

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOEL MARTOS, JOSHUA SANTUCHE,
DISABILITY RIGHTS FLORIDA, INC.,

CASE NO: 16-cv-21501-Martinez

Plaintiffs,

v.

MIAMI-DADE COUNTY,

Defendant.

SETTLEMENT AGREEMENT

COMES NOW, the Plaintiffs, JOEL MARTOS, JOSHUA SANTUCHE and DISABILITY RIGHTS FLORIDA, and the Defendant, MIAMI-DADE COUNTY, who hereby agree to the following:

1. This Agreement is entered into among Joel Martos and Joshua Santuche ("Private Plaintiffs"); Disability Rights Florida ("P&A Plaintiff") (collectively, "Plaintiffs"); the Miami-Dade Department of Corrections and Rehabilitation ("MDCR") and Correctional Health Services ("CHS") (all collectively referred to as the "Parties"). The Parties share a mutual interest in promoting and maintaining equal access to services and programs for persons who are deaf or hard of hearing and deem it to be in their respective interests and the interests of the public to provide an expeditious and cost-effective resolution to those issues and/or disagreements as have arisen between them. Accordingly, it is the Parties' intent that this Settlement Agreement shall resolve all issues associated with the provision of effective communication with persons who are deaf and hard of hearing so that they

may participate in or benefit from the services, programs, or activities of MDCR on an equal basis with other individuals, including but not limited to inmates, arrestees, companions, complainants, and visitors. This Agreement reaffirms and restates the County's obligations to provide appropriate auxiliary aids and services whenever necessary to ensure effective communications with individuals who are deaf or hard of hearing.

Definitions

1. "ADA" means the Americans with Disabilities Act, codified at 42 U.S.C. § 12101 *et seq.*, as amended by the ADA Amendments Act of 2008 (P.L. 110-325).
2. "Auxiliary Aids and Services" include, but are not limited to, "Interpreters," "Qualified Interpreters," or "other effective methods of making aurally delivered materials available to individuals with hearing impairments," 42 U.S.C. § 12103, such as hearing aids, computer-aided transcription services, assistive listening systems, closed caption decoders, open and closed captioning, TDDs, TTYs, videotext displays, written materials, video relay services, and visual alert or alarm systems. *See also* 28 C.F.R. § 35.104.
3. "CHS" means Correctional Health Services.
4. "Clinical Encounter" means an interaction between an inmate and CHS staff for the purposes of assessing, diagnosing, treating and/or delivering health care to such inmate.
5. "Deaf persons" means individuals who are unable to hear well enough to rely on their hearing as a means of processing information and who rely on Auxiliary Aids and Services to effectively communicate and who qualify as individuals with disabilities under the Americans with Disabilities Act as amended by the ADA Amendments Act of 2008. *See* 42 U.S.C. § 12102(4); P.L. 110-325.

6. “Detention Facility” includes the Metro West Detention Center, Pre-Trial Detention Center, the Turner Guilford Knight Correctional Center, and any other MDCR-controlled facilities where Deaf inmates are held in the custody of MDCR.
7. “Effective Communication” means communication with Deaf inmates that is as effective as communication with the general inmate population, 28 C.F.R. § 35.160(a), and will, when necessary, include the provision of appropriate Auxiliary Aids and Services, such as Qualified Interpreters.
8. “Effective Date” means the date of execution after this Agreement is executed by all Parties, and a joint stipulation of dismissal of Case No. 16-cv-21501-JEM is filed with the United States District Court for the Southern District of Florida.
9. “MDCR” means the Miami-Dade County Department of Corrections and Rehabilitation.
10. “Plaintiffs” means Joel Martos, Joshua Santuche, and Disability Rights Florida.
11. “Qualified Interpreter” means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to that person) using any necessary specialized vocabulary. A qualified interpreter may provide interpretive services on the premises or remotely.
12. “Section 504” means Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 701 et seq. (2014).
13. “TTYs” or “TDDs” means teletypewriters or telecommunications devices for the Deaf, which are devices used with a telephone to communicate with persons who are Deaf by typing and reading communications.

14. "Video Remote Interpreting" or "VRI" means a video-telecommunication interpreting service, which uses Qualified Interpreters and is delivered over a high-speed internet connection. *See* 28 C.F.R. § 35.160(d).
15. "Video Relay Services" means a method to place and receive "phone" calls with a remote professional ASL interpreter via a videophone or other compatible device and a high speed internet connection.

