

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: _____

TIMOTHY SIAKI,
KIMBERLEE MOORE, and
COLORADO CROSS-DISABILITY COALITION, a Colorado nonprofit organization,

Plaintiffs,

v.

DOUGLAS DARR, in his official capacity as Sheriff of Adams County, Colorado,

Defendant.

COMPLAINT

Plaintiffs, Timothy Siaki, Kimberlee Moore, and Colorado Cross-Disability Coalition (“CCDC”) by and through undersigned counsel, hereby bring this Complaint against Douglas Darr, in his official capacity as Sheriff of Adams County, Colorado, for violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, *et seq.*

Introduction

1. On July 26, 1990, now more than twenty years ago, the ADA was passed, establishing the most important civil rights law for people with disabilities in the nation’s history.

2. The ADA was passed to ensure people with disabilities are not discriminated

against.

3. One of the purposes of the ADA is ensuring that deaf or hard-of-hearing individuals receive qualified sign language interpreter services or other auxiliary aids and services to ensure effective communication.

4. Title II of the ADA specifically applies to public entities, such as the Adams County, Colorado Sheriff's Office ("ACSO").

5. As set forth more fully below, ACSO has discriminated against deaf and hard-of-hearing individuals who have been contacted as alleged victims of crimes, against alleged deaf or hard of hearing perpetrators and against deaf or hard of hearing individuals detained at the Adams County Detention Facility ("ACDF").

6. ACSO has refused to provide effective communication for deaf persons.

7. Plaintiffs seek a court order compelling the ACSO to comply with the ADA and Section 504, monetary damages and the recovery of their reasonable attorneys' fees and costs.

Jurisdiction and Venue

8. This Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §§ 1331 and 1343.

9. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

Parties

10. Colorado Cross-Disability Coalition ("CCDC") is a Colorado non-profit corporation whose members are persons with disabilities and their non-disabled allies.

11. Plaintiff Timothy Siaki is and was at all times material hereto a resident of

Colorado. Mr. Siaki is deaf. Mr. Siaki is a CCDC member.

12. Plaintiff Kimberlee Moore is and was at all times material hereto a resident of Colorado. Ms. Moore is deaf. Ms. Moore is a CCDC member.

13. Defendant Douglas Darr is the Sheriff of Adams County, Colorado, elected and serving pursuant to Part 5, Article 10, Title 30, Colorado Revised Statutes. Sheriff Darr is responsible for the operations of ACSO. On information and belief, Sheriff Darr also serves as the custodian of the ACDF. Colo. Rev. Stat. § 30-10-511. ACSO is responsible for the operations of the ACDF. Sheriff Darr is sued in his official capacity as the Sheriff of Adams County, Colorado.

Facts

14. According to its website <http://apps.adcogov.org/sheriff/divisions.html>, ACSO operates an Administrative Services Division, a Patrol Division, a Sheriff's Substation, a Sheriff's Detention Division, and a Jail Division, which consists of a Booking Section, Court Security Section, Detective Unit, Security Section, Transport Section, Accounting Unit, Bonding Unit, Court Services Section, Mail Unit, Programs Section, Jail Records Section, and Technical Services.

15. In May of 2010, Mr. Siaki and Ms. Moore were staying at a Super 8 Motel, located at 5888 Broadway, Denver, Colorado.

16. Late in the evening of May 14, 2010, Ms. Moore returned home and, upon her return, she and Mr. Siaki had an argument.

17. Both Mr. Siaki and Ms. Moore are deaf and communicate by using American

Sign Language (“ASL”).

18. ASL is a separate and distinct language from English, which uses its own unique phrases, descriptions, syntax and grammatical rules.

