AN EQUAL CHANCE TO SUCCEED: CHALLENGING BARRIERS FOR DISABLED PEOPLE ON PROBATION AND PAROLE

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ABSTRACT

Probation, parole, and other forms of post-conviction supervision are challenging for anyone, requiring strict adherence to dozens of complex rules under threat of incarceration for any slip-up. For the high number of people on supervision who have disabilities, supervision is even more challenging. Disabled people regularly face barriers to understanding their supervision obligations, physically getting to required meeting locations, keeping track of their myriad obligations, and attending mandated appointments while experiencing serious health issues. People with disabilities therefore regularly need reasonable accommodations to meet their supervision requirements, such as plain-language explanations of their supervision rules, appointment reminders, sign language interpreters, and flexible meeting scheduling.

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 require agencies administering supervision to assess the accommodation needs of people with disabilities and provide needed accommodations to ensure they have an equal opportunity to succeed on supervision. But supervision systems throughout the United States are failing to fulfill this legal obligation—setting disabled people up for failure.

This Article explores the obstacles to completing supervision for people with disabilities, supervision agencies' legal obligations to accommodate them, and strategies to ensure access to reasonable accommodations.

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INTRODUCTION 1230
I. THE RANGE OF DISABILITIES FOR PEOPLE ON SUPERVISION 1232
II. LEGAL FRAMEWORK 1233
III. *COBB V. GEORGIA DEPARTMENT OF COMMUNITY SUPERVISION*: ENSURING EFFECTIVE COMMUNICATION FOR DEAF AND HARD OF HEARING PEOPLE . . 1237
A. Communication Access for Deaf and Hard of Hearing People on Supervision 1238
B. Challenges for Deaf Georgians on Supervision. 1242
C. The Lawsuit and the Court's Summary Judgment Rulings 1244
D. The Settlement 1246
1. Communication Assessments and Communication Plans 1246
2. Critical Interactions and In-Person Interpreters 1247
3. Use of VRI 1248
4. Written Documents 1248
5. Requiring Third-Party Vendors to Provide Accommodations 1249
IV. *MATHIS V. UNITED STATES PAROLE COMMISSION*: SECURING REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES 1250
A. The Lawsuit 1250
B. Preliminary Injunction 1251
C. Class Certification 1252
CONCLUSION 1253

INTRODUCTION

Large numbers of people in the United States are on probation, parole, and other forms of post-conviction "supervision."[1] As of 2022, over 3.6 million adults in the United States—or one in every seventy-one adult residents—were on probation or parole.[2] Supervision requires strict adherence to dozens of wide-ranging, vague, and conflicting rules under penalty of sanctions, including incarceration, for any violation.[3] Thus, rather than an alternative to incarceration, supervision is often a

1. In this Article, "supervision" refers to "sentences that require people to abide by a set of conditions outside of jail or prison," which includes probation, parole, and mandatory post-prison supervision. *See* AM. C.L. UNION & HUM. RTS. WATCH, REVOKED: HOW PROBATION AND PAROLE FEED MASS INCARCERATION IN THE UNITED STATES 1 (2020). Beyond post-conviction supervision, high numbers of people are subject to "pre-trial supervision"—meaning requirements to abide by rules as a condition of release pending trial. *See* AM. C.L. UNION, A NEW VISION FOR PRETRIAL JUSTICE IN THE UNITED STATES 3 (2019), https://www.aclu.org/publications/new-vision-pretrial-justice-united-states. While this Article focuses on post-conviction supervision, much of the information also applies to pre-trial supervision.

2. DANIELLE KAEBLE, U.S. DEP'T OF JUST., PROBATION AND PAROLE IN THE UNITED STATES, 2022, at 1, 4 (2022) https://bjs.ojp.gov/document/ppus22.pdf.

3. *See generally* AM. C.L. UNION & HUM. RTS. WATCH, *supra* note 1, at 3, 13, 48.

tripwire into jail and prison. In 2021, nearly half of all state prison admissions in the United States stemmed from supervision violations.[4]

For people with disabilities, success under supervision is particularly challenging. High numbers of people on supervision have disabilities—including mental health disabilities, intellectual or developmental disabilities, and physical disabilities.[5] Such individuals regularly face additional barriers to following supervision rules. For example, people with mobility limitations are regularly required to attend meetings in locations that are difficult for them to physically access.[6] Many people with cognitive disabilities cannot understand their supervision requirements or keep track of ever-shifting appointments.[7] And those with mental health disabilities, such as post-traumatic stress disorder, may have trouble forming trusting relationships with supervision authorities, and therefore engaging in required treatment and programming.[8] Given other forms of structural discrimination, these barriers are particularly high for people with disabilities who are Black or brown, LGBTQ, or experiencing homelessness or poverty.[9]

Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibit entities, including jails, prisons, and post-conviction supervision agencies, from discriminating against people on the basis of their disability.[10] Among other requirements, these laws mandate that supervision agencies make "reasonable modifications"—often called "reasonable accommodations"—to supervision practices (including how these practices are implemented) that afford people with disabilities an equal opportunity to succeed.[11] Accommodations are inherently individualized and may include appointment reminders, plain-language explanations of supervision rules, sign language interpreters, and flexible meeting scheduling.

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4. *Supervision Violations and Their Impact on Incarceration*, COUNCIL OF STATE GOV'TS, https://projects.csgjusticecenter.org/supervision-violations-impact-on-incarceration/key-findings/ (last visited June 4, 2025). This figure includes "technical" violations, meaning conduct that would not otherwise constitute a crime, and "new offense" violations, meaning conduct that could constitute a crime. *Id.*

5. *See* Laura Hawks, Emily A. Wang, Benjamin Howell, Steffie Woolhandler, David U. Himmelstein, David Bor & Danny McCormick, *Health Status and Health Care Utilization of US Adults Under Probation: 2015–2018*, 110 AM. J. PUB. HEALTH 1411, 1413 (2020) ("Persons on probation had a higher burden of physical conditions, mental illnesses, and substance use disorders than did the general population . . . ."); LAURA M. MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, U.S. DEP'T OF JUST., SURVEY OF PRISON INMATES, 2016: DISABILITIES REPORTED BY PRISONERS 1 (2021), https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf (explaining that in 2016, nearly two in five people in state and federal prisons had at least one disability).

6. *See* AM. C.L. UNION, REDUCING BARRIERS: A GUIDE TO OBTAINING REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES ON SUPERVISION 15 (2024), https://www.aclu.org/publications/reducing-barriers-a-guide-to-obtaining-reasonable-accommodations-for-people-with-disabilities-on-supervision.

7. *Id.* at 4.

8. *Id.* at 14.

9. Such individuals face additional structural barriers—which are beyond the scope of this Article—to obtaining jobs, housing, health care, and other resources that are critical to successful re-entry. *See id.* at 20.

10. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. § 12101–12213 and at 47 U.S.C. § 225); Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794.

11. 28 C.F.R. § 35.130(b)(7)(i) (2025); *see* Alexander v. Choate, 469 U.S. 287, 301 (1985).

Yet across the United States, supervision agencies routinely ignore these federal disability laws. All too often, supervision authorities impose and enforce a slate of supervision conditions without assessing people's disability-related needs or providing required accommodations.[12] As a result, many people with disabilities lack an equal opportunity—to which they are entitled under the ADA and Section 504—to succeed on supervision.

This Article outlines the barriers confronting people with disabilities on supervision, highlighting two American Civil Liberties Union (ACLU) cases that seek to vindicate the rights of disabled people on supervision. It proceeds in five parts. Part I provides a brief overview of the prevalence of disabilities among people under correctional control. Part II summarizes the relevant disability discrimination legal framework, with a focus on the requirement to provide reasonable accommodations. Part III discusses litigation and a subsequent settlement arising from a case challenging Georgia's failure to provide communication access to deaf and hard of hearing people on supervision. Part IV describes ongoing litigation in Washington, D.C. to ensure people with all types of disabilities have an equal opportunity to complete supervision. Finally, the Conclusion offers recommendations for attorneys representing people with disabilities and highlights potential reasonable accommodations that might be helpful for significant numbers of people with disabilities.

I. THE RANGE OF DISABILITIES FOR PEOPLE ON SUPERVISION

People with disabilities are overrepresented among those under correctional control, including probation and parole.[13] As of 2019, one in five people on probation or parole had a mental health disability—twice the rate of the general population.[14] Rates of cognitive disabilities, physical disabilities, and substance use disorder (SUD) are also higher among those under supervision than the general

12. *See* AM. C.L. UNION, *supra* note 6, at 4.

