaired Prisoners

Blind and visually impaired prisoners are denied equal access to the law library, which is a violation of the ADA. Schroeder ¶¶ 20.1-20.5. *See also Cole v. Velasquez*, 67 F. App'x 252 (5th Cir. 2002) (reversing a district court decision dismissing an ADA claim by a legally blind inmate against a law library supervisor). The FDOC's law libraries are not equipped with standard screen enlarging software (Zoomtext) and text-to-speech software (JAWS), nor do they have private spaces available to enable the blind or visually impaired inmate's assistant or a law clerk to read material aloud. Schroeder ¶ 20.2.

Moreover, law clerks are inadequately trained and supervised. It was consistently reported to Dr. Schroeder that law clerks were demanding payment from blind and visually impaired inmates before helping them with reading and writing their legal work. Schroeder ¶ 20.3; *see also* ██████████ Dec. ¶ 20 (law clerks wouldn't help him unless they were paid and he wouldn't be given enough time with them). This has infringed on blind prisoners' access to courts. *See* ██████████ Dec. ¶ 9 (missed legal deadlines after being refused auxiliary aids to

help him read and write and also being denied the assistance of a law clerk). Finally, Dr. Schroeder found that access to a law clerk is not a replacement for assistive technology because non-disabled inmates have the ability to conduct independent research. Schroeder ¶ 20.5.

The FDOC Fails to Provide Adequate Vision-Related Medical Treatment

The FDOC fails to provide blind and visually impaired inmates with prompt and adequate vision-related medical treatment, often resulting in the avoidable loss of remaining vision. Schroeder ¶ 9.1; *see also* [REDACTED] Dec. ¶ 3 (has deteriorating vision due to glaucoma and cataracts but hasn't seen an ophthalmologist since October 2015). [REDACTED], [REDACTED], and [REDACTED] all reported that they were able to get cataract surgery on one eye but were denied surgery on the other. Schroeder ¶ 9.2. This policy of providing surgery on only one eye is improper. Bilateral vision is vital to depth perception and needed for safe mobility. Schroeder ¶ 9.2. This pattern and practice of medical delay, denial, and neglect also constitutes deliberate indifference to serious medical needs, in violation of the Eighth Amendment.

VIOLATIONS COMMON TO ALL PRISONERS WITH DISABILITIES

The FDOC engages in several practices that affect the rights of all prisoners with physical disabilities.

The FDOC Fails to Identify Prisoners with Disabilities

The FDOC's affirmative obligations include identifying people with disabilities and periodically reassessing their communication skills. *See* 28 C.F.R. pt. 35, app. A. ("Because the appropriateness of particular auxiliary aids and services may vary as a situation changes, the Department strongly encourages public entities to do a communication assessment of the individual with a disability when the need for auxiliary aids and services is first identified, and to re-assess communication effectiveness regularly throughout the communication."). *See also*

Cokely Report at 33-35 (recommending development of individualized communication plan that is more than medical assessment).

But the FDOC fails to do this. The FDOC maintains an electronic system that records whether prisoners have certain physical disabilities. The output from this system has identified 2,323 prisoners with physical disabilities (367 who are deaf or hard of hearing, 327 who are blind or have low vision, 1,707 who have mobility impairments, and 636 who use wheelchairs). *See* Ex. 2. But these numbers cannot possibly represent all Florida prisoners with disabilities. For instance, a recent ACLU Report found that approximately 20% of the Florida prison population—or 19,787 prisoners—have been assigned some kind of assistive device or special pass indicating a mobility impairment. ACLU Report (Ex. 5) at 7-8. Using the BJS percentages described above (see Ex. 1), the FDOC should have identified roughly 6,925 prisoners with vision disabilities, 6,134 prisoners with hearing disabilities, and 9,893 prisoners with mobility impairments.