19. Mr. Siaki does not speak, read or write in English.

20. Mr. Siaki does not read lips.

21. Ms. Moore has a very limited ability to speak, read and write in English.

22. Ms. Moore can occasionally read lips when she is familiar with the speaker and the speaker’s speech patterns.

23. As set forth in records and documents from the public defender’s office involved in Mr. Siaki’s criminal case and from the ACSO in this case, there are conflicting statements from witnesses who claimed to hear what transpired in the room that evening; however, both Mr. Siaki and Ms. Moore allege Mr. Siaki never harmed Ms. Moore. ACSO records demonstrate the ACSO deputies alleged Mr. Siaki hit Ms. Moore.

24. Plaintiffs have denied and continue to deny this allegation and tried to communicate this to the ACSO’s officers on May 14, 2010.

25. Like other deaf individuals, Plaintiffs Siaki and Moore both verbalize sounds which, to a person who is not deaf or who is unfamiliar, may sound like the deaf person is speaking loudly or abruptly.

26. On May 14, 2010, two ACSO deputies broke down the door to Mr. Siaki and Ms. Moore’s room, entered the room with their guns drawn, and ordered Mr. Siaki to the floor.

27. On information and belief, the two ACSO deputies were Jaime Keefer and

Christopher Eye.

28. Both deputies were aware that Mr. Siaki was deaf soon after their arrival.

29. Both deputies were aware Ms. Moore was deaf soon after their arrival.

30. Because Mr. Siaki is deaf, he was unable to understand the Deputies' commands.

31. Deputy Keefer grabbed Mr. Siaki's left arm and physically forced him to the floor.

32. Based on statements obtained, he did so because he believed Mr. Siaki was not complying with his orders.

33. Mr. Siaki had no understanding of what the deputies said before forcing him to the floor.

34. One of the deputies handcuffed Mr. Siaki behind his back.

35. Deputy Keefer knew Mr. Siaki was deaf, but made assumptions that Mr. Siaki could understand Deputy Keefer.

36. According to Deputy Keefer's statement in the record, Deputy Keefer instructed Mr. Siaki to write his version of events on a piece of paper.

37. Deputy Keefer wrote in his Affidavit in Support of Warrantless Arrest that Mr. Siaki "refused" to write.

38. Mr. Siaki cannot read and write effectively.

39. Throughout their interaction on May 14, 2010, Mr. Siaki attempted as best he could to communicate to the deputies that he did not read, write, speak or understand English, and that he required a qualified sign language interpreter, but the Deputies did not offer or

provide him with an interpreter or any other auxiliary aid or service.

40. Neither deputy attempted to offer or provide auxiliary aids and services to Mr. Siaki.

41. Mr. Siaki's inability to communicate effectively verbally and in writing is readily apparent.

42. On information and belief, the deputies had no reason to force Mr. Siaki to the floor and handcuff him except for their mistaken belief that he understood what they said and refused to comply.

43. At or about the time Deputy Keefer forced Mr. Siaki to the floor, Deputy Eye took Ms. Moore from the room.

44. Ms. Moore posed no threat of any kind to the health or safety of the deputies or anyone else.

45. While outside, Deputy Eye requested that Ms. Moore complete a written statement.

46. Ms. Moore is unable to communicate effectively by writing in English.

47. Ms. Moore attempted to the best of her ability to communicate to Deputy Eye that she is unable to communicate effectively by writing in English, but was unable to do so effectively because she was not offered or provided a qualified sign language interpreter.

48. Because Ms. Moore was not offered or provided with appropriate auxiliary aids and services, she was unable to communicate effectively what happened.

49. Neither deputy attempted to offer or provide auxiliary aids and services to Ms.

Moore.

50. As a result, Ms. Moore's written statement is inaccurate.

51. The deputies contacted North Washington Fire Department ("NWFD") paramedics to examine Ms. Moore.

52. Defendants neither offered nor provided auxiliary aids and services for Ms. Moore's interactions with the paramedics.

53. Ms. Moore was unable to effectively communicate with the paramedics because she was not provided with appropriate auxiliary aids and services.

54. Ms. Moore wanted to communicate to the paramedics that Ms. Siaki did not hit her.

55. According to Deputy Keefer's Affidavit in Support of Warrantless Arrest, "Deputy Eye advised [Deputy Keefer] while Kimberly [sic] was being treated inside the ambulance she told the paramedics Timothy had hit her in the mouth."