TERMS AND CONDITIONS

1. **Nondiscrimination.** MDCR agrees not to engage in any act or practice, directly or through contracting, licensing, or other arrangements, that has the purpose or effect of unlawfully discriminating against any person with a disability in violation of Title II of the ADA or Section 504 of the Rehabilitation Act. Unless otherwise indicated, within three hundred sixty-five (365) days after the effective date of this Agreement MDCR agrees to implement fully the practices and policies set forth below.
2. **Coverage of Involuntary Participation.** Throughout this Agreement, terms such as "enjoyment," "benefit," or "seek" that in other contexts might imply the voluntary and willing participation of a member of the public in a public entity's programs, services, or activities, shall also refer to a member of the public's involuntary participation in MDCR's programs, services, and activities.
3. **ADA Coordinator.** Within thirty (30) days of the effective date of this Agreement, MDCR will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II, Section 504, and this Agreement ("ADA Coordinator"). MDCR will make available to all interested members of the public the name, office address, and telephone number of ADA Coordinator. A copy of the MDCR

grievances involving disability-related issues shall be provided to and maintained by the ADA Coordinator. Staff responsible for inmate grievances will consult with and involve the ADA Coordinator in the grievance process and provide copies of the resolution of the grievance to the ADA Coordinator.

4. **Duties.** MDCR is not required to take any action under this Agreement that it can demonstrate would result in a fundamental alteration in the nature of its custodial operations or related service, program, or activity, or in undue financial and administrative burdens. If an action required to comply with Title II, Section 504, or this Agreement would result in such an alteration or burden, MDCR will endeavor ensure that such decision accounts for all available resources as required under 28 C.F.R. § 35.164, and will then take any other appropriate action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, members of the public who are deaf or hard of hearing receive the benefits or services provided by MDCR .
5. **Provision of Auxiliary Aids and Services.** MDCR will ensure that appropriate auxiliary aids and services, including qualified interpreters, are made available to persons who are deaf or hard of hearing when such aids and services are necessary to ensure effective communication, so that they may participate in or benefit from MDCR's services, programs, or activities on an equal basis with others.
6. **Primary Consideration.** In determining what type of auxiliary aid or service is necessary to comply with the ADA, MDCR and CHS agrees to give primary consideration to the expressed preference for a particular auxiliary aid or service by an individual who is deaf or hard of hearing. "Primary consideration" means that MDCR and CHS personnel will inquire as to the choice of auxiliary aid or service of the

individual and will honor the expressed choice unless MDCR and CHS can demonstrate that another equally effective means of communication is available.

7. **Interpreters.** MDCR and CHS shall furnish qualified sign language interpreters where a qualified sign language interpreter is necessary to ensure an inmate has an equal opportunity to participate in, and enjoy the benefits of, programs, services and activities offered by MDCR and CHS. The interactions for which MDCR must furnish qualified sign language interpreters include but are not limited to the intake process, at classification hearings, disciplinary hearings, religious services, educational classes, Narcotics and Alcoholics Anonymous meetings or the equivalent, and any other interactions with staff that implicate an inmates' due process rights. CHS shall furnish qualified sign language interpreters during any clinical encounter where a qualified sign language interpreter is necessary to ensure an inmate has an equal opportunity to participate in, and enjoy the benefits of, programs, services and activities offered by CHS. MDCR and CHS may employ alternatives to a live sign language interpreter such as video remote interpreting. MDCR and CHS need not maintain a full-time staff sign language interpreter, but may use on-call services.

8. **Use of Video Remote Interpreting Services**

MDCR will obtain a video remote interpreting (VRI) system through a high-speed wireless network system. CHS will use VRI as the primary mode for providing interpreter services. CHS will only provide in person interpreter services as needed and dictated by circumstances. However, VRI shall only be used where the inmate has the ability to see the video screen and such VRI must comply with the technical requirements of 35 C.F.R. § 160(d). VRI will be NOT be used at the following times when non-exigent circumstances exist:

- a) Learning events in a classroom, lecture environment, or religious services where the interpretation is of a long duration and involves interaction of more than two people.
- b) Sensitive discussions, such as sexual assault, and other situations as deemed appropriate by personnel..

MDCR and CHS shall maintain invoices that document the use of the VRI service.

