

January 6, 2022

U.S. Department of Justice
Civil Rights Division
Disability Rights Section
950 Pennsylvania Avenue, NW
4CON, 9th Floor
Washington, DC 20530

Delivered via email

To whom it may concern:

The American Civil Liberties Union of Nevada (ACLU NV) files this complaint to report the mistreatment of deaf inmates by the Clark County Detention Center (“CCDC”) in Las Vegas, Nevada, in violation of Title II of the American Disability Act, 42 U.S.C. § 12131; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. § 1983. We request that the Department of Justice investigate these violations and take any action necessary to ensure that deaf inmates are no longer abused by the facility.

ACLU NV currently represents two men who have been incarcerated at CCDC within the last two years. They retained us as they were both denied basic services that they were entitled to under law such as qualified interpreters, videophones, and simple modifications to CCDC programs, procedures, and practices to accommodate their disability.

I. Factual Background

As the largest detention center in Nevada and handling over 70,000 bookings per year,¹ CCDC is aware of its obligations under law to provide services and auxiliary aids to deaf inmates to ensure those individuals have a similar experience as hearing inmates. This is reflected in CCDC’s Inmate Handbook and written policies. Furthermore, going back to 2004, CCDC has offered trainings for its staff on the rights of deaf inmates and the services that these inmates are entitled to. In theory, CCDC is well-versed in its responsibilities under the ADA, the Rehabilitation Act, and the United States Constitution.

But in practice CCDC has not acted on these policies and trainings. Deaf inmates are denied qualified interpreters for medical evaluations, disciplinary proceedings, and therapeutic, educational, and religious programming offered by the jail. The Teletypewriter

¹“According to the data Metro presented, 74,912 people were booked at CCDC in 2019.” *Yes, people sit in jail because they can’t afford bail*, Michael Lyle, Nevada Current, March 4, 2020.



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(TTY) phone alternative offered by the jail to deaf inmates is an out-of-date technology, and even with this unacceptable alternative, deaf inmates are not given same access to telecommunication devices as hearing inmates. Explanations by jail staff, about anything from mundane booking procedures to life-or-death matters such as COVID-19, are made without any accommodation whatsoever for the hearing impaired. Our clients' experiences illustrate these systemic failures.

CCDC's failure to provide accommodations have impacted our clients' health. Both men have had medical appointments while in custody but were not provided interpreters for those appointments. One of our clients made multiple, documented requests for an interpreter, all of which were denied. In his case, this denial resulted in him being misdiagnosed by CCDC psychiatric staff. It took a medical professional provided by the Clark County Public Defender's Office assisted by a qualified American Sign Language interpreter for him to receive a proper psychiatric diagnosis.

CCDC's failures have also interfered with our clients' rehabilitation. In particular, one of our clients made multiple attempts to participate in programming offered by CCDC. The jail's own records reflect that he attended multiple group therapy sessions with other hearing inmates. This "participation" was meaningless as he was never provided an interpreter and so had no way to share his experience and thoughts with the group or the coordinator. Since then, he has made other attempts to attend programming and religious services but has been discouraged by the simple fact that his requests for interpreters have been unanswered.

CCDC's failure to provide appropriate services put our clients at risk and caused them unnecessary stress during the unprecedented COVID-19 pandemic. There have been multiple presentations to the inmates at CCDC about COVID-19 and the precautions they would need to take to protect themselves. Every one of these presentations were given orally without any visual aids, written explanations, and never with an interpreter.

CCDC's failure to provide appropriate services isolated our clients from their support network. The facility severely restricted their opportunity to speak with family, friends, and other people outside due to CCDC's lack of suitable communication technology for deaf inmates. CCDC only provides Teletypewriter phones (TTY) to deaf inmates. This technology is 60-years-old, error-prone, failure-prone and causes delays in communication. The message is received by an operator at a distant location who then reads it to an American Sign Language (ASL) interpreter at another location. The interpreter uses a videophone and ASL to relay the message to the person receiving it. A reply involves all of those steps in reverse order. The messages lose nuance and emotional content. In CCDC, where calls are limited to 15 minutes, this is untenable. The vast majority of the deaf community has transitioned to videophones, and many prisons and jails around the country offer videophones to deaf inmates. Furthermore, courts agree that it is wrong for facilities to rely on TTY for outside communications under

the ADA. Since 2018, correctional departments in Colorado and Michigan have been ordered by federal courts to provide videophones to deaf inmates. *See Rogers v. Colorado Department of Corrections*, No. 1:16-cv-02733-STV-NRN (D. Col. February 7, 2020), ECF No. 199; *McBride v. Michigan Department of Corrections*, No. 2:15-cv-11222-SFC-DRG (E.D. Mich. March 9, 2018), ECF No. 99.