56. Because ACSO's deputies failed to provide effective communication, Ms. Moore was not able to communicate effectively with the deputies.

57. Deputy Keefer decided that Mr. Siaki had hit Ms. Moore and placed him under arrest.

58. When Ms. Moore realized that the deputies were placing Mr. Siaki under arrest for allegedly hitting her, she attempted to clear up the confusion, but she was unable to do so because the deputies neither offered nor provided auxiliary aids and services that would have enabled Ms. Moore to communicate effectively.

59. Deputy Eye reported in an Incident/Investigation Report as “[t]he female party changed her story and said that the male party did not punch her, that he had tried to catch her by the neck/jaw as she was falling down from tripping.”

60. Deputy Keefer completed a “Domestic Violence Case Summary” form, and directed Ms. Moore to sign it.

61. That “Domestic Violence Case Summary” form indicated that Mr. Siaki had struck Ms. Moore with his hand, had pushed and shoved her, and that Ms. Moore did not require an interpreter.

62. The effect of signing the “Domestic Violence Case Summary” form to comply with Deputy Keefer’s instructions was that Ms. Moore affirmed that the information contained on the form was correct; however, Ms. Moore did not understand the form, did not complete the form, disputes several of the statements made on the form, and only signed the form because she was directed to do so by Deputy Keefer.

63. Mr. Siaki was handcuffed and transported to an Adams County substation for booking.

64. Because Mr. Siaki was denied access to effective communication by the deputies, he did not know why he was being arrested and did not know where he was being taken.

65. Because Ms. Moore was denied access to effective communication by the deputies, she did not know why Mr. Siaki was being arrested and did not know where he was being taken.

66. While at the Adams County substation, Deputy Keefer gave Mr. Siaki a form

with his Miranda rights, written in English.

67. Deputy Keefer directed Mr. Siaki to sign the Miranda rights form.

68. Mr. Siaki did not understand his Miranda rights.

69. Mr. Siaki was denied access to effective communication by the deputies and, therefore, could not convey that he did not understand the Miranda form.

70. Mr. Siaki did not understand that by signing the Miranda rights form, he was acknowledging that he understood what his rights were.

71. Because Mr. Siaki, while in custody, was directed to sign the form by Deputy Keefer, he signed the form.

72. At the substation, Mr. Siaki was directed to sign several other forms. He did not understand any of the forms or the effect of his signature on those forms.

73. Mr. Siaki signed the forms because he was afraid of the deputies who directed him to sign the forms.

74. The ACSO neither offered nor provided Mr. Siaki access to effective communication at the substation.

75. Mr. Siaki remained at the substation for approximately one hour before being transported to the Adams County Detention Facility (“ACDF”).

76. For the entirety of his time at the Adams County substation, Mr. Siaki repeatedly attempted to request a sign language interpreter, but the Adams County Deputies and staff did not offer or provide him with appropriate auxiliary aids and services, including a sign language interpreter.

77. For the entirety of his time at the Adams County substation, the Adams County Deputies and staff did not offer or provide Mr. Siaki with a means by which he could communicate his need for a sign language interpreter.

78. Due to ACSO's failure to offer or provide appropriate auxiliary aids and services, Mr. Siaki was unable to communicate effectively with anyone while at the substation.

79. Mr. Siaki was also denied equal access to telecommunications equipment by ACSO.

80. Other hearing detainees had access to a telephone to make a call during the booking process.

81. Mr. Siaki was not provided access to a TDD (telecommunications device for the deaf) on equal terms.

82. After Mr. Siaki's arrest, and using the internet-based relay system, My IP Relay, Ms. Moore called Adams County inmate information telephone number.

83. Ms. Moore called the Adams County inmate information telephone number in order to determine what was happening to Mr. Siaki, what he was charged with, where he was taken, and whether there was a bond.

