

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

ATLANTA DIVISION

**BRANDON COBB, CARLOS HERRERA,
JOSEPH NETTLES, ERNEST WILSON,
JEREMY WOODY, and JERRY COEN,
on behalf of themselves and all others
similarly situated,**

Plaintiffs,

v.

**GEORGIA DEPARTMENT OF
COMMUNITY SUPERVISION, and
MICHAEL NAIL, in his official capacity
as Commissioner of the Georgia
Department of Community Supervision,**

Defendants.

Civil Action No.

CLASS ACTION

ORAL HEARING REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

	<u>Page</u>
BACKGROUND	4
A. Plaintiffs	4
B. Defendants	6
C. Defendants’ Unlawful Conduct	7
ARGUMENT	12
A. Plaintiffs Are Likely to Succeed on the Merits	12
1. Plaintiffs Are Qualified Individuals with a Disability	15
2. Plaintiffs Have Been Excluded from and/or Denied the Benefits of Probation or Parole Services	15
3. Plaintiffs Have Been Denied Benefits by Reason of Their Disability	19
B. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief	20
C. The Remaining Factors Favor Preliminary Injunctive Relief	24
CONCLUSION	25

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>Am. Ass’n of People with Disabilities v. Harris</i> , 647 F.3d 1093 (11th Cir. 2011)	12
<i>Arce v. Louisiana State</i> , 2019 WL 2359204 (E.D. La June 4, 2019)	19
<i>Armstrong v. Brown</i> , 857 F. Supp. 2d 919 (N.D. Cal. 2012)	20
<i>Bircoll v. Miami-Dade Cnty.</i> , 480 F.3d 1072 (11th Cir. 2007)	12
<i>Cash v. Smith</i> , 231 F.3d 1301 (11th Cir. 2000)	13
<i>Chalk v. United States District Court Central District of California</i> , 840 F.2d 701 (9th Cir. 1988)	23
<i>Civic Ass’n of Deaf of New York City, Inc. v. Giuliani</i> , 915 F. Supp. 622 (S.D.N.Y. 1996)	21
<i>Concerned Parents to Save Dreher Park Ctr. v. City of W. Palm Beach</i> , 846 F. Supp. 986 (S.D. Fla. 1994)	25
<i>D’Amico v. New York State Bd. of Law Examiners</i> , 813 F. Supp. 217, 220 (W.D.N.Y. 1993)	21
<i>D.H. ex rel. Harrington v. Poway Unified Sch. Dist.</i> , No. 09-CV- 2621-L NLS, 2013 WL 6730163 (S.D. Cal. Dec. 19, 2013)	21
<i>Doe v. Judicial Nominating Comm’n for Fifteenth Judicial Circuit of Fla.</i> , 906 F. Supp. 1534 (S.D. Fla. 1995)	21
<i>Enyart v. Nat’l Conf. of Bar Exam., Inc.</i> , 630 F.3d 1153, 1167 (9th Cir. 2011)	24
<i>F.T.C. v. Career Info. Servs., Inc.</i> , No. CIV. A. 1:96-CV-1464, 1996 WL 435225 (N.D. Ga. June 21, 1996)	20
<i>Gresham v. Windrush Partners, Ltd.</i> , 730 F.2d 1417 (11th Cir. 1984)	20

In re Norris, 192 B.R. 863 (Bankr. W.D. La. 1995).....22

K.G. ex rel. Garrido v. Dudek, 839 F. Supp. 2d 1254 (S.D. Fla. 2011).....24

Long v. Benson, No. 4:08-cv-26-RH/WCS, 2008 WL 4571903 (N.D. Fla. Oct. 14, 2008), *aff'd*, 383 F. App'x 930 (11th Cir. 2010).....23

Martin v. Metro. Atlanta Rapid Transit Auth., 225 F. Supp. 2d 1362 (N.D. Ga. 2002)24

Morrissey v. Brewer, 408 U.S. 471 (1972).....22

Ray v. Sch. Dist. of DeSoto Cnty., 666 F. Supp. 1524 (M.D. Fla. 1987).....23

Scott v. Roberts, 612 F.3d 1279 (11th Cir. 2010)12, 24

Stone v. City and County of San Francisco, 968 F.2d 850 (9th Cir. 1992)25

United States v. Hayes, 415 F.2d 1038 (5th Cir. 1969).....20

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008).....12

Statutes

42 U.S.C. § 1210124, 25

42 U.S.C. § 12102.....15

42 U.S.C. §12131.....15

42 U.S.C. § 12132.....12, 15, 20

42 U.S.C. § 12133.....13

29 U.S.C. § 705.....15

29 U.S.C. § 794.....12, 15, 20

Ga. Comp. R. & Regs. 475-3-.08.....3

Other Authorities

28 C.F.R. § 35.10313

28 CFR § 35.10413, 14, 15

28 C.F.R. § 35.13014, 15

28 C.F.R. § 35.16013, 14, 15, 23

28 C.F.R. § 42.50313, 14, 15

70 Fed. Reg. 19611

U.S. Const. amend. XIV22

This is a case about the Georgia Department of Community Supervision’s years-long failure to provide Plaintiffs—six deaf individuals—with qualified American Sign Language (“ASL”) interpreters and other necessary auxiliary aids and services and modifications to which they are entitled under Title II of the Americans with Disabilities Act (the “ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”). Because Defendants’ violations of law are so clear, and the harm to Plaintiffs so severe, Plaintiffs are entitled to preliminary injunctive relief.