13. *See* Anna G. Preston, Alana Rosenberg, Penelope Schleisinger & Kim M. Blankenship, *"I Was Reaching Out for Help and They Did Not Help Me": Mental Healthcare in the Carceral State*, HEALTH & JUST. 1, 2 (July 25, 2022), https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-022-00183-9 (collecting studies on rates of individuals with disabilities who are incarcerated or under supervision); FRED OSHER, DAVID A. D'AMORA, MARTHA PLOTKIN, NICOLE JARRETT & ALEXA EGGLESTON, COUNCIL OF STATE GOV'TS JUST. CTR., ADULTS WITH BEHAVIORAL HEALTH NEEDS UNDER CORRECTIONAL SUPERVISION: A SHARED FRAMEWORK FOR REDUCING RECIDIVISM AND PROMOTING RECOVERY 3–6 (2012), https://csgjusticecenter.org/wp-content/uploads/2020/02/9-24-12_Behavioral-Health-Framework-final.pdf (same); LAURA M. MARUSCHAK ET AL., *supra* note 5, at 1–2; J. Steven Lamberti, Viki Katsetos, David B. Jacobowitz & Robert L. Weisman, *Psychosis, Mania and Criminal Recidivism: Associations and Implications for Prevention*, 28 HARV. REV. PSYCHIATRY 179, 179 (2020) (discussing the overrepresentation of individuals with mental disabilities in the criminal legal system); Laura Hawks et al., *supra* note 5, at 1413.

14. Emily Widra & Alexi Jones, *Mortality, Health, and Poverty: The Unmet Needs of People on Probation and Parole*, PRISON POL'Y INITIATIVE (Apr. 3, 2023), https://www.prisonpolicy.org/blog/2023/04/03/nsduh_probation_parole/.

population.[15]

Despite their prevalence, many disabilities are still un- or under-diagnosed and are not always readily detectable by others.[16] For example, deaf and hard of hearing people may feign understanding in encounters with authority figures (or simply ordinary hearing people) to avoid experiencing the stigma of being deaf and admitting that they're not able to understand what the other person is communicating.[17] Moreover, some people with intellectual disabilities and autism spectrum disorder mask or hide their disabilities in an effort to conform to societal expectations of how people should behave socially.[18] This means that officials within the criminal-legal system may not know that the person under supervision has a disability, making it particularly important for officials to affirmatively assess whether an individual has a disability.

II. LEGAL FRAMEWORK

The ADA and Section 504 are federal civil rights laws that prohibit a broad range of discrimination against people with disabilities. 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

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15. *Id.*; AM. C.L. UNION, *supra* note 6, at 6. Common disabilities for people under correctional control include: mental health disabilities, such as post-traumatic stress disorder (PTSD), anxiety, depression, obsessive-compulsive disorder (OCD), schizophrenia and other psychotic disorders, bipolar disorder, borderline and antisocial personality disorders (BPD and ASPD); neurodevelopmental disorders, including attention deficit/hyperactivity disorder (ADHD), intellectual/developmental disabilities (ID/D), autism spectrum disorders (ASD), SUD; and physical conditions such as chronic illnesses, traumatic brain injury (TBI), mobility disorders, and auditory and/or vision disorders. For more information about common disabilities and their impacts on people's ability to follow supervision rules, see *id.*

16. *See, e.g.*, Emma Facer-Irwin, Nigel J. Blackwood, Annie Bird, Hannah Dickson, Daniel McGlade, Filipa Alves-Costa & Deirdre MacManus, *PTSD in Prison Settings: A Systematic Review and Meta-Analysis of Comorbid Mental Disorders and Problematic Behaviours*, PUB. LIBR. OF SCI. ONE, Sept. 2019, at 1–2 (noting PTSD is often underdiagnosed in prison settings); Ian Freckelton, *Obsessive Compulsive Disorder and Obsessive Compulsive Personality Disorder and the Criminal Law*, 27 PSYCHIATRY, PSYCH. & L. 831, 832 (2020) (discussing the delayed and under-diagnosis of OCD); Thomas Fovet, Pierre Alexis Geoffroy, Guillaume Vaiva, Catherine Adins, Pierre Thomas & Ali Amad, *Individuals with Bipolar Disorder and Their Relationship with the Criminal Justice System*, 66 PSYCHIATRIC SERVS. 348, 350 (2015) (noting that the "prevalence of early-onset bipolar disorder is significantly underestimated in prison"); Drew Nagele, Monica Vaccaro, MJ Schmidt & Daniel Keating, *Brain Injury in an Offender Population: Implications for Reentry and Community Transition*, 57 J. OFFENDER REHAB. 562, 564 (2019) (noting the under-diagnosis of TBI because of "no consistent screening at intake or surveillance for a history of TBI in correctional facilities"). Further, cultural norms among some people may make them less likely to disclose their disability. *See* Marion L. D. Malcome, Gina Fedock, Rachel C. Garthe, Seana Golder, George Higgins & T. K. Logan, *Weathering Probation and Parole: The Protective Role of Social Support on Black Women's Recent Stressful Events and Depressive Symptoms*, 45 J. BLACK PSYCH. 661, 665 (2019).

17. *See* Blaine Goss, *Hearing from the Deaf Culture*, 12 INTERCULTURAL COMMC'N STUD. 9, 15 (2003) (describing this phenomenon and passing behaviors such as smiling or nodding in agreement).

18. *See* Wenn B. Lawson, *Adaptive Morphing and Coping with Social Threat in Autism: An Autistic Perspective*, 8 J. INTELL. DISABILITY DIAGNOSIS & TREATMENT 519, 519 (2020).

such entity."[19] Supervision entities, as elements of "[s]tate or local government[s]," are covered entities under Title II.[20] Section 504 prohibits the same types of discrimination by federal agencies and entities that receive federal financial assistance.[21]

To state a disability-discrimination claim, generally an individual must establish that: (1) they are a qualified individual with a disability who (2) has been excluded from, denied the benefit of, or otherwise subject to discrimination (3) by reason of their disability.[22]

First, the ADA defines "disability" "broadly" as "a physical or mental impairment that substantially limits one or more major life activities of such individual," "a record of such an impairment," or "being regarded as having such an impairment."[23] A particular diagnosis of disability is not required.[24] Thus, "[t]he question of whether an individual meets the definition of 'disability' . . . should not demand extensive analysis."[25] One notable exception is that an individual "currently engaging in the illegal use of drugs" does not have a protected disability, although people in recovery from SUD are protected.[26]

An individual is "qualified" if "with or without reasonable modifications to rules, policies, or practices," they "mee[t] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity."[27] Because people are required to be subject to supervision, they are, by definition, "qualified" to participate in supervision.[28] Thus, if a person has a

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19. 42 U.S.C. § 12132. The ADA contains three main titles, and Title II applies to state and local government entities. *Id.* The other titles apply to employment (Title I), 42 U.S.C. § 12111 et seq., and public accommodations (Title III), 42 U.S.C. § 12181 et seq.

20. 42 U.S.C. § 12131(1) (defining "public entity" as "any State or local government" or "any department, agency, . . . or other instrumentality of a State or States or local government"); Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 210 (1998) (holding that Title II of the ADA applies to prisons); *Ensuring Equality in the Criminal Justice System for People with Disabilities*, U.S. DEP'T OF JUST. C.R. DIV., https://www.ada.gov/criminaljustice/ (last visited June 4, 2025) (explaining the application of the ADA to criminal legal-system entities).

21. 29 U.S.C. § 794(a). Since courts largely interpret the statutes interchangeably, this Article focuses on the ADA. *See* Am. Council of the Blind v. Paulson, 525 F.3d 1256, 1260 n.2 (D.C. Cir. 2008) (collecting cases on the interpretation of Section 504). The only major difference is that Section 504 only applies to federal entities or entities that receive federal funding, while the ADA applies to state and local entities. *See* Randolph v. Rodgers, 170 F.3d 850, 858 (8th Cir. 1999). Additionally, as discussed below, some courts apply a heightened causation standard to Section 504 claims.

22. *See, e.g.*, Furgess v. Pa. Dep't of Corr., 933 F.3d 285, 288–89 (3d Cir. 2019); Wright v. N.Y. State Dep't of Corr., 831 F.3d 64, 72 (2d Cir. 2016).

23. 42 U.S.C. § 12102(1); 28 C.F.R. § 35.101(b) (2025); *see also* 29 U.S.C. § 705(20)(B) (defining disability under Section 504).

24. *See supra* note 23.

25. 28 C.F.R. § 35.101(b); *see* 42 U.S.C. § 12102(4)(A) (noting the "definition of disability . . . shall be construed in favor of broad coverage of individuals").