84. The individual who answered Ms. Moore's telephone call, on information and belief, was an ACSO deputy or staff member by the name of Sally Elkerton.

85. According to records obtained through releases and Colorado Access to Criminal Justice Act requests, Ms. Elkerton informed Ms. Moore of Mr. Siaki's charge, and stated that she would be unable to visit him for seven more days.

86. Ms. Moore then asked Ms. Elkerton when and where Mr. Siaki's first court appearance would be.

87. After some delay, Ms. Elkerton told Ms. Moore that Mr. Siaki was due in court at 8:00 a.m. on the following Monday, which was approximately two days away.

88. Ms. Elkerton told Ms. Moore that court would be convened at the ACDF address of 150 North Nineteenth Avenue, not the court address.

89. Ms. Moore then called the ACSO at (303) 654-1850, also using a relay service and spoke with Adams County Detention Specialist Megan Moore.

90. Ms. Moore asked Detention Specialist Moore about the date, time and location of Mr. Siaki's first court appearance. Detention Specialist Moore told Ms. Moore that the appearance would be the following Monday at 8:00 a.m.

91. Detention Specialist Moore gave Ms. Moore a different address for Mr. Siaki's court appearance, which was for the Brighton Justice Center, 1100 Judicial Center Drive, Brighton, Colorado 80601.

92. Detention Specialist Moore also informed Ms. Moore that a restraining order had been automatically entered, restraining Mr. Siaki from having contact with Ms. Moore.

93. Ms. Moore was unaware of the restraining order.

94. Ms. Moore was extremely concerned about Mr. Siaki's health and safety.

95. Ms. Moore felt isolated because, following Mr. Siaki's arrest, she was left alone with no idea when she would be able to see and communicate with him next.

96. Upon Mr. Siaki's arrival at the ACDF, he met with medical intake interviewers

who conducted a medical intake.

97. Mr. Siaki's disability was readily apparent to the ACSO deputies and staff at the ACDF, including the medical intake interviewers.

98. Mr. Siaki attempted to the best of his ability to request a sign language interpreter, but neither the ACSO deputies nor ACSO staff offered or provided Mr. Siaki with appropriate auxiliary aids and services, including a sign language interpreter.

99. ACDF staff did not provide Mr. Siaki with a means to communicate his need for an interpreter.

100. Because ACDF staff denied him access to appropriate auxiliary aids and services, Mr. Siaki was unable to effectively communicate with the ACSO medical intake interviewers, and was unable to understand the forms the interviewers gave him.

101. ACSO staff provided Mr. Siaki with an inmate handbook, which was written in English.

102. Mr. Siaki was unable to read or understand the inmate handbook in the absence of appropriate auxiliary aids and services.

103. Mr. Siaki was detained at the ACDF for approximately twenty-five days, from May 15, 2010 until June 10, 2010.

104. Due to the ACSO deputies' and staff's failure to provide him with appropriate auxiliary aids and services, during Mr. Siaki's entire detention at the ACDF was he unable to effectively communicate with the ACDF deputies or staff.

105. During his detention, Mr. Siaki did not understand why he was being detained.

106. During his detention, ACDF staff did not offer or provide auxiliary aids and services for any of the programs, services and activities available to hearing detainees.

107. On information and belief, the ACSO staff communicated with detainees using auditory methods which Mr. Siaki could not hear.

108. On information and belief, ACSO staff did not make such auditory communications accessible to Mr. Siaki.

109. During Ms. Moore's relay calls to the ACDF, she made clear she was deaf.

110. When Ms. Moore was finally permitted to visit Mr. Siaki, ACSO staff did not offer or provide auxiliary aids and services to facilitate their communication.

111. Ms. Moore was denied effective communication by Defendant.

112. ACSO provides personnel who conduct pre-trial services interviews to all detainees.

113. ACSO neither offered nor provided Mr. Siaki with auxiliary aids and services for effective communication during his pre-trial services meeting.