Plaintiffs are individuals subject to ongoing supervision by the Georgia Department of Community Supervision and its Commissioner, Michael Nail (collectively, “GDCS” or “Defendants”). The supervision process is strict and requires regular and effective communication—including through in-person meetings and lengthy, written documentation—to ensure that Plaintiffs both understand and comply with the terms of their supervision. Non-compliance with supervision rules can result in severe consequences, including reincarceration. Defendants have set Plaintiffs up for failure by refusing to provide them with the means to understand their supervision terms or to participate in their supervision on an equal basis. Plaintiffs want to comply with those terms and to do everything expected of them by GDCS so that they may successfully re-integrate into society. As a result of Defendants’ violations of federal law, however, Plaintiffs fear

reincarceration from unintentionally violating probation terms. Hearing persons simply do not face this risk to their liberty.

The term “deaf and hard of hearing” refers to hearing levels or loss that qualify as “disabilities” under the ADA and Section 504.¹ For most Plaintiffs, ASL is their primary language. ASL is a complete and complex language distinct from English. Because deaf people often cannot read or write in English, written notes are not usually an effective communication tool. Nor are *ad hoc* communication attempts like gesturing, speech-reading, or fingerspelling. Instead, deaf individuals need ASL interpreters to communicate effectively with hearing people and to read and understand documents written in English. Some deaf individuals who experienced language deprivation during critical years of language development may not have developed fluency in even their primary language. To communicate effectively with hearing people, these individuals may need a team of two interpreters—a hearing person who interprets between ASL and English, and a Deaf Interpreter (“DI”) who interprets from ASL into a suitable linguistic format.

While subject to supervision, Plaintiffs are required to comply exactly with rigorous and highly specific rules and requirements, including meetings,

¹ Plaintiffs use the term “Deaf” to refer to individuals who self-identify as culturally deaf. The phrase “deaf and hard of hearing” includes deaf, hard of hearing, d/Deaf-Disabled, d/DeafBlind, and Deaf individuals.

appointments, curfews, and lie-detector tests. Plaintiffs are frequently required to sign long, complex documents memorializing these requirements. Some Plaintiffs are subject to the authority of multiple supervision agencies, each with its own rules, requirements, and documents. Failure to comply precisely with these requirements, including by non-criminal conduct, can result in severe penalties like reincarceration. *See* Ga. Comp. R. & Regs. 475-3-.08.

Defendants routinely and repeatedly fail to provide interpreters, other essential auxiliary aids and services, and other reasonable modifications guaranteed to Plaintiffs under federal law that Plaintiffs need to have an equal opportunity to succeed while supervised. As a result, Plaintiffs do not fully understand the terms of their supervision, are entirely or substantially unable to ask questions or obtain clarifications about the terms of their supervision, and are denied the opportunity to participate in their supervision programs. Hearing individuals subject to GDCS supervision are better able to have an ongoing dialogue with and ask questions of their GDCS officers. Without effective communication, Plaintiffs face a heightened risk of being cited for accidentally or unknowingly violating supervision conditions.

Preliminary injunctive relief is warranted. Defendants have repeatedly and habitually failed to comply with federal law. Plaintiffs face the danger of reincarceration should they fail to comply exactly with the supervision requirements

that Defendants have failed to effectively communicate to them. Defendants' routine suggestion that Plaintiffs provide interpreters at their own cost not only violates federal law, but also constitutes further irreparable harm. Balancing of the hardships and public interest strongly weighs in favor of requiring Defendants to comply with federal law, particularly because the very purpose of these laws is to eradicate, not to perpetuate, discrimination against individuals with disabilities.

Accordingly, Plaintiffs request that this Court issue an order restraining Defendants from violating the ADA and Section 504 and directing Defendants to immediately provide qualified ASL interpreters, auxiliary aids and services, and reasonable modifications, as determined by each individual's preferred method of communication, to Plaintiffs and to all other deaf and hard of hearing individuals subject to GDCS supervision, including: (i) at every meeting and encounter with a GDCS officer and (ii) to facilitate effective communication of the contents of any written documents related to the terms of these individuals' supervision.

BACKGROUND²

A. Plaintiffs

Brandon Cobb is Deaf and communicates exclusively in ASL. Cobb Decl.

² Plaintiffs direct the Court to their Complaint filed simultaneously with this motion ("Compl."), and the declarations attached hereto, for a full recitation of the relevant facts. *See* Declarations of Brandon Cobb ("Cobb Decl."), Joseph Nettles ("Nettles

¶¶ 3–4. He requires at least one hearing interpreter and one DI to communicate effectively with his supervision officers. *Id.* ¶ 5. He is currently on parole. *Id.* ¶ 6.

