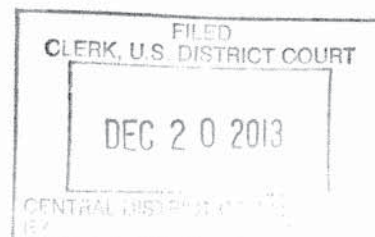


COPY

ADAM S. PARIS (SBN 190693)
 parisa@sullcrom.com
 RORY P. CULVER (SBN 271868)
 culverr@sullcrom.com
 1888 Century Park East, Suite 2100
 Los Angeles, California 90067
 Tel.: (310) 712-6600
 Fax: (310) 712-8800



[Additional Counsel Listed on Signature Page]

Attorneys for Plaintiff David Bryant

**UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DAVID BRYANT,

Plaintiff,

v.

FEDERAL BUREAU OF
 PRISONS,

CHARLES SAMUELS, JR., in
 his official capacity as Director
 of the Federal Bureau of Prisons,
 and

JUAN CASTILLO, in his official
 capacity as Regional Director of
 the Western Region of the
 Federal Bureau of Prisons,

Defendants.

Case No. 11-cv-00254-CAS (DTB)

FIRST
**AMENDED AND SUPPLEMENTED
 COMPLAINT FOR VIOLATIONS
 OF THE REHABILITATION ACT
 AND THE FIRST, FIFTH, AND
 EIGHTH AMENDMENTS TO THE
 U.S. CONSTITUTION**

TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	NATURE OF THE ACTION	1
4	JURISDICTION AND VENUE	6
5	PARTIES	6
6	A. Plaintiff	6
7	B. Defendants	7
8	STATEMENT OF FACTS	8
9	A. Auxiliary Aids Available for Deaf Persons.....	8
10	B. Defendants Failed to Provide Bryant with Necessary Auxiliary Aids	
11	and Accommodations.	10
12	C. Bryant Seeks Relief Through the Prison Grievance Process and	
13	Files Suit.	14
14	D. The BOP Continues to Fail to Provide Bryant with Even the Most	
15	Basic Auxiliary Aids and Accommodations After His Transfer to	
16	USP Tucson.	16
17	E. Bryant Obtains a Series of Victories in the Administrative Process.	17
18	F. Defendants Provide Bryant with Inconsistent Auxiliary Aids and	
19	Accommodations and Continue to Fail to Provide Other Ordered	
20	Relief.....	22
21	CLAIMS FOR RELIEF	24
22		
23		
24		
25		
26		
27		
28		
	PRAYER FOR RELIEF.....	40

1 David Bryant, by his undersigned counsel, for his complaint against
2 defendants the Federal Bureau of Prisons (the "BOP"); Charles Samuels, Jr., in his
3 official capacity as Director of the BOP; and Juan Castillo, in his official capacity
4 as Regional Director of the Western Region of the BOP¹ (referred to collectively,
5 along with their predecessors and successors in equivalent positions, where
6 applicable, as "Defendants"), alleges as follows:

7 **NATURE OF THE ACTION**

8 1. This action concerns Defendants' repeated and continued failure to
9 provide Bryant—a deaf man in BOP custody since August 2005—with the
10 auxiliary aids and accommodations necessary to provide him with meaningful
11 access to prison programs and activities on an equal basis with hearing individuals
12 and to ensure his health, safety and general welfare as required by the
13 Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 701 *et seq.*, and the
14 First, Fifth and Eighth Amendments to the U.S. Constitution.

15 2. Bryant has been deaf since early childhood.

16 3. As is common with other individuals who became deaf early in life,
17 English, whether written or spoken, is not an effective method of communication
18 for Bryant. Bryant is not able to understand long sentences in written English and
19 cannot have complex communications in written English. The BOP itself has
20 measured Bryant's reading ability at just below a second-grade level. For spoken
21 English, Bryant cannot hear human speech even with the assistance of a hearing
22 aid, and Bryant understands only a very occasional simple word from lip reading.

23 4. Bryant's primary and native language is American Sign Language
24 ("ASL"), and he prefers to communicate in ASL. ASL also is the only language in

25 ¹ This action was originally filed against Harley G. Lappin and Robert E.
26 McFadden in their official capacities. Mr. Samuels and Mr. Castillo have since
27 succeeded Mr. Lappin and Mr. McFadden, respectively, and thus are automatically
28 substituted into this action as a matter of law pursuant to Federal Rule of Civil
Procedure 25(d).

1 which Bryant can communicate effectively. ASL is a complex language that
2 employs signs made with the hands, as well as facial expressions and other types of
3 body language, to communicate thoughts or concepts rather than words. ASL is
4 not simply English in hand signals; it is completely distinct and different from
5 English and has its own vocabulary and grammatical and syntactical rules. On
6 account of these and other differences, there is no conventionally accepted written
7 form of ASL.

8 5. Like other deaf people, Bryant must rely upon auxiliary aids and
9 accommodations in order to receive meaningful access to many of the programs
10 and services of the federal government, including the BOP, equal to that of hearing
11 individuals. These auxiliary aids and accommodations are also necessary to
12 protect his constitutional rights.

13 6. During the time Bryant has been in the custody of the BOP,
14 Defendants routinely have failed to provide Bryant with auxiliary aids and
15 accommodations, resulting in Bryant being:

- 16 • unable to communicate effectively with health care providers and
17 mental health professionals, raise medical issues with them, discuss
18 mental health concerns with them or understand the treatments and
19 medications they prescribe;
- 20 • excluded from participating in the same educational, vocational and
21 rehabilitative programs as hearing prisoners;
- 22 • deprived of knowledge and/or understanding of prison-wide
23 emergency and/or other important announcements;
- 24 • attacked by other inmates for attempting to activate closed-captioning
25 on prison televisions; and
- 26 • prevented from contacting and effectively communicating with his
27 family, friends and attorneys using an effective telecommunications
28 device.

1 7. Bryant first exhausted the BOP's internal administrative remedy
2 process and was denied any relief. Bryant then filed his first Complaint in this
3 action on January 7, 2011, alleging claims under the Rehabilitation Act and the
4 First, Fifth and Eighth Amendments to the U.S. Constitution against the BOP;
5 then-Director of the BOP, Harley G. Lappin; then-Regional Director of the BOP,
6 Robert E. McFadden; and then-Warden of United States Penitentiary ("USP")
7 Victorville, Francisco Quintana, in their official capacities. After filing the
8 Complaint, Bryant was transferred from USP Victorville to USP Canaan in
9 Pennsylvania and then, in July 2011, was transferred again to USP Tucson in
10 Arizona.

11 8. On May 31, 2011, Defendants moved to dismiss the Complaint on the
12 ground that Bryant had not exhausted the Department of Justice's administrative
13 process in 28 C.F.R. § 39.170 (the "Administrative Process"). On July 11, 2011,
14 the Court granted Defendants' motion in part and denied it in part, dismissing
15 Bryant's claim under the Rehabilitation Act without prejudice and staying his
16 claims under the First, Fifth and Eighth Amendments to the U.S. Constitution,
17 pending exhaustion of the Administrative Process.

18 9. On September 4, 2013, Bryant exhausted the Administrative Process
19 when Complaint Adjudication Officer Mark Gross issued the Final Decision of the
20 Department of Justice regarding Bryant's administrative complaint (the
21 "Administrative Decision").

22 10. Bryant prevailed. Following a live hearing where eleven witnesses
23 testified, including four expert witnesses, the Administrative Decision found, as
24 alleged in the first Complaint, that Bryant is an individual with a disability and that
25 the BOP had violated the Rehabilitation Act by, *inter alia*, failing to provide him
26 with the auxiliary aids necessary to ensure effective communication. The
27 Administrative Decision found that at USP Tucson the BOP had failed to provide
28 Bryant with (1) qualified ASL interpreters; (2) an adequate notification system to

1 make him aware of emergencies; and (3) sufficient access to a telecommunications
2 device for the deaf ("TDD") as required by the Rehabilitation Act. The
3 Administrative Decision requires the BOP to provide Bryant with (a) a qualified
4 ASL interpreter whenever he participates in "programs or services"; (b) a
5 notification system sufficient to provide him with "adequate notice . . . of
6 emergencies"; (c) access to a TDD on terms "comparable to that of other inmates";
7 (d) a hearing aid (which helps Bryant better sense his surroundings) and hearing
8 aid batteries as needed; and (e) access to closed-captioned television.

9 11. The Administrative Decision represents a significant victory for
10 Bryant. The BOP has agreed that it must provide the relief ordered therein.

11 12. However, the Administrative Decision does not provide all of the
12 relief that Bryant sought, relief to which Bryant is entitled under the Constitution
13 and the Rehabilitation Act.

14 13. Bryant seeks further relief in at least three respects. *First*, the
15 Administrative Decision determined that the BOP may satisfy its obligations under
16 the Rehabilitation Act for its telecommunications program by providing a
17 teletypewriter ("TTY")² to Bryant. Bryant, however, cannot communicate
18 effectively in written English as required to use a TTY. Instead, he can only
19 communicate effectively in ASL, which a videophone, his preferred auxiliary aid,
20 makes possible for telecommunications.³ *Second*, the Administrative Decision
21 determined that a flashing blue light in Bryant's housing unit, flashing amber lights
22 on the guard tower in the recreation yard, and an inmate companion *could* provide
23

24 ² Through use of a small text display, a keyboard and a receiver for a
25 telephone handset, TTYs allow users to transmit typewritten messages through a
26 telephone.

27 ³ Videophones come in a variety of forms, including standalone units with a
28 display, input device and camera. Videophones allow users to communicate via
ASL by simultaneously transmitting video between users.

1 Bryant with “adequate notice,” but did not actually determine whether such aids do
2 so. Such aids are not adequate as they do not provide notice equivalent to that
3 provided to hearing individuals. For this reason, Bryant prefers a vibrating pager
4 or visual paging system as a non-aural notification system. *Third*, the
5 Administrative Decision did not order the BOP to pay attorneys’ fees, but instead
6 directed Bryant, as the “prevailing party,” to seek his attorneys’ fees in this Court.
7 Bryant thus seeks to recover those fees in this action.

8 14. Moreover, the BOP has failed, and continues to fail, to provide all the
9 relief ordered in the Administrative Decision and required by the Rehabilitation
10 Act and U.S. Constitution—including relief which the BOP has agreed to provide
11 to Bryant.

12 15. Since the Administrative Decision, Defendants have failed to provide
13 Bryant with qualified ASL interpreters at all times required. For example, despite
14 having had years since his transfer in July 2011 to contract for qualified ASL
15 interpreters, the BOP has not done so for Bryant’s educational courses, resulting in
16 those courses, including a GED course, being delayed.

17 16. Additionally, Defendants have failed to ensure that Bryant has a
18 properly functioning hearing aid. Recently, when Bryant informed BOP staff that
19 his hearing aid was not functioning properly, the BOP staff told him that they did
20 not believe him and that his hearing aid would not be repaired or replaced.

21 17. The BOP also has failed to provide Bryant with access to the TTY in
22 the evenings and on the weekends—when his family and friends are most likely to
23 be available—even though hearing inmates may use standard telephones at these
24 times.

25 18. These repeated failures coupled with the Defendants’ historic failures
26 to provide any auxiliary aids and accommodations evidence a strong likelihood
27 that Defendants will continue to fail to comply with the Rehabilitation Act and
28 U.S. Constitution absent a Court order requiring them to do so.

19. Moreover, the facts that Defendants have previously transferred Bryant between institutions instead of providing him with required auxiliary aids and stated that Bryant likely will be transferred again demonstrate that a judicial order is required to ensure Defendants' compliance with their statutory and Constitutional obligations.

20. Bryant thus brings this action both to (i) confirm the relief ordered in the Administrative Decision and end the BOP's haphazard, ineffectual implementation of this required relief, and (ii) obtain further relief not ordered in the Administrative Decision, but compelled by the facts and the law. This further relief specifically includes Bryant's access to a videophone and an adequate notification system at whatever institution he is housed. Finally, Bryant seeks to recover the substantial attorneys' fees incurred by his counsel in this action and the Administrative Process.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

22. Venue was proper in this Judicial District when the first Complaint was filed, and Defendants did not challenge venue in responding to the first Complaint. Moreover, venue remains proper in this Judicial District pursuant to 28 U.S.C. § 1391(e) because, as demonstrated throughout this Amended and Supplemented Complaint, a substantial part of the events and omissions giving rise to Bryant's claims occurred in this District, comprising a serious, continuous and ongoing violation of Bryant's federal statutory and Constitutional rights.

PARTIES

A. Plaintiff

23. Bryant is a 49-year old deaf man who is serving a life sentence in the custody of Defendants. Since August 2005, Bryant has been housed in at least six

1 separate BOP prison facilities located throughout the country: USP Hazelton in
2 Bruceton Mills, West Virginia from August 2005 to October 2009; USP Coleman I
3 in Coleman, Florida from October 2009 to March 2010; USP Victorville in
4 Adelanto, California from March 2010 to March 2011; Metropolitan Detention
5 Center ("MDC") Brooklyn in Brooklyn, New York from April 2011 to May 2011;
6 USP Canaan in Waymart, Pennsylvania from May 2011 to July 2011; and USP
7 Tucson in Tucson, Arizona from July 14, 2011 through the present.

8 **B. Defendants**

9 24. The BOP is the federal executive agency responsible for the
10 supervision and custody of over 217,000 inmates, including Bryant. The BOP is
11 headquartered in Washington, D.C.

12 25. Charles Samuels, Jr. is the current Director of the BOP. As Director
13 of the BOP, he is responsible for the oversight and management of the BOP's more
14 than 117 institutions and for the safety and security of the more than 217,000
15 inmates under the agency's jurisdiction. He is also responsible for developing and
16 directing the implementation of the BOP's policies and practices regarding the
17 treatment of and services provided to disabled inmates. Upon information and
18 belief, he is aware of the BOP's policies and practices regarding disabled
19 individuals and, due to his position at the BOP, has constructive and/or actual
20 knowledge of Defendants' failure to accommodate Bryant's deafness in its
21 programs and services. He is sued in his official capacity.