9. **Use of Interpreting Service Agencies.** MDCR and CHS will maintain working relationships with one or more qualified interpreter agencies to ensure that qualified interpreting services will be available on a priority basis, twenty-four hours per day, and seven days a week. Any inmate complaints regarding actions taken in response to requests for qualified interpreting services shall be processed through MDCR's inmate grievance procedure.
10. **Use of pre-recorded videos in American Sign Language.** In lieu of producing an interpreter to provide orientation or explanation services for inmates that are Deaf or Hard-of-Hearing for orientation, review of rules and orientation for jail policies or procedures, or other communications that are not interactive, MDCR may pre-record a person stating the verbal instruction in sign language provided that such information is both in ASL and subtitled in English, Spanish, and Creole.
11. **Time for Interpreter Response for Court Proceedings.** Upon identification of a deaf inmate at booking, MDCR shall notify the Administrative Office of the Courts (AOC), the Public Defender's Office and the Circuit Court's First Appearance personnel to ensure that AOC makes interpreter services available at first appearance.
12. **Qualified Interpreters at Booking and Intake.**

- a. Should MDCR personnel learn that a person who is deaf or hard of hearing will arrive at the Detention Facility for booking and intake, MDCR, in consultation with the arrestee, will assess what auxiliary aids or services are necessary, and the timing, duration, and frequency with which they will be provided, using an assessment form. The assessment will take into account all relevant facts and circumstances, including, for example, the individual's communication skills and knowledge, and the nature and complexity of the communication at issue. The Video Remote Interpreting system can be used to complete the assessment. MDCR personnel shall inquire as to the necessary accommodation for the inmate at intake. The jail booking record will identify the necessary accommodation in the ADA stamp.
- b. If an inmate who is deaf or hard of hearing expresses or demonstrates a medical condition or need that cannot wait for the assistance of a qualified interpreter to facilitate communication, or MDCR or CHS personnel suspect there is medical need or condition requiring immediate treatment or other immediate response, MDCR and CHS shall not delay in providing whatever medical care, treatment, evaluation, or service would be provided to a non-deaf or hard of hearing person under similar circumstance, and shall provide interpreting services as expeditiously thereafter as necessary.

13. Training.

- a. **Medical and Psychiatric Assessments and Treatment.** CHS shall ensure that all clinical staff assigned to deliver healthcare in clinical encounters have specific training pertaining to inmates who are deaf and hard of hearing, which shall include effective communication with persons who are deaf or hard of hearing

provided by a mutually agreeable individual with specialized knowledge of the Americans with Disabilities Act and compliance therewith, within three hundred sixty-five (365) the execution of this agreement, and thereafter, on a continuing basis as is necessary.

b. Corrections Personnel. MDCR will continue to train all MDCR personnel who have contact with inmates as to effective communication with persons who are deaf or hard of hearing to enable personnel to effectively implement all provisions of this Agreement, and all additional policies and procedures developed pursuant to this Agreement.

c. Video Remote Interpreting Training: All personnel who use the VRI equipment will be trained as to the use of the technology to ensure that he or she may quickly and efficiently set up and operate the equipment, for effectively communication.

14. Response time for other programs or services. Whenever a qualified interpreter is to be provided by an interpreting service, it will be scheduled at the earliest reasonable time, and not less than two hours, prior to a program or service that the Deaf inmate has enrolled in or otherwise signed up for through MDCR, in which communication is required for the Deaf inmate to receive effective communication.

15. Exigent Circumstances. When there is an emergency involving a threat to the safety or welfare of an individual (including MDCR personnel or members of the public), and there is insufficient time to make available appropriate auxiliary aids and services, MDCR personnel will use whatever auxiliary aids and services are most effective under the circumstances to communicate with persons who are deaf or hard of hearing, consistent with an appropriate law enforcement response to the threat. This may include, for example, exchanging written notes or using the services of a person who knows sign

language but who is not a qualified interpreter, for an interim period during the period of ongoing threat, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. *See* 28 C.F.R. § 35.160(c). When there is no longer a threat, MDCR will follow its procedures to provide appropriate auxiliary aids and services.

16. Use of Other Members of the Public to Facilitate Communication.

- a. MDCR and CHS shall not rely on an individual who is deaf or hard of hearing to bring another member of the public, or inmate, to interpret for him or her.
- b. MDCR and CHS will not rely on an adult accompanying an individual who is deaf or hard of hearing to interpret or facilitate communication except:

- (i) In an emergency involving a threat to the safety or welfare of an individual or the public where there is no interpreter available; or

- (ii) Where the individual who is deaf or hard of hearing specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance and reliance on that adult for such assistance is appropriate under the circumstances.