Joseph Nettles is deaf, communicates primarily in ASL, and can only read and write some basic words and sentences in English. Nettles Decl. ¶¶ 3–4. He needs an ASL interpreter in order to understand written documents and to communicate. *Id.* ¶¶ 10, 17. He is currently on probation and his probation officer visits his home twice a month. *Id.* ¶¶ 5, 13. He reports to the county sheriff’s office every year. *Id.* ¶ 17.

Carlos Herrera is Deaf and communicates exclusively in ASL. Herrera Decl. ¶ 3. For complex communications where nuance and detail are important, like communications with his supervision officers, Mr. Herrera requires at least one hearing interpreter and one DI to communicate effectively with hearing people. *Id.* ¶ 5. Mr. Herrera is currently on probation. *Id.* ¶ 21. As part of his probation, his probation officer makes unannounced visits to his home at random intervals, including late at night, and always without interpreters. *Id.* ¶ 22.

Jeremy Jay Woody is Deaf, communicates primarily in ASL, and can only read and write some words in English. Woody Decl. ¶ 2. He is on probation and his probation officers conduct regular unannounced visits to his home without

Decl.”), Carlos Herrera (“Herrera Decl.”), Jeremy Jay Woody (“Woody Decl.”), and Ernest Wilson (“Wilson Decl.”).

interpreters. *Id.* ¶¶ 3, 13, 14.

Ernest Wilson lost his hearing around 2002 and is completely deaf. Wilson Decl. ¶ 2. He can read, write, and speak in English, but he cannot hear spoken words. *Id.* He communicates effectively when using a system called Communication Access Real-time Translation (“CART”), in a which a person types a real-time transcript of everything said for Mr. Wilson to read. *Id.* ¶ 3. Mr. Wilson is currently on probation and his probation officer visits his home approximately twice a month. *Id.* ¶¶ 5, 9. He also reports to the county sheriff’s office every year. *Id.* ¶ 10.

Jerry Coen is Deaf and communicates primarily in ASL. Compl. ¶ 25. He understands very limited written English. *Id.* He is currently on probation. *Id.* ¶ 55. His probation officer visits him at his house, always without interpreters. *Id.*

B. Defendants

GDCS is an executive branch agency of the State of Georgia, with field offices across the State. GDCS was established in 2015 to supervise the more than 200,000 people on probation and parole in Georgia and individuals on Georgia’s sex offender registry. GDCS oversees particular programs that are required for people subject to its supervision, such as specific classes, mental health counseling, and drug testing.

Michael Nail is the Commissioner of GDCS and is responsible for GDCS field office operations in Georgia and for ensuring that GDCS officers comply with

applicable law. Commissioner Nail is being sued in his official capacity.

C. Defendants' Unlawful Conduct

GDCS and its officers consistently fail to communicate effectively with Plaintiffs at all stages of their supervision. GDCS's communication failures begin at its initial contact with Plaintiffs, when the supervised individual first reports to the regional GDCS office. Compl. ¶ 9. This meeting is crucial for the supervised person to understand how to successfully complete his term of supervision. The supervision officer presents the supervised person with a packet of documents which includes the rules and requirements of the person's supervision. *Id.* These are often written in complicated English that Plaintiffs cannot understand. During this meeting, the supervision officer typically verbally explains these rules and requirements and provides the supervised person with an opportunity to ask clarifying questions. *Id.* Because supervision officers provide no means of effectively communicating with Plaintiffs, this opportunity is denied Plaintiffs.

GDCS has never provided ASL interpreters for any of the Plaintiffs during this critical first meeting and has frequently imposed additional barriers to communication. When Mr. Nettles asked for an ASL interpreter during his first meeting with his probation officer, he believes that his officer told him that he needed special permission from the court to get an ASL interpreter and that the

court—rather than GDCS—would need to arrange for the ASL interpreter to come to the probation office for the meeting. Nettles Decl. ¶ 9. Mr. Woody has also been told that he would have to provide his own interpreter, which he cannot afford to do. Woody Decl. ¶ 8. Often, after refusing to provide ASL interpreters or auxiliary aids and services, GDCS officers ignore the supervised person, speaking to family members instead. *See, e.g.*, Cobb Decl. ¶ 14 (sister); Wilson Decl. ¶ 7 (daughter).