26. 42 U.S.C. § 12210. Thus, SUD *alone* is often not a qualifying disability. However, a person with SUD *and another* disability may still be covered under the ADA—and many people with SUD also have other co-occurring disabilities. *See id.*

27. Tennessee v. Lane, 541 U.S. 509, 517 (2004) (alteration in original) (quoting 42 U.S.C. § 12131(2)).

28. *See* Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 210–11 (1998).

disability and is sentenced to a term of supervision, they are a "qualified individual with a disability."[29]

Second, the ADA prohibits various forms of discrimination, including denying access to a benefit, providing a benefit that is not equal to or as effective as that provided to those without disabilities, or unnecessarily providing different or separate benefits.[30] Entities also cannot rely on "methods of administration" that prevent the entity from accomplishing their program objectives with respect to people with disabilities, nor may they conduct their programs in a way that disparately impacts people with disabilities.[31]

Most relevant to this Article, the ADA further defines discrimination to require covered entities to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."[32] Thus, supervision authorities must provide reasonable accommodations that afford people an equal opportunity to understand and follow their supervision obligations. Some courts have held that entities must *proactively* ensure that people have access to necessary reasonable accommodations, even absent a specific request.[33]

People need not wait until they have suffered a downstream consequence, such as revocation, to experience discrimination based on an entity's failure to accommodate. Rather, people suffer discrimination where "they face 'obstacles' . . . 'that impede[] their access to a government benefit or program,'" such as being required "to participate in the Government's supervision programs without reasonable accommodations."[34] Put differently, the inability to effectively participate in legal proceedings, including probation and parole terms, *is itself* disability discrimination—even if individuals do not suffer any other consequences such as sanctions or revocation proceedings.[35]

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29. *Id.*

30. 28 C.F.R. § 35.130(b)(1) (2025).

31. *Id.* § 35.130(b)(3).

32. *Id.* § 35.130(b)(7); *see also* Alexander v. Choate, 469 U.S. 287, 301 (1985).

33. *See, e.g.*, Pierce v. District of Columbia, 128 F. Supp. 3d 250, 267, 272 (D.D.C. 2015) (prison engaged in disability discrimination "as a matter of law when it failed to evaluate [a disabled individual's] need for accommodation at the time he was taken into custody"); Armstrong v. Davis, 275 F.3d 849, 859 (9th Cir. 2001) (upholding injunction requiring California Parole Board "to identify . . . which prisoners have a disability, create and maintain a system for tracking disabled prisoners and parolees, and provide them with accommodations at parole and parole revocation proceedings"); Lewis v. Cain, No. 15-cv-318, 2021 WL 1219988, at *59 (M.D. La. Mar. 31, 2021) (prison violated ADA by "[f]ailing to identify and track disabilities and accommodation requests in a meaningful way"); Tellis v. LeBlanc, No. 18-541, 2022 WL67572, at *8–10 (W.D. La. Jan. 6, 2022) (same); Dunn v. Dunn, 318 F.R.D. 652, 658 (M.D. Ala. 2016) (same); L.H. v. Schwarzenegger, 645 F. Supp. 2d 888, 892 (E.D. Cal. 2009) (approving class settlement on ADA disability claim in parole revocation context).

34. Mathis v. U.S. Parole Comm'n, No. 24-cv-01312, 2024 WL 4056568, at *5–6 (D.D.C. Sept. 5, 2024) (quoting Am. Council of the Blind v. Paulson, 525 F.3d 1256, 1267 (D.C. Cir. 2008)).

35. *See, e.g.*, *id.* at *6; Luke v. Texas, 46 F.4th 301, 306 (5th Cir. 2022) ("Not being able to understand a court hearing or meeting with a probation officer is, by definition, a lack of meaningful access to those public services. . . . Lack of meaningful access is *itself* the harm under Title II, regardless of whether any additional

Whether a proposed accommodation is "reasonable" involves a "fact-specific, case-by-case inquiry."[36] An accommodation is unreasonable if it would "fundamentally alter the nature of the service provided."[37] Entities cannot impose blanket bans on proposed accommodations—rather, "an individualized inquiry must be made to determine whether a specific modification for a particular person's disability would be reasonable under the circumstances as well as necessary for that person, and yet at the same time not work a fundamental alteration."[38]

In addition to the "reasonable accommodations" mandate, the regulations implementing Title II require "[a] public entity [to] take appropriate steps to ensure that communications with . . . members of the public . . . and companions with disabilities are *as effective as communications with others*."[39] The regulations also impose an affirmative duty on a public entity to "furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities . . . an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity."[40]

The appropriate auxiliary aids and services will vary based on the individual. For instance, deaf and hard of hearing people may need some combination of: qualified sign language interpreters, qualified deaf interpreters, assistive listening devices, and communication access real-time translation (CART).[41] In determining which communication method is best for someone under supervision, federal law requires that the entity give "primary consideration" to the auxiliary aids and services the person with disability requests.[42] For instance, if the person asks for American Sign Language (ASL) interpreters instead of written notes, that request must be given primary consideration. Federal law prohibits entities from imposing charges to cover the costs of these auxiliary aids and services, or from asking people with disabilities to provide or pay for these accommodations themselves.[43]

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injury follows."); Robertson v. Las Animas Cnty. Sheriff's Dep't, 500 F.3d 1185, 1199 (10th Cir. 2007) (plaintiff was "injured" under the ADA when he "was denied the ability to participate in his probable cause hearing to the same extent as non-disabled individuals" even though he was not required to attend the court proceeding, and the hearing resulted in dismissal of all charges); Montgomery v. District of Columbia, No. 18-cv-1928, 2022 WL 1618741, at *25 (D.D.C. May 23, 2022) (plaintiff was "injured" under ADA and Section 504 when he could not "meaningfully access his interrogations" due to his psychiatric disability—"even if [his] prosecution were inevitable"); Paulone v. City of Frederick, 787 F. Supp. 2d 360, 405 (D. Md. 2011) (plaintiff was denied meaningful access to supervision-mandated program she could not understand due to her disability, even though she was not accused of violating her supervision); *Armstrong*, 275 F.3d at 865 (noting the "failure to make accommodations that would enable [people] to attend or comprehend parole and parole revocation hearings" "constitutes 'actual injury'" for standing purposes).

36. Mary Jo C. v. N.Y. State & Loc. Ret. Sys., 707 F.3d 144, 153 (2d Cir. 2013) (quoting Staron v. McDonald's Corp., 51 F.3d 353, 356 (2d Cir. 1995)); *see* McGary v. City of Portland, 386 F.3d 1259, 1270 (9th Cir. 2004).

37. Tennessee v. Lane, 541 U.S. 509, 532 (2004).

38. PGA Tour, Inc. v. Martin, 532 U.S. 661, 688 (2001).

39. 28 C.F.R. § 35.160(a)(1) (2025) (emphasis added).

40. *Id.* § 35.160(b)(1).

41. *Id.* §§ 35.104, 35.160(b)(1).

42. *Id.* § 35.160(b)(2).

43. *Id.* § 35.130(f).

To satisfy the third and final element of a disability discrimination claim, discrimination must be "due to" the plaintiff's disability. While courts have formulated the precise standard differently and many failure-to-accommodate cases do not address causation, essentially the accommodation must be related to the person's disability.[44] In other words, generally causation is satisfied where the plaintiff "does not claim that he required and/or was denied a reasonable accommodation for any reason other than his disability."[45]

Further, for cases seeking only injunctive or declaratory relief—such as requiring a supervision system to accommodate people with disabilities—plaintiffs do not need to show intent or deliberate indifference (a means of proving intentional discrimination).[46] This reflects Congress' intent, in enacting Section 504 and the ADA, to prohibit not only intentional discrimination, but also discrimination that is the product of "thoughtlessness and indifference—of benign neglect."[47] Thus, under Section 504 and Title II of the ADA, "the issue of intentional discrimination is only relevant to the issue of compensatory damages."[48]

Accordingly, a litigant seeking declaratory or injunctive relief for failure to accommodate must demonstrate that (1) they are a qualified person with a disability and (2) a covered entity did not provide reasonable accommodations that (3) they needed due to their disability.[49]

III. *COBB V. GEORGIA DEPARTMENT OF COMMUNITY SUPERVISION*: ENSURING EFFECTIVE COMMUNICATION FOR DEAF AND HARD OF HEARING PEOPLE

The challenges faced by people with disabilities on supervision, and the legal avenues available to remedy these discriminatory barriers, are illustrated by litigation brought by the ACLU and its partners to challenge disability discrimination in

44. *See, e.g.*, Henrietta D. v. Bloomberg, 331 F.3d 261, 291 (2d Cir. 2003) (discrimination is "by reason of" an individual's disability "even if there are other contributory causes for the exclusion or denial, as long as the plaintiff can show that the disability was a substantial cause of the exclusion or denial"); Wis. Cmty. Servs., Inc. v. City of Milwaukee, 465 F.3d 737, 752 (7th Cir. 2006) (en banc) (holding that establishing a Title II claim "requires the plaintiff to show that, 'but for' his disability, he would have been able to access the services or benefits desired"); Brown v. District of Columbia, 928 F.3d 1070, 1098 (D.C. Cir. 2019) (Wilkins, J., concurring) (collecting cases discussing the causation standard). Some jurisdictions apply a stricter causation standard to claims under Section 504 (which prohibits discrimination "solely by reason of" one's disability) than to ADA claims (which prohibits discrimination "on the basis of" one's disability). *See* Drasek v. Burwell, 121 F. Supp. 3d 143, 154 (D.D.C. 2015) (collecting cases applying a stricter causation standard under Section 504).

