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# **ADA Legal Updates: 2023 in Review**

State of Georgia, ADA Conference

June 4, 2024



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# Today's Presentation

Review of important court decisions and settlements

- Title I: Employment
- Title II: Public entities
  - Effective Communication
  - Education
  - Transportation
  - Healthcare
  - Criminal Legal System
  - Olmstead – Community Integration
- Questions

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# **Title I: Employment**

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## ***Hine v. Prince George's County***

- Opinion: 2024 WL 918370 (D. Md. March 4, 2024)
- Deaf plaintiff was denied the opportunity to serve as a volunteer firefighter because he did not meet the National Fire Protection Association standards; he previously worked for three other fire departments.
- Court found that the employer did not comply with the ADA's requirement to do an individualized inquiry, instead relying solely on national professional standards.
- Case can move forward to a jury.

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## ***EEOC v. Charter Communications***

- Opinion: 75 F.4th 729 (7th Cir. 2023)
- Employee requested a commuting-related accommodation--earlier work schedule due to difficulty driving at night.
- Legal issue is whether an employer has to consider reasonable accommodations related to an employee's commute.
- 7th Circuit reviewed different approaches across the circuits and then held that if an employee's disability interferes with his ability to get to work, the employee *may* be entitled to a work-schedule accommodation if commuting is a prerequisite to an essential job function, such as attendance in the workplace.
- Court also highlighted the changing work environment due to COVID-19.
- March 2024: [Settlement](#) reached resolving case.

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## ***Hopman v. Union Pacific Railroad***

- Opinion: 68 F.4th 394 (8th Cir. 2023)
- Employee with a service animal that helped ameliorate symptoms of his disabilities brought failure-to-accommodate claim against his employer.
- Eighth Circuit held that plaintiff could not establish failure-to-accommodate claim because plaintiff *could* perform the essential functions of his job without an accommodation.
- Rejected argument that service animal provided equal access to "benefits and privileges of employment" by allowing employee to work without "physical and emotional pain."
- Supreme Court denied Feb 2024; case on similar issue pending in Second Circuit: *Tudor v. Whitehall Central School District*, 23-665 (2d Cir.)

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## ***EEOC v. Methodist Hospitals of Dallas***

- Opinion: 62 F.4th 938 (5th Cir. 2023)
- EEOC brought case challenging employer's policies and practices that did not require mandatory reassignment of employees with disabilities, citing its "most qualified candidate" policy.
- EEOC also brought claim on behalf of individual employee who sought reassignment to a vacant scheduling position.
- Court held that mandatory reassignment is not reasonable in the run of cases, but remanded to lower court to consider whether there are special circumstances in this case that would make an exception to the policy reasonable.
- Court also affirmed dismissal of claim for individual employee, finding that she broke down the interactive process.

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## ***Orozco v. Garland***

- Opinion: 60 F.4th 684 (D.C. Cir. 2023)
- FBI employee brought claim under Section 508 of the Rehabilitation Act seeking declaratory and injunctive relief due to his employer's use of inaccessible software.
- Lower court dismissed, finding Section 508 does not apply to employees.
- D.C. Circuit held that Section 508 provides a private right of action for declaratory and injunctive relief to any individual with a disability—including a federal employee—who first files an administrative complaint.
- Status: Pending in district court.



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## ***DOJ Consent Decrees About Medical Exams***

- [\*\*United States v. City of Miami Beach\*\*](#) (Jan 2024): City asked police applicants to take medical and psychological exams early in the process (before or at the same time as physical agility tests and review of experience) instead of isolating such tests at the end of the hiring process after a conditional job offer is made.
  - Consent Decree: City will update its hiring practices; upon request, will tell applicant why their conditional job offer was revoked.
- [\*\*United States v. City of Blaine, Minnesota\*\*](#) (Nov 2023): Employee with alcohol use disorder (AUD) who voluntarily disclosed his condition was required to undergo treatment and pay for testing and evaluation, contrary to employer policy.
  - Consent Decree: City will implement policies, procedures and training; pay out-of-pocket losses and compensatory damages.

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## ***Purvenas-Hayes v. Saltz, Mongeluzzi & Bedensky, P.C.***

- Opinion: 2023 WL 8702739 (E.D. Pa. Dec. 15, 2023)
- Employee filed a lawsuit unrelated to the ADA; there was media interest.
- Employer told newspaper that former employee left employment because she did not wish to receive the COVID-19 shot; employee sued alleging that her former employer violated the ADA's confidentiality requirements.
- The court let employee's case move forward, denying motion to dismiss.
- The court, reviewing text of the ADA, held that while an employer may make inquiries about an employee's ability to perform a job, the ADA's confidentiality obligation still covers medical information learned from such inquiries.