During initial meetings, GDCS officers have also asked Plaintiffs' family members to serve as interpreters. When Mr. Nettles first reported to the probation office, his supervising officer asked his mother—who was not fluent in ASL and was not an ASL interpreter—to interpret. Nettles Decl. ¶ 10. Similarly, when Mr. Cobb first reported to his parole office, he received a 13-page packet of documents written at a college reading level that his sister tried to explain to him via notes because no ASL interpreter was present. Cobb Decl. ¶ 12. Mr. Cobb could not understand his sister's notes because he cannot read English. *Id.* Eventually, Mr. Cobb's sister gestured in an attempt to tell him to sign the documents. *Id.* ¶ 13. Mr. Cobb did not want to sign the documents because he did not know what they said, but signed them anyway because he was afraid that he would not be allowed to leave the parole office and would be sent back to prison if he did not. *Id.*

Because of GDCS's failure to effectively communicate with Plaintiffs during

these initial meetings, Plaintiffs regularly leave feeling confused and scared. They know that they need to follow all of the rules of their supervision, but are universally terrified by the prospect of accidentally violating a rule that was never communicated to them. *See, e.g.*, Cobb Decl. ¶ 17; Herrera Decl. ¶ 12; Nettles Decl. ¶¶ 12, 19–20; Wilson Decl. ¶¶ 8, 16–17; Woody Decl. ¶¶ 4–5.

GDCS’s failure to communicate effectively with Plaintiffs continues throughout its supervision of Plaintiffs. GDCS officers regularly visit supervised persons at their homes. During a home visit, a hearing person can communicate with his supervision officer about the purpose for the visit and what the officer is looking for. A hearing person can review the rules of his supervision with his officer and discuss any changes in those rules. A hearing person can also ask important questions that bear on his personal liberty—like whether he can leave his house at a particular time, visit a particular place, or accept a particular job. But GDCS has *never* provided ASL interpreters or any other auxiliary aids during its officers’ visits to the named Plaintiffs’ homes, so Plaintiffs cannot access this information.

Often, GDCS officers refuse to even attempt to communicate with Plaintiffs during home visits. In May 2019, *five* probation officers arrived at Mr. Woody’s home without an interpreter and—without explanation—searched his entire room, his personal papers, his computer, and his phone. Woody Decl. ¶ 14. To this day,

Mr. Woody still does not know why the officers conducted the search. *Id.* When Mr. Woody could not remember the password to a particular application on his phone (an application that he had never used), the officers took his phone away. *Id.* ¶ 15. Throughout this terrifying encounter, the officers refused to communicate with Mr. Woody and instead spoke to his roommate who does not know ASL and could not interpret what they were saying for Mr. Woody. *Id.* ¶ 14. Similarly, Mr. Nettles' probation officer regularly looks through his home and his belongings without communicating with him. Nettles Decl. ¶ 14. Mr. Herrera's visits with his probation officer often consist of the officer giving him a "thumbs up" sign and immediately leaving. Herrera Decl. ¶ 23. Other times, GDCS officers attempt methods of communication that are completely ineffective for Plaintiffs like typing notes on a cell phone (Nettles Decl. ¶ 15), speaking aloud (Wilson Decl. ¶ 6), or asking family members to interpret (Nettles Decl. ¶ 16; Herrera Decl. ¶ 24).

In apparent recognition of the fact that the methods they have tried to communicate with Plaintiffs are ineffective, some GDCS officers use Video Relay Services ("VRS"). VRS is a telecommunications relay service that allows hearing individuals using a standard telephone to make calls to deaf and hard of hearing individuals who are using a videophone. *See, e.g.,* Woody Decl. ¶¶ 9, 13. The problem with this approach is that VRS is intended *only* for situations in which a

phone call would typically be made—remote communications where the parties are not in the same location.³ Because in-person use of VRS violates Federal Communications Commission rules, 70 Fed. Reg. 8034, 8037 (Feb. 17, 2005), once VRS operators realize that a GDCS officer and a Plaintiff are together, they disconnect the call, Woody Decl. ¶¶ 9, 13.

GDCS’s blatant refusal to effectively communicate with Plaintiffs has resulted in significant misunderstandings. For example, during a meeting between Mr. Nettles and two officers at the sheriff’s office, Mr. Nettles noticed that the officers appeared to be afraid of his signing as they jumped and looked startled and scared. Nettles Decl. ¶ 18. Mr. Nettles’ daughter—who was attempting to interpret for him—explained that the officers said Mr. Nettles’ signing was “threatening.” *Id.* Mr. Nettles was not threatening the officers; he was merely communicating in ASL, which is an expressive, full-body language. *Id.*

GDCS’s communication failures are continuous and pervasive. When Mr. Herrera was released on probation, he had eight different meetings in GDCS offices across two counties within 72 hours of his release; none of which provided interpreters. Herrera Decl. ¶¶ 13–20. Since his release on probation, Mr. Woody has

³ See Reminder That Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot Be Used as a Substitute for “In-Person” Interpreting Services or Video Remote Interpreting (VRI), 70 FR 59346 (Oct. 12, 2005).

been supervised by GDCS offices in four different counties, each of which has refused to consistently provide him with interpreters. Woody Decl. ¶¶ 5, 8, 10, 12. Mr. Nettles has been on probation for eight years and has had three different supervising officers, none of which provided him an interpreter. Nettles Decl. ¶ 13.

ARGUMENT

Plaintiffs are entitled to a preliminary injunction because: (i) they are likely to succeed on the merits of their claims; (ii) they are likely to suffer irreparable injury if their request for relief is denied; (iii) the harm that Plaintiffs will likely suffer far outweighs any potential harm to GDCS; and (iv) the relief requested will serve the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010).