17. Use of Employees, Volunteers, or Inmates as Sign Language Interpreters or Oral Translitterators. MDCR and CHS will not use personnel as sign language interpreters or oral translitterators if the employee or volunteer's presence poses a conflict of interest or raises confidentiality and privacy concerns. On occasion, an inmate may possess the skill level necessary to provide interpreting services; however, the impartiality concerns

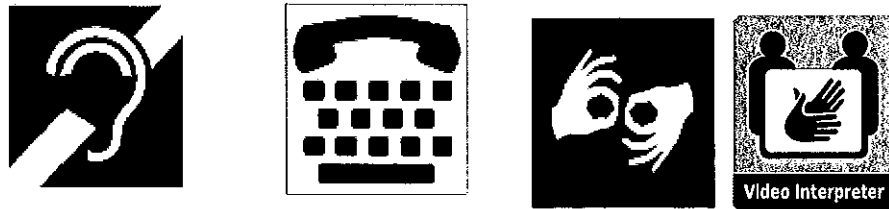
remain, and in most situations inmate interpreters or transliterators should not be used due to confidentiality, privacy, and security reasons. This provision shall not apply in emergency situations.

18. **Reasonable Modification of Handcuffing Policies.** When necessary to handcuff a person who is deaf or hard of hearing, personnel will, safety permitting, handcuff such persons in front to enable the person to communicate using sign language or writing.
19. **Housing Assignments.** Personnel will ensure that inmates who are deaf or hard of hearing are not placed in isolated facilities or designated medical areas unless they are receiving medical care or treatment, or in facilities or parts of facilities that do not offer the same programs as the facilities or parts of facilities they would otherwise be housed. Further, Deaf inmates shall not be segregated from one another solely because of their deafness and ability to communicate in sign language.
20. **Signs.** Within one-hundred and eighty (180) days of the effective date of this Agreement, all facilities operated or occupied by MDCR and in which personnel are reasonably anticipated to engage with members of the public shall have conspicuously posted in public areas (including booking and intake areas) signs advising persons who are deaf or hard of hearing of the availability of appropriate auxiliary aids and services, including qualified interpreters. The signs shall provide as follows:

To ensure effective communication with individuals who are deaf or hard of hearing, Miami-Dade County Department of Corrections and Rehabilitation will provide free of charge auxiliary aids such as qualified sign language oral interpreters, TTYs, and volume controlled telephones.

Please ask for assistance by contacting an officer or the Miami-Dade County Department of Corrections and Rehabilitation Facility Shift Commander, Shift Supervisor or ADA Coordinator (786) 263-6013

The posted signs will include the International Symbol for Hearing Loss, the International Symbol for TTYs, VRIs, and a symbol to indicate the availability of sign language interpreters:



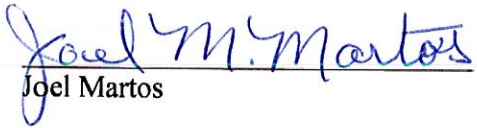
21. **Phones.** Within three hundred sixty-five days (365) of the effective date of this Agreement, MDCR will equip each facility where Deaf inmates are housed with a sufficient number of working video relay service equipment and TTYs (at least one of each) to enable such inmates to make calls of the same frequency and with the same availability as those inmates who do not use such phones. If any Deaf inmate prefers a different method of communication, MDCR will make reasonable efforts to provide the communication device requested.
- a. Where telephone calls are time-limited, MDCR will adopt policies permitting a longer period of time for individuals using a TTY or video relay service due to the slower nature of these communications as compared to voice communications. If a TTY or video relay service is not available in the same location as telephones used by inmates who are not deaf or hard of hearing, inmates who need to use a TTY or video relay service will be allocated reasonable additional time to get to and from the location of the equipment.

- b. Signage will be displayed at the MDCR Housing Facilities indicating the availability of the TTY and video relay services and the procedure for requesting use of those services.
 - c. MDCR will ensure that the privacy of telephone calls by inmates using a TTY or video relay service is equal to that of other inmate telephone calls.
 - d. MDCR will ensure that any monies or other consideration charged for the use of TTYs or video relay services is equal to that of other inmate telephone calls.
22. **Television Programming.** Inmates who are deaf or hard of hearing will have equivalent access to captioned television programming as non-disabled inmates.
23. **Hearing Aid and Cochlear Processor Replacement Batteries.** CHS shall supply replacement batteries for hearing aids and cochlear processors to deaf and hard of hearing inmates utilizing such hearing devices in the Detention Facility at no cost to the inmate. Replacement batteries will be provided to those requesting them as soon as possible. Nothing in this Agreement requires CHS or any party to purchase or replace a hearing aid or cochlear implant processor for an inmate who does not already own such a device.
24. **Repair of Hearing Aids and Other Such Personal Devices.** MDCR will send inmate hearing aids, cochlear processors, and other such devices to appropriate repair companies as soon as possible following a request for the repair of such device. MDCR shall inform the inmate when the device was sent for repair and when it is expected to be returned by the repair company. The inmate will be provided with written documentation of all such repairs, including detailed information regarding the vendor used, the date of the repair, and the specific repairs performed. The cost of all repairs, including shipping costs, if any, shall be borne by the inmate, unless the repairs are required due to personnel's negligence or another inmate's actions.