Moreover, Plaintiff has identified numerous prisoners who have clear physical disabilities, but were not identified as such in the FDOC system. *See* [REDACTED] docs (Ex. 56) at 2748-49 (documenting Mr. [REDACTED]'s hearing impairment); [REDACTED] Dec. ¶ 2 (documenting deafness); [REDACTED] docs (Ex. 57) at 4589 (documenting hearing impairment); [REDACTED] docs (Ex. 58) at 2649-50 (documenting myasthenia gravis/muscular weakness, knee deformity, and showing he uses a wheelchair); [REDACTED] docs (Ex. 59) at 20282-83 (documenting compressed discs, bulging disc, arthritis, and permanently injured knee, use of cane); Schroeder ¶¶ 9.1 n.1, 17.1, 17.3, & 25.2 (documenting [REDACTED] vision impairment); Schroeder ¶¶ 9.1 n.1, 16.2 n.3, 19.4, & 20.3 (documenting [REDACTED] vision impairment); [REDACTED] Dec. ¶ 2 (documenting blindness); [REDACTED] documents (Ex.

60) at 52239, 94229-30 (documenting advanced glaucoma); [REDACTED] docs. (Ex. 61) at 2542 (documenting impaired vision); [REDACTED] docs (Ex. 62) at 2644-45 (documenting blindness). *See also* [REDACTED] Dec. ¶¶ 8 & 10 - 14 (repeatedly grieved for auxiliary aids and told that the FDOC doesn't have sufficient documentation of his disability to get them).

The failure to identify prisoners with disabilities prevents the FDOC from implementing any accommodation, aids, or services to the thousands of prisoners who have not been identified.

The FDOC Excludes Prisoners with Disabilities from Jobs and Programs

Jobs and programs are critical for the lives of prisoners. They enable prisoners to earn gain-time (thereby reducing their sentence), provide them with job training and a daily purpose within prison, and occasionally permit them to earn money. But the FDOC does not permit prisoners with certain disabilities to work in certain jobs. Many prisoners with disabilities are relegated to being housemen, a janitorial position that involves cleaning the dorm. Or, it imposes blanket rules that have the effect of discriminating against prisoners with disabilities. *See* Cokely Report at 54; Mazz Report at 7; Schroeder ¶ 22. *See also* [REDACTED] Dec. ¶ 17 (only permitted to work as houseman despite requests for different job because uses a wheelchair); [REDACTED] Dec. ¶ 8 (denied work in kitchen and library); [REDACTED] Dec. ¶ 12 (denied PRIDE and work release); [REDACTED] Dec. ¶¶ 9 & 19 - 20 (can't access programs, forced to be a Housewoman); [REDACTED] Dec. ¶¶ 7 - 8; [REDACTED] Dec. ¶¶ 11 - 12 (not permitted to participate in masonry class because of mobility impairment; not permitted to participate in puppies for prisoners class because of vision impairment; denied placement in faith-based dorm at NWFRC Annex because they didn't have a wheelchair bed); [REDACTED] Dec. ¶ 11 (denied Alcoholics Anonymous, Narcotics Anonymous, Landscape Operations, Commercial Foods, PC Support Services, Architectural Drafting, and transition program); [REDACTED]

█ Dec. ¶¶ 21 - 22 (not permitted work release, vocational, and educational classes; at Columbia Annex, was told that because he used a wheelchair, he couldn't be weighed and therefore couldn't go to work release); █ Dec. ¶ 12 (could not go to faith based dorm at NWFRC because no wheelchair bed available); █ docs at 16405 (not permitted to work or go outside the gate because he is deaf); █ docs at 100810 (denied PRIDE job because he is deaf and was told he has a "communication problem").

Restricting the types of jobs and programs available to prisoners with disabilities violates the ADA regulations, which prohibit a public entity from "utiliz[ing] criteria or methods of administration: . . . That have the effect of subjecting qualified individuals with disabilities to discrimination." 28 C.F.R. § 35.130(b)(3)(i). *See also* 28 C.F.R. § 35.130(b)(8) (prohibiting the use of "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities"). Indeed, even though the "[a] public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities[,]" it "must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities." 28 C.F.R. §35.130(h). *See also Wright*, 831 F.3d at 78 (quoting the regulations); 28 C.F.R. 35.152(b)(2)(iii) ("[A] public entity . . . [s]hall not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed."). The FDOC, rather than completing the individualized inquiry to determine whether a particular prisoner can do a particular job, simply enforces blanket rules, in violation of the ADA.