45. Schine *ex rel.* Short v. N.Y. State Off. for People with Developmental Disabilities, No. 15-CV-5870, 2017 WL 9485650, at *4 (E.D.N.Y. Jan. 5, 2017), *report and recommendation adopted*, 2017 WL 1232530 (E.D.N.Y. Mar. 31, 2017); *see also* Mathis v. U.S. Parole Comm'n, No. 24-cv-01312, 2024 WL 4056568, at *5 (D.D.C. Sept. 5, 2024) (causation established where plaintiffs' "injur[ies]—obstacles to equal access [to supervision]—exists 'solely by reason' of their disabilities" (quoting 29 U.S.C. § 794(a)).

46. *See, e.g.*, Midgett v. Tri-Cnty. Metro. Transp. Dist., 254 F.3d 846, 851 (9th Cir. 2001) ("We have never held that a plaintiff must prove an intentional violation of the ADA in order to obtain an injunction mandating compliance with its provisions.").

47. Alexander v. Choate, 469 U.S. 287, 295 (1985).

48. Hunter *ex rel.* Hunter v. District of Columbia, 64 F. Supp. 3d 158, 167 (D.D.C. 2014).

49. *Id.*

supervision. Recently, litigation against the Georgia Department of Community Supervision over its failure to provide deaf and hard of hearing people on supervision with the auxiliary aids and services they require for effective communication resulted in a groundbreaking settlement that changes the state's procedures for assessing and providing for the needs of deaf and hard of hearing supervisees.[50] This Section begins by providing background on the communication needs of people who are deaf and hard of hearing and the services available to meet those needs, and then outlines the challenges that members of this community on supervision in Georgia faced because of the state's failure to provide effective communication. The Section then describes the lawsuit filed to challenge these barriers and the legal theories it advanced. The Section concludes by giving some detail about the settlement.

A. Communication Access for Deaf and Hard of Hearing People on Supervision

Many people who are deaf and hard of hearing[51] need auxiliary aids and services to effectively communicate with supervision authorities, given their varied communication needs.[52] Many culturally deaf people in the United States use ASL or other signed languages (e.g., Mexican Sign Language) as their first and primary language, and may not have spoken or written English-language skills adequate to communicate in legal situations.[53] Also, relying on English to communicate with deaf and hard of hearing people on supervision is less likely to be effective, as lower English literacy rates are documented in the deaf community and it is reasonable to expect that deaf people who have experienced incarceration are more likely to be functionally illiterate than other formerly incarcerated people.[54]

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50. Amended Order Granting Final Approval of Class Action Settlement Agreement and Award of Attorneys' Fees—Attaching Exhibit A, Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285-WMR, 2024 WL 3843600 (N.D. Ga. May 6, 2024) [hereinafter Cobb Settlement].

51. This Article uses the term "deaf and hard of hearing" to refer to individuals with hearing levels that qualify as disabilities under the ADA and Section 504. The phrase "deaf and hard of hearing," includes deaf, hard of hearing, d/Deaf-Disabled, d/DeafBlind, late-deafened, and culturally deaf individuals (otherwise known as deaf individuals).

52. *See* TESSA BIALEK & MARGO SCHLANGER, UNIV. OF MICH. L. SCH. & C.R. LITIG. CLEARINGHOUSE, WHITE PAPER: EFFECTIVE COMMUNICATION WITH DEAF, HARD OF HEARING, BLIND AND LOW VISION INCARCERATED PEOPLE 1, 55 (2022), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1210&context=other.

53. *See American Sign Language*, NAT'L INST. ON DEAFNESS AND OTHER COMMC'N DISORDERS, https://www.nidcd.nih.gov/health/american-sign-language (last visited June 4, 2025); Jeremy L. Brunson, *Your Case Will Now Be Heard: Sign Language Interpreters as Problematic Accommodations in Legal Interactions*, 13 J. DEAF STUD. & DEAF EDUC. 77, 88 (2008) (explaining that most deaf people can only understand "brief statements or words" in English and that "[l]egal explanations are problematic for deaf people when not interpreted into [ASL]").

54. *Cf.* Expert Report of Dennis Cokely, Ph.D. at 12–18, Disability Rts. Fla., Inc. v. Jones, No. 16-cv-00047 (N.D. Fla. Jan. 30, 2017) ("[O]ne would expect that a greater proportion of Deaf [incarcerated people] would be considered functionally illiterate than would be the case for the [incarcerated] population as a whole.").

Additionally, large numbers of deaf people in the criminal legal system experience language deprivation syndrome,[55] a co-occurring intellectual disability characterized by functional delays in language and comprehension that result from a lack of access to language during childhood.[56] Long periods of incarceration with no ability to communicate with other people who know ASL can compound the effects of language deprivation syndrome. This diminished access to language impacts deaf people's understanding of the world that is developed through having the ability to passively access information through language (i.e., knowledge about social norms, political structures, and current events). This understanding is known as one's "fund of knowledge"[57] and frequently includes the ability to understand legal proceedings.[58] Having an impoverished fund of knowledge renders common English-based auxiliary aids, such as captioning or written notes, an ineffective way to communicate rules and other concepts related to supervision to language-deprived deaf people. However, deaf and hard of hearing people who did not experience the full impact of language deprivation may be able to benefit from English-based auxiliary aids, such as texting or captioning.

As a result of this differentiation in language-deprivation severity, supervision authorities must provide individualized accommodations to meet the needs of deaf and hard of hearing people on supervision in order to ensure that communication is effective. The right communication method may differ based on the circumstances and what is being communicated—what works for one person in one situation may not work for the same person in a different situation or for a different person in the same situation.

For instance, when someone not fluent in ASL communicates with a signing deaf person experiencing language deprivation, they will have a better likelihood of achieving effective communication if they provide a deaf interpreter to facilitate the communication. Deaf interpreters are a recommended auxiliary aid for language-deprived deaf people—particularly those in the criminal legal system—as they are deaf specialists who provide interpreting, translation, and transliteration services in ASL and other visual and tactile communication forms.[59] Deaf

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55. *See* Robert Q. Pollard, Jr. & Meghan L. Fox, *Forensic Evaluation of Deaf Adults with Language Deprivation*, *in* LANGUAGE DEPRIVATION AND DEAF MENTAL HEALTH 101, 103–04 (Neil S. Glickman & Wyatte C. Hall eds., 2019).

56. *See* Sanjay Gulati, *Language Deprivation Syndrome*, *in* LANGUAGE DEPRIVATION AND DEAF MENTAL HEALTH 24, 24–53 (Neil S. Glickman & Wyatte C. Hall eds., 2019).

57. *See* Wyatte C. Hall, Leonard L. Levin & Melissa L. Anderson, *Language Deprivation Syndrome: A Possible Neurodevelopmental Disorder with Sociocultural Origins*, 52 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 761, 766–67 (2017).

58. *See* Roger C. Williams, *Assessing Linguistic Incompetence in the Criminal Justice and Mental Health Systems*, *in* DEAF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM: SELECTED TOPICS ON ADVOCACY, INCARCERATION, AND SOCIAL JUSTICE 22, 22–25 (Debra Guthmann et al. eds., 2021).

59. For more information on the utility of deaf interpreters in the criminal legal system, see Raychelle Harris & Donna Mertens, *Research Methods with Deaf People in the Justice System*, *in* DEAF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM: SELECTED TOPICS ON ADVOCACY, INCARCERATION, AND SOCIAL JUSTICE 40, 52–53 (Debra Guthmann et al. eds., 2021).

interpreters work in tandem with hearing sign language interpreters and are trained to mediate and support communication in situations where a hearing sign language interpreter trained in standard ASL may not be able to communicate effectively.[60] Hearing sign language interpreters alone are typically unable to bridge communication gaps between deaf adults with language deprivation and their supervision officers.[61] These communication gaps can often lead to serious and preventable misunderstandings between the deaf person and the supervision officer that a deaf interpreter could solve. Deaf interpreters have the life experience of a deaf person that allows them to understand where the gaps in the language-deprived deaf person's fund of knowledge are, and crucially, how to fill those gaps.[62]

Conversely, a hard of hearing person without language deprivation may be able to use residual or hearing aid-supported hearing in a one-to-one conversation in a quiet environment but need human-generated captioning[63] (i.e., CART), or even ASL interpretation if they are a signer, for a high-stakes legal setting. The supervision authority must work with the supervisee to determine which accommodations are appropriate for the supervisee, including giving primary consideration to the person's preferred method of communication. Unfortunately, too often supervision authorities make assumptions about how deaf and hard of hearing people can communicate, such as assuming that they can communicate via written English or can speech-read (i.e., read lips). Without meaningful assessment of people's communication needs, supervision authorities often provide the wrong aids and services or none at all, leading to ineffective communication.

There are three main reasons why formalized communication assessments are essential. First, simply asking the deaf person what auxiliary aid or service works

60. For more information, see Charlene Crump & Neil Glickman, *Mental Health Interpreting with Language Dysfluent Deaf Clients*, 21 J. INTERPRETATION 21, 31 (2011).