22 26. Juan Castillo is the current Regional Director of the BOP's Western
23 Region. He is responsible for the development, approval, implementation,
24 monitoring and evaluation of policies, operations and programs for the 12 federal
25 institutions and three complexes in the Western Region, including USP Victorville
26 and USP Tucson. Upon information and belief, he is aware of the BOP's policies
27 and practices regarding disabled individuals and, due to his position at the BOP,
28

1 has constructive and/or actual knowledge of Defendants' failure to accommodate
2 Bryant's deafness in its programs and services. He is sued in his official capacity.

3 **STATEMENT OF FACTS**

4 **A. Auxiliary Aids Available for Deaf Persons.**

5 27. Deaf persons must rely upon auxiliary aids and accommodations in
6 order to receive meaningful access to many of the programs and services of the
7 federal government and on a basis equal to that of hearing individuals. Examples
8 of such aids include qualified ASL interpreters, closed-captioning on televisions,
9 hearing aids, visual paging systems, vibrating pagers and videophones.

10 28. A qualified ASL interpreter is one who is "able to interpret
11 effectively, accurately and impartially both receptively and expressively, using any
12 necessary specialized vocabulary." 28 C.F.R. § 35.104. In the prison context, the
13 requirement of impartiality forecloses prison staff or other inmates from being
14 qualified ASL interpreters. Although fluency in ASL is a necessary condition to
15 being a qualified ASL interpreter, it is not a sufficient one since the cognitive
16 processes involved in interpreting are complex and require specific training. In
17 response to concerns over the qualification of interpreters and to provide an
18 independent and objective measure of qualifications, standards have been
19 developed by professional organizations, such as the Registry of Interpreters for
20 the Deaf and the National Association of the Deaf, and licensing requirements have
21 been imposed by various states, including California and Arizona. These certified
22 interpreters also are bound by a code of conduct, which includes confidentiality.

23 29. Closed-captioning displays a transcription of the audio portion of the
24 broadcast on a television, including spoken dialogue and other non-spoken aural
25 elements. All televisions 13 inches or larger sold in the United States must be
26 equipped with closed-captioning.

27 30. Both visual paging systems and vibrating pagers are methods of
28 providing the deaf with non-aural notifications of emergencies and other

1 announcements. A visual paging system is a wall-mounted screen that can display
2 visual messages either in pictures or a few simple words what is being broadcast
3 over a public address ("PA") system. It is the functional equivalent of an
4 electronic marquee. A vibrating pager is a pager that can display visual messages
5 either in pictures or a few simple words what is being broadcast over a PA system
6 and that vibrates upon receipt of that message.

7 31. Both TTYs and videophones are TDDs that, unlike a standard
8 telephone, do not rely on a user's ability to hear or speak.

9 32. TTYs allow communication directly with other TTY users by
10 exchanging written text messages over the telephone lines. They also allow
11 communication indirectly with non-TTY users through a relay service in which the
12 relay operator receives the typewritten message from the TTY, reads it over the
13 phone to the non-TTY user and then transcribes the spoken response for the TTY
14 user. A TTY relies on the deaf user's ability to communicate in writing. Because
15 of the limitations on a user's typing speed and a variety of other technological
16 limitations, it is a much more time-intensive communication tool than a standard
17 telephone. While TTYs were once the standard for deaf telecommunication,
18 technological advances are such that the vast majority of deaf individuals no longer
19 have TTYs and telecommunicate solely by videophone.

20 33. Videophones allow for visual, real-time communication by means of a
21 video feed through an internet connection. A videophone allows deaf persons to
22 communicate using ASL either with another ASL-videophone user or with hearing
23 telephone users through a Video Relay Service ("VRS"). VRS operators are
24 qualified ASL interpreters who translate ASL into spoken English and back again
25 in real time. The deaf person signs to the VRS operator over the videophone and
26 the operator then speaks what is being signed in ASL to the hearing person over
27 the telephone. Then, the operator signs in ASL to the deaf videophone user the
28 spoken response from the hearing person. Videophones also can be employed to

1 provide Video Remote Interpreting ("VRI") services, which utilize videophone
2 technology to provide off-site qualified ASL interpreters. The only difference
3 between VRI and VRS is that with VRI, the hearing person and deaf person are in
4 the same room, while for VRS, the deaf person signs over the videophone and the
5 operator then speaks by telephone to a hearing person in a remote location.

6 34. Videophones have many advantages over TTYs. Communications via
7 videophones, even using VRS, are much faster than via TTYs. Most importantly,
8 however, videophones enable native-ASL speakers to communicate in their native
9 language rather than forcing them to read and write in another language in which
10 they might not be able to communicate effectively. Thus, for Bryant, who
11 communicates effectively in ASL but not in written English, a videophone is the
12 only TDD that permits effective communication.

13 35. Videophones are cheap to install, operate and maintain. In general,
14 videophone equipment is provided free of charge by VRS providers. Likewise,
15 VRS is provided free of charge through a federal government program. Aside
16 from costs associated with a conventional internet connection, there are no
17 additional costs to operate videophones or access VRS.

18 36. Correctional facilities throughout the country, including in Virginia,
19 Texas, Minnesota, Wisconsin and California, have installed or are in the process of
20 installing videophones for inmates. Furthermore, videophone conversations,
21 including conversations over VRS, can be recorded and monitored by correctional
22 facilities. Videophone providers have expressed a willingness and desire to work
23 alongside the BOP to install videophone technology compatible with the BOP's
24 existing infrastructure and security concerns.

25 **B. Defendants Failed to Provide Bryant with Necessary Auxiliary**
26 **Aids and Accommodations.**

27 37. Beginning in August 2005, at each of the five separate BOP
28 institutions at which Bryant was housed, Defendants failed time and again to

1 provide Bryant with auxiliary aids and accommodations required by the
2 Rehabilitation Act and U.S. Constitution. Defendants' persistent failure to
3 accommodate his disability resulted in Bryant being excluded from or denied
4 meaningful access to the BOP's medical, educational, and vocational programs as
5 well as other programs and services, including telecommunications and television.
6 Defendants' failure to accommodate Bryant's disability also posed serious dangers
7 to Bryant's health and safety and resulted in him being unfairly disciplined by
8 Defendants. The failures at these five BOP institutions are described below.

9 38. *Qualified ASL Interpreters.* Defendants were aware that Bryant
10 requires the assistance of a qualified ASL interpreter in order to communicate
11 effectively with the BOP and its staff except for the most standard, context-driven
12 and basic communications. Defendants, however, consistently denied Bryant the
13 assistance of such interpreters to access BOP programs and services, including
14 medical, psychiatric, educational, vocational and disciplinary programs and
15 services.

16 39. The consequences resulting from Defendants' failure to provide
17 Bryant with qualified ASL interpreters were severe. Bryant had several
18 misunderstandings with prison staff and officials and perceived disciplinary issues,
19 sometimes simply for not responding to oral orders, which resulted in Bryant being
20 placed for long periods of time in the special housing unit ("SHU") where inmates
21 are "securely separated from the general inmate population." 28 C.F.R. § 541.21.
22 Further, Bryant was unable to access the BOP's medical and psychiatric programs
23 and services on equal terms with hearing inmates. On account of Defendants'
24 failure to provide qualified ASL interpreters, Bryant was unable to communicate
25 effectively with medical or psychiatric providers, resulting in Bryant being
26 misdiagnosed, treated improperly and treated without his informed consent. For
27 example:

28

- 1 • Upon admission to USP Hazelton in August 2005, Bryant was
2 evaluated by medical and psychological staff without the assistance of
3 an ASL interpreter. As a result, he was placed on a heavy regimen of
4 psychotropic drugs, including Haldol, Trazodone, Prolixin, Prozac
5 and Cogentin. Without the aid of a qualified ASL interpreter, Bryant
6 had no way of knowing what drugs he was taking or understanding
7 their side effects. A different medical staff member later noted that
8 Bryant “may have been given medication for what appeared to be
9 agitation, likely related to difficulty communicating.” When Bryant
10 was reevaluated with the aid of a qualified ASL interpreter, this staff
11 member decided that the medications were unnecessary and adjusted
12 his drug regimen with the goal of weaning him off the medications
13 entirely.
- 14 • While at USP Victorville, Bryant was placed in the SHU for several
15 months without being informed of the reason for his separation from
16 the general population. Bryant’s counsel later discovered that
17 Bryant’s confinement to the SHU occurred because the BOP was
18 under the mistaken impression that Bryant had requested to be there,
19 clearly a miscommunication. Although Bryant and his counsel
20 attempted to correct this misunderstanding, the BOP did not release
21 Bryant from the SHU until shortly before he was transferred from
22 USP Victorville.
- 23 • While at USP Victorville, Bryant was deprived of functioning hearing
24 aids for several months while the BOP purportedly attempted to
25 provide him with replacements. On October 7, 2010—months after
26 Bryant had turned in his hearing aids to medical staff—Bryant was
27 finally supposed to meet with an audiologist to be evaluated for new
28 hearing aids. However, the correctional officer refused to let Bryant

1 leave his cell without explanation. Bryant therefore missed the
2 appointment. When the appointment was finally rescheduled in
3 January 2011, it was conducted without a qualified ASL interpreter.
4 As a result, when Bryant had concerns about the methodology of the
5 test, Bryant was unable to raise those concerns with the audiologist
6 and ultimately received a hearing aid that was not sufficiently
7 powerful.

8 40. ***Non-Aural Notifications.*** Defendants failed to provide Bryant with
9 non-aural notification of emergencies and other important prison announcements.
10 As a result, Bryant was not informed of emergencies, such as prison lockdowns,
11 and important prison announcements, such as scheduled movements, meals and
12 activities—information that hearing inmates received. The lack of any non-aural
13 notification system also resulted in Bryant being unfairly disciplined by BOP staff.
14 For example, while at USP Hazelton in June 2007, BOP staff informed inmates
15 aurally that it was time for the inmates to line up to go to the cafeteria. Bryant did
16 not hear this call to line up and shortly thereafter asked one of the guards to be
17 taken to the cafeteria. The guard attempted to inform Bryant that Bryant had
18 missed the call and would have to skip the meal. Bryant attempted to explain the
19 issue to the guard, but due to communication barriers, the guard perceived Bryant's
20 attempt to communicate as a threat and sent Bryant to the SHU as punishment.

21 41. ***Telecommunications Devices for the Deaf.*** Defendants failed to
22 provide Bryant with a videophone as required to ensure effective communication.
23 Instead, Bryant was required to try to telecommunicate through typed written
24 messages in English via a TTY. This continuing failure has effectively excluded
25 him from the BOP's telephone services and prevented him from meaningful
26 communication with his family and attorneys due to his inability to communicate
27 effectively in English. Further, Defendants did not grant Bryant meaningful access
28 even to the TTY. Defendants often failed to maintain and provide Bryant with a

1 functioning TTY, improperly charged Bryant for calls made using the TTY, and
2 otherwise restricted Bryant's access to the TTY in a way hearing inmates were not
3 restricted, for instance, by limiting the days and hours that he was allowed to use it.

4 42. **Hearing Aids.** Defendants failed to provide Bryant with functioning
5 hearing aids and replacement hearing aid batteries on an as-needed basis, rendering
6 his hearing aids non-functioning for long periods of time. At times, Defendants
7 even forced Bryant to remove his hearing aids because they were damaged and
8 emitting feedback. Bryant also was not given new hearing aids when his hearing
9 aids were broken. Although hearing aids do not enable Bryant to hear speech, they
10 enable him to sense certain loud noises and better respond to his surroundings. By
11 denying Bryant the use of working hearing aids, Defendants were deliberately
12 indifferent to and placed Bryant at a serious risk of physical harm.

13 43. **Closed-Captioned Television.** Defendants failed to provide closed-
14 captioning-enabled televisions to Bryant and ensure that Bryant would not face
15 violent retribution from other inmates for enabling the closed-captioning function
16 on the televisions. Through these failures, Defendants effectively excluded him
17 from a program available to hearing inmates. For example, by Defendants not
18 taking reasonable efforts to ensure that Bryant did not face reprisals for enabling
19 closed-captioning, Bryant has been attacked on multiple occasions by other
20 inmates for trying to activate the closed-captioning on his unit's television. After
21 one such attack at USP Coleman I, rather than addressing the problem, Defendants
22 allowed Bryant to be sent to the SHU for five months at which point he was
23 transferred to another BOP facility.

24 **C. Bryant Seeks Relief Through the Prison Grievance Process**
25 **and Files Suit.**

26 44. To redress these (and other) problems, Bryant began requesting
27 auxiliary aids and accommodations for his deafness in 2007 through the prison's
28 internal administrative remedy process. In a series of requests filed between 2007

1 and 2011, Bryant sought: (i) qualified ASL interpreters for all BOP programs and
2 services; (ii) non-aural notification of emergencies and other important
3 announcements through a vibrating pager or visual paging system; (iii) meaningful
4 access to a videophone or, at the very least, a functioning TTY; (iv) hearing aids
5 and hearing aid batteries as needed; and (v) safe access to closed-captioned
6 television.

7 45. Rather than provide the auxiliary aids and accommodations Bryant
8 sought, Defendants punished Bryant for participating in the prison's internal
9 administrative remedy process and for asserting his rights under the U.S.
10 Constitution and the Rehabilitation Act. Defendants repeatedly transferred Bryant
11 from prison to prison, upon information and belief, in an attempt to moot his
12 administrative remedy requests. For example, after Bryant completed the
13 administrative process at USP Hazelton, the then-Regional Director of the Mid-
14 Atlantic Region of the BOP, Kim M. White, informed Bryant, in a letter dated
15 October 8, 2009, that he had been transferred and asserted that this transfer
16 "render[ed] moot any specific issues [Bryant] had related to his incarceration at
17 USP Hazelton." Similarly, as Bryant neared completion of the prison
18 administrative remedy process at USP Coleman I, Defendants transferred Bryant
19 from that facility to USP Victorville. In addition to transferring Bryant to other
20 institutions to avoid resolving his claims, Defendants also punished him by
21 keeping him in the SHU. In July 2010, Defendants sent Bryant to the SHU at USP
22 Victorville in an apparent response to his requests for auxiliary aids and
23 accommodations and in lieu of providing him with those auxiliary aids and
24 accommodations.