114. As a result of ACSO's failure to offer or provide Mr. Siaki with auxiliary aids and services for effective communication during his pre-trial services meeting, Mr. Siaki was denied effective communication with the interviewer.

115. Mr. Siaki was damaged by Defendant's unlawful discrimination.

116. Ms. Moore was damaged by Defendant's unlawful discrimination.

117. ACSO refuses to offer or provide sign language interpreters or other appropriate auxiliary aids and services during interrogation by its deputies.

118. ACSO refuses to offer or provide sign language interpreters or other appropriate auxiliary aids and services during booking.

119. ACSO refuses to offer or provide sign language interpreters or other appropriate auxiliary aids and services during medical questioning.

120. ACSO provides programs and services to detainees but does not provide auxiliary aids and services for effective communication for detainees who are deaf for such programs and services.

121. On information and belief, ACSO has a policy, practice or custom of not providing sign language interpreters or other appropriate auxiliary aids and services during interrogations, bookings, medical questioning, counseling, programs and detentions.

122. On information and belief, ACSO has never provided a qualified sign language interpreter to any deaf individual who has been detained at the ACDF.

123. In response to a Colorado Open Records Act request by the Colorado Cross-Disability Coalition, the ACSO reported that nine inmates identified as deaf were booked at the ACDF from December 2009 to August 2011.

124. ACSO denies access to auxiliary aids and services for deaf detainees (e.g., a TTY or video phone) to communicate with persons outside the Detention Facility during times when hearing detainees are permitted to make telephone calls.

125. ACSO has no policies informing its employees and/or contractors about providing appropriate auxiliary aids and services to detainees who are deaf or hard of hearing.

126. Plaintiffs and other deaf individuals will be harmed if Defendant does not change

its policies, practices and procedures.

127. Plaintiffs and other deaf individuals will be harmed if Defendant does not immediately adopt and implement policies, practices and procedures to ensure that deaf detainees are provided with effective communication.

128. CCDC's purpose is to promote independence, self-reliance, and full participation for people with all types of disabilities, and to combat discrimination against individuals with disabilities, through advocacy, education, research and training. As a part of that purpose, CCDC seeks to ensure that individuals who are deaf and hard-of-hearing have access to -- and do not encounter discrimination in -- participating in government services, including services while encountering law enforcement officials, and while being arrested, booked, interrogated, and detained.

129. CCDC engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. This effort and this purpose have been and continue to be adversely affected by Defendant's violations of the ADA and Section 504.

130. ACSO's actions have caused and continue to cause distinct, palpable and perceptible injury to CCDC. Those injuries include, but are not limited to, those described herein.

131. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to communicating with Defendant in an attempt to secure accessible services, activities and programs.

132. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to educate members and others who have been injured by Defendant's discrimination.

133. ACSO's discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities. For example:

- a. Defendant's discrimination, in and of itself, denies effective communication to people who are deaf; and
- b. Defendant's actions send the message that such discrimination continues to be acceptable at this time.

134. Defendant's discrimination has required and continues to require CCDC to make a greater effort -- and to allocate significant resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CCDC's counseling, advocacy, educational, and training missions.

135. CCDC also has devoted and continues to devote resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of Defendant.

136. CCDC's injuries -- including, without limitation, those described herein -- are traceable to Defendant's discriminatory conduct alleged in this Complaint and will be redressed by the relief requested in it.

137. CCDC's members include individuals who are deaf and hard of hearing who

require auxiliary aids and services for effective communication.

138. CCDC's members have been injured and will continue to be injured by Defendant's discrimination described above.

139. The elimination of discrimination, such as that of Defendant, is at the core of CCDC's organizational purpose.

140. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

First Claim for Relief
(Violations of the ADA)

141. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as fully set forth herein.

142. Title II of the ADA provides in pertinent part: “[N]o 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 subject to discrimination by any such entity.”

143. Public entities are defined as “any State or local government; [and] any department, agency, special purpose district, or other instrumentality of a State or States or local government[.]” 42 U.S.C. § 12131(1)(A)-(B).