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## ***EEOC Round Up, Part 1***

- [\*\*EEOC v. Voyant Beauty\*\*](#) **(Feb 2024)**: Deaf employee fired on her first day based on unfounded fears she could not work safely as a production worker; case settled for \$75,000, training and reporting.
- [\*\*EEOC v. Tech Mahindra\*\*](#) **(Feb 2024)**: Deaf applicant for automation engineer position was rejected after employer discovered he was deaf and using an ASL interpreter; consent decree resolved case for \$255,000, policies, training, ADA coordinator to review requests for reasonable accommodation.
- [\*\*EEOC v. McLane Northeast\*\*](#) **(Feb 2024)**: Jury awarded Deaf applicant \$1,675,000 after employer first refused to interview applicant after learning she was disabled and then refusing to hire her for two entry-level warehouse jobs.
- [\*\*EEOC v. Werner Enterprises and Drivers Management\*\*](#) **(Sept 2023)**: Deaf truck driver with an exemption from federal hearing regulation for the operation of a commercial motor vehicle was not hired because he could not hear; jury awarded \$36 million in punitive and compensatory damages; court entered a reduced judgment of \$355,682.

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## ***EEOC Round Up, Part 2***

- [\*\*EEOC v. Pete's Car Smart\*\*](#) **(Feb 2024)**: Long-time employee took a brief medical leave for bypass heart surgery and owner told other employees she needed to retire or would be fired; consent decree resolving ADA and age discrimination claims for \$145,000, new protocols for requesting accommodations, training on employment discrimination and new protocols.
- [\*\*EEOC v. Papa John's Pizza\*\*](#) **(Nov 2023)**: Employee who used service animal to assist with commute was hired but fired once he asked for an accommodation to have his service animal; consent decree for \$175,000, training, policy review, EEOC monitoring.
- [\*\*EEOC v. Salvation Army\*\*](#) **(July 2023)**: Employee had a job coach during probationary period and worked successfully for several months until a new store manager started harassing him about his disability, refused to allow additional job coaching and then fired him; consent decree for \$25,000, annual training, reports, and a written warning to the store manager.
- [\*\*EEOC v. Dollar General\*\*](#) **(Oct. 2023)**: Employees required to pass pre-employment medical exams and divulge family members' medical histories; rescinded offers to applicants with high blood pressure or limited vision, even though these conditions did not prevent applicants from safely performing the job; consent decree for \$1 million, updated policies, and training.

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# **Title II: Public Entities**

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# **Effective Communication**

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# ***Website Accessibility***

## **DOJ settlement with Service Oklahoma**

- Public agency had a mobile identification app that provided a digitized version of a driver's license or other state-ID that was not accessible to blind users.
- After issuing a letter of findings (2023), DOJ entered into a [settlement agreement](#) (2024) requiring agency to ensure that its mobile apps conform to WCAG 2.1, Level AA, develop process to solicit and address feedback, requests and complaints, and more.

See also:

- [Golden 1 Agrees to Make Online Ticketing Accessible](#)
- [DOJ Guidance on Web Accessibility](#)
- [DOJ Fact Sheet on Notice of Proposed Rulemaking on Accessibility of Web Information and Services for State and Local Government Entities](#)

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# ***Accessible Vote by Mail***

## ***American Council of the Blind, et al. v. Indiana Election Commission, Case No. 1:20-cv-3118***

- Suit filed on behalf of Indiana voters with print disabilities who were unable to vote by mail privately and independently
- [Settlement Agreement](#) - State agreed to acquire new remote accessible ballot marking tool and once ballot is marked can be returned via email.

## ***Johnson v. Callanen, 2023 WL 4374998 (W.D. Tex. July 6, 2023)***

- Suit filed by blind voters asserting Texas vote by mail violates federal law because they cannot vote privately and independently
- Summary judgment for plaintiffs – county must modify its vote by mail system to ensure that blind voters can vote privately and independently



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## ***Davis v. Laboratory Corporation of America Holdings***

- Opinion: 2024 WL 489288 (9th Cir. Feb. 8, 2024)
- Class action on behalf of individuals with visual impairments for the failure to make its e-check-in kiosks accessible.
- Defendants filed a Rule 23(f) petition seeking interlocutory review of the order certifying both a nationwide and California Unruh Act classes.
- In memorandum opinion, Ninth Circuit affirmed both classes and found that Article III standing was established.