25 46. Bryant exhausted the prison's internal administrative remedy process
26 and commenced this lawsuit on January 7, 2011. The first Complaint brought
27 claims under the Rehabilitation Act and the First, Fifth and Eighth Amendments to
28 the U.S. Constitution against Defendants, seeking: (i) qualified ASL interpreters

1 for all programs and services of the BOP; (ii) non-aural notification of emergencies
2 and other announcements through a vibrating pager or visual paging system;
3 (iii) meaningful access to a videophone; (iv) hearing aids and hearing aid batteries
4 as needed; and (v) safe access to closed-captioned television.

5 47. Defendants moved to dismiss the Complaint on the ground that Bryant
6 had failed to properly exhaust the claims under the Prison Litigation Reform Act
7 ("PLRA"), 42 U.S.C. § 1997e. Defendants conceded that Bryant had exhausted
8 the prison's internal administrative grievance process (*e.g.*, Dkt. No. 24 at 10), but
9 contended that Bryant had failed to exhaust all available administrative remedies
10 because he had not completed the Administrative Process.

11 48. On July 11, 2011, this Court dismissed Bryant's Rehabilitation Act
12 claims without prejudice and stayed his constitutional claims, pending completion
13 of the Administrative Process.

14 **D. The BOP Continues to Fail to Provide Bryant with Even the Most**
15 **Basic Auxiliary Aids and Accommodations After His Transfer to**
16 **USP Tucson.**

17 49. Following periods of incarceration at MDC Brooklyn and USP
18 Canaan, Bryant was ultimately transferred to USP Tucson in Arizona in July 2011.
19 Defendants continued to fail to provide any auxiliary aids and accommodations to
20 him despite their awareness of Bryant's needs and requests. Defendants did not
21 provide Bryant with a qualified ASL interpreter during his initial intake screening
22 at which Bryant's physical health was evaluated and housing placement was
23 determined. Nor did Defendants provide Bryant with a qualified ASL interpreter
24 during his interactions with medical staff at USP Tucson, except for a single
25 appointment with an audiologist in December 2011. Moreover, Defendants did not
26 provide Bryant with access to a videophone, and the access they provided to a TTY
27 was not equivalent to the access to telephones they provided to hearing inmates.
28

E. Bryant Obtains a Series of Victories in the Administrative Process.

50. On May 9, 2011, Richard Toscano, Director of the Equal Employment Opportunity (“EEO”) Staff of the DOJ’s Justice Management Division, determined that Bryant had filed a complaint under 28 C.F.R. § 39.170 that was complete as of May 2, 2011, thereby commencing the Administrative Process. Director Toscano requested that Mina Raskin, an EEO Officer of the BOP, attempt to informally resolve Bryant’s complaint and, if not informally resolved, investigate the complaint and issue a Letter of Findings.

51. On November 2, 2011, EEO Officer Raskin issued a Letter of Findings (attached hereto as Exhibit A). It found that the Rehabilitation Act required the BOP to provide Bryant with (i) qualified ASL interpreters when he “attends an educational program, meets with a healthcare provider or participates in a disciplinary proceeding”; (ii) “an inmate companion coupled with the use of some sort of visual alarm” to provide notification of emergencies and other announcements; (iii) restricted access to a TTY; (iv) hearing aids and hearing aid batteries as needed; and (v) closed-captioning when “Bryant is watching television.”

52. The Letter of Findings represented a significant victory for Bryant. The BOP’s own EEO Officer admitted the need to provide Bryant with auxiliary aids and accommodations for his deafness and found that the BOP was failing to do so. The Letter of Findings, however, lacked clarity on certain of its proposed remedies and failed to provide certain other relief required by the Rehabilitation Act. Therefore, on December 2, 2011, Bryant appealed the Letter of Findings and requested a hearing before an administrative law judge. The BOP indicated that it agreed with the Letter of Findings and falsely contended that it was in compliance with it and providing the auxiliary aids and accommodations ordered therein.

53. Between July 31, 2012 and August 3, 2012, an administrative hearing was held before Administrative Law Judge Ellen K. Thomas. The administrative hearing was limited in scope to Bryant's confinement at USP Tucson. No pre-hearing discovery was allowed. The first opportunity that Bryant's counsel had to speak with the BOP's many witnesses was at the hearing itself. The hearing comprised eleven witnesses over four days, and was held inside USP Tucson.

54. On June 20, 2013, Judge Thomas issued the Recommended Decision With Findings of Fact, Conclusions of Law, and Remedies ("Recommended Decision") (attached hereto as Exhibit B). The Recommended Decision went beyond the Letter of Findings' recommendations and conclusions. Judge Thomas found that the BOP had violated the Rehabilitation Act at USP Tucson over and over again by (a) failing to provide Bryant with a qualified ASL interpreter for prison programs, including medical care and educational programs; (b) failing to keep Bryant adequately notified of emergencies; and (c) failing to provide Bryant with meaningful access to a TDD. Judge Thomas proposed the following remedies, which constitute a substantial portion of the relief Bryant has sought since he has been incarcerated:

- a. ***Qualified ASL Interpreters.*** The BOP must provide "qualified interpreters" to Bryant in connection with "all programs and services provided to inmates at USP Tucson." The Recommended Decision defines "qualified interpreters" as those whose qualifications have been objectively verified, such as those with certifications from the National Registry of Interpreters for the Deaf, and excludes BOP staff and inmates as "qualified interpreters." It states that "the standard to be used in selecting interpreters" should be to use "the most available certified interpreter, or when no certified interpreter is reasonably available . . . the services of an otherwise qualified interpreter." Judge Thomas found that live interpreters "are preferred whenever possible

1 for medical appointments, disciplinary proceedings, or other high
2 stakes settings.” The BOP also must file quarterly reports with the
3 Complaint Adjudication Officer for at least one year concerning its
4 provision of qualified interpreters. (Ex. B at 6, 16.)

5 b. ***Non-Aural Notification of Emergencies.*** The BOP is required to
6 “ensure that adequate notice is provided to [Bryant] of emergencies”
7 by using non-aural notification systems, which may be an inmate
8 companion and visual alarms. The BOP also must provide Bryant
9 with training on the non-aural notification systems. (*Id.* at 8, 15, 16.)

10 c. ***Telecommunications Device.*** The BOP must provide Bryant with
11 “access to telecommunications that is comparable to the access
12 provided to hearing inmates.” Judge Thomas found that the TTY
13 requires knowledge of English, that Bryant cannot communicate
14 effectively in English, that the TTY is “rapidly becoming obsolete,”
15 that Bryant can communicate effectively in ASL, that videophones
16 allow Bryant to communicate in ASL and are a “superior method [of
17 telecommunication] in all respects,” and that videophones would not
18 present any security concerns when used in conjunction with a video
19 relay service (VRS). The BOP therefore should “explore the
20 possibility of implementing the [videophone] technology with all
21 deliberate speed.” Nonetheless, Judge Thomas held that the BOP
22 could satisfy its obligations under the Rehabilitation Act by providing
23 Bryant with meaningful access to a TTY. Judge Thomas therefore
24 directed the BOP to provide Bryant with increased access to a TTY
25 equal to that of hearing inmates, including access in the evenings and
26 on weekends. (*Id.* at 4, 7-9, 11, 17.)

27 d. ***Hearing Aids and Closed-Captioning.*** The BOP must comply with
28 the relief ordered in the Letter of Findings. (*Id.* at 17.)

- 1 e. **Scope and Implementation.** The remedies ordered “are to be
2 implemented effective immediately upon issuance of a final order.”
3 The Recommended Decision creates “a rebuttable presumption that
4 the same remedies will accompany [Bryant] and be made available to
5 him” wherever he is transferred. (*Id.* at 19.)
- 6 f. **Attorneys’ Fees.** Under 29 U.S.C. § 794a(b), the prevailing party in a
7 mandatory administrative proceeding is entitled to recover reasonable
8 attorneys’ fees, but Judge Thomas concluded that she was not
9 authorized to award such fees. Bryant thus was directed to request his
10 attorneys’ fees from the District Court. (*Id.* at 17-18.)

11 55. On July 10, 2013, Bryant filed a limited exception to the
12 Recommended Decision (attached hereto as Exhibit C). Bryant challenged Judge
13 Thomas’s conclusion that the BOP could comply with the Rehabilitation Act’s
14 requirements to provide meaningful access to the BOP’s telecommunications
15 program equal to that of hearing individuals by providing him with only TTY
16 access. Bryant noted that the following factual findings were incompatible with a
17 legal conclusion that the BOP can satisfy its obligations by providing Bryant with
18 TTY access:

- 19 • “[T]he extent of [Bryant’s] mastery of written English has thus far
20 remained at the level of the very early primary grades” (Ex. B at 4);
- 21 • TTYs rely on a user’s ability to communicate in English and are
22 “rapidly becoming an obsolete technology” (*id.* at 9, 11, 14);
- 23 • A videophone “enables ASL users to communicate with voice
24 telephone users through video rather than typed text” and, unlike a
25 TTY, does not rely on Bryant’s English to communicate (*id.* at 9, 11);
- 26 • Videophones provide for much more efficient communication
27 between ASL and English speakers (*id.*);
- 28

- 1 • Videophones with access to VRS are “a superior [telecommunication]
2 method in all respects for David Bryant” (*id.*);
- 3 • The technology needed for VRS is the same as the technology needed
4 for VRI, “a capacity that by now should be up and running at USP
5 Tucson” (*id.* at 9, 14); and
- 6 • Security concerns over the use of videophones at USP Tucson “are
7 satisfied because the only number that needs to be called is the
8 number for the VRS service, and the prison has the ability to restrict
9 the telephone numbers that may be contacted by the service just as it
10 does with the current TTY relay system” (*id.* at 9).

11 56. On July 19, 2013, the BOP submitted a reply to Bryant’s exceptions
12 (the “Reply,” attached hereto as Exhibit D). The BOP disagreed with Bryant that a
13 videophone is required under the Rehabilitation Act. The Reply stated that “Judge
14 Thomas provided a thorough and well-documented analysis of this case” and
15 “urge[d] the Complaint Adjudication Officer to adopt in full Judge Thomas’s
16 Recommended Decision.” (Ex. D at 1.) This includes the findings above
17 concerning Bryant’s disability, the ineffectiveness of the TTY, the effectiveness of
18 the videophone with VRS, as well as all of Judge Thomas’s findings, conclusions
19 and remedies with respect to the various non-telecommunications auxiliary aids
20 and accommodations sought by Bryant, including attorneys’ fees.

21 57. On September 4, 2013, the Complaint Adjudication Officer issued the
22 Administrative Decision (attached hereto as Exhibit E). In the cover letter
23 enclosing the Administrative Decision, the Complaint Adjudication Officer noted
24 “this decision is the last step in the administrative process, with no further right of
25 administrative appeal.” (Ex. E, Letter at 1.) The Administrative Decision fully
26 adopts the factual findings, legal conclusions and proposed remedies in the
27 Recommended Decision (with one immaterial exception). It includes a longer
28

1 discussion of whether the Rehabilitation Act requires the BOP to provide Bryant
2 with access to VRS that was unsupported by the administrative record and the law.

3 58. Critically, the Administrative Decision also states that Bryant is a
4 “prevailing party” and instructs him to seek attorneys’ fees with this Court. (*Id.* at
5 12.)

6 **F. Defendants Provide Bryant with Inconsistent Auxiliary Aids and**
7 **Accommodations and Continue to Fail to Provide Other Ordered**
8 **Relief.**

9 59. After years of Defendants depriving Bryant of required auxiliary aids
10 and accommodations, Defendants recently have begun providing Bryant with
11 many of the requested auxiliary aids and accommodations sought and ordered in
12 the Administrative Decision. In the past several months, Defendants have started
13 providing Bryant with qualified ASL interpreters for scheduled medical
14 appointments and rehabilitative programs. Defendants installed a VRI system at
15 USP Tucson so that interpreting services can be provided to Bryant both in-person
16 as well as through VRI. Defendants allowed Bryant increased access to the TTY,
17 but only on weekdays. Defendants also installed a blue flashing light in Bryant’s
18 housing unit and flashing amber lights on the guard tower in the recreation yard
19 and assigned Bryant an “inmate companion” in an attempt to better notify him of
20 emergencies and other important announcements. Defendants further installed
21 several televisions in Bryant’s housing unit on which they enabled closed-
22 captioning.

23 60. However, Bryant has serious concerns about Defendants’ commitment
24 to maintain these efforts in the future or at other institutions in the absence of an
25 order from this Court requiring this relief. Each of the concessions obtained from
26 Defendants was the direct result of judicial scrutiny, including efforts by the
27 Honorable David T. Bristow who has overseen a years-long mediation between the
28 parties, and Judge Thomas in the Administrative Process.

1 61. Indeed, even after the Letter of Findings, the Recommended Decision
2 and the Administrative Decision were issued, and Defendants endorsed them,
3 Defendants failed to comply with their terms. Most recently, Defendants have
4 failed to comply with these orders by postponing educational courses in which
5 Bryant has tried to enroll, including a GED course, because they failed to locate
6 and provide Bryant with qualified ASL interpreters despite having had years to do
7 so. As of the date of this filing, it is still unclear when these courses will begin.

8 62. Defendants did not provide Bryant with a qualified ASL interpreter
9 during his most recent appointment with an audiologist. When his hearing aid
10 began emitting feedback and not working properly, Defendants failed to resolve
11 the issue and provide Bryant with a properly functioning hearing aid. Defendants
12 have also failed to provide Bryant with access to a TTY in the evenings and on the
13 weekends. This record, coupled with Defendants' propensity to transfer Bryant
14 instead of providing him with required auxiliary aids and accommodations,
15 evidences a strong likelihood that Defendants will continue to fail to comply with
16 the Rehabilitation Act and the U.S. Constitution absent a Court order.

17 63. Additionally, Bryant is being denied other auxiliary aids and
18 accommodations required under the Rehabilitation Act and U.S. Constitution.
19 Despite Bryant only being able to communicate effectively in ASL and requiring a
20 videophone to telecommunicate in ASL, including with his family and attorneys,
21 the BOP refuses to provide him with access to a videophone. Bryant thus does not
22 have meaningful access to the prison's telephone program on an equal basis with
23 his fellow hearing inmates in violation of the Rehabilitation Act and Constitution.
24 The factual findings in the Administrative Decision compel a conclusion that
25 Defendants must provide Bryant with access to a videophone.