144. Defendant is a public entity within the meaning of the ADA.

145. Plaintiff Siaki is a qualified individual with a disability. *See* 42 U.S.C. § 12131(2).

146. Plaintiff Moore is a qualified individual with a disability. *See* 42 U.S.C. §

12131(2).

147. CCDC also has members who are also qualified individuals with disabilities.

148. Defendant has discriminated against Plaintiff Siaki on the basis of his disability.

149. Defendant has discriminated against Plaintiff Moore on the basis of her disability.

150. Plaintiff Siaki, Plaintiff Moore and CCDC have been, and will continue to be, injured, damaged and aggrieved by Defendant's discrimination.

151. Plaintiff Siaki, Plaintiff Moore and other CCDC members who are deaf are likely to encounter the same discriminatory policies and practices.

152. In the absence of the injunction requested herein, Defendant will continue to discriminate against Plaintiff Siaki, Plaintiff Moore and CCDC, including its members, on the basis of disability in violation of Title II of the ADA and its implementing regulations.

153. Defendant and its agents acted intentionally and with a reckless disregard for Plaintiff Siaki's civil rights.

154. Defendant and its agents acted intentionally and with a reckless disregard for Plaintiff Moore's civil rights.

155. Defendant and its agents acted intentionally and with a reckless disregard for the civil rights of individuals who are deaf or hard of hearing.

156. CCDC members are individuals with disabilities, and are qualified to participate in the services, programs, activities and benefits of Defendant's law enforcement activities within the meaning of Section 504.

157. Defendant and its agents acted intentionally and with a reckless disregard for

Plaintiffs' civil rights.

158. Defendant and its agents acted intentionally and with a reckless disregard for the civil rights of individuals who are deaf or hard of hearing.

159. Plaintiffs have been injured, damaged and aggrieved by and will continue to be injured, damaged and aggrieved by Defendant's discrimination.

Second Claim for Relief
(Violations of Section 504)

160. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as fully set forth herein.

161. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), provides in pertinent part:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

162. Defendant receives federal funding through state and federal programs.

163. In addition, Defendant's law enforcement and detention activities constitute the operation of "a department, agency, special purpose district, or other instrumentality of a State or of a local government[.]" 29 U.S.C. § 794(b)(1)(A).

164. Plaintiff Siaki is a qualified individual with a disability and has been subjected to discrimination by ACSO, as described in this Complaint, solely on the basis of his disability. Such discrimination includes the failure to provide auxiliary aids and services in order to ensure effective communication.

165. Plaintiff Moore is a qualified individual with a disability and has been subjected to discrimination by the ACSO, as described in this Complaint, solely on the basis of her disability. Such discrimination includes the failure to provide auxiliary aids and services in order to ensure effective communication.

166. CCDC members are individuals with disabilities, and are qualified to participate in the services, programs, activities and benefits of Defendant's law enforcement activities within the meaning of Section 504.

167. Defendant and its agents acted intentionally and with a reckless disregard for Plaintiffs' civil rights.

168. Defendant and its agents acted intentionally and with a reckless disregard for the civil rights of individuals who are deaf or hard of hearing.

169. Plaintiffs have been injured, damaged and aggrieved by and will continue to be injured, damaged and aggrieved by Defendant's discrimination.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully pray:

That this Court assume jurisdiction;

That this Court issue an Order declaring Defendant to be in violation of Section 504 and Title II of the ADA;

That this Court issue an injunction ordering Defendant to provide qualified sign language interpreters or other appropriate auxiliary aids or services in order to ensure effective communication with deaf and hard-of-hearing individuals.

That this Court awards Plaintiffs damages.

That this Court award Plaintiffs their reasonable attorneys' fees and costs; and

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

JURY DEMAND: Plaintiffs request this case be heard by the court without a jury.

Dated: November 23, 2011

Respectfully Submitted,

/s/ Kevin W. Williams

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