Putting aside the fundamental inadequacies of TTY, CCDC failed to provide our clients access to these antiquated devices in a fashion akin to the hearing inmates' use of standard telephones. First, TTY was not made available when our clients arrived at CCDC, preventing them from contacting bail bondsmen or other services available to hearing inmates. Second, in most units at CCDC, hearing prisoners have daily access to phones they can use to call family, friends, lawyers, or anyone else that they might want to talk to. They do not need to make any requests to CCDC staff – the inmates can get on whenever they have free time. By comparison, CCDC requires that deaf inmates specifically request that TTY be brought to their units, and our clients have waited up to a week after putting in such request before the TTY has been brought to them.

Beyond the medical evaluations, programming and presentations offered by the jail, disciplinary proceedings, and telephone access, CCDC has failed to provide simple accommodations and adjustments in its routine procedures that would fundamentally change experience of deaf inmates. There are multiple examples of this behavior:

- No interpreters were provided to either of our clients during the booking process nor was an interpreter used to explain any of CCDC's procedures.
- There are audible alarms, including fire alarms, at CCDC that do not have corresponding visual or tactile cues;
- When inmates are given "free time" to socialize, contact family, or freely move around the unit, they are notified by an auditory signal: three beeps. While some individual corrections officers have made the personal effort to notify deaf inmates when the signal goes off, our clients missed these periods because there are no visual or tactile cues.
- There are televisions in units our clients have been housed in, but the closed captioning is regularly left off, even after our clients make a request for it to be turned on.
- Though it has offered no other way for our clients to communicate with staff or other inmates, CCDC has required our clients to pay for their own pen and paper during their stay at the facility.



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These fundamental failures expose CCDC’s complete disregard for the deaf inmates, such as our clients, in its care. They also violate the ADA, the Rehabilitation Act, and the Fourteenth Amendment of the United States Constitution.

II. Violations by the Clark County Detention Center

1) Americans with Disabilities Act (ADA), Title II, 42 U.S.C. § 12131

Congress enacted the ADA “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. §12101(b)(1). Title II of the ADA states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. As a deaf people, our clients are “qualified individual[s] with a disability.” 42 U.S.C. § 12131(b).

Public entities are required under the ADA to “take appropriate steps to ensure that communication with . . . participants . . . with disabilities are as effective as communication with others.” 28 C.F.R. § 35.160(a)(1). Ensuring effective communication includes “furnish[ing] appropriate auxiliary aids and services,” 28 C.F.R. § 25. 160(b)(1), including “[q]ualified interpreters . . . real-time computer-aided transcription services . . . telephone headset 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[.]” 28 C.F.R. § 35.104.

In providing any aid, benefit or service, a public entity may not:

- 1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit or service;
- 2) Afford a qualified individual with a disability an opportunity to participate in an aid, benefit, or service that is not equal to that afforded others;
- 3) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity . . . as that provided to others...; or
- 7) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others....



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28 C.F.R. § 35.130(b)(1)(i), (ii), (iii), (vii). Furthermore, a public entity must “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the natures of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7). The Ninth Circuit has specifically ruled that a detention center’s (1) failure to provide an ASL interpreter or TTY during the booking process; (2) failure to provide a TTD to make a phone call; (3) failure to turn on closed captioning on jail television; and (4) failure to provide an ASL interpreter during [a] medical evaluation all violate the ADA. *Updike v. Multnomah Cty.*, 870 F.3d 939, 954–57 (9th Cir. 2017).

To say that CCDC has violated the ADA is an understatement. It repeatedly failed to provide our clients a qualified interpreter during crucial interactions with jail staff, including mental health evaluations, medical examinations, and disciplinary hearings. It has failed to offer interpreter services during classes and religious services, denied our clients any meaningful benefit from therapy or other rehabilitative services offered by CCDC to hearing inmates, and has failed to provide interpreters during fundamental stages such as the booking process and essential presentations about the ongoing COVID-19 public health crisis.

Where hearing inmates housed in general population may freely use phones during free time, deaf inmates must request to use a phone, and as our clients have learned, a request may not be answered until days later. Furthermore, the only phones offered to deaf inmates are TTY phones, not the videophones that are commonly used by the deaf community today. There is no valid security basis to deny deaf inmates access to videophones, which are safely used in secure correctional facilities across the country.

Regarding “reasonable modifications,” in practice CCDC fails to provide even the simplest accommodations for our clients despite acknowledging these requirements in its written policies and procedures. The units rely on auditory signals without any visual or tactile cues. The facility fails to ensure that the television in his unit has the closed captioning on. And it requires deaf inmates, like our clients, to buy their own writing materials, the only means they are left with to communicate, and then takes those materials from them when they are suffering from a mental health crisis and placed in a psychiatric unit.