A. Plaintiffs Are Likely to Succeed on the Merits

To state a claim under Title II and Section 504 generally, Plaintiffs must prove that: (i) they are qualified individuals with a disability; (ii) they were excluded from participation in, or denied the benefits of, a public entity's services, and/or were otherwise discriminated against by the public entity; and (iii) the exclusion, denial of benefit, or discrimination was by reason of their disability. *See* 42 U.S.C. § 12132 (2012); 29 U.S.C. § 794(a) (2012); *Am. Ass'n of People with Disabilities v. Harris*, 647 F.3d 1093, 1101 (11th Cir. 2011); *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072,

1083 (11th Cir. 2007). “Discrimination claims under the Rehabilitation Act are governed by the same standards used in ADA cases.” *Cash v. Smith*, 231 F.3d 1301, 1305 (11th Cir. 2000); *see also* 42 U.S.C. § 12133 (2012) (“remedies, procedures, and rights” are the same under both federal statutes); 28 C.F.R. § 35.103(a) (July 26, 1991) (Title II shall not be construed to apply a lesser standard than the standards applied under the Rehabilitation Act).

Under the ADA and Section 504, Defendants are required to “take appropriate steps to ensure that communications with . . . [individuals] with disabilities are as effective as communications with others” by “furnish[ing] appropriate auxiliary aids and services.” 28 C.F.R. §§ 35.160(a)(1), (b)(1) (July 26, 1991, *amended* Sept. 15, 2010). In determining which “auxiliary aids and services” are necessary, “a public entity shall give primary consideration to the requests of the individuals with disabilities.”⁴ *Id.* § 35.160(b)(2).

This means, *inter alia*, that Defendants are prohibited from requiring Plaintiffs to: (i) provide their own interpreters (*id.* § 35.160(c)(1)); (ii) pay a “surcharge” to

⁴ “Auxiliary aids and services” include “[q]ualified interpreters . . . real-time computer-aided transcription services . . . telephone handset amplifiers; assistive listening devices . . . telephones compatible with hearing aids; 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[.]” *Id.* § 35.104 (July 26, 1991, *amended* Aug. 11, 2016); *accord* 28 C.F.R. § 42.503(f) (July 3, 1980).

cover the cost of necessary auxiliary aids and services (*id.*, § 35.130(f)); or (iii) “rely on an adult accompanying an individual with a disability to interpret or facilitate communication,” with very limited exceptions not applicable here (*id.* § 35.160(c)(2)). ADA regulations define “qualified interpreter” as a person who can “interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary,” (*id.* § 35.104), a definition which necessarily excludes family members who are not impartial and who rarely have the skills required to interpret effectively and accurately, both receptively and expressively, and lack “necessary specialized vocabulary.” Defendants are also barred from discriminating against qualified individuals with a disability “through contractual or other arrangements.” *Id.* §§ 35.130(b)(3); 28 C.F.R. § 42.503(b)(3).

Defendants are further required under federal law to ensure that qualified individuals with disabilities are afforded an equal opportunity to participate in or benefit from a program, service, or activity. *See, e.g.*, 28 C.F.R. § 35.130(b)(1)(i)–(vi). Plaintiffs therefore cannot be provided a service that is “not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” *Id.* § 35.130(b)(1)(ii), (iii); *accord* 28 C.F.R. § 42.503(a), (b)(1)(i)–(iii). As such, Defendants must make reasonable modifications to policies, practices, and

procedures to ensure that deaf and hard of hearing people can participate equally in and benefit from programs, services, and activities. *Id.* §§ 35.130(b)(7), (b)(8); 28 C.F.R. § 35.160, 28 C.F.R. § 42.503(b)(1)(ii), 28 C.F.R. § 42.503(b)(1)(iv), 28 C.F.R. § 42.503(e), C.F.R. § 42.503(f).

1. Plaintiffs Are Qualified Individuals with a Disability

Plaintiffs, each of whom is deaf or hard of hearing, are eligible to participate in GDCS's probation and parole programs and are "qualified individuals with a disability" within the meaning of the ADA and Section 504. *See, e.g.*, 42 U.S.C. §§ 12102(1)(A), 2(A), 42 U.S.C. §12131(2); 12132; *accord* 29 U.S.C. § 705(20); 28 C.F.R. §§ 35.104 (auxiliary aids and services available to individuals who are deaf and hard of hearing), 108(d)(2)(iii)(A) ("deafness substantially limits hearing"); 42.540(1).