The FDOC Imposes Illegal Surcharges for Aids, Services, and Accommodations

The FDOC “may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.” 28 C.F.R. § 35.130(f). Several courts have struck down even nominal fees under this provision. *See Dare v. California*, 191 F.3d 1167, 1173 (9th Cir. 1999) (\$6 fee for disability parking placard violates ADA); *Klingler v. Dir., Dep’t of Revenue, State of Mo.*, 433 F.3d 1078, 1082 (8th Cir. 2006) (\$2 fee for disability parking placard violates ADA).

But the FDOC violates this provision in several ways. First, to obtain or renew any accommodation or auxiliary aid—including wheelchairs, hearing aids, specialized headphones, white canes, radios, etc.—a prisoner is required to have a medical visit, at which point a \$5 copayment is charged. *See Fla. Stat. § 945.6037* (imposing the copayment). *See* [REDACTED] Dec. ¶ 19 (charged co-payments for routine pass renewal and prescription refills); [REDACTED] Dec. ¶¶ 9 & 11 (sent to medical to correct issues with impaired inmate assistant not doing job); [REDACTED] docs at 16000 (forced to go to medical to get passes); [REDACTED] Dec. ¶¶ 8 - 13 (told to go to medical about TV transmitter and TTY). *See also* RMAR Documents (Ex. 23) at 4157-4159, 3941-3943, 4738-4741, 3948-3950, 3039-3041, 4232-4237, 4160-4169, 4112-4114, 2396-2399 (requests for accommodations all denied and inmates instructed to be evaluated by medical department). Whereas a prisoner who can hear can watch the television for free, a prisoner who needs a special radio can only access the television after he pays a \$5 copayment and waits for a medical appointment. The copayment is the equivalent of an illegal surcharge.

Second, the FDOC has required prisoners to pay for certain devices such as headphones,

vibrating watches, telecoils loops, and specialized radios. *See* ██████████ Dec. ¶ 11 (paid for his vibrating watch); ██████████ Dec. ¶¶ 15 - 16 (batteries, and paid for vibrating watch); ██████████ Dec. ¶ 12 (approved for radio if he buys himself, but can't afford it); ██████████ Dec. ¶ 15 (paid for his vibrating watch); ██████████ Dec. ¶ 18 (had to pay for his special headphones); ██████████ Dec. ¶ 12 (paid for vibrating watch). *See also* RMAR Documents (Ex. 23) at 4697-4700, 4688-4690, 4252-4257, 3174-3180 (requests for accommodations all denied, instructing inmates to purchase items themselves). Again, charging prisoners for these devices that the FDOC is required to provide plainly violates the regulation.

The FDOC Retaliates Against Prisoners with Disabilities and Interferes with Their Ability to Report Disability-Related Issues

The ADA prohibits retaliation against an individual because “such individual has opposed any act or practice made unlawful by [the ADA] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA].” 42 U.S.C. § 12203(a); 28 C.F.R. § 35.134(a). It also prohibits “coerc[ing], intimidate[ing], threaten[ing], or interfer[ing] with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by [the ADA].” 42 U.S.C. § 12203(b); 28 C.F.R. § 35.134(b).

FDOC staff regularly retaliate against prisoners for lodging disability complaints. *See* ██████████ Dec. ¶ 16 (subjected to threats in 2016 by medical staff and guards at RMC); ██████████ Dec. ¶ 15 (subjected to threats by DOC staff and all legal papers destroyed in 2015 in retaliation); ██████████ Dec. ¶¶ 12 - 13 (at Mayo CI Annex was ridiculed by DOC staff and subjected to bogus disciplinary reports as retaliation for filing grievances and trying to help other inmates); ██████████ Dec. ¶ 13 (at Gulf CI told by DOC staff that if he did not stop