26 64. Additionally, the auxiliary aids and accommodations that Defendants
27 are currently providing Bryant for notification of emergencies and other important
28 prison announcements do not provide Bryant with notice that is equal to that of

1 hearing inmates. Only a vibrating pager and visual paging system can provide
2 Bryant with the same information provided to hearing individuals through auditory
3 instructions and announcements and prevent Bryant from being placed in a
4 position of dependence on another inmate.

5 65. Finally, Bryant seeks to recover his attorneys' fees and costs for
6 bringing this action and prevailing in the Administrative Process ordered by the
7 Court.

8 **CLAIMS FOR RELIEF**

9 **COUNT I: VIOLATION OF THE REHABILITATION ACT**
10 **(29 U.S.C. § 794 *ET SEQ.*) AGAINST ALL DEFENDANTS**
11 **(QUALIFIED ASL INTERPRETERS)**

12 66. Bryant realleges and incorporates by reference each and every
13 allegation above as if fully set forth herein.

14 67. Bryant is deaf and a qualified individual with a disability within the
15 meaning of the Rehabilitation Act.

16 68. The BOP is an executive agency within the meaning of the
17 Rehabilitation Act. All of the operations of the BOP at each of its correctional
18 facilities throughout the country, including USP Canaan, USP Coleman I, USP
19 Hazelton, USP Victorville and USP Tucson, are programs or activities conducted
20 by an executive agency within the meaning of the Rehabilitation Act. At all times
21 relevant to this action, the Rehabilitation Act was in full force and effect in the
22 United States, and Bryant had and has a right not to be subjected to discrimination
23 by Defendants on the basis of his disability or on the basis of his seeking redress
24 for Defendants' violations of the Rehabilitation Act.

25 69. Defendants have routinely failed to provide Bryant with a qualified
26 ASL interpreter, *see* 28 C.F.R. § 35.104, resulting in Bryant being:

- 27 • unable to communicate effectively with healthcare providers and
28 mental health professionals, raise medical issues, discuss mental

- 1 health problems or understand the treatments and medications
2 prescribed for him;
- 3 • excluded from participating in the same educational, vocational, and
 - 4 rehabilitative programs and activities as hearing prisoners;
 - 5 • unable to communicate effectively with correctional officers;
 - 6 • subject to disciplinary action stemming from Defendants' refusal to
 - 7 accommodate his deafness; and
 - 8 • confined to the SHU, often for indefinite periods of time.

9 70. Defendants' failure to provide Bryant with qualified ASL interpreters
10 as necessary to ensure effective communication has denied, and continues to deny,
11 Bryant on the basis of his deafness the same access to Defendants' services,
12 benefits, activities, programs and privileges that is afforded to hearing individuals.
13 This failure to provide qualified interpreters as necessary to ensure effective
14 communication, and the resulting failure to provide equal and meaningful access to
15 the services, benefits, activities, programs and privileges of the BOP, is the result
16 of the regular and institutional policies, practices and/or customs of Defendants.
17 These failures have been ongoing.

18 71. As a proximate result of Defendants' violations of the Rehabilitation
19 Act, Bryant has suffered, and continues to suffer, discrimination, unequal
20 treatment, exclusion (including exclusion from Defendants' services, benefits,
21 activities, programs and privileges), financial loss, loss of dignity, frustration,
22 humiliation, emotional pain and suffering, anxiety, trauma, embarrassment,
23 unnecessary loss of rights and privileges (including unnecessary disciplinary
24 measures), segregation and lockdown, serious injury to his health and mental
25 health (including the injuries specified herein), as well as an unnecessary risk of
26 serious injury to his health and mental health. Defendants' failure to provide
27 Bryant with qualified ASL interpreters will continue to result in harm to Bryant, as
28 Bryant will be in the custody or supervision of the BOP for the rest of his life and

1 will continue to attempt to use the services, benefits, activities, programs and
2 privileges provided by the BOP and to which he is entitled. This harm will
3 continue and/or has a reasonable likelihood to recur unless and until Defendants
4 are ordered by this Court to modify their policies, practices and procedures.

5 72. Though in recent months Defendants have provided Bryant with
6 qualified ASL interpreters at times, these actions have been in the context of
7 constant judicial and administrative scrutiny and, even under this scrutiny, have not
8 extended to all programs and services they have provided Bryant. Further, when
9 not under this scrutiny, Defendants continually failed to provide Bryant with
10 qualified ASL interpreters. Defendants' deficiencies in terms of compliance with
11 administrative orders and the Rehabilitation Act have a reasonable likelihood of
12 continuing or recurring in the future whether Bryant remains at USP Tucson or is
13 transferred to another BOP facility, as the BOP has stated likely will occur again.

14 **COUNT II: VIOLATION OF THE REHABILITATION ACT**
15 **(29 U.S.C. § 794 *ET SEQ.*) AGAINST ALL DEFENDANTS**
16 **(NON-AURAL NOTIFICATION SYSTEM)**

17 73. Bryant realleges and incorporates by reference each and every
18 allegation above as if fully set forth herein.

19 74. Defendants have routinely failed to provide Bryant with any non-aural
20 notification system, and continue to fail to provide Bryant with his preferred non-
21 aural notification system of a vibrating pager or a visual paging system, resulting
22 in Bryant being deprived of knowledge of prison-wide safety or emergency
23 announcements, as well as knowledge of counts, meals and other important events.

24 75. Defendants' failure to provide Bryant with any non-aural notification
25 system sufficient to ensure effective communication has denied, and continues to
26 deny, Bryant on the basis of his deafness the same access to Defendants' services,
27 benefits, activities, programs and privileges that is afforded to hearing individuals.
28 The failure to provide a non-aural notification system sufficient to ensure effective
communication, and the resulting failure to provide equal and meaningful access to

1 the services, benefits, activities, programs and privileges of the BOP, is the result
2 of the regular and institutional policies, practices and/or customs of Defendants.
3 These failures have been ongoing.

4 76. As a proximate result of Defendants' violations of the Rehabilitation
5 Act, Bryant has suffered, and continues to suffer, discrimination, unequal
6 treatment, exclusion (including exclusion from Defendants' services, benefits,
7 activities, programs and privileges), loss of dignity, frustration, humiliation,
8 emotional pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of
9 rights and privileges (including unnecessary disciplinary measures), segregation
10 and lockdown, and serious injury to his health and mental health (including the
11 injuries specified herein), as well as an unnecessary risk of serious injury to his
12 health and mental health. Defendants' failure to provide Bryant with a non-aural
13 notification system sufficient to ensure effective communication will continue to
14 result in harm to Bryant, as Bryant will be in the custody or supervision of the BOP
15 for the rest of his life and will continue to attempt to use the services, benefits,
16 activities, programs and privileges provided by the BOP and to which he is
17 entitled. This harm will continue and/or has a reasonable likelihood to recur unless
18 and until Defendants are ordered by this Court to modify their policies, practices
19 and procedures.

20 77. Though in recent months Defendants have provided Bryant with a
21 non-aural notification system in the form of a flashing blue light in Bryant's
22 housing unit, flashing amber lights on the guard tower in the recreation yard, and
23 an inmate companion, these actions have been in the context of constant judicial
24 and administrative scrutiny. When not under this scrutiny, Defendants continually
25 failed to provide Bryant with any non-aural notification system, let alone one
26 sufficient to ensure effective communication. Defendants' deficiencies in terms of
27 compliance with administrative orders and the Rehabilitation Act have a
28 reasonable likelihood of continuing or recurring in the future whether Bryant

1 remains at USP Tucson or is transferred to another BOP facility, which the BOP
2 has stated likely will occur again.

3 **COUNT III: VIOLATION OF THE REHABILITATION ACT**
4 **(29 U.S.C. § 794 *ET SEQ.*) AGAINST ALL DEFENDANTS**
5 **(CLOSED-CAPTIONING)**

6 78. Bryant realleges and incorporates by reference each and every
7 allegation above as if fully set forth herein.

8 79. Defendants have routinely failed to provide Bryant with access to
9 closed-captioned television, or to take reasonable steps to ensure he has safe access
10 to it, and continue to fail to provide Bryant with safe access to closed-captioned
11 television, resulting in Bryant being forced to choose between being attacked by
12 other inmates for attempting to enable closed-captioning or to watch programming
13 without closed-captioning in order to avoid such attacks.

14 80. Defendants' failure to provide Bryant with safe access to closed-
15 captioned television has denied, and continues to deny, Bryant on the basis of his
16 deafness the same access to Defendants' services, benefits, activities, programs and
17 privileges that is afforded to hearing individuals. The failure to provide safe access
18 to closed-captioned television, and the resulting failure to provide equal and
19 meaningful access to the services, benefits, activities, programs and privileges of
20 the BOP, is the result of the regular and institutional policies, practices and/or
21 customs of Defendants. These failures have been ongoing.

22 81. As a proximate result of Defendants' violations of the Rehabilitation
23 Act, Bryant has suffered, and continues to suffer, discrimination, unequal
24 treatment, exclusion (including exclusion from Defendants' services, benefits,
25 activities, programs and privileges), loss of dignity, frustration, humiliation,
26 emotional pain and suffering, anxiety, trauma, embarrassment, and serious injury
27 to his health and mental health (including the injuries specified herein), as well as
28 an unnecessary risk of serious injury to his health and mental health. Defendants'
failure to provide Bryant with safe access to closed-captioned television will

1 continue to result in harm to Bryant, as Bryant will be in the custody or supervision
2 of the BOP for the rest of his life and will continue to attempt to use the services,
3 benefits, activities, programs and privileges provided by the BOP and to which he
4 is entitled. This harm will continue and/or has a reasonable likelihood to recur
5 unless and until Defendants are ordered by this Court to modify their policies,
6 practices and procedures.

7 82. Though in recent months Defendants provided Bryant with access to
8 closed-captioned television by purchasing and installing new televisions at USP
9 Tucson, these actions have been in the context of constant judicial and
10 administrative scrutiny. When not under this scrutiny, Defendants continually
11 failed to provide Bryant with any access to closed-captioned television, let alone
12 safe access to it. Defendants' deficiencies in terms of compliance with
13 administrative orders and the Rehabilitation Act have a reasonable likelihood of
14 continuing or recurring in the future whether Bryant remains at USP Tucson or is
15 transferred to another BOP facility, which the BOP has stated likely will occur
16 again.

17 **COUNT IV: VIOLATION OF THE REHABILITATION ACT**
18 **(29 U.S.C. § 794 ET SEQ.) AGAINST ALL DEFENDANTS**
19 **(HEARING AIDS)**

20 83. Bryant realleges and incorporates by reference each and every
21 allegation above as if fully set forth herein.

22 84. Defendants have routinely failed to provide Bryant with functioning
23 hearing aids and replacement hearing aid batteries on an as-needed basis, and
24 continue to fail to provide Bryant with a functioning hearing aid, resulting in
25 Bryant being unable to sense his surroundings and being exposed to an
26 unnecessary risk of serious physical harm.

27 85. Defendants' failure to provide Bryant with functioning hearing aids
28 and replacement hearing aid batteries on an as-needed basis has denied, and
continues to deny, Bryant on the basis of his deafness the same access to

1 Defendants' services, benefits, activities, programs and privileges that is afforded
2 to hearing individuals. The failure to provide functioning hearing aids and
3 replacement hearing aid batteries on an as-needed basis, and the resulting failure to
4 provide equal and meaningful access to the services, benefits, activities, programs
5 and privileges of the BOP, is the result of the regular and institutional policies,
6 practices and/or customs of Defendants. These failures have been ongoing.

7 86. As a proximate result of Defendants' violations of the Rehabilitation
8 Act, Bryant has suffered, and continues to suffer, discrimination, unequal
9 treatment, exclusion (including exclusion from Defendants' services, benefits,
10 activities, programs and privileges), loss of dignity, frustration, humiliation,
11 emotional pain and suffering, anxiety, trauma, embarrassment, and an unnecessary
12 risk of serious injury to his health and mental health. Defendants' failure to
13 provide Bryant with functioning hearing aids and replacement hearing aid batteries
14 on an as-needed basis will continue to result in harm to Bryant, as Bryant will be in
15 the custody or supervision of the BOP for the rest of his life and will continue to
16 attempt to use the services, benefits, activities, programs and privileges provided
17 by the BOP and to which he is entitled. This harm will continue and/or has a
18 reasonable likelihood to recur unless and until Defendants are ordered by this
19 Court to modify their policies, practices and procedures.

20 87. Though in recent months Defendants provided Bryant with hearing
21 aids and replacement hearing aid batteries on an as-needed basis at times, these
22 actions have been in the context of constant judicial and administrative scrutiny.
23 When not under this scrutiny, Defendants continually failed to provide Bryant with
24 functioning hearing aids and/or replacement hearing aid batteries on an as-needed
25 basis. Defendants' deficiencies in terms of compliance with administrative orders
26 and the Rehabilitation Act have a reasonable likelihood of continuing or recurring
27 in the future whether Bryant remains at USP Tucson or is transferred to another
28 BOP facility, which the BOP has stated likely will occur again.

**COUNT V: VIOLATION OF THE REHABILITATION ACT
(29 U.S.C. § 794 ET SEQ.) AGAINST ALL DEFENDANTS
(TTYS AND VIDEOPHONES)**

88. Bryant realleges and incorporates by reference each and every allegation above as if fully set forth herein.

89. Defendants have routinely failed to provide Bryant with meaningful access to any TDD, and continue to fail to provide Bryant with his preferred TDD of a videophone, resulting in Bryant being prevented from contacting family, friends and his counsel and being prevented from effectively communicating with them even when contact is permitted.

90. Defendants' failure to provide Bryant with meaningful access to a TDD sufficient to ensure effective communication has denied, and continues to deny, Bryant on the basis of his deafness the same access to Defendants' services, benefits, activities, programs and privileges that is afforded to hearing individuals. The failure to provide meaningful access to a TDD sufficient to ensure effective communication, and the resulting failure to provide equal and meaningful access to the services, benefits, activities, programs and privileges of the BOP, is the result of the regular and institutional policies, practices and/or customs of Defendants. These failures have been ongoing.