2. Plaintiffs Have Been Excluded from and/or Denied the Benefits of Probation or Parole Services⁵

As a result of Defendants' persistent failure to communicate effectively with Plaintiffs at all stages of their supervision, Plaintiffs have been unable to

⁵ GDCS is a "public entity" and receives federal financial assistance within the meaning of Title II of the ADA and Section 504, respectively. 42 U.S.C. §§ 12131(1)(A)–(B); 29 U.S.C. §§ 794(a), (b)(1)(A)–(B). GDCS is legally responsible for ensuring that its programs and services comply with federal disability nondiscrimination laws and the U.S. Constitution.

communicate with GDCS officers and have not been afforded an equal opportunity to participate in probation or parole services. From their very first interactions with GDCS onward, Plaintiffs have been denied opportunity after opportunity to understand the terms of their supervision and to ask questions. Many of the meetings between GDCS officers and supervised individuals involve review of important, complex, and high-stakes information, none of which is effectively communicated to Plaintiffs. Nonetheless, GDCS officers require Plaintiffs to understand the terms of their supervision and then impose violations on Plaintiffs who fail to follow rules that GDCS never effectively communicated to them.

Not once at an initial meeting did GDCS provide Plaintiffs with interpreters or any other auxiliary aids or services. *See, e.g.*, Cobb Decl. ¶ 14; Herrera Decl. ¶ 16; Nettles Decl. ¶ 9; Wilson Decl. ¶ 7; Woody Decl. ¶ 8. In direct violation of federal law, GDCS instead required family members who are never “qualified interpreters” to attempt to facilitate communication. Notwithstanding the violation of federal law, many Plaintiffs are not comfortable sharing the terms of their probation or parole with their family members. *See, e.g.*, Cobb Decl. ¶ 15; Herrera Decl. ¶¶ 16, 26. Plaintiffs were directed to and did sign long, complex documents detailing the terms of the supervision without any way to understand what they said or to ask any questions. *See, e.g.*, Cobb Decl. ¶¶ 12, 13, 15; Nettles Decl. ¶ 12. As a

result, Plaintiffs began their supervision without understanding its terms and faced the prospect and fear of accidentally violating a rule. Cobb Decl. ¶ 17; Herrera Decl. ¶ 12; Nettles Decl. ¶¶ 12, 19–20; Wilson Decl. ¶ 8; Woody Decl. ¶¶ 4–5.

GDCS’s failure to effectively communicate with Plaintiffs continues throughout their supervision. GDCS officers routinely fail to even attempt to effectively communicate with Plaintiffs. *See, e.g.*, Herrera Decl. ¶¶ 23–24 (speaking only to family members); Nettles Decl. ¶¶ 15–16 (same); Wilson Decl. ¶ 6 (speaking aloud to Plaintiff). This deprives Plaintiffs of the opportunity to discuss the terms of their supervision or to review any changes in the terms or conditions of their supervision with the GDCS officer—opportunities that are provided to hearing individuals. This lack of communication often has a significant impact on Plaintiffs’ lives and may dictate, for example, whether they can accept a particular job, travel to a certain place, or leave home at a certain time. Without access to this information, Plaintiffs often feel they have no choice but to impose significant restrictions on themselves, for fear of unknowingly running afoul of a rule they did not understand. *See, e.g.*, Herrera Decl. ¶¶ 26–27; Wilson Decl. ¶¶ 12–13.

For example, Mr. Herrera’s meetings with his probation officer typically last less than thirty seconds and often his probation officer simply gives him a “thumbs up” sign. Herrera Decl. ¶ 23. Mr. Herrera has no opportunity to ask questions or get

answers. *Id.* ¶¶ 23, 26. Instead, like many of the Plaintiffs, he avoids any action that might be a violation for fear of an accidental violation. For example, in October 2018, a GDCS officer gave Mr. Herrera a letter stating that Mr. Herrera would be subject to a curfew over the Halloween holiday. *Id.* ¶ 26. The letter required Mr. Herrera to remain in his home from 6:00pm on October 31 until 6:00am on November 1. *Id.* Because Mr. Herrera does not read English and GDCS provided no interpreters to communicate the contents of the letter, Mr. Herrera misunderstood the terms of his curfew and believed that that curfew applied *every day*, not just over Halloween. *Id.* Since October 2018, Mr. Herrera has abided by this curfew, believing this to be a requirement to avoid reincarceration. *Id.* This self-imposed restriction—which Mr. Herrera believes is a requirement of his probation—has seriously impacted Mr. Herrera’s day-to-day life, and is a direct result of GDCS’s failure to communicate effectively with him. Mr. Wilson likewise believes that he is subject to a curfew, but has no way to confirm. Wilson Decl. ¶ 12.

Similarly, in July 2018, Mr. Woody’s probation officer informed him that he could no longer work at his job. *See* Woody Decl. ¶ 11. Mr. Woody tried to explain that his job did not violate the probation rules as he understood them, but he was unable to effectively communicate this to his probation officer who never brought an interpreter to any of their meetings. *Id.* Mr. Woody had no choice but to stop

working at his job. *Id.* Other Plaintiffs have similarly suffered—and will continue to suffer—severe restrictions on their daily activities when they do not receive the communication access they need to understand and discuss their supervision terms.

GDCS has also failed to ensure effective communication with Plaintiffs during GDCS-mandated programming like required classes, counseling, and lie-detector tests. For example during lie detector tests, Mr. Herrera has been instructed to sit entirely still and not to communicate. *See, e.g.,* Herrera Decl. ¶¶ 28–30. Participating in these programs is often a requirement of supervision, and failure to complete these programs successfully can lead to reincarceration.