writing grievances, they would have someone at compound “take care of” him); [REDACTED] Dec. ¶ 6 (forced to interpret for other deaf IM under threats); [REDACTED] Dec. ¶ 20 (threatened by officers); [REDACTED] Dec. ¶ 11 (threatened with confinement if she refused to attend drug program without interpreters); [REDACTED] Dec. ¶¶ 22 - 25 (told he was moved because he files many grievances); [REDACTED] Dec. ¶ 19 (“Because of the grievances I filed, I was threatened, retaliated against, and placed in confinement by prison staff and administration”); [REDACTED] Dec. ¶ 15 (believes he has been denied auxiliary aids because he repeatedly grieved denial of medical treatment for his degenerative eye condition); [REDACTED] [REDACTED] docs at 96383 (Ms. [REDACTED] was mocked and told to shut up by a corrections office for communicating in ASL; instructed “not to teach sign language in pill line” because communicating in ASL is a “distraction”); [REDACTED] docs at 96044-96045 (threatened with DR if he reported officer’s conduct). These actions violate the ADA’s prohibition on retaliation and interference.

Conclusion

Prisons are “unique facilities under title II.” 28 C.F.R. part 35 app. A. “Inmates cannot leave the facilities and must have their needs met by the corrections system.” *Id.* The importance of these facilities being fully accessible cannot be overstated. But, as demonstrated above, the FDOC has failed in its responsibility to achieve that. Accordingly, Plaintiff respectfully requests that this Court grant summary judgment in its favor and declare that the FDOC has violated, and continues to violate, the Americans with Disabilities Act, Rehabilitation Act, Eighth Amendment, and Due Process Clause, with respect to the issues described above.

Should the Court grant this Motion as to some or all of the issues, Plaintiff would

respectfully request the opportunity to confer with the Defendant as to the appropriate remedy, and brief the Court accordingly.

Certificate of Word Limit. Pursuant to N.D. Fla. Local Rule 7.1(F), this motion contains 15,086 words.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, January 30, 2017, the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all persons registered to receive electronic notifications for this case, including all opposing counsel.

By: s/Dante P. Trevisani
Dante P. Trevisani, Esq.

EXHIBIT LIST TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

1. Bureau of Justice Statistics (BJS) Report
2. FDOC Impairment Rating Spreadsheet
3. AVID Report
4. Center for American Progress Report
5. ACLU Report
6. DOJ-FDOC Letters
7. Dr. Dennis Cokely Report
8. [REDACTED] Declaration
9. [REDACTED] Declaration
10. [REDACTED] Declaration
11. [REDACTED] Declaration
12. [REDACTED] Declaration
13. [REDACTED] Declaration
14. [REDACTED] Declaration
15. [REDACTED] Declaration
16. [REDACTED] Declaration
17. [REDACTED] Declaration
18. [REDACTED] documents
19. [REDACTED] documents
20. [REDACTED] documents
21. [REDACTED] documents
22. [REDACTED] documents
23. RMAR Documents
24. FDOC Procedure 604.101
25. Procedure 403.011
26. FDOC's Response to Plaintiff's Second Request for Production
27. [REDACTED] Declaration
28. [REDACTED] documents
29. Health Service Bulletin 15.03.27
30. [REDACTED] documents
31. Mark Mazz Report
32. *Martinetti* Motions to Enforce
33. *Martinetti* Response to Motion to Enforce
34. Grizzard Affidavit
35. Norkunas Reports
36. Grizzard Deposition
37. [REDACTED] Declaration
38. [REDACTED] documents
39. [REDACTED] Declaration
40. [REDACTED] Declaration
41. [REDACTED] Declaration
42. [REDACTED] Declaration
43. [REDACTED] Declaration
44. [REDACTED] documents

- 45. [REDACTED] documents
- 46. [REDACTED] declaration
- 47. [REDACTED] Declaration
- 48. [REDACTED] documents
- 49. Villanueva Verified Complaint
- 50. [REDACTED] documents
- 51. Dr. Fredric Schroeder Report
- 52. [REDACTED] Declaration
- 53. [REDACTED] Declaration
- 54. [REDACTED] Declaration
- 55. [REDACTED] Declaration
- 56. [REDACTED] documents
- 57. [REDACTED] documents
- 58. [REDACTED] documents
- 59. [REDACTED] documents
- 60. [REDACTED] documents
- 61. [REDACTED] documents
- 62. [REDACTED] documents
- 63. [REDACTED] documents