91. As a proximate result of Defendants' violations of the Rehabilitation Act, Bryant has suffered, and continues to suffer, discrimination, unequal treatment, exclusion (including exclusion from Defendants' services, benefits, activities, programs and privileges), financial loss, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of rights and privileges (including unnecessary disciplinary measures), and injury to his mental health (including the injuries specified herein). Defendants' failure to provide Bryant with meaningful access to a TDD sufficient to ensure effective communication will continue to result in harm to Bryant, as Bryant will be in the custody or supervision of the BOP for the rest of his life and

1 will continue to attempt to use the services, benefits, activities, programs and
2 privileges provided by the BOP and to which he is entitled. This harm will
3 continue and/or has a reasonable likelihood to recur unless and until Defendants
4 are ordered by this Court to modify their policies, practices and procedures.

5 92. Though in recent months Defendants provided Bryant with increased
6 access to a TTY on weekdays, these actions have been in the context of constant
7 judicial and administrative scrutiny, and, even under this scrutiny, Defendants have
8 failed to provide Bryant with access to a TTY in the evenings and on the weekends
9 as required by the Administrative Decision. When not under this scrutiny,
10 Defendants continually failed to provide Bryant with meaningful access to any
11 TDD, let alone a videophone—the only TDD that ensures Bryant has the same
12 ability to engage in clear and effective communication with individuals remotely as
13 hearing inmates in Defendants' custody. Defendants' deficiencies in terms of
14 compliance with administrative orders and the Rehabilitation Act have a
15 reasonable likelihood of continuing or recurring in the future whether Bryant
16 remains at USP Tucson or is transferred to another BOP facility, which the BOP
17 has stated likely will occur again.

18 **COUNT VI: VIOLATION OF THE REHABILITATION ACT**
19 **(29 U.S.C. § 794 *ET SEQ.*) AND THE FIRST AMENDMENT TO THE U.S.**
20 **CONSTITUTION AGAINST ALL DEFENDANTS**
(RETALIATION)

21 93. Bryant realleges and incorporates by reference each and every
22 allegation above as if fully set forth herein.

23 94. Defendants have further violated the Rehabilitation Act, as well as the
24 First Amendment to the U.S. Constitution, by impermissibly retaliating against
25 Bryant for petitioning the government and attempting to secure the rights to which
26 he is entitled under the Rehabilitation Act and the U.S. Constitution.

27 95. Defendants transferred Bryant from USP Hazelton to USP Coleman I,
28 from USP Coleman I to USP Victorville, from USP Victorville to USP Canaan and

1 from USP Canaan to USP Tucson. Upon information and belief, these transfers
2 had no legitimate purpose, but rather were substantially motivated by Defendants'
3 desire to frustrate Bryant's exhaustion of the administrative remedy process and
4 prevent his access to the court system.

5 96. Defendants also have repeatedly placed Bryant in the SHU—often
6 indefinitely and without communicating to Bryant the basis for his confinement—
7 following his attempts to utilize the prison's internal administrative remedy
8 process. On information and belief, Defendants' placement of Bryant in the SHU
9 often had no legitimate purpose, but rather was substantially motivated by
10 Defendants' desire to avoid providing Bryant with the auxiliary aids and
11 accommodations that he was entitled to under the Rehabilitation Act and U.S.
12 Constitution, and which he sought through the prison administrative remedy
13 process.

14 97. Defendants' retaliation against Bryant for exercising rights secured by
15 the Rehabilitation Act and the U.S. Constitution are the result of the regular and
16 institutional policies, practices and/or customs of Defendants. Prior to his transfer
17 to USP Tucson, these retaliatory actions had been ongoing.

18 98. As a proximate result of Defendants' violations of the Rehabilitation
19 Act and the First Amendment, Bryant has suffered, and continues to suffer,
20 discrimination, unequal treatment, exclusion (including exclusion from
21 Defendants' services, benefits, activities, programs and privileges), loss of dignity,
22 frustration, humiliation, emotional pain and suffering, anxiety, trauma,
23 embarrassment, unnecessary loss of rights and privileges (including unnecessary
24 disciplinary measures), segregation and lockdown, and serious injury to his health
25 and mental health (including the injuries specified herein), as well as an
26 unnecessary risk of serious injury to his health and mental health. Defendants'
27 retaliatory actions will continue to result in harm to Bryant, as Bryant will be in the
28 custody or supervision of the BOP for the rest of his life and will continue to

1 attempt to use the services, benefits, activities, programs and privileges provided
2 by the BOP and to which he is entitled. This harm will continue and/or has a
3 reasonable likelihood to recur unless and until Defendants are ordered by this
4 Court to modify their policies, practices and procedures.

5 99. Though in recent months Defendants have ceased their retaliation
6 against Bryant, this cessation is in the context of constant judicial and
7 administrative scrutiny. When not under this scrutiny, Defendants continually
8 retaliated against Bryant by transferring him to various BOP facilities located
9 throughout the country and placing him in the SHU. These retaliatory actions have
10 a reasonable likelihood of resuming in the future whether Bryant remains at USP
11 Tucson or is transferred to another BOP facility, which the BOP has stated likely
12 will occur again.

13 **COUNT VII: VIOLATION OF THE FIRST AMENDMENT**
14 **TO THE U.S. CONSTITUTION AGAINST ALL DEFENDANTS**
15 **(RIGHT TO COMMUNICATION)**

16 100. Bryant realleges and incorporates by reference each and every
17 allegation above as if fully set forth herein.

18 101. Defendants have impermissibly deprived, and continue to deprive,
19 Bryant of his First Amendment right to communication by failing to provide him
20 with auxiliary aids and accommodations necessary for him to communicate
21 effectively with non-inmates.

22 102. Hearing inmates in Defendants' custody have telecommunication
23 equipment that allows communication with non-inmates.

24 103. Because Bryant is housed in a remote area far from his family's
25 residence in Washington, D.C., and does not communicate effectively in written or
26 spoken English, written correspondence, personal visits and TTYs are not adequate
27 alternatives for exercising his First Amendment right to communicate with friends,
28 family and attorneys.

1 104. On account of his disability, Bryant requires a videophone with VRS
2 in order to have the same level of communication with non-inmates that hearing
3 prisoners have.

4 105. Defendants' refusal to provide Bryant with a videophone serves no
5 legitimate or compelling penological need and is not rationally related or narrowly
6 tailored to any identified penological need. Provision of appropriate
7 telecommunication equipment to Bryant would have negligible effects, if any, on
8 other inmates and prison employees.

9 106. Defendants' failure to comply with the First Amendment has resulted
10 and will continue to result in harm to Bryant, unless and until Defendants are
11 ordered by this Court to modify their policies, practices and procedures.

12 107. Though in recent months Defendants provided Bryant with increased
13 access to a TTY on weekdays, these actions have been in the context of constant
14 judicial and administrative scrutiny, and, even under this scrutiny, Defendants have
15 failed to provide Bryant with access to a TTY in the evenings and on the weekends
16 as required by the Administrative Decision. When not under this scrutiny,
17 Defendants continually failed to provide Bryant with meaningful access to any
18 TDD, let alone a videophone—the only TDD that ensures Bryant has the same
19 ability to engage in clear and effective communication with individuals remotely
20 that is provided to hearing inmates in Defendants' custody. Defendants'
21 deficiencies in terms of compliance with administrative orders and the U.S.
22 Constitution have a reasonable likelihood of continuing or recurring in the future
23 whether Bryant remains at USP Tucson or is transferred to another BOP facility,
24 which the BOP has stated likely will occur again.

25 ///

26 ///

27 ///

28 ///

**COUNT VIII: VIOLATION OF THE FIFTH AMENDMENT
TO THE U.S. CONSTITUTION AGAINST ALL DEFENDANTS
(INFORMED CONSENT; DEPRIVATION OF LIBERTY WITHOUT
PROCESS)**

108. Bryant realleges and incorporates by reference each and every allegation above as if fully set forth herein.

109. Defendants have violated the Fifth Amendment by providing Bryant with medical and psychiatric care without his informed consent.

110. Defendants systematically denied Bryant the means of effective communication, including the services of a qualified ASL interpreter, which are necessary to allow Bryant to understand and communicate with medical staff and mental health professionals. Without these auxiliary aids and accommodations, Bryant was and is unable to understand, and thus give his informed consent to, any and all medical treatment, including psychological treatment, to which he has been subjected by Defendants and their employees.

111. Defendants have further violated the Fifth Amendment by transferring Bryant to the SHU and failing to inform him of the reason for his detention with the aid of a qualified ASL interpreter. Defendants also have not afforded Bryant status hearings concerning his placement in the SHU.

112. Defendants' failure to provide Bryant with qualified ASL interpreters as necessary to ensure informed consent serves no legitimate or compelling penological need and is not rationally related or narrowly tailored to any identified penological need. In addition, Defendants' transfers of Bryant to the SHU and further failure to provide him with status hearings concerning his placement in the SHU serve no legitimate or compelling penological need and are not rationally related or narrowly tailored to any identified penological need. Likewise, Defendants' failure to inform Bryant for the reason for his detention in the SHU with the aid of a qualified ASL interpreter serves no legitimate or compelling

1 penological need and is not rationally related or narrowly tailored to any identified
2 penological need.

3 113. Defendants' failure to comply with the Fifth Amendment has resulted
4 and will continue to result in harm to Bryant, unless and until Defendants are
5 ordered by this Court to modify their policies, practices and procedures.

6 114. Though Defendants at times provided Bryant with qualified ASL
7 interpreters in recent months and in the preceding two years have ceased their
8 practice of confining Bryant to the SHU, this cessation is in the context of constant
9 judicial and administrative scrutiny. When not under this scrutiny, Defendants
10 have continually failed to provide Bryant with qualified ASL interpreters as
11 necessary to ensure informed consent and repeatedly placed him in the SHU
12 without any explanation and without the ability to challenge that placement.
13 Defendants' deficiencies in terms of compliance with administrative orders and the
14 Fifth Amendment have a reasonable likelihood of continuing or recurring in the
15 future whether Bryant remains at USP Tucson or is transferred to another BOP
16 facility, as the BOP has stated likely will occur again.

17 **COUNT IX: VIOLATION OF THE EIGHTH AMENDMENT**
18 **TO THE U.S. CONSTITUTION AGAINST ALL DEFENDANTS**
19 **(UNREASONABLE RISK OF PHYSICAL HARM;**
20 **DISPROPORTIONATE PUNISHMENT)**

21 115. Bryant realleges and incorporates by reference each and every
22 allegation above as if fully set forth herein.

23 116. Defendants have violated the Eighth Amendment prohibition against
24 cruel and unusual punishment by systematically denying Bryant access to basic
25 human services and vital information during his incarceration.

26 117. Defendants have failed to provide Bryant with the auxiliary aids and
27 accommodations necessary to ensure Bryant has adequate notice of prison alerts,
28 announcements and safety instructions, which are necessary for Bryant's safety. In
the past several years, Defendants have failed to provide Bryant with functioning

1 hearing aids and batteries for those devices on an as-needed basis, which help
2 provide Bryant with a better sense of his surroundings and potential emergencies.
3 Moreover, they have failed to provide the means of effective communication,
4 including the services of a qualified ASL interpreter, to allow Bryant to understand
5 and communicate with medical staff, mental health professionals, correctional
6 officers and other members of prison staff with whom vital communications occur.

7 118. As a result of these failures, Bryant has been subjected to dangerous
8 living conditions where he is vulnerable to assault and other hazards, and unable to
9 protect himself from these hazards or communicate his need for assistance and
10 protection. Bryant has also been prescribed completely unnecessary
11 psychopharmacological drugs because Defendants failed to ensure that medical
12 staff and mental health care professionals are able to communicate effectively with
13 him.

14 119. Defendants had knowledge of the dangerous and unconstitutional
15 conditions in which Bryant was living as a result of these failures. Bryant
16 submitted numerous written complaints to BOP staff and to BOP officials
17 throughout the country, requesting that the BOP provide him with functioning
18 hearing aids and hearing aid batteries as needed, qualified ASL interpreters and
19 other auxiliary aids and services when he meets with medical staff and mental
20 health professionals and engages in important communications with correctional
21 officers and other members of prison staff and non-aural notification of
22 emergencies.

23 120. Defendants' failure to comply with the Eighth Amendment has
24 resulted and will continue to result in harm to Bryant, unless and until Defendants
25 are ordered by this Court to modify their policies, practices and procedures.

26 121. Defendants have further violated the Eighth Amendment by
27 effectively keeping Bryant in a perpetual state of solitary confinement and thereby
28 imposing a punishment grossly disproportionate to his crime.

1 122. Defendants failed to provide Bryant with the auxiliary aids and
2 accommodations necessary to ensure he is able to effectively communicate with
3 BOP staff, friends, family and his attorneys.

4 123. The deliberate and knowing refusal to provide means of effective
5 communication, including the services of a qualified ASL interpreter, to allow
6 Bryant to understand and communicate with medical staff and healthcare
7 providers, including mental health professionals and pharmacists, educational and
8 vocational instructors, correctional officers, and other members of prison staff have
9 kept, and continue to keep, Bryant in solitary confinement. Defendants' prior
10 refusal to provide Bryant an interpreter for educational activities ensures that
11 Bryant's limited English language skills will remain as they are, keeping him in a
12 position where he is unable to communicate with correctional officers, other
13 members of prison staff and his fellow inmates, thereby furthering his isolation.

14 124. Defendants compounded these deprivations by placing Bryant in the
15 SHU for indefinite periods of time, thereby further isolating him from his fellow
16 inmates and depriving him of the privileges which he would enjoy as part of the
17 prison's general population, including telecommunications access.

18 125. Additionally, by punishing him for requesting the auxiliary aids and
19 accommodations to which he is entitled, Defendants have shown other deaf or
20 hearing impaired inmates with whom he might otherwise communicate that it is to
21 their advantage to accept the *status quo*, not seek auxiliary aids and
22 accommodations for themselves and not communicate with Bryant.

23 126. Defendants' failure to comply with the Eighth Amendment has
24 resulted and will continue to result in harm to Bryant, unless and until Defendants
25 are ordered by this Court to modify their policies, practices and procedures.