3. Plaintiffs Have Been Denied Benefits by Reason of Their Disability

The last element of an ADA or Section 504 claim asks whether Plaintiffs have been excluded from, denied benefits of, or discriminated against by reason of their disability. As established above, the answer is yes, because hearing individuals are able to communicate with their supervision officers in a way that deaf and hard of hearing individuals cannot. By refusing to provide Plaintiffs with ASL interpreters or any other auxiliary aids and services, Defendants have failed to ensure communications with Plaintiffs are as effective as communications with hearing individuals subject to GDCS supervision. *See, e.g., Arce v. Louisiana State*, 2019 WL 2359204 (E.D. La June 4, 2019) (awarding attorney’s fees after jury found that

state “discriminated against [deaf individual] in violation of the ADA” for failure to provide a qualified ASL interpreter during meetings with probation officer.); *Armstrong v. Brown*, 857 F. Supp. 2d 919, 926 (N.D. Cal. 2012) (issuing injunction because state violated the ADA by failing to provide interpreters for deaf parolees).

Plaintiffs are highly motivated to succeed on supervision. They have the same goals as their hearing counterparts: to complete their terms of supervision successfully and live freely in their communities. Solely because of Defendants’ failure to comply with federal law, Plaintiffs are being deprived of an equal opportunity to succeed and successfully integrate into society.

B. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief

Irreparable harm may be presumed where—as here—a statute is violated that either specifically provides for injunctive relief in a particular set of circumstances (*see* 42 U.S.C. § 12132; 29 U.S.C. § 794(a)), or the purpose of the statute would be eviscerated without injunctive relief. *See, e.g., Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984); *United States v. Hayes Int’l Corp.*, 415 F.2d 1038, 1045 (5th Cir. 1969); *F.T.C. v. Career Info. Servs., Inc.*, No. CIV. A. 1:96-CV-1464-ODE, 1996 WL 435225, at *4 (N.D. Ga. June 21, 1996). Even without a presumption of irreparable harm, Plaintiffs have established that they have suffered, and will continue to suffer, irreparable harm absent an injunction.

Courts routinely find that discrimination on the basis of disability constitutes irreparable harm and warrants the issuance of injunctive relief. *See, e.g., Doe v. Judicial Nominating Comm'n for Fifteenth Judicial Circuit of Fla.*, 906 F. Supp. 1534, 1545 (S.D. Fla. 1995) (issuing preliminary injunction because “[d]iscrimination on the basis of disability is the type of harm that warrants injunctive relief”); *see also, e.g., D.H. ex rel. Harrington v. Poway Unified Sch. Dist.*, No. 09-CV-2621-L NLS, 2013 WL 6730163, at *6 (S.D. Cal. Dec. 19, 2013) (irreparable harm shown where school district failed to provide CART services to deaf plaintiff); *Civic Ass’n of Deaf of New York City, Inc. v. Giuliani*, 915 F. Supp. 622, 639 (S.D.N.Y. 1996) (irreparable harm shown where deaf plaintiffs would be excluded from participation in and denied the benefit of reporting fires if alarm boxes on city street were removed without provision of an accessible notification alternative); *D’Amico v. New York State Bd. of Law Exam’rs*, 813 F. Supp. 217, 220 (W.D.N.Y. 1993) (irreparable harm shown where deaf plaintiff’s injury constituted a loss of a chance to engage in a normal life activity like employment).

Absent injunctive relief, GDCS will continue to engage in discriminatory practices that result in real and irreparable harm to Plaintiffs. GDCS’s conduct will deprive Plaintiffs of auxiliary aids and services they need to actually (and effectively) understand the terms of their supervision. Probation and parole are not

optional for Plaintiffs; they are court-mandated. GDCS officers wield a tremendous amount of power over Plaintiffs' lives, and yet make almost no effort to communicate effectively with them. Plaintiffs will continue to face the prospect of following complex, often-changing rules that Defendants refuse to explain to them.

As a direct result of GDCS's failure to effectively communicate the terms of Plaintiffs' supervision to them, Plaintiffs face the heightened risk of unknowingly violating the terms of their supervision. *See, e.g.,* Nettles Decl. ¶ 20 ("I am very afraid that I might accidentally break a rule that has not been explained to me."). Non-criminal "technical" violations of conditions of supervision—like missing an appointment with a GDCS officer, accepting a job, or moving without following specific protocols—can result in dire consequences, including reincarceration. These consequences constitute irreparable harm. *See, e.g., In re Norris*, 192 B.R. 863, 867 (Bankr. W.D. La. 1995) ("incarceration constitutes irreparable harm").⁶

Moreover, to the extent that Plaintiffs have no option but to resort to paying

⁶For this very reason, Plaintiffs are also seeking procedural due process relief under the Fourteenth Amendment, U.S. Const. amend. XIV, *see* Compl. ¶¶ 82–91, requiring GDCS to establish at a hearing that it effectively communicated the rules of supervision to the deaf or hard of hearing supervised individual before penalizing that individual for a technical violation of those rules. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (individuals on parole are entitled to basic procedural due process before the state may revoke their parole).