The unequal treatment our clients, and certainly other deaf inmates, have experienced and their exclusion from CCDC’s services, benefits, activities, and programs has resulted in a loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of rights and privileges, and injury to their health.

2) Rehabilitation Act, Section 504, 29 U.S.C. § 794

Section 504 of the Rehabilitation Act states that no “qualified individual with a disability in the United States . . . shall, solely by reason of disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

As discussed in detail above, CCDC has impaired deaf inmates like our clients’ ability to communicate effectively with medical personnel, jail staff, other inmates, and people outside of CCDC. The facility has excluded deaf inmates from educational, vocational, and religious services. It has failed to offer announcements, including life and death fire alarms, in a format that Deaf inmates would be able to understand. It has done this by failing to provide appropriate aids in violation of the Rehabilitation Act. And CCDC continues to deny deaf inmates like our clients the same access to services, benefits, activities, programs, and privileges as the access provided to hearing inmates. These failures are a product of CCDC’s regular practices and customs which are at odds with its own stated policies and procedures.



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3) Fourteenth Amendment, 42 U.S.C. § 1983 (Medical)

If a detention center is deliberately indifferent to the medical needs of an inmate, the facility violates the Fourth Amendment of the United States Constitution. *See Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018). As made clear by its own policies and training, CCDC is well aware it must provide auxiliary aids to deaf inmates if requested. And as the Ninth Circuit has previously noted, “the mere payment of an ASL interpreter . . . cannot be considered an undue burden [by a detention facility],” and “[m]edical evaluations often will be the type of complex and lengthy situation in which as ASL interpreter should be provided.” *Updike*, 870 F.3d at 950 & 956. Yet our clients have been denied qualified interpreters for their medical appointments and mental health evaluations *even when the client specifically requested one*. In at least one instance, this failure led to an extended delay before one of our clients received a correct mental health diagnosis.

4) Fourteenth Amendment, 42 U.S.C. § 1983 (Due Process)

Pursuant to the Fourteenth Amendment of the United States Constitution, “pretrial detainees may be subjected to disciplinary segregation only with a due process hearing to determine whether they have in fact violated any rule.” *Mitchell v. Dupnik*, 75 F.3d 517, 524 (9th Cir. 1996). Furthermore, a pretrial detainee also has the right to call witnesses and present evidence at such a hearing. *Id.* at 525. In other words, inmates must have the opportunity to meaningfully participate in the hearing. CCDC’s own training program reflects this, specifically stating that deaf inmates have “a right to be provided with qualified interpreter services to enable him or her to participate in . . . any disciplinary or other proceedings.” *Id.* But when one of our clients requested a qualified interpreter for a disciplinary hearing he was facing while in custody at CCDC, his request was denied. In

this case, our client was limited to writing in defending himself against the allegations and was subsequently placed in a disciplinary unit.

The denial of an interpreter undoubtedly violated CCDC's own policies and more important its obligations under the Fourteenth Amendment.

III. Request for Investigation

ACLU NV respectfully requests that the Department of Justice investigate CCDC for its ongoing disregard for the rights of its Deaf inmates. The facility has failed its Deaf population. Its existing policies, practices, and services are insufficient to meet its obligations under the ADA, the Rehabilitation Act, and the United States Constitution. And the policies it does have are systemically ignored by CCDC staff. At a bare minimum, we believe the following measures must be taken to bring the facility into compliance with its legal obligations:

- 1) Immediately begin to follow through with the practices described in its policies and training program regarding the rights of deaf inmates;
- 2) Update its telecommunications technology for the deaf from TTY phones to videophones and provide the same access to videophones for deaf inmates that hearing inmates have to telephones;
- 3) Offer interpreter services, either in-person or electronically, and other requested aids during the booking process;
- 4) Offer interpreter services, either in-person or electronically, and other requested aids when explaining jail procedures to inmates, including but not limited to CCDC's grievance process;
- 5) Offer interpreter services, either in-person or electronically, and other requested aids during all hearings that may result in inmate discipline;
- 6) Offer interpreter services, either in-person or electronically, and other requested aids for all medical consultations;
- 7) Offer interpreter services, either in-person or electronically, and other requested aids for all programming offered by the jail, including but not limited to religious, therapeutic, educational programming; and
- 8) Modify all alarms and other audio signals so that they are accompanied with visual and/or tactile cues that will provide an equivalent alert to deaf inmates.



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Considering how long our clients have been denied services, and that we have multiple clients reporting similar factual accounts, we have good reason to believe that the problems at CCDC are systemic and pervasive. We respectfully request that the Department of Justice open an investigation into these systemic violations of the Constitution and federal law.



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Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Peterson". The signature is fluid and cursive.

Christopher Peterson
Senior Staff Attorney
ACLU of Nevada