26 127. Though in recent months Defendants have provided Bryant with a
27 non-aural notification system, qualified ASL interpreters at times and improved
28 access to a TTY on weekdays, these actions have been in the context of constant

1 judicial and administrative scrutiny. When not under this scrutiny, Defendants
2 continually and systematically punished Bryant in manner disproportionate to his
3 crimes. Defendants' deficiencies in terms of compliance with administrative
4 orders and the Eighth Amendment have a reasonable likelihood of continuing or
5 recurring in the future whether Bryant remains at USP Tucson or is transferred to
6 another BOP facility, which the BOP has stated likely will occur again.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Bryant respectfully requests that:

9 A. The Court adjudge and decree that Defendants, by the organizations,
10 systems, policies, practices and conditions described above, have violated and
11 continue to violate Section 794 of the Rehabilitation Act and the Constitution of
12 the United States;

13 B. The Court enter such injunctive and/or declaratory relief pursuant to
14 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil
15 Procedure against Defendants and in favor of Bryant as it deems appropriate to
16 remedy past violations of the laws of the United States and to prevent future
17 violations of the same, including, but not limited to, an order requiring Defendants
18 to provide to Bryant the same remedies ordered by the Court at USP Tucson and
19 any and all BOP institutions to which he is transferred in the future, and including
20 all the auxiliary aids and accommodations Bryant seeks:

- 21 • access to a qualified ASL interpreter—*i.e.*, a non-inmate, non-BOP
22 staff member who is objectively and independently determined to be
23 “able to interpret effectively, accurately and impartially both
24 receptively and expressively, using any necessary specialized
25 vocabulary”—for all programs and services provided to inmates;
- 26 • a vibrating pager, visual paging system or other auxiliary aid capable
27 of providing notification of emergencies and other important
28 announcements equivalent to hearing inmates;

- properly functioning hearing aids and hearing batteries on an as-needed basis;
- access to a videophone with VRS equal to the access had by hearing inmates to telephones; and
- safe access to televisions with closed-captioning.

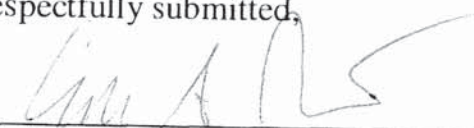
C. The Court retain jurisdiction of this matter until Defendants demonstrate that they have fully complied with the Administrative Decision and any orders of this Court, and until there is a reasonable assurance that Defendants will continue to comply in the future absent continuing Court oversight;

D. The Court enter judgment against Defendants in favor of Bryant for the costs of litigation both in this action and the Administrative Process, including for recovery of his reasonable attorneys' fees under 29 U.S.C. § 794a(b); and

E. The Court award Bryant any further relief that the Court deems appropriate.

Dated: December 20, 2013

Respectfully submitted,


ADAM S. PARIS (SBN 190693)
parisa@sullcrom.com
RORY P. CULVER (SBN 271868)
culverr@sullcrom.com
1888 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

ANDREW E. GELFAND (*pro hac vice*)
gelfanda@sullcrom.com
125 Broad Street, 32nd Floor
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEBORAH GOLDEN (*pro hac vice*)
Deborah_Golden@washlaw.org
Washington Lawyers' Committee for Civil
Rights and Urban Affairs
11 Dupont Circle, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 319-1000
Facsimile: (202) 319-1010

Attorneys for Plaintiff David Bryant

EXHIBIT A

U.S. Department of Justice

Office of the Inspector General

CERTIFIED MAIL

November 2, 2011

Deborah Golden
Washington Lawyer's Committee
11 Dupont Circle NW, Suite 400
Washington, DC 20036

Harlan Penn
Regional Counsel
Western Region
Bureau of Prisons
7338 Shoreline Drive
Stockton, CA 95219

Re: David Bryant, Register Number 06704-106
Letter of Findings

Dear Ms. Golden and Mr. Penn:

This letter is in response to the complaint filed by Inmate David Bryant (Register Number 06704-106) under Section 504 of the Rehabilitation Act of 1973, as amended, and Title 28, CFR, Part 39. Richard Toscano, Director, Equal Employment Opportunity Staff, Justice Management Division, Department of Justice, delegated my office the authority to process Mr. Bryant's complaint in accordance with Title 28, CFR, Part 39. The complaint was determined to be complete as of May 2, 2011.

Because the parties were unable to reach an informal resolution, my office has completed its investigation of the complaint, in accordance with Title 28 CFR §39.170, and is notifying the parties of the results through this letter.

Mr. Bryant's complaint states he has severe to profound sensorineural hearing loss in his left ear and profound sensorineural hearing loss in his right ear. It further states that Mr. Bryant wears hearing aids, not to hear, but to better sense his surroundings. It also states that Mr. Bryant's primary and native language is American Sign Language (ASL). Additionally, it states, because Mr. Bryant is functionally illiterate, reading and writing do not provide an effective method of communication for Mr. Bryant. In his complaint, Mr. Bryant requests the following:

- A qualified ASL interpreter to help him communicate effectively with prison staff, educational and vocational

instructors, work program managers and coordinators, medical staff, healthcare providers, mental health professionals and pharmacists, and disciplinary officers;

- Non-aural, non-written notification of emergencies or other important events and announcements, e.g. a vibrating pager;
- Batteries for his hearing aids as needed;
- Access to telecommunication devices appropriate for deaf, such as videophone or TTY, equal to the telephone privileges of hearing inmates; and
- Safe access to a television enabled with close captioning, commensurate with the television privileges afforded to other inmates.

28 C.F.R. Section 39.130 provides the general prohibitions against discrimination. It states: "No qualified handicapped person shall...be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency."
28 CFR §39.130(a).

In addition, it states that the agency, "in providing any aid, benefit or service, may not... (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service; (ii) Afford a qualified handicapped person an opportunity to participate or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; (iv) Provide different or separate aid, benefits or services to handicapped persons or to any class of handicapped persons that is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;... (vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other receiving the aid, benefit, or service."
28 CFR §39.130(b).

With regards to communications, the regulations state, "The agency shall take appropriate steps to ensure effective communication with... members of the public.. (1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency. (i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person. (ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. (2) Where the

agency communicates with.. beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used." 28 CFR §39.160

Findings of Fact and Conclusions of Law

Mr. Bryant is currently located at Federal Correctional Complex (FCC) Tucson, a care level three institution. All of the inmates in his housing unit are care level 3 inmates. The definition of care level three is: "Inmates with CARE Level 3 needs are fragile outpatients who require frequent clinical contacts, and/or who may require some assistance with activities of daily living, but do not require daily nursing supervision." Because of assignment to a care level three facility, he has access to more programming.

As the regulations above state, in determining what type of auxiliary aid is needed to provide Mr. Bryant an equal opportunity to participate in the programs and activities available at FCC Tucson, Mr. Bryant's requests will be given primary consideration. Thus, each of the requests listed in his complaint will be discussed, in order.

1. A Qualified ASL Interpreter

Mr. Bryant is requesting a qualified ASL interpreter to help him communicate effectively with prison staff, educational and vocational instructors, work program managers and coordinators, medical staff, healthcare providers, mental health professionals and pharmacists, and disciplinary officers. The regulations define a qualified sign language interpreter as one who is "able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. § 35.104.

The Rehabilitation Act requires that otherwise qualified individuals receive "meaningful access" to programs and activities. See *Randolph v. Rodgers*, 170 F.3d 850 (8th Cir. 1999). Physical attendance is insufficient to meet the requirement of "meaningful access." Thus, whenever Mr. Bryant attends an educational program, meets with a healthcare provider or participates in a disciplinary proceeding, he must be provided a qualified ASL Interpreter. If FCC Tucson is going to rely on staff or inmates to meet this requirement, they must ensure the individuals receive the proper training to meet the regulatory definition.

2. Notification of Emergencies

Mr. Bryant is requesting non-aural, non-written notification of emergencies or other important events and announcements, e.g. a vibrating pager. Currently, Mr. Bryant is assigned an inmate

companion, his cellmate, who is instructed to notify him of emergencies and other special movements. Mr. Bryant's cell is on the lowest tier and his bunk is on the lower bunk. His cell is across from a correctional officer's office. He is located in the same housing unit as other special care needs inmates. A vibrating pager is not reliable due to the construction of the prison with its steel doors and rebars.

When dealing with accommodations in the employment context, the Job Accommodation Network, an organization referenced by the Equal Employment Opportunity Commission, discusses the "buddy system" which is comparable to Mr. Bryant's situation. They state that the "buddy system should not be relied on as the only means of alerting an individual with a hearing impairment to emergency situations." They further explain that the use of the "buddy system" can be appropriate but only when used in conjunction with another method. <http://askjan.org/soar/hearing/deaf.html>.

Based on the constraints of the correctional environment, it is determined that the use of an inmate companion coupled with the use of some sort of visual alarm would be sufficient to meet the regulatory requirements. Thus, FCC Tucson must ensure that there is some sort of visual alarm installed to alert Mr. Bryant of emergencies.

3. Hearing Aid

Currently, Mr. Bryant does not wear a hearing aid. Upon completion of an examination by an audiologist, if it is determined that he requires hearing aids, then batteries must be provided. Mr. Bryant must be provided a qualified interpreter when meeting with medical staff.

4. Telecommunication Device

Mr. Bryant is requesting access to telecommunication devices appropriate for deaf, such as videophone or TTY, equal to the telephone privileges of hearing inmates. Mr. Bryant currently has access to a TTY phone system through unit staff. At present, Mr. Bryant must request a time to access the system through the unit staff. The TTY phone must be accessed through an 800 number. Because of security concerns, the phone must be maintained and accessed through a staff office.

In Spurlock v. Simmons, 2000 WL 207162 (D.Kan 2000), the court held that the prison officials did not discriminate against a deaf inmate in violation of the Rehabilitation Act by permitting the deaf inmate only limited telephone access in comparison to the non-deaf inmates. The court found that the deaf inmate, who was required to use a special telecommunications device for deaf in a separate office, had meaningful access to a

telephone. (See also Douglas v. Gusman, 567 F. Supp. 2d 877 (E.D.La. 2008), finding no discrimination when prison provided twice daily use of TTY device outside of deaf inmate's housing tier.) Therefore, Mr. Bryant's current arrangements with regards to TTY usage meet the legal requirements.

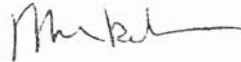
5. Television Viewing

Mr. Bryant requests safe access to a television enabled with close captioning, commensurate with the television privileges afforded to other inmates. It is hereby ordered that at least one television in Mr. Bryant's housing unit include close captioning when Mr. Bryant is watching television.

Appeal Rights

Both the complainant (Mr. Bryant) and the respondent (Bureau of Prisons) may appeal these findings to the Complaint Adjudication Officer, Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, N.W., Washington, DC 20530 (phone number: 202-514-0545), with or without a request for a hearing. Appeals must be filed within 30 days of receipt of this letter pursuant to 28 CFR §39.170(i).

Sincerely,



Mina Raskin
EEO Officer

cc: Richard Toscano
Director
Equal Employment Opportunity Staff
Justice Management Division
Department of Justice

EXHIBIT B

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

June 20, 2013

DAVID BRYANT,	)	
Complainant,	)	
	)	
v.	)	Case No. 06704-016
	)	
FEDERAL BUREAU OF PRISONS,	)	
Respondent.	)	
_____	)	

RECOMMENDED DECISION WITH FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND REMEDIES

Appearances:

For the complainant:

Matthew S. Fitzwater	Adam M. Shapiro
Andrew E. Gelfand	Deborah M. Golden
Adam T. Kirgis	Rory Price Culver

For the respondent:

Theresa T. Talplacido
Eliezer Ben-Shmuel

I. PROCEDURAL HISTORY

This case arises under section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794, which provides in pertinent part that,

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 or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 C.F.R. § 794(a). Regulations promulgated by the Department of Justice¹ in implementing this section are set forth at 28 C.F.R. part 39, Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Justice, and are applicable to programs and activities of the various subunits of the Department of Justice, including, inter alia, the Federal Bureau of Prisons (BOP).

David Bryant, an individual in the custody of the BOP and currently an inmate at the United States Penitentiary (USP) Tucson,² initiated this matter by filing a complaint that was found to be complete pursuant to § 39.170(d) as of May 2, 2011. Richard Toscano, the Director of the EEO staff at the Justice Management Division, delegated the processing of Bryant's complaint to Mina Raskin, an EEO officer for the BOP. Because informal resolution pursuant to § 39.170(g) was not achieved, Mina Raskin conducted an investigation and issued a Letter of Findings on November 2, 2011 pursuant to § 39.170(h).

The Letter of Findings addressed each of the five issues raised by David Bryant's complaint: 1) qualified ASL interpreters, 2) notification of emergencies, 3) hearing aids, 4) telecommunication devices, and 5) television viewing. The letter directed first that a qualified ASL interpreter must be provided for David Bryant whenever he attends an educational program, meets with a health care provider, or participates in a disciplinary proceeding and that if USP Tucson relies on staff or inmates for this purpose, it must ensure that they receive the proper training to meet the regulatory definition.

Second, the letter found that David Bryant's request for nonaural, nonwritten notification of emergencies and other important events and announcements could be met by the use of an inmate companion coupled with some sort of visual alarm, and that a vibrating pager would not be reliable. Third, the letter directed that if an audiology exam showed that David Bryant required hearing aids, batteries must be provided to him as needed. The letter also found with respect to telecommunications that David Bryant's access to the teletypewriter (TTY) phone system was sufficient to meet legal requirements for meaningful access, and finally, it directed that at least one television set in David Bryant's housing unit had to include closed captioning.

¹ The authority to implement section 504 was initially vested in the Department of Health, Education and Welfare, and subsequently in the Department of Health and Human Services. On November 2, 1980, President Carter issued Executive Order No. 12,250, 3 C.F.R. 298 (1980), vesting authority in the Attorney General for the coordination and implementation of § 504 in federally assisted programs and executive agencies.

² USP Tucson, a high-security penitentiary, is one of three facilities at the Federal Corrections Complex (FCC) located in Tucson, Arizona. The other components are a satellite camp and a medium security federal correctional institution. David Bryant is serving a life sentence.