for their own interpreters as GDCS has repeatedly directed them to do, this too would result in irreparable harm. *See, e.g., See Long v. Benson*, No. 4:08-cv-26-RH/WCS, 2008 WL 4571903, at *2 (N.D. Fla. Oct. 14, 2008), *aff'd*, 383 F. App'x 930 (11th Cir. 2010) (irreparable harm found where cost of paying for in-home care would deplete plaintiff's resources). Notwithstanding the fact that this is a clear violation of federal law, 28 C.F.R. § 35.160 (July 26, 1991, *amended* Sept. 15, 2010), and a burden that is not borne by hearing individuals, Plaintiffs plainly cannot afford to provide their own interpreters (*see, e.g.,* Herrera Decl. ¶ 16; Woody Decl. ¶ 8).⁷

Finally, courts have recognized that individuals excluded from public services and programs because of their disabilities may experience severe emotional distress which likewise constitutes an irreparable harm. *See, e.g., Chalk v. U.S. C.D. Cal.*, 840 F.2d 701, 710 (9th Cir. 1988) (irreparable harm where HIV-positive teacher would be forced to transfer positions which would affect his well-being); *Ray v. Sch. Dist. of DeSoto Cnty.*, 666 F. Supp. 1524, 1535 (M.D. Fla. 1987) (irreparable harm where hemophiliac children suffered feelings of anger, resentment, and social rejection after being excluded from school). Every day, Plaintiffs face the threat of reincarceration for violating rules that they do not understand because GDCS has

⁷ GDCS's suggestion is also wholly unworkable from a practical standpoint. GDCS regularly conducts unannounced visits and Plaintiffs would have no way to anticipate these meetings so they could hire an interpreter to be present.

made no effort to effectively communicate these rules to Plaintiffs. Plaintiffs' inability to communicate and their truncated interactions with GDCS officers lead to immense feelings of fear, anxiety, and isolation for Plaintiffs. This emotional distress will continue to cause irreparable injury absent injunctive relief.

C. The Remaining Factors Favor Preliminary Injunctive Relief

Because a state agency is the defendant here, the third and fourth considerations for preliminary injunctive relief are largely the same—*viz.*, where the relief requested is squarely within the public interest, there can be no harm to the state. *See, e.g., K.G. ex rel. Garrido v. Dudek*, 839 F. Supp. 2d 1254, 1260 (S.D. Fla. 2011) (citing *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010)). The public has a clear interest in the enforcement of its statutes and in the elimination of discrimination on the basis of disability. *See, e.g., Enyart v. Nat'l Conf. of Bar Exam'rs., Inc.*, 630 F.3d 1153, 1167 (9th Cir. 2011); *Martin v. Metro. Atlanta Rapid Transit Auth.*, 225 F. Supp. 2d 1362, 1383 (N.D. Ga. 2002) (public has an interest in eliminating discrimination against individuals with disabilities). The ADA reflects Congress's view that the public has an interest in eradicating discrimination against individuals with disabilities. *See, e.g., 42 U.S.C. § 12101(a)(8)* (“[T]he continuing existence of unfair and unnecessary discrimination and prejudice . . . costs the United States billions of dollars in unnecessary expenses resulting from dependency and

nonproductivity.”); *id.* § (a)(7) (public interest served by requiring entities to take steps to “assure equality of opportunity” for individuals with disabilities). Plaintiffs are not requesting exemption from the rules; they are merely asking for an equal opportunity to meet their supervision requirements, as guaranteed by federal law.

There is no question that the irreparable injuries threatening Plaintiffs far outweigh any alleged harm to Defendants. Because granting the Plaintiffs’ requested relief serves the public interest, GDCS cannot credibly argue that it will suffer any genuine harm if the relief is granted. Indeed, the public interest is supported by a well-functioning supervision program that helps individuals re-integrate into society and not re-offend. Further, courts have repeatedly made clear that expenditure of funds “cannot be considered a harm if the law requires it.” *Concerned Parents to Save Dreher Park Ctr. v. City of W. Palm Beach*, 846 F. Supp. 986, 993 (S.D. Fla. 1994) (citing *Stone v. City and Cnty. of San Francisco*, 968 F.2d 850, 858 (9th Cir. 1992)). Accordingly, both of these factors militate in favor of the issuance of preliminary injunctive relief for Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for a preliminary injunction in its entirety, and such other and further relief as the Court deems just and proper.

Respectfully submitted this 19 day of July, 2019

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CERTIFICATION OF COMPLIANCE

I hereby certify that the typeface used herein is 14-point Times New Roman and that the memorandum is compliant with L.R. 5.1 and L.R. 71.

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CERTIFICATE OF SERVICE

I hereby certify that on Friday, July 19, 2019, I caused the foregoing Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction with declarations attached thereto to be electronically filed with the Clerk of Court using the CM/ECF system.

I further certify that I transmitted the foregoing documents to a professional process server for personal service upon the following:

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