61. *See id.* at 31 ("When most hearing interpreters are asked how they work with extremely dysfluent consumers, their response is often, 'call in a certified deaf interpreter (CDI).'"); KELLIE STEWART, ANA WITTER-MERITHEW & MARGARET COBB, THE NAT'L CONSORTIUM OF INTERPRETER EDUC. CTRS., BEST PRACTICES: AMERICAN SIGN LANGUAGE AND ENGLISH INTERPRETATION WITHIN LEGAL SETTINGS 19 (2009), http://www.interpretereducation.org/wp-content/uploads/2011/06/LegalBestPractices_NCIEC2009.pdf ("It is best practice to collaborate with deaf interpreter specialists in court and legal settings because deaf interpreters are able to enhance the accuracy, meaning, and effectiveness of the interpretation.").

62. However, most deaf interpreters do not necessarily share the same experience of criminalization and incarceration as deaf people entangled in the criminal legal system. Talila A. Lewis has suggested that efforts be made to "develop a pipeline of formerly incarcerated deaf interpreters . . . to support other deaf people affected by the criminal legal system." Talila A. Lewis, *Disability Justice in the Age of Mass Incarceration*, *in* DEAF PEOPLE IN THE CRIMINAL JUSTICE SYSTEM: SELECTED TOPICS ON ADVOCACY, INCARCERATION, AND SOCIAL JUSTICE 229, 290 (Debra Guthmann et al., eds., 2021).

63. Automatic or automated captioning that is produced by artificial intelligence (typically via videoconferencing platforms like Zoom or Google Meet, or voice transcription apps like Otter.AI or Google Live Transcribe) should not be considered as sufficient for high-stakes legal settings. However, the use of such captioning could be considered as an option in low-stakes situations (e.g., monthly check-in appointments) if it is deemed appropriate after an individualized assessment of the deaf person and many other factors, such as noise levels in the environment and the ability of the AI to accurately transcribe the speaker. Of course, any such use of automated captioning would require guardrails and a clear understanding that if the captioning fails to be accurate, the entity is required to use other auxiliary aids to achieve effective communication.

best for them would be an ineffective strategy. This is largely because the deaf person might not know the full panoply of communication options available—this may be especially true if the person has been incarcerated for decades and is completely unaware of certain accommodations such as captioning or deaf interpreters. Further, asking a deaf person for their preferred method of communication might yield an answer that is vague, such as "sign language" without further clarification as to the *appropriate* auxiliary aid or service for that communication, such as a hearing interpreter interpreting remotely or a deaf interpreter working in person.

Second, deaf people, particularly in situations where they are experiencing significant power disparities, such as when being read their *Miranda* rights, are likely to pretend that they are understanding the communication in order to avoid admitting communication breakdown and subsequent conflict with the hearing person.[64] One common way this manifests is through a "deaf nod," in which the deaf person affirmatively nods to whatever the hearing person is saying (e.g., "Do you lip-read?"), in hopes that the hearing person thinks the deaf person understood and moves on from the topic.[65] This "deaf nod" has the risk of leading the hearing person to believe that the deaf person is understanding them, and puts the deaf person at risk of giving up their legal rights.

Finally, a communication assessment can provide linguistic information that a hearing assessment cannot about the type of communication that would be effective for the deaf and hard of hearing person.[66] There are a variety of formal communication assessments available, but they all should assess expressive and receptive skills across a continuum of linguistic modalities to determine how a person communicates best in a variety of situations.[67] Information about a person's hearing level (typically conveyed via an audiogram) would be unhelpful in determining what reasonable accommodation is appropriate, as one's communication methods do not necessarily align with their hearing levels. For example, a profoundly deaf person who is unable to access any auditory information but is fluent in written English may communicate most effectively by accessing captions via CART and writing or typing out their responses. However, the same accommodation would be ineffective for an illiterate hard of hearing person, despite them being able to access more auditory information than the deaf person.

Supervision entities supervising deaf and hard of hearing people will benefit from reliance on communication assessments in helping to provide the appropriate auxiliary aids and services and mitigate the impacts of language deprivation. In doing

64. *See* McCay Vernon, Lawrence J. Raifman & Sheldon F. Greenberg, *The Miranda Warnings and the Deaf Suspect*, 14 BEHAV. SCIS. & L. 121, 127–28 (1996).

65. *Id.*

66. For more general information on communication assessments, see Roger C. Williams & Charlene J. Crump, *Communication Skills Assessment for Individuals Who Are Deaf in Mental Health Settings*, *in* LANGUAGE DEPRIVATION AND DEAF MENTAL HEALTH 136 (Neil S. Glickman & Wyatte C. Hall eds., 2019).

67. *Id.* at 148–50.

so, they can best ensure that deaf and hard of hearing supervisees are able to communicate effectively and thus have equal opportunities to succeed on supervision.

B. Challenges for Deaf Georgians on Supervision

The Georgia supervision system provides a case study in how ineffective communication can harm people who are deaf and hard of hearing. In Georgia, as in many other states, deaf and hard of hearing people on supervision were often unable to understand their complex supervision requirements and were at constant risk of being reincarcerated for violating conditions of which they were unaware.[68] Supervision officers often held important meetings with people who relied on ASL for communication but failed to provide ASL interpreters or other needed accommodations.[69] The officers "explained" the rules of supervision to people who could not hear or understand these rules but who, nonetheless, risked prison or jail time if they didn't follow them.[70] Supervision officers also failed to take disability into account in other ways. They knocked on the doors of individuals they knew were deaf, and then accused them of failing to comply with their supervision terms when they didn't answer a knock at the door that they couldn't hear. For other supervisees relying on ASL for communication, supervision officers frequently used sign language interpreters on their cell phone screens.[71] The cellphone-sized video images of these interpreters were often too small for ASL users—particularly those with vision disabilities or age-related declines in vision—to clearly see and comprehend.[72] In other situations, supervision officers would deny the use of deaf interpreters.[73]

The experiences of Brandon Cobb, a named plaintiff in the ACLU's lawsuit against the Georgia supervision system, illustrate many of these problems. For example, since the start of his parole, the Georgia Department of Community Supervision (GDCS) had repeatedly denied or failed to provide the accommodations necessary to communicate effectively with him.[74] Like many people who are deaf and born into hearing families, Brandon was denied full access to ASL—or any

68. *See* Second Amended Complaint ¶ 30, Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285-WMR (N.D. Ga. July 1, 2021) [hereinafter Cobb Second Amended Complaint].

69. *Id.* ¶ 35.

70. *Id.* ¶ 30.

71. Plaintiffs' Local Rule 56.1 Statement of Additional Material Facts ¶¶ 44–45, Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285-WMR (N.D. Ga. June 16, 2022).

72. *Id.*

73. For example, in one instance during this lawsuit, a probation officer relied on a single, hearing interpreter—present on a computer—to explain a form with confusing conditions to a client. The client struggled to understand the interpreter and asked to take a photo of the form so he could ask his legal team to provide a deaf interpreter to translate the form in a way he understood. Had his legal team not stepped in to secure a deaf interpreter, the client would not have fully understood what the form said, nor would he have been able to ask several clarifying questions, and would have risked reincarceration.

74. Cobb Second Amended Complaint, *supra* note 68, ¶ 43.

language—in the first few years of his life and experiences the effects of language deprivation.

To be able to effectively convey information presented in English to deaf people like Brandon, the ADA and Section 504 require that service providers who are not fluent in ASL—such as counselors or parole officers—provide effective communication through auxiliary aids.[75] For deaf and hard of hearing sign language users who experience the impacts of language deprivation, effective communication can be best provided with deaf interpreters. Brandon had communicated his need for a deaf interpreter to his probation officer many times, including during a meeting in the summer of 2022 that culminated in his arrest. At that meeting, his parole officer relied solely on a hearing ASL interpreter on a small cellphone screen who repeatedly struggled to understand Brandon.[76] Brandon could not understand what he was being accused of, provide information in his defense, nor ask the parole officer any meaningful questions. Nevertheless, authorities arrested him at that meeting.

Then, while in custody, Brandon's parole officer arrived at the jail and again used a video interpreter on her cell phone.[77] Despite not providing adequate communication, the parole officer required Brandon to sign a complex legal document that Brandon only came to understand days later, when his counsel reviewed the document with him using the appropriate deaf interpreters.[78] He had not known that signing the document meant he was waiving his right to a preliminary revocation hearing.[79] Despite being denied effective communication throughout this entire process, Brandon's parole was revoked and he was sent back to prison, still having many questions about what happened and how long he would be incarcerated.[80]

In fact, Brandon had been arrested for violating parole conditions, including failing to attend a drug treatment program.[81] However, in reality, Brandon had contacted multiple programs and was turned away from each one, as they refused to provide ASL interpreters. Federal law requires the supervision system to make required programs accessible to people with disabilities, but its failure to do so led, in part, to Brandon being reincarcerated.[82]

Brandon's story is horrific and frustrating, but far from unique. Many of the ACLU's clients in this particular area—and even more people across the country—have experienced the serious consequences of a system failing to comply with the

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75. 28 C.F.R. § 35.160(a)(1), (b)(1) (2025) (concerning the ADA); *id.* C.F.R. § 42.503(e)–(f) (concerning Section 504).

76. Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285-WMR, 2022 WL 22865202, at *3 (N.D. Ga. Oct. 13, 2022).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. He was eventually released from prison to an accessible residential drug treatment program with signing deaf and hard of hearing staff, where he continues his recovery.

laws that would give them a fighting chance to rebuild their lives.[83]

C. The Lawsuit and the Court's Summary Judgment Rulings

Georgia's practices described above were challenged in a lawsuit filed in 2019 on behalf of named Plaintiffs and a putative class of deaf and hard of hearing people under supervision in Georgia.[84] The case named the Georgia Department of Community Supervision and its Commissioner as Defendants, and Plaintiffs were represented by the ACLU Foundation Disability Rights Program, the ACLU Foundation of Georgia, the National Association for the Deaf Law and Advocacy Center, and Arnold & Porter Kaye Scholer LLP.[85] Plaintiffs asserted three claims: disability discrimination under the ADA, disability discrimination under Section 504, and violation of the Due Process Clause of the Fourteenth Amendment.[86] For the disability claims, Plaintiffs argued that Defendants violated both disability statutes by "failing to provide [the] necessary auxiliary aids and services to ensure equally effective communication to Plaintiffs during supervision, failing to ensure access to and effective communication at required supervision programs, and failing to make reasonable modifications to policies, practices and procedures to avoid disability discrimination."[87] Plaintiffs also argued that Defendants failed to adequately train their staff on ADA and Section 504 policies to ensure that they understood and complied with their requirements under federal disability laws.[88]

After denying Defendants' motion to dismiss,[89] the court granted Plaintiffs' motion for class certification and denied Defendants' motion for summary judgment.[90]

First, the court certified the 23(b)(2) class as:

> All present and future deaf or hard of hearing individuals supervised by GDCS, whose hearing qualifies as a disability under the ADA and [Section 504] and who require hearing-related accommodations and services to communicate effectively and/or to access or participate equally in programs, services, or activities available to individuals supervised by GDCS.[91]

Defendants argued that Plaintiffs did not meet the commonality requirement because the class members' issues were "highly individualized" and that the deaf and hard of

83. *See, e.g.*, Cobb Second Amended Complaint, *supra* note 68, ¶ 11 (discussing Plaintiffs Joseph Nettles and Mary Hill).

84. Complaint, Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285 (N.D. Ga. July 19, 2019).

85. *Id.*

86. Cobb Second Amended Complaint, *supra* note 68, ¶¶ 52–80.

87. *Id.* ¶¶ 58, 68.

88. *Id.*

89. Order, Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285-WMR (N.D. Ga. Mar. 11, 2020).

90. Order at *4, Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285-WMR, 2022 WL 22865202 (N.D. Ga. Oct. 13, 2022).

91. *Id.* at *13.

hearing class members had a "wide variety of communications wishes and needs."[92] While the Court noted the diversity of experiences within the class, it explained that "[p]laintiffs are challenging the system-wide policies and practices of DCS and how such issues affect all class members"—thus finding a common question that could be resolved with a common answer.[93]

Having certified the class, the court addressed Defendants' motion for summary judgment. In support of summary judgment, Defendants had argued, among other points, that Plaintiffs lacked Article III standing to seek injunctive relief.[94] Specifically, Defendants contended that "the risk of Plaintiffs facing revocation of their supervision and reincarceration due to the ineffective communication" was not "real and immediate."[95] The court disagreed and explained that, under another circuit's reasoning in *Luke v. Texas*, the "[l]ack of meaningful access is *itself* the harm under Title II, regardless of whether any additional injury follows."[96] In other words, plaintiffs need not show a likelihood of revocation or incarceration to establish standing.

The court determined that plaintiffs were, indeed, denied meaningful access to the benefits of supervision. Plaintiffs were "unable to effectively learn about helpful services and information from DCS that they would otherwise be able to learn."[97] The court concluded that ineffective communication leading to the inability to access GDCS' information-sharing services was sufficient grounds for the court to determine that Plaintiffs had suffered injury.[98]

The court also held that this denial of effective communication was ongoing, as Plaintiffs "face[d] a substantial likelihood that they w[ould] be affected by Defendants' allegedly unlawful conduct in the future" due to the ongoing requirement to return to Defendants' facilities, "including initial intake, home visits, employment visits, random drug screens 'from time to time,' and counseling" and the ongoing technical issues with VRI.[99] Thus, the court determined Plaintiffs had standing.[100]

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92. *Id.*

93. *Id.* The court also cited a class certification decision from the Middle District of Georgia, holding that individual class members' circumstances did not defeat class certification where plaintiffs claimed that they "have allegedly been affected by a general policy of the defendant, and the general policy is the focus of the litigation," and "challenge[d] . . . system-wide practices, policies, and procedures that affect all members of the proposed class," specifically the "alleged systemic discrimination in policy and practice across the GDC's prison facilities." Harris v. Ga. Dep't of Corr., No. 18-cv-00365, 2021 WL 6197108, at *12–13 (M.D. Ga. Dec. 29, 2021). Note that "DCS" refers to GDCS.

94. Order at *5, Cobb v. Ga. Dep't of Cmty. Supervision, No. 1:19-cv-03285-WMR, 2022 WL 22865202 (N. D. Ga. Oct. 13, 2022).

95. *Id.* at *5, *7 n.8.

96. *Id.* at *6 (quoting Luke v. Texas, 46 F.4th 301, 306 (5th Cir. 2022)).

97. *Id.* (e.g., information about substance abuse treatment and mental health services).

98. *Id.*

99. *Id.* at *2, *7.

100. *Id.* at *7. Defendants made two other unsuccessful arguments in support of summary judgment which are not discussed here: that Plaintiffs' claims were moot in light of Defendants' new ADA policy; and Plaintiffs were not entitled to permanent injunctive relief.

D. The Settlement

Following the class certification and the denial of summary judgment but before trial, the parties reached a settlement, which the court approved in May 2024.[101] The settlement agreement requires GDCS to dismantle the discriminatory hurdles that make it harder for deaf and hard of hearing Georgians to avoid prison and live safely in their communities. Below, we discuss some settlement provisions that constitute meaningful progress for a supervision agency seeking to fulfill their obligations under federal disability law. We sincerely hope that other states will look to this agreement and its provisions when determining what is required for their supervision agencies to comply with federal disability law.

1. Communication Assessments and Communication Plans

Under the settlement, each current and future deaf or hard of hearing person on supervision in Georgia will undergo a communication assessment.[102] Each assessment will allow the state to create a communication plan that considers the range of situations a deaf or hard of hearing person may experience while on supervision, and the types of accommodations they may need. First, GDCS staff must identify new supervisees who appear to be deaf or hard of hearing.[103] If a deaf or hard of hearing person seems to know sign language, then the intake process will be conducted with Video Remote Interpreting (VRI) until a communication plan can be developed as described below.[104] If the person does not seem to know sign language, then the GDCS officer must stop the intake and contact the agency's ADA Coordinator to determine what accommodations should be provided to continue the intake.[105]

The next step in the assessment process requires the ADA Coordinator to meet with the supervisee to "describe what communication access is, explain the supervisee's right to Effective Communication during supervision, and outline the Communication Assessment process."[106] People who became deaf or hard of hearing while they were a minor will be referred (unless they decline) for an external communication assessment with a qualified assessor—who has been trained to provide communication assessments to deaf and hard of hearing people—in the Georgia

101. Cobb Settlement, *supra* note 50, at *1.

102. *Id.* at *10.

103. *Id.* The agreed-upon criteria are:

(i) an individual appears to be using sign language or gesture; (ii) an individual is visibly using a device to assist with hearing (e.g., hearing aid, cochlear implant/implantable device, etc.); (iii) an individual self-identifies as being Deaf or Hard of Hearing or as someone with hearing loss who uses an alternative means of communication; and/or (iv) an individual for whom DCS observes communication barriers that appear to be related to hearing ability.

Id. at *8.

104. *Id.* at *10.

105. *Id.*

106. *Id.* at *11.

Department of Behavioral Health and Developmental Disabilities (GDBHDD) (which includes an Office of Deaf Services).[107] The external assessment will help ensure that the supervisees' communication needs are assessed by someone with the appropriate expertise—particularly important for people who are experiencing the effects of language deprivation.

The communication assessment will address supervisees' ability to communicate in a variety of situations relevant to their supervision experience, as well as their ability to read and write in English. For this settlement, the parties agreed to rely on the Communication Assessment Form attached as Exhibit 1 of the Agreement, as it guides the assessor through questions about a supervisee's communication abilities in sign language, reading, writing, and speaking, and directs the assessor to make recommendations for types of accommodations appropriate for particular situations that a person may experience while on supervision.[108]

The results of the Communication Assessment are used to form a Communication Plan that GDCS staff can refer to in order to determine which individualized auxiliary aids and services and reasonable modifications are appropriate to provide in a given situation.[109] A notable aspect of this Settlement is that GDCS has agreed to provide deaf interpreters (or an equally effective auxiliary aid) for supervisees who have the need noted in their Communication Plans.[110] This is an exciting indication that entities are beginning to recognize the necessity of deaf interpreters in providing effective communication to language-deprived deaf people.