David Bryant noticed a timely appeal from the Letter of Findings on December 2, 2011 pursuant to § 39.170(i) and requested a hearing. The BOP did not appeal the Letter of Findings and affirmatively stated that it agreed with and adopted the findings made. Three specific areas were addressed in David Bryant's appeal: interpreter services, notification of emergencies, and telecommunications. First, while David Bryant agreed with the conclusion that qualified ASL interpreters must be provided, he appealed the conclusion that BOP staff or other inmates could meet the regulatory definition of a qualified ASL interpreter, and also sought clarification that the finding must also apply to therapeutic sessions, vocational programs, or other programs and services offered by the BOP. Second, the appeal challenged the sufficiency of the steps taken with respect to nonaural and/or nonwritten notification of emergencies and events; while David Bryant agreed that the use of visual alarms and/or inmate companions are appropriate steps, he deemed them insufficient and requested factfinding on the technical feasibility of a vibrating pager or other device to communicate emergencies. Finally, David Bryant appealed the conclusions respecting telecommunications. He agreed that TTY access must be provided, but said it is insufficient, and that access to a videophone is mandated. In the alternative, he requested additional factfinding on the technological feasibility of a videophone. David Bryant did not appeal the findings regarding hearing aid batteries or closed caption television, and acknowledged that USP Tucson was in compliance with the Letter of Findings respecting those matters.

David Bryant contends, however, that USP Tucson is not in compliance with even the limited remedies ordered in the Letter of Findings because qualified interpreters are not being provided to him. The parties disagreed as well regarding the scope and implementation of the mandated remedies: David Bryant contends that every BOP institution should be required to implement the findings; the BOP's position is that the letter's scope is limited to the facility at USP Tucson. David Bryant argues that the findings were effective immediately on November 2, 2011; the BOP contends that while its efforts to provide appropriate accommodations at USP Tucson are ongoing, the Findings are not currently in effect because the matter is still on appeal.

All conditions precedent to the institution of this proceeding have been satisfied. In accordance with § 39.170(k)(3), a hearing was convened at USP Tucson commencing on July 31, 2012 and concluding on August 3, 2012. Witnesses testifying for the complainant included Dennis Cokely, Richard Ray, David Bryant, and Carl Courtright. The government's witnesses were Scott Pennington, Aracelli Corona, Damon McLoughlin, Steven Hellman, Eileen Baker, Jack Fox, and Lionel Craig Apker. Admitted into evidence were Complainant's Exhibits A-F, H-K, Q-U, Z, AA-BBB, and III and Respondent's Exhibits 1-10.

On November 20, 2012, some three months after the hearing, the BOP submitted what was styled as a Final Exhibit List together with its new proposed exhibits 11, 12, and 13. These exhibits were not mentioned or offered at the hearing, they were not authorized to be filed, and they deal exclusively with matters that occurred after the hearing. They are not authenticated or sworn to, and the authors and recipients identified in them are not available for cross examination. The

tendered exhibits 11, 12, and 13 are not admitted into evidence in this matter and any references made to them in the respondent's proposed findings and conclusions are disregarded. This recommended decision is based exclusively on the record made at the hearing.

Many of the operative facts underlying this case are uncontroverted. In the course of the prehearing procedures the parties entered into thirty-five factual stipulations that address David Bryant's abilities and limitations, the history of his designations at various BOP facilities, and some of the efforts USP Tucson made to accommodate his disability after his arrival there on July 14, 2011. Those stipulations were deemed accepted as binding on the parties without the necessity of further proof, and are adopted as the first thirty-five findings of fact *infra*; the additional findings are made based on the testimony of the witnesses and the exhibits admitted at the hearing.

II. SUMMARY OF HEARING

The evidence shows that David Bryant's language is American Sign Language (ASL), a visual language not related to spoken or signed English. It is undisputed that David Bryant is unable to hear or understand spoken words, with or without hearing aids, and that the extent of his mastery of written English has thus far remained at the level of the very early primary grades. He is nevertheless able to manage the ordinary activities of everyday living at USP Tucson such as ordering items in the commissary and following the basic schedule for mealtimes or other activities, so long as the interactions are sufficiently simple and can be understood through gesturing or writing basic English words on a whiteboard. Lipreading, fingerspelling, and signed English³ are for the most part tools of limited utility for David Bryant because their effectiveness depends upon the user's competence in the English language.

David Bryant is also able to some degree to utilize TruLines, a computer system designed for inmates that permits them to access their commissary accounts, to receive menus and other internal notices, and to send and receive email to and from approved contacts. David Bryant is able to contact his attorneys by email using TruLines but because his family has no computer or internet access he is unable to use the TruLines system to communicate with them.

A. Interpreter Services

During the period between the issuance of the Letter of Findings and the hearing, David Bryant had no disciplinary proceedings or issues, but he did have numerous medical encounters and also attended educational programs. It was undisputed that on numerous occasions when Bryant had medical encounters or enrolled in educational programs, a qualified ASL interpreter was not provided for him. There were in fact only three occasions between the Letter of Findings and the

³ Signed English is a form of English in which each spoken word is accorded a corresponding manual sign, and the signs are used to convey the words.

the date of the hearing when qualified interpreters were provided. These occurred first on July 21, 2011 when David Bryant went through the Admissions and Orientation process (A&O) upon his arrival at USP Tucson; second, in December of 2011 for the second of two appointments with an audiologist; and third, during the summer of 2012 for a suicide prevention program. There were at least twenty occasions when David Bryant had medical appointments or encounters at which no qualified ASL interpreter was provided.

No ASL interpreter was provided for any of the educational programs David Bryant attended, although USP Tucson acknowledged the need to increase his reading comprehension level. The prison's Individual Plan of Accommodations for David Bryant reflects that testing indicated his reading skills were at the high first grade level and that the specific goal set out in the plan is to increase his reading comprehension. The areas of need set out in the Plan included comprehension, context clues, details/facts, main idea, drawing conclusions, inference/predicting outcome, and summarizing.

To the extent there was conflict in the expert testimony regarding the necessity of ASL interpreters for educational programs, I found the testimony of Professor Cokely more persuasive as well as more consistent with David Bryant's own experience and therefore credit that, because of his reduced reading and writing skills, David Bryant would require an ASL interpreter for most educational programs if the program is to succeed. The exception to this general rule would be for computer-directed courses that do not require interaction with others. Although Eileen Baker, one of USP Tucson's expert witnesses, disagreed in some respects with Professor Cokely's assessment, she too emphasized the necessity of improving reading and writing skills as part of an educational program for the deaf. USP Tucson itself has a direct interest in increasing David Bryant's ability to understand written English because as he becomes better able to communicate in writing, his need for ASL interpreter services is likely to diminish.

Although inmates or staff assisted at some of David Bryant's medical appointments, USP Tucson acknowledged that those individuals were not qualified interpreters, and they are not. As explained in the Letter of Findings, a qualified interpreter pursuant to 28 C.F.R. § 35.104 is one who is "able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary." Given their inherent conflicts of interest, neither staff nor inmates can be characterized as impartial, even with training, and confidentiality concerns will always be an issue as well. *Cf. Bonner v. Lewis*, 857 F.2d 559, 563 (9th Cir. 1988) (plaintiff asserted that inmate interpreter leaked nature of his crime to general prison population thereby endangering plaintiff's safety). There are certain contexts in which the use of inmates and staff as interpreters simply pose unacceptable risks, for example, at disciplinary proceedings, at medical appointments, or in other high stakes situations. *Cf.* 28 C.F.R. § 115.16(c) (prohibiting, except in limited circumstances, the use of inmate interpreters in programs designed to prevent sexual abuse and sexual harassment).

Federal anti-discrimination regulations do not require that an ASL interpreter be formally certified by the National Registry of Interpreters for the Deaf (RID) in order to be deemed qualified. *See Duffy v. Riveland*, 98 F.3d 447, 455-46 (9th Cir. 1996) (declining to find that regulations enacted pursuant to the Americans with Disabilities Act require RID certification). RID certification is nevertheless probably the easiest way to ensure that an interpreter is qualified. The standard set out in the Court Interpreters Act of 1978, 28 U.S.C. §§ 1827-1828 (2006) provides in pertinent part that the presiding officer in judicial proceedings instituted by the United States “shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available . . . the services of an otherwise qualified interpreter.” This is the standard to be used in selecting interpreters. For purposes of determining whether an interpreter is “otherwise qualified,” the qualifications must be evaluated using an objective standard.

Jack Fox, Chief of Security to the Office of Security Technology for the BOP, and Craig Apker, the Warden for FCC Tucson, testified that a DSL line was being installed in three locations at USP Tucson, in the associate warden’s conference room, in the medical unit and in the educational unit, and that USP Tucson would undertake the process of contracting for video remote interpreter (VRI) services to enable it to provide ASL interpreters for David Bryant in order to comply with the Letter of Findings.

B. Notification of Emergencies

The Letter of Findings noted that a cellmate and inmate companion had been assigned to David Bryant and that one of the companion’s responsibilities was to notify David Bryant of emergencies and other special movements. The letter found this to be insufficient and directed that assignment of an inmate companion must be supplemented with “some sort of visual alarm” to alert David Bryant to emergencies. USP Tucson thereafter added two additional types of visual emergency notification signals to the already existing visual fire alarm. A blue rotating light was installed around January 19, 2012 outside David Bryant’s cell in the housing unit, and the so-called amber light (also referred to as the yellow or orange light) was installed on each side of the tower in the recreation yard on or about June 15, 2012. Testimony by officials was that the blue light signals a lockdown, calling for inmates to return to their cells, and that the amber light means that inmates out in the yard need to get down on the ground—a standard occurrence in high security institutions. There was no concrete evidence, however, that either of these lights had actually ever been used or that David Bryant was ever specifically educated as to what each meant and what he was to do in response.

While Scott Pennington, unit manager, testified that he believed a staff member would have instructed David Bryant what to do if the blue light came on, David Bryant’s testimony was that no one ever told him what to do when the blue light flashes. David Bryant’s understanding of what he is supposed to do, moreover, appears to be the exact opposite of what was intended for the blue light: he testified that “If it ever does flash, then I know that I have to go out.” He said,

said, "I assume that when it flashes, I leave." He also said, however, that he would be wondering where he was supposed to go. While efforts may have been made to convey information to David Bryant about the meaning of the lights, the questionable effectiveness of such efforts appears to be part of a generalized pattern of misunderstandings and miscommunications. There was testimony by others that David Bryant knew what to do in response to each of the emergency signals, but this appears to be an unwarranted assumption. Notwithstanding assurances by prison officials that Bryant understands what is conveyed to him by lipreading, gesturing, reading, and writing, moreover, it is difficult to credit that a person whose mastery of written English has not reached the second grade level is capable of much effective communication by those means. Despite the testimony of prison officials that David Bryant knows what to do in response to each of the emergency signals, I cannot conclude that he does.

There were, moreover, some troubling inconsistencies in the testimony with respect to the new signals. Jack Fox testified that the blue light signals an institutional lockdown, and Carl Courtright said that for a lockdown within the unit itself, the only alarm would be a verbal one from the staff. Courtright described a specific incident a few days before the hearing when staff had to locate an inmate and a verbal lockdown was called without turning on the blue light. He said that although the other inmates were running around preparing for the lockdown, David Bryant was just standing there watching the closed captions on the television until Courtright went to get him. When Warden Apker was questioned about this incident he said that he was unaware of that particular lockdown, but generally speaking the blue light should have been turned on. The record thus lacks clarity as to whether the blue light is turned on only for an institutional lockdown or whether it is supposed to be turned on for a unit lockdown as well.

While I concur with the Letter of Findings that the use of an inmate companion coupled with visual alarms may under appropriate circumstances be enough to satisfy the requirements of the Rehabilitation Act, these requirements are not satisfied by the provision of warning lights the meaning of which is not made crystal clear to nonhearing individuals. Warning lights also fail to meet regulatory requirements if they are not actually activated when appropriate. The risk of consequences for failure to follow directions in a high security setting is serious; Warden Apker said that a wrong response could have consequences to David Bryant's physical safety or that of others, including the ability of staff to resolve an emergency situation.

David Bryant requested a vibrating pager for notification of emergencies, and pointed out that regulations provide that in determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped individual. 28 C.F.R. § 39.160(a)(1)(i). The same regulations also note, however, that an agency "need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature." 28 C.F.R. § 39.160(a)(1)(ii). Scott Pennington testified that inmates are not permitted to have individually owned cell phones, laptops, personal DVD players, or other electronic devices. One of Bryant's own witnesses, Richard Ray, testified that a vibrating pager is not appropriate within a high security correctional institution.

The Letter of Findings said that a vibrating pager would not be reliable due to the construction of the prison with its steel doors and rebars. The evidence with respect to this point was equivocal and no findings are based on it. But even giving primary consideration to his request for a vibrating pager, the BOP is not obligated under the Rehabilitation Act to provide David Bryant with this or other personal devices. It is required, however, to ensure that adequate notice is provided to him of emergencies and such notice includes the necessity of being provided with specific instructions as to what is expected of him.

Detailed information about the nature of the emergency, however, is not immediately provided to other inmates and need not be provided to David Bryant either, although explanations may be provided after the fact. General nonemergency electronic announcements at USP Tucson are made to inmates via TruLines, but because inmates do not have access to TruLines during emergencies, this system is not a vehicle through which emergency notifications can be made. Additional information may be provided about an emergency in this manner, however, once the emergency is over.

Fire alarms in the Tucson facility consist of a loud noise and flashing white strobe lights that unambiguously have only one meaning: evacuate the area. There were no issues raised with respect to the fire alarm and David Bryant knows what to do in response to it.

C. Telecommunications

Because David Bryant is deaf and cannot speak, he is unable to use the regular inmate telephone system. USP Tucson provides TTY services as an alternative. A TTY consists of a display, a keyboard like that on a typewriter, and a receiver for a telephone handset. TTYs allow a deaf person to communicate by sending a typewritten message either to another TTY user directly, or to a non-TTY user indirectly by using a Telecommunication Relay Service (TRS), in which case the relay service operator receives the typewritten message, then reads it aloud over the phone to the hearing recipient. The relay operator then transcribes the recipient's verbal response and types it to the nonhearing person via TTY.

David Bryant said he uses the relay service to communicate with his family because they do not have a computer or a TTY device. But David Bryant complains that he is not being provided equal access to telecommunication because his TTY access is limited by staff availability; the TTY service is never available to him in the evening or on weekends as telephone service is to hearing inmates. Hearing inmates have access to telephone services seven days a week. David Bryant testified that the reason he cannot use the TTY on the weekend is that the counselor is not there. David Bryant's family members are not at home during the week, however, because they are at work. David Bryant also contends that TTY is not in any event an effective means of communication for him and requests a videophone. A videophone is a camera that uses special video compression rates and is connected by the internet to a videophone at the other end to permit communication between two people by signing.