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## ***Vargas v. Quest Diagnostics***

- Opinion: 2023 WL 6447226 (C.D. Cal. Sept. 29, 2023)
- Class action on behalf of blind individuals who used the Quest self-service kiosk to check-in.
- Following week-long bench trial, court granted permanent injunction requiring Quest to ensure widespread adoption of certain changes but did not order it to modify kiosk to include all requested accessibility features, such as screen reader and screen magnification capability.
- Status: Cross appeal pending in 9th Circuit.

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## ***McCullough v. Cal. Dept. of Developmental Servs.***

- Case No: 3:20-cv-02958-SI (N.D. Cal. 2020)
- Class action against the California Department of Developmental Services (DDS) on behalf of deaf individuals with intellectual and developmental disabilities who depend on regional center programs and services.
- Under the [settlement agreement](#), DDS will, among other things, offer communication assessments, hire a statewide deaf specialist, fund regional centers to hire deaf services specialists, provide specialized training, develop a housemate matching system for deaf consumers, and conduct outreach with local agencies that provide services to deaf people.

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## ***Hernandez v. Enfield Board of Education***

- Case No: 3:19-cv-01907-MPS (D. CT 2019)
- Lawsuit challenging the failure to provide auxiliary aids and services for autistic and deaf elected member of the board of education who spent two years continuously requesting basic accommodations.
- At trial in January 2024, jury found liability and awarded the plaintiff nominal damages, but not compensatory or emotional distress damages.

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# Education

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## ***Perez v. Sturgis Public Schools***

- Case No: 598 U.S. 142 (2023)
- Deaf student filed ADA case for money damages for school's failure to provide him with appropriate education.
- School: Plaintiff failed to exhaust administrative remedies under the IDEA.
- Lower Courts: Agreed with school - ADA case dismissed.
- SCOTUS reversed and held that IDEA's exhaustion requirement does not preclude ADA lawsuit because the remedy sought (compensatory damages) is not available under IDEA.

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## ***M.F. v. NYC Department of Education***

- Case No: 18-CV-6109 (E.D.N.Y. Nov. 2018)
- Class action seeking an overhaul of the New York Department of Education's systemic policies and practices to ensure that all students with diabetes receive appropriate care and can participate in school programs.
- Final approval of [settlement agreement](#) granted in April 2023. Defendants agreed to modify their policies on planning for the needs of students with diabetes, providing care so that students with diabetes are not excluded from their classmates, and training for staff.

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## ***Elis for Rachael, Inc. v. Yale University***

- Case No: 3:22-cv-01517-MPS (D. Conn. Nov. 2022)
- Case brought by two Yale students and Elis for Rachael, Inc. alleging decades-long discrimination against students with mental health disabilities.
- [Settlement Agreement](#) reached in August 2023. Yale agreed to modify its policies on leaves of absence, allowing part-time study as a reasonable accommodation, and creating a new “Time Away Resource” -- a year-round, non-evaluative staff member who will help students understand relevant policies, access resources, and navigate the medical leave process.



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# ***Payan v. Los Angeles Community College District***

- Case No: 17-cv-01697 (C.D. Cal.)
- Blind students sought accessible textbooks, handouts, websites, and other technology.
- In 2023, a jury found 14 violations of Title II of the ADA.
- Jury awarded a total of \$242,500 in damages to the two plaintiffs.
- Defendant filed motion for remittitur relying on *Cummings*.
- Plaintiffs opposed arguing *Cummings* does not apply to Title II and Defendants waived argument; Plaintiffs further argued that even if *Cummings* applies, the jury awarded damages in response to economic damages and loss of equal opportunity.
- **Court:** Relying on *Cummings* and other reasons, the judge reduced the jury's damage award to \$1,650 in out-of-pocket expenses. The judge also narrowed the scope of the injunctive relief. Appeals to the 9<sup>th</sup> Circuit are expected.

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# ***Transportation***

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## ***ACB of Metropolitan Chicago v. City of Chicago***

- Opinion: 667 F.Supp.3d 767 (N.D. Ill. 2023)
- Class action alleging that Chicago's failure to ensure access to its signalized intersections for blind pedestrians violates the ADA and Section 504; DOJ intervened in case.
- Court granted summary judgment to Plaintiffs and Intervenor on several theories of liability, finding Chicago failed to provide meaningful access to City's program of signalized intersections; make newly installed and modernized signals accessible; provide effective communication to blind pedestrians.
- Briefing on proposed remedial plans is now complete – stay tuned.