2. Critical Interactions and In-Person Interpreters

During situations where supervisees are particularly at risk of experiencing serious consequences from a miscommunication or a misunderstanding (i.e., "Critical Interactions"), GDCS agreed to rely on in-person interpreters instead of interpreters remotely appearing via VRI.[111] In this settlement agreement, "Critical Interactions" include the following:

> (i) the initial explanation of the conditions of DCS supervision at Intake, any subsequent changes thereto, and any other instances in which the contents of legal documents are provided or reviewed;
> (ii) instances in which a communication with DCS occurs with the intention of substantively discussing the reasons leading to and the consequences of arrest or revocation, such as waivers; and

107. *Id.* at *9–10, *11.The Settlement also gives Defendants the option to use another "Qualified Assessor" outside GDBHDD "who is familiar with American Sign Language, oral communication, gestural communication, who has experience assessing the reading and writing ability of Deaf and Hard of Hearing individuals, and who is able to determine which appropriate Auxiliary Aids and Services including all types of Qualified Interpreters would provide Effective Communication." *Id.* at *10.

108. *Id.* at Exhibit 1.

109. *See id.* at Exhibit 2.

110. *Id.* at *13.

111. *Id.*

(iii) any interactions with a supervisee in a carceral setting.[112]

Crucially, GDCS will provide stopgap measures if an unplanned critical interaction occurs (e.g., a home visit leads to an arrest and the GDCS officer subsequently interacts with the supervisee in a jail), as there may not always be adequate notice to request and place an interpreter.[113] If this happens, then GDCS will use other accommodations identified in the supervisee's Communication Plan until the necessary auxiliary aids and services are available.[114] If GDCS relies on any stopgap measures, the agency will "seek remedial action as necessary to ensure that any information that was attempted to be shared during the stop-gap period is communicated effectively."[115] For example, GDCS may redo the critical interaction with the appropriate accommodations to ensure that the supervisee has full access to and understanding of the interaction.

3. Use of VRI

GDCS has agreed to three conditions governing the use of VRI:[116]

- It may only use VRI with people who have it identified as appropriate in their Communication Plan.[117]
- The use of VRI must comply with or exceed the technical requirements of 28 C.F.R. § 35.160(d), which include "high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication" as well as "[a]dequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI."[118]
- The interpretation must be visible on a sufficiently large screen.[119] Some GDCS officers had a regular practice of presenting VRI on small cell phone screens, which was challenging for deaf and hard of hearing supervisees, especially those with vision disabilities, to understand.[120]

4. Written Documents

Prior to the settlement, GDCS provided critical information about supervision only in writing. Conveying information only via writing was problematic, given that research literature widely shows that deaf adults struggle to read, having

112. *Id.* at *9.
113. *Id.* at *13.
114. *Id.*
115. *Id.*
116. *Id.* at *11.
117. *Id.*
118. *Id.*; 28 C.F.R. § 35.160(d)(1), (4) (2025).
119. Cobb Settlement, *supra* note 50, at *12.
120. Plaintiffs' counsel agreed that VRI can be used on cell phones only in emergency situations when the laptop fails to show VRI. *Id.*

median reading levels at or below fourth grade levels.[121] This delay can be attributed, in part, to language deprivation.[122] Put simply, when entities in the criminal legal system expect the average deaf adult, without any individualized assessment or communication plan, to read and comprehend legal documents, they will fail to accomplish effective communication with the deaf person.

After the settlement, a lack of fluency in reading or writing English will no longer be a barrier to successfully completing supervision. If the deaf person cannot understand written documents due to their disability, GDCS has agreed to use appropriate accommodations and provide the written information in another accessible format.[123] This will help prevent future incidents of confusion when people receive documents with important instructions that they do not understand.[124]

5. Requiring Third-Party Vendors to Provide Accommodations

Many people on supervision in Georgia are required to complete programs or classes as a condition of their supervision, but, in the past, providers of many of these programs have refused to provide ASL interpreters and other necessary accommodations to deaf and hard of hearing people on supervision.[125] GDCS will now require that any GDCS-approved third-party vendor offering classes and programs required as a condition of supervision comply with federal disability laws by providing necessary accommodations, such as interpreters, for effective communication.[126] GDCS will be required to assess the vendors' compliance, and if they fail to comply, they will lose approval status under GDCS.[127] This mechanism will help incentivize those individual vendors to provide the necessary accommodations.

Plaintiffs' counsel hope that the detailed provisions of this settlement agreement will result in lasting change at GDCS and will serve as a model for other supervision systems around the country. Many of these agencies, just like GDCS prior to the

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121. *See, e.g.*, Thomas E. Allen, *Patterns of Academic Achievement Among Hearing Impaired Students: 1974 and 1983*, *in* DEAF CHILDREN IN AMERICA 161, 164 (Arthur N. Schildroth & Michael A. Karchmer eds., 1986); Michael M. McKee, Michael K. Paasche-Orlow, Paul C. Winters, Kevin Fiscella, Philip Zazove, Ananda Sen & Thomas Pearson, *Assessing Health Literacy in Deaf American Sign Language Users*, 92 J. HEALTH COMMC'N 92 (2015); Susan R. Easterbrooks, Amy R. Lederberg, Shirin Antia, Brenda Schick, Poorna Kushalnagar, Mi-Young Webb, Lee Branum-Martin & Carol McDonald Connor, *Reading Among Diverse DHH Learners: What, How, and for Whom?*, 159 AM. ANNALS DEAF 419 (2015).

122. *See* Wyatte C. Hall, Leonard L. Levin & Melissa L. Anderson, *Language Deprivation Syndrome: A Possible Neurodevelopmental Disorder with Sociocultural Origins*, 52 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 761 (2017).

123. Cobb Settlement, *supra* note 50, at *14.

124. Plaintiffs' counsel has also produced ASL and plain language translations of the new ADA Policy so that signers and those with limited literacy can access the ADA policy at any time. For the translations, see *Georgia Department of Community Supervision ADA Policy*, AM. C.L. UNION, https://www.aclu.org/cobb-v-georgia-department-of-community-supervision/georgia-department-of-community-supervision-ada-policy (last visited June 4, 2025).

125. Cobb Second Amended Complaint, *supra* note 68, ¶ 12.

126. Cobb Settlement, *supra* note 50, at *14.

127. *Id.*

settlement, are failing to provide effective communication, and this litigation and settlement put them on notice that the needs of deaf and hard of hearing people on supervision cannot be ignored. But the challenges these agencies face in addressing disabilities go well beyond communication for people who are deaf or hard of hearing, as the next Section demonstrates.

IV. *MATHIS V. UNITED STATES PAROLE COMMISSION*: SECURING REASONABLE ACCOMMODATIONS FOR PEOPLE WITH DISABILITIES

A. The Lawsuit

Another current ACLU case illustrates the legal risks of failing to accommodate people on supervision with many different types of disabilities beyond the deaf and hard of hearing community. In Washington, D.C., as in scores of jurisdictions around the country, government agencies are systematically failing to reasonably accommodate people on supervision with disabilities. The two federal agencies tasked with administering supervision in the District of Columbia, the United States Parole Commission (the Commission), and the Court Services and Offender Supervision Agency (CSOSA), admit that they have *no system* to assess people's accommodation needs or to provide necessary accommodations.[128] As a result, people with disabilities in the District of Columbia are forced to navigate a maze of conditions that, due to their disability, they lack an equal opportunity to meet—setting them up for failure.

The result is discrimination on the basis of disability at each stage of supervision—when the agencies enforce blanket conditions, when they revoke supervision for minor violations, and when they release people to the very same conditions that are nearly impossible to follow without reasonable accommodations. Indeed, the federal government's own data shows that people with mental health disabilities on supervision in the District of Columbia are nearly twice as likely to face revocation for "technical violations"—meaning violations, such as missing an appointment, that do not constitute crimes—as the general supervised population.[129]

Take Plaintiff Mr. Mathis, a seventy-year-old military veteran with congestive heart failure who had been on parole for eighteen years.[130] CSOSA and the Commission incarcerated him for missing supervision appointments on dates when he needed to receive medical treatment at a hospital for his heart condition.[131] The agencies then released him on the same supervision conditions he had struggled to meet due to his disability, without providing any accommodations.[132] Likewise, Mr. Davis, a middle-aged man on lifetime parole who lives with chronic pain and mobility limitations

128. Mathis v. U.S. Parole Comm'n, No. 24-cv-01312, 2024 WL 4056568, at *4 (D.D.C. Sept. 5, 2024); Preliminary Injunction Mem. at 10, Mathis v. U.S. Parole Comm'n, No. 24-cv-01312 (D.D.C. May 6, 2024).