25. **Identification.** MDCR and CHS will take appropriate steps to ensure that all personnel having contact with an inmate who is deaf or hard of hearing are made aware of the person's disability and his or her preferred auxiliary aids and services so that effective communication with the person will be achieved. A person's identity as someone needing appropriate auxiliary aids and services for effective communication will not be treated as confidential medical information.
26. **Attorney's fees.** Miami-Dade County shall pay the Plaintiffs \$30,000.00 in full and final settlement for all attorney's fees and costs incurred in this matter, payable to Disability Independence Group, Inc., Trust Account ("Settlement Payment").
27. **Dismissal, Release and Continuing Jurisdiction.** After such Settlement Payment is made, Plaintiffs' attorney will file a stipulation of dismissal with prejudice of the claims in this matter, and any claims which Plaintiffs could have been brought in this matter. This Court shall maintain jurisdiction to enforce the terms of this settlement. It is further hereby acknowledged that the Undersigned, for the sole consideration of the Settlement Payment do hereby and for their heirs, executors, successors and assigns, release, acquit and forever discharge Miami-Dade County and its departments, agents, and employees from any and all claim, damages, costs, expenses and compensation whatsoever, which any of the Undersigned now have or may hereafter accrue on account of the claims which were brought, or which could have been brought, in this matter. It is understood and agreed that this settlement is the compromise of a disputed claim, and that the payment made is not to be construed as an admission of liability on the part of Miami-Dade County.
28. **Lack of Waiver.** A failure by any signatory party to enforce any provision or deadline of this Agreement will not be construed as a waiver of their right to enforce other provisions or deadlines of the Agreement.

29. **Headings.** The paragraph headings in this Agreement are for convenience only and will not be deemed to affect in any way the language of the provisions to which they refer.
30. **Signatories Bind Parties.** The person signing for the Parties represent that they are authorized to bind their respective Parties to this Agreement.
31. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the Parties relating to this case. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party that is not contained in this written Settlement Agreement will be enforceable.
32. **Parameters of Agreement.** This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law not specifically referenced herein. This Agreement does not affect MDCR's continuing responsibility to comply with all aspects of the ADA and the Rehabilitation Act.
33. **Severability.** If any term of this Agreement is determined by any court of competent jurisdiction to be unenforceable, the other terms shall nonetheless remain in full force and effect; provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, they shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the Parties' rights and obligations as closely as possible to those initially agreed upon.
34. **Prior Drafts and Communications.** The Parties agree that prior drafts of this Agreement, along with prior contemporaneous communications between them leading or pertaining to the crafting and finalization of the Agreement, whether oral, written, or electronic, are and shall remain subject to Settlement Privilege.
35. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement.

THE PARTIES HERETO HAVE CAUSED THIS SETTLEMENT AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED OFFICERS AS OF THE DAY AND YEAR WRITTEN BELOW.


Joel Martos

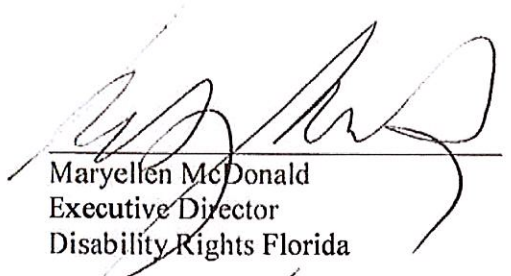
Daniel Junior
Interim Director
Miami-Dade Corrections and
Rehabilitation Department

Dated 10-12-16

Dated _____

Joshua Santuche

Dated _____


Maryellen McDonald
Executive Director
Disability Rights Florida
Dated 9/28/16

Carlos A. Migoya
President and CEO
Jackson Health System

Dated _____

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Joel Martos

Daniel Junior
Interim Director
Miami-Dade Corrections and
Rehabilitation Department

Dated _____

Dated _____



Joshua Santuche

Dated 9-26-2014

Maryellen McDonald
Executive Director
Disability Rights Florida

Carlos A. Migoya
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Jackson Health System

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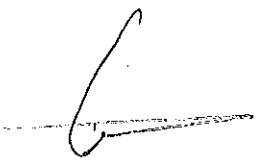
Dated _____

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Joshua Santuche

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Maryellen McDonald
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Carlos A. Migoya
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Dated _____

Dated 9/26/16

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Joel Martos



Daniel Junior
Interim Director
Miami-Dade Corrections and
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Dated _____

Dated 9/21/16

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Dated _____