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## ***DOJ Enforcement – ADA Paratransit Services***

- **[Maryland Transit Administration](#)** (June 2023):
  - DOJ concluded that the MTA fails to provide service that is comparable to the level of designated public transportation services provided to people without disabilities.
  - DOJ specifically identified two “capacity constraints” that significantly limit the availability of service to people eligible for services—untimely pickups and drop-offs and lengthy waits for telephone service.

***See also [Settlement Agreement with City and County of Honolulu](#)*** (Jan 2023) and ***[Letter of Findings re: NYC Transit Authority](#)*** (Oct 2022)

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# ***Liberty Resources, Inc. v. City of Philadelphia***

- Case No: 19-cv-03846
- Class action lawsuit seeking to make sidewalks and pedestrian routes accessible.
- Under the [Settlement](#) (approved in May 2023), the City will:
  - Install or remediate at least 10,000 curb ramps over 15-years, with 2,000-ramp milestones every three years.
  - Install accessible curb ramps where they are missing and fix curb ramps where they are noncompliant whenever the City newly constructs or alters a road or street with a pedestrian walkway.
  - Maintain curb ramps in operable working condition.
  - Establish a curb ramp request system to request installation, remediation or maintenance, with timelines.
  - Post progress reports on City's official website.

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***Healthcare***

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# ***United States v. MedStar Health***

- Case No: 24-cv-00302 (D. Md. 2024)
- DOJ alleged that in 2020, 2021 and 2022, MedStar failed to modify no-visitor policies to permit people with disabilities from having Support Persons with them.
- Then, even after its policies were revised, Support Persons were still excluded during lockdowns, leaving certain people with disabilities unable to provide medical history or understand medical directions.
- Under the terms of the [consent decree](#), MedStar agreed to:
  - Pay a total of \$440,000 to compensate affected individuals.
  - Revise policies to ensure ADA compliance, train its workforce on the new policies, and report to the Department on any future exclusion of support persons.

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## ***Bone v. University of North Carolina Health Care System***

- Opinion: --- F.Supp.3d ---, 2023 WL 4144277 (June 22, 2023)
- Per complaint, UNCHCS failed to ensure that its written materials (intake questionnaires, consent forms, after-visit summaries, instructions, medical bills) were accessible to blind patients, despite repeated requests for accessible formats.
- Court held that UNCHCS failed to provide equally effective communication; also held that despite the updated policies it adopted during the litigation, patients still failed to receive important documents in accessible formats.
- Court issued an injunction requiring UNCHCS to provide the two individuals, upon request, equally effective access to all material information provided to patients (specific requests were large print, braille, accessible electronic information); permitted alternative methods of communication (reading communication in private location) until accessible documents can be provided.



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## ***Spencer v. Providence St. Joseph Health***

- Case No: 22-cv-01033 (W.D. Wash. 2022)
- Case brought on behalf of Deaf patients who use ASL as primary method of communication.
- [Settlement](#) reached in February 2024 formalizing comprehensive plan:
  - Retain a Deaf Access Consultant to ensure policies and training are both legally compliant and Deaf-friendly.
  - Improve staff understanding of when an interpreter should be provided in person rather than remote.
  - Pledge to defer to patient's request for in-person interpretation.
  - Evaluate existing connections and hardware for Video Remote Interpreting.

***See also Wade v. University Medical Center of Southern Nevada, Case No: 18-cv-01927 (D. Nev. Oct. 5, 2023)*** (jury awarded \$50,000 for pain and suffering and expectation interest damages for a hospital's failure to provide an ASL interpreter).

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# ***Criminal Legal Systems***

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## ***Reasonable Modifications During Traffic Stop***

- **DOJ Agreement with City of Dayton and Dayton Police Department (DPD)**
  - Driver with paraplegia pulled over by DPD. Officers ordered him out of car, but he did not have wheelchair with him and couldn't exit car safely. Officers pulled him out of car, handcuffed him, and dragged him to police car.
  - DOJ entered into a [settlement agreement](#) that requires DPD to modify its policies to meet the needs of people with disabilities, provide training to police on interacting with people with disabilities, and report its progress to DOJ.