129. *Id.* at *3; *see* Email from Jeanean West, FOIA Officer, Off. of Gen. Couns., to Ashika Verriest, Staff Attorney, Am. C.L. Union (June 23, 2023) (on file with author).

130. *Mathis*, 2024 WL 4056568, at *2.

131. *Id.* at *2–3.

132. *Id.* at *3.

stemming from third-degree burns, as well as anxiety, depression, and post-traumatic stress disorder, recently served twelve months in prison for a technical violation related to his disabilities.[133] Due to his incarceration, Mr. Davis missed a necessary surgery for his burns.[134]

To remedy these violations, in May 2024, the ACLU, along with the ACLU of D.C., the Public Defender Service for the District of Columbia, and Latham & Watkins LLP, filed a federal class-action lawsuit on behalf of Mr. Mathis, Mr. Davis, and all other similarly-situated individuals.[135] The lawsuit, filed in the U.S. District Court for the District of Columbia, alleges that CSOSA and the Commission systematically fail to accommodate people with disabilities on supervision in violation of Section 504.[136] It seeks injunctive relief requiring Defendants to implement a system that proactively assesses the necessary reasonable accommodations for people with disabilities under supervision and provides such accommodations.

B. Preliminary Injunction

On September 5, 2024, the court denied Defendants' motion to dismiss and granted Plaintiffs' preliminary injunction motion as to the named Plaintiffs.[137] The injunction requires CSOSA and the Commission to assess what reasonable accommodations the named Plaintiffs require to have an equal opportunity to succeed on supervision, and to provide all such required accommodations.[138]

Critically, the court rejected the government's argument that Plaintiffs must show that their disability caused their "downstream harms" of revocation and incarceration.[139] Rather, the court held, the Plaintiffs established discrimination by showing that they "'face obstacles,' solely because of their disabilities, that 'impede their access to a government benefit or program.'"[140] This is so even if other factors *also* contributed to their ultimate "downstream harms" of revocation and incarceration, because the ADA and Section 504 "put[] the focus on 'discrimination' itself, not the consequences it causes."[141] As the court explained: "Parolees' claim under the [Rehabilitation] Act ripened the moment their disabilities made it harder for them—compared to their non-disabled counterparts—to participate in the Government's supervision programs without reasonable accommodations."[142]

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133. *Id.*

134. *Id.*

135. Press Release, American Civil Liberties Union, Class-Action Lawsuit Challenges Discriminatory Post-Conviction Supervision System in Washington, D.C. (May 6, 2024), https://www.aclu.org/press-releases/class-action-lawsuit-challenges-discriminatory-post-conviction-supervision-system-in-washington-d-c.

136. *Mathis*, 2024 WL 4056568, at *4. The suit does not raise ADA claims because the only Defendants are federal agencies, who are subject to suit under Section 504 (rather than the ADA, which covers state and local actors).

137. *Mathis*, 2024 WL 4056568, at *16.

138. *Id.*

139. *See id.* at *6.

140. *Id.* at *5 (quoting Am. Council of the Blind v. Paulson, 525 F.3d 1256, 1267 (D.C. Cir. 2008)).

141. *Id.* at *6.

142. *Id.*

Similarly, the court held that for purposes of "irreparable harm" necessary to grant preliminary injunctive relief, "the 'denial of equal treatment' *itself* counts as an injury, even if the Parolees ultimately share in the same degree of success as their nondisabled counterparts. The law requires no further downstream harms."[143]

C. Class Certification

On February 11, 2025, the court granted Plaintiffs' motion for class-certification.[144] Two aspects of the decision are particularly notable. First, the class definition includes people with *all* types of disabilities—it is not limited to people with only one type of disability or one particular accommodation need. The court certified a class of "all people with a disability who are on or will be on parole or supervised release in the District of Columbia under the Commission's and CSOSA's supervision, and who need accommodations in order to have an equal opportunity to succeed on parole or supervised release."[145] The court explained that, despite individual factual variations, "all class members allegedly suffer the same harm for the same reason: discrimination because of the Government's wholesale failure to consider and accommodate disabilities during supervision."[146]

Second, the court rejected the Government's argument that Plaintiffs could not establish "commonality" because they challenged failures by multiple agencies at various stages in the supervision process.[147] The court held, "[t]he nature and source of the harm does not turn on the stage or agency; it comes from a ubiquitous deficiency that permeates the entire supervision system, harming all class members at every turn."[148]

As of the time of writing this Article, Plaintiffs are continuing to fight for permanent systemic relief so that all people on supervision have an equal chance to succeed and remain in their communities.

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143. *Id.* at *13 (citing Ne. Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville, 508 U.S. 656, 666 (1993)). The court accepted the government's argument that "[t]he Rehabilitation Act lacks a private right of action to enforce" the Act against federal agencies for discrimination in their own programs. *Id.* at *6–11. This argument is limited to claims—such as in *Mathis*—brought solely against *federal executive* agencies, which arise only under Section 504 (not the ADA). Nevertheless, the court held that it "possess[es] inherent equitable power to enjoin the Government from violating the Rehabilitation Act" pursuant to the Supreme Court's decision in *Armstrong v. Exceptional Child Center, Inc.*, and thus granted the preliminary injunction. *Id.* at *11–13; *see also* Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 326–27 (2015).

144. Order, Davis v. U.S. Parole Comm'n, No. 24-cv-01312, 2025 WL 457779 (D.D.C. Feb. 11, 2025). Mr. Davis became the lead named-Plaintiff after Mr. Mathis sadly passed away during the pendency of this litigation.

145. *Id.* at *3.

146. *Id.* at *8.

147. *Id.* at *5.

148. *Id.*

CONCLUSION

Federal law requires supervision authorities to avoid disability discrimination, including by proactively making reasonable accommodations. Nevertheless, hundreds of thousands of people across the United States are forced to navigate complex and onerous supervision requirements without the accommodations they need—setting them up for failure.

Lawyers and other advocates can play a critical role in facilitating access to reasonable accommodations. Each case raises its own strategic and capacity considerations. Further, accommodations are inherently individualized, and each person will require different changes to their supervision rules. Nevertheless, as a general matter, attorneys should take the following steps to help clients access reasonable accommodations.

Attorneys should talk to their clients about potential accommodation needs. Lawyers should ask clients, in a simple and nonjudgmental manner, if they have a disability. If so, attorneys should work with their clients to brainstorm possible accommodations. Attorneys should recognize that clients may not always know if they have a disability or what forms of reasonable accommodations might work for them. Accordingly, attorneys should familiarize themselves with different types of reasonable accommodations that may be useful to their clients.[149]

As soon as practicable, attorneys should engage with relevant supervision authorities to obtain needed accommodations. This advocacy can occur in legal proceedings, such as during sentencing to supervision conditions, and informally through conversations with supervision officers over the course of supervision.[150] Attorneys should also raise disability-related barriers during revocation proceedings, both as defenses to the allegations and as mitigation. Further, if the decision-maker restores the individual back to supervision, lawyers should seek modification of the problematic conditions that contributed to the violation to avoid setting clients up to fail again.

More broadly, attorneys and other advocates should push for systemic reforms. For example, they should encourage supervision agencies to enact systems to proactively assess people's accommodation needs and provide required accommodations. Advocates should also urge supervision authorities to adopt "universal design" accommodations that would make supervision more manageable for *everyone*, whether or not they have disabilities. Examples of "universal design" accommodations include:

- Plain Language: Supervision departments should use "plain language" in oral and written communications to ensure that people with intellectual disabilities or limited English fluency can understand their supervision obligations.
- Auxiliary Aids and Services: Supervision departments should ensure availability of auxiliary aids and services, including but not limited to sign

149. To learn more about potential reasonable accommodations, see AM. C.L. UNION, *supra* note 6, at 10–19.

150. For an example accommodation-request form, which attorneys could submit to relevant authorities when requesting accommodations (for instance, to a supervision officer over the course of supervision), see *id.* at 21–23.

language interpreters—including deaf interpreters—and brailled/large print materials.

- Flexible Scheduling: Supervision officials should work with the person on supervision to determine when and where required meetings will take place, based on the individual's disability-related needs. This could include holding meetings at different times of the day (e.g., afternoon meetings if someone's disability-related symptoms tend to be worse in the morning), in accessible locations (e.g., near a wheelchair-accessible public transportation stop, or in a location that does not trigger a person's prior trauma), and at a frequency that is manageable (e.g., less frequent meetings if the individual is also balancing numerous medical appointments).
- Appropriate Treatment Programs: Supervision officials should ensure people are able to engage in, and benefit from, any required treatment programs. This could include facilitating entry into a program that is appropriate for their cognitive abilities and/or trauma history.

The United States over-polices and over-punishes people with disabilities. Ultimately, reforms must shift resources from the criminal legal system into voluntary, community-based services and supports. Ensuring access to reasonable accommodations that give people with disabilities a meaningful chance to remain in their communities is a critical step toward that goal.