Based on expert witness testimony, TTY is rapidly becoming obsolete in the civilian world. While primary consideration must be given to David Bryant's expressed request for a videophone, that technology is inconsistent with the testimony David Bryant gave at the hearing that he does not communicate with family members in ASL and that even before his incarceration his family often didn't understand him when he used ASL. He said he had to write in order to communicate with them, and that his sister understood his writing better and often had to help the others because his English is quite limited. If his family members do not understand ASL, it does not appear that a videophone would facilitate communication with them.

Video Relay Service, on the other hand, would appear to be a superior method in all respects for David Bryant to communicate with his family. VRS is a form of Telecommunication Relay Service (TRS) that enables ASL users to communicate with voice telephone users through video rather than typed text.⁴ The video relay operator sees the ASL signs made by the nonhearing person by computer or videophone, then translates the message to English and speaks it on the phone to the non-ASL user. The spoken response can then be translated back to the nonhearing person in ASL. Unlike the TTY system, no typing or text is involved. VRS uses the same technology as is used for video remote interpretation, a capacity that by now should be up and running at USP Tucson. VRS has a number of additional advantages because it facilitates communication between a user of ASL and a nonuser in a much more efficient way than TTY. Security concerns are satisfied because the only number that needs to be called is the number for the VRS service, and the prison has the ability to restrict the telephone numbers that may be contacted by the service just as it does with the current TTY relay system.

Section 39.160(a)(2) requires that telecommunication devices for deaf persons must be provided, but does not mandate that the auxiliary aids be the most technologically advanced or that state-of-the-art technology be obtained. TTY access has, moreover, generally been found to satisfy the minimum requirements of the Rehabilitation Act, *see, e.g., Douglas v. Gusman*, 567 F. Supp. 2d 877, 887 (E.D. La. 2008); *Spurlock v. Simmons*, 88 F. Supp. 2d 1189, 1196 (D. Kan. 2000); *cf. Chisolm v. McManimon*, 275 F.3d 315, 329 (3d Cir. 2001), so long as meaningful access is provided. No cases have been cited to me in which VRS has been mandated in a prison setting.

I therefore must concur with the Letter of Findings that TTY access can be sufficient to comply with legal requirements, but this is the case only under certain conditions. Regulations require that appropriate auxiliary aids must be furnished to afford a handicapped person an equal opportunity to participate in and enjoy the benefits of programs and activities. 28 C.F.R. § 39.106. This does not necessarily mean that access to telecommunications services for a qualified handicapped individual must be precisely equal to that available to others, but it does

⁴ VRS providers are compensated through the Interstate TRS fund overseen by FCC. *See Consumer Guide: Video Relay Services*, Federal Communications Commission (Jan. 13, 2012), <http://transition.fcc.gov/cgb/consumerfacts/videorelay.pdf>.

mean that access must be meaningful. *See Douglas v. Gusman*, 567 F. Supp. 2d at 887 (access to TTY fifteen or twenty times between May and September, then one call in the evening seven days a week for about six weeks was meaningful access). Given the totality of the circumstances, David Bryant's access to telecommunications services is not meaningful or comparable to that of other inmates when he is continually deprived of access in the evenings and on weekends.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. The complainant in this action is David Bryant, Register Number 06704-016. Mr. Bryant is a deaf man, 47 years of age, and currently incarcerated at United States Penitentiary ("USP") Tucson, in Tucson, Arizona.
2. The respondent in this action is the Federal Bureau of Prisons ("BOP"). The BOP is an organizational unit of the Department of Justice. The BOP is the federal agency responsible for the supervision and custody of approximately 217,152 inmates, including Mr. Bryant. The BOP is headquartered in Washington, D.C.
3. Mr. Bryant is currently serving a life sentence. Mr. Bryant was placed in BOP custody on November 3, 2003 and transferred to USP Tucson, where he is currently incarcerated, on July 14, 2011. Before being transferred to USP Tucson, Mr. Bryant was housed successively at the following institutions: USP Hazleton, USP Coleman, USP Victorville, and USP Canaan.
4. Mr. Bryant is hearing impaired and only able to hear very loud noises with the assistance of a hearing aid; he cannot hear and understand human speech with or without a hearing aid. Mr. Bryant's hearing impairment dates to early childhood.
5. Mr. Bryant uses American Sign Language ("ASL"), spoken and written English and lip reading in an attempt to communicate with staff and other inmates in BOP.
6. Mr. Bryant informed Respondents of, and requested various accommodations in connection with, his deafness by using the BOP's administrative remedy process.
7. Specifically, Mr. Bryant requested through the BOP administrative remedy process, among other things: (a) a qualified ASL interpreter to help him communicate with various prison staff, including healthcare providers and educational and vocational instructors; (b) non-aural, non-written notification of emergencies and other prison alarms and important announcements, *e.g.*, via vibrating pager; (c) access to a telecommunication device appropriate for the deaf, such as a teletypewriter ("TTY") or videophone; (d) safe access to a television enabled with closed-captioning and (e) working hearing aids and hearing aid batteries on an as-needed basis.

8. On January 7, 2011, Mr. Bryant filed a complaint in the United States District Court for the Central District of California, naming as defendants the BOP and various BOP employees in their official capacities (the "Federal Complaint"). The Federal Complaint asserted claims for relief under the U.S. Constitution and the Federal Rehabilitation Act ("Rehabilitation Act"), 29 U.S.C. § 794 *et seq.* and 5 U.S.C. § 703.

9. On July 11, 2011, Mr. Bryant's Rehabilitation Act claim was dismissed without prejudice by Judge Christina A. Snyder on the ground that in order to comply with the Prisoner Litigation Reform Act, 42 U.S.C. § 1997e, Mr. Bryant must first exhaust not only the BOP's Administrative Remedy Program, 28 C.F.R. § 542.10 *et seq.*, but also the administrative process laid out in the Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Justice Compliance Procedures, 28 C.F.R. § 39.170. Judge Snyder stayed Mr. Bryant's remaining claims pending the outcome of the administrative process.

10. The BOP's Equal Employment Opportunity ("EEO") Office investigated Mr. Bryant's complaint, determined to be complete as of May 2, 2011.

11. On November 2, 2011, EEO Officer Mina Raskin issued a Letter of Findings in response to Mr. Bryant's May 2, 2011 administrative complaint, which is the subject of the instant appeal.

12. Mr. Bryant cannot use the telephone in the same way as a hearing person, and requires either a TTY or a videophone to communicate.

13. TTYs allow deaf individuals to communicate in English via typewritten means either directly with another TTY user or indirectly with a non-TTY user via a Telecommunications Relay Service ("TRS"), in which the relay operator reads aloud the written messages from the TTY user and transcribes the non-TTY user's verbal response.

14. A videophone is a telephone with a camera and screen for visual, real-time communication.

15. The BOP has had an "IP Video Network" which is utilized for, among other things, conducting video conferences in medicine and psychiatry.

16. Closed captioning is the process of displaying on a television a transcription of the audio portion of the broadcast, including spoken and non-spoken aural elements. On televisions capable of displaying closed captioning, the feature can be enabled with the use of a remote control or program menu.

17. Mr. Bryant was designated at USP Hazelton in Bruceton Mills, West Virginia from August 03, 2005 to October 06, 2009.

18. Bryant was designated at USP Coleman I in Coleman, Florida from October 13, 2009 to March 16, 2010.
19. Bryant was designated at USP Victorville in Adelanto, California from March 18, 2010 until March 31, 2011.
20. Bryant was temporarily held at MDC Brooklyn in Brooklyn, New York, from April 04, 2011 to May 04, 2011.
21. Bryant was designated at USP Canaan in Waymart, Pennsylvania, from May 04, 2011 to July 07, 2011.
22. Bryant has been incarcerated at USP Tucson on July 14, 2011.
23. BOP has used staff members and inmates with some knowledge of ASL to communicate with Mr. Bryant in the provision of medical care, educational programming, and direction regarding the expectations of staff.
24. USP Tucson provided Mr. Bryant ASL interpreters during certain portions of the prison's inmate orientation programs.
25. At various times, USP Tucson has allowed staff members and inmates to interpret for Mr. Bryant. Neither the staff members nor inmates are certified ASL interpreters.
26. On or around November 07, 2011, Mr. Bryant was examined by an audiologist. USP Tucson did not provide Mr. Bryant with an ASL interpreter.
27. Mr. Bryant received a new hearing aid for his left ear on December 30, 2011 to better enable him to hear loud noises that might indicate an emergency situation. As of the date of this document, Mr. Bryant now receives new hearing aid batteries by exchanging them one for one on as needed basis. An ASL interpreter was present during the December 2011 hearing aid fitting and appointment with the audiologist.
28. On or around November 14, 2011, Mr. Bryant and Carl Courtright began sharing a cell.
29. Since being transferred to USP Tucson, Mr. Bryant attempted to access televisions with closed-captioning.
30. On January 19, 2012, USP Tucson installed several new televisions with closed-captioning. The closed-captioning on these televisions cannot be disabled by the inmates.

31. At USP Tucson, Mr. Bryant has access to a television with closed-captioning in English at the housing unit, education and recreation areas.

32. BOP has taken certain steps to provide notification of emergencies to Mr. Bryant. These include providing an inmate companion who is also his cellmate, and on or around January 19, 2012, USP Tucson installed a strobe light in Mr. Bryant's unit for notification of emergencies. BOP also installed a hearing impaired sign on his cell door.

33. While at USP Tucson, Mr. Bryant also sought access to communication systems. USP Tucson has a TTY.

34. At USP Tucson, Mr. Bryant has access to social and legal mail, social and legal visits, and inmate email (TruLines).

35. While at USP Tucson, Mr. Bryant has sought access to educational programs.

36. A blue flashing light was installed outside David Bryant's cell in the housing unit on or about January 19, 2012.

37. Prison officials testified that the blue light signifies a lockdown, meaning that prisoners are to return to their cells.

38. Amber flashing lights were installed on each side of the tower in the recreation yard on or about June 15, 2012.

39. Prison officials testified that the amber light means that inmates are to get on the ground.

40. It does not affirmatively appear that David Bryant has been provided adequate instructions as to the significance of the new emergency lights and precisely what he is to do in response to each.

41. On at least twenty occasions during the period between the Letter of Findings and the hearing in this matter, qualified ASL interpreters were not provided to David Bryant for medical appointments or encounters.

42. Qualified ASL interpreters were not provided to David Bryant for any of the educational programs he attended during the period between the Letter of Findings and the hearing in this matter.

43. Because of David Bryant's low level of reading and writing skills, he requires a qualified ASL interpreter for most educational programs if the program is to succeed. The only educational programs for which a qualified ASL interpreter is not required are computer-directed courses that do not require interaction with others. Whenever an educational program involves interactivity—whether one-to-one, small group, or lecture—a qualified ASL interpreter is required.

44. During the summer of 2012 USP Tucson began the process of installing a DSL line in three locations: the associate warden's office, the medical unit, and the educational unit, for the purpose of facilitating the provision of video remote interpretation services to David Bryant.

45. Hearing inmates at USP Tucson have access to telephone services seven days a week.

46. David Bryant does not have meaningful access to telephone services on weekends or in the evening.

47. David Bryant's family members are usually at work on weekdays.

48. Video Relay Service is a form of Telecommunication Relay Service that enables ASL users to communicate with voice telephone users through video rather than typed text.

49. VRS uses the same technology as is used for video remote interpretation.

50. TTY is rapidly becoming an obsolete technology.

B. Conclusions of Law

1. David Bryant is a qualified handicapped person within the meaning of 28 C.F.R. § 39.103.

2. The Federal Bureau of Prisons, together with its components, is an agency within the meaning of 28 C.F.R. § 39.103.

3. All conditions precedent to the institution of this proceeding have been satisfied.

4. A qualified interpreter pursuant to 28 C.F.R. § 35.104 is one who is "able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary."

5. There are certain contexts in which the use of inmates and staff as interpreters simply pose unacceptable risks, for example, at disciplinary proceedings, at medical appointments, or in other high stakes situations. *Cf.* 28 C.F.R. § 115.16(c); *Bonner v. Lewis*, 857 F.2d 559, 563 (9th Cir. 1988).

6. Federal anti-discrimination regulations do not require that an ASL interpreter be formally certified by the National Registry of Interpreters for the Deaf (RID) in order to be deemed qualified. *See Duffy v. Riveland*, 98 F.3d 447, 455-46 (9th Cir. 1996).
7. The standard set out in the Court Interpreters Act of 1978, 28 U.S.C. §§ 1827-1828 (2006) provides in pertinent part that the presiding officer in judicial proceedings instituted by the United States "shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available . . . the services of an otherwise qualified interpreter."
8. The use of an inmate companion coupled with visual alarms may under appropriate circumstances be sufficient to satisfy the requirements of the Rehabilitation Act.
9. TTY access has generally been found to satisfy the minimum requirements of 28 C.F.R. § 39.160(a)(2) that telecommunication devices must be provided for deaf persons. *See Douglas v. Gusman*, 567 F. Supp. 2d 877, 887 (E.D. La. 2008); *Spurlock v. Simmons*, 88 F. Supp. 2d 1189, 1196 (D. Kan. 2000).
10. Regulations state that in determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped individual. 28 C.F.R. § 39.160(a)(1)(i).
11. Regulations state that an agency "need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature." 28 C.F.R. § 39.160(a)(1)(ii).
12. USP Tucson is not in compliance with the Letter of Findings with respect to the provision of ASL interpreters to David Bryant for medical encounters and educational programs.
13. USP Tucson is not fully in compliance with the Letter of Findings with respect to notification of emergencies.
14. USP Tucson is not fully in compliance with the Letter of Findings with respect to the provision of telecommunication services.
15. USP Tucson is in full compliance with the Letter of Findings with respect to providing David Bryant with hearing aid batteries and access to closed caption television viewing.
16. Applying the Rehabilitation Act in the context of a prison setting must give due consideration to the reasonable requirements of effective prison administration. *See Gates v. Rowland*, 39 F.3d 1439, 1446-47 (9th Cir. 1994).

IV. RECOMMENDED REMEDIES

A. Qualified Interpreters

BOP is required to comply with the Letter of Findings, in all respects and without delay, regarding the provision of qualified ASL interpreters whether by using live interpreters or VRI services. Live interpreters are preferred for medical and disciplinary encounters. By