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## ***Access to Treatment for Court-Involved People with OUD***

- **Court Supervision:** DOJ reached a [settlement agreement](#) to resolve case alleging that Pennsylvania courts violated ADA by preventing people under court supervision from taking prescribed medication to treat Opioid Use Disorder (OUD). The courts will pay \$100,000 to victims, encourage its component courts to adopt new policies, and train personnel on ADA's anti-discrimination requirements regarding OUD.
- **Detainees:** DOJ reached a [settlement agreement](#) with Allegheny County, Pennsylvania which had denied treatment for people with OUD in Allegheny County Jail. Agreement requires implementation of new policies and training and \$10,000 payments to individuals with OUD who were discriminated against.

See also, [DOJ Fact Sheet](#) on OUD and the ADA.

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# ***Disability Rights Washington v. Washington Department of Corrections***

- Case No. 2:23-cv-01553 (E.D. Wash)
- DRW alleged that WDOC violated the ADA and 504 by discriminating against transgender patients with disabilities in the provision of gender-affirming medical and mental health care.
- Reached a comprehensive [settlement agreement](#) about the treatment of transgender people in prisons including policy changes, training, a designated Gender-Affirming Mental Health Specialist at each major prison and a DOC Gender-Affirming Medical Specialist available to patients. Ensures that DOC accommodate patient's disabilities.

DOJ recently filed [case in Utah](#) for inmate with gender dysphoria

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## ***Effective Communication for Inmates with Vision Disabilities***

- DOJ investigation found Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) failed to reasonably modify its policies or provide auxiliary aids and services (Brailled materials, audio recordings, and screen reader software) to ensure people with vision disabilities could communicate effectively while incarcerated
- Thereafter, parties reached a [settlement agreement](#) in which ADCRR agreed to:
  - retain an expert to revise policies and practices;
  - train personnel; and
  - provide necessary modifications, aids and services and assistive technology to people with vision disabilities in ADCRR custody.

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## ***Armstrong v. Newsom***

- Case No. 94-cv-02307 CW
- Court order requiring accommodations for blind, low vision and deaf people in preparing for and following up from parole hearings. The order mandates:
  - Administrative proceedings translated into American Sign Language must be videotaped so a deaf signer can review the transcript privately and independently later;
  - Specific and up to date assistive technology so that blind and low vision individuals can read and write privately and independently; and
  - Education for incarcerated people and staff on how to access the assistive technology.

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# ***Olmstead – Community Integration***



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## ***United States v. Florida***

- Opinion: 2023 WL 4546188 (S.D. Fla. July 14, 2023)
- Case alleging Florida segregated and institutionalized children with complex medical needs and that its policies and practices placed other children at serious risk of institutionalization.
- Long, complex procedural history; this decision followed a bench trial.
- Court found Florida violated the ADA's integration mandate as providing community-based services to children with complex medical needs was appropriate; was not opposed by the majority of those children and families; reasonable accommodations could increase the availability of community-based services; and would not pose a fundamental alteration.
- Injunction ordered: Florida must take steps to increase availability of private-duty nursing, facilitate transition of children from nursing facilities to community-based settings; and improve care coordination.
- Florida filed notice of appeal.

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## ***United States v. Mississippi***

- Opinion: 82 F. 4<sup>th</sup> 387 (5th Cir. 2023)
- DOJ brought case alleging that Mississippi's mental health system fails to provide necessary, integrated, community-based mental health services, forcing adults to access care in segregated state hospitals.
- District court agreed and issued an injunction to develop and implement measures to prevent unnecessary institutionalization by coordinating care and diverting people with serious mental illness from hospitalizations.
- The Fifth Circuit struck down the injunction holding that *Olmstead* does not cover "risk of institutionalization" claims and concluding injunction was overbroad.

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## ***Fitzmorris v. NH Dept of Health and Human Services***

- Opinion: 2023 WL 8188770 (D.N.H. Nov. 27, 2023)
- Class action certified of waiver participants who have been placed at serious risk of unjustified institutionalization because Defendants failed to ensure that participants receive community-based long term care services and supports.
- Plaintiffs identified several system-wide practices that they allege drive the class members' service gaps, exposing them to serious risk of unjustified institutionalization.
- Distinguished *U.S. v. Mississippi* - Fifth Circuit decision.
- 1st Circuit denied interlocutory appeal.

*See also, Disability Rights California v. Alameda Co* – [Olmstead settlement](#) for people with mental illness at risk of institutionalization. (Good contrast to *US v. Mississippi*)

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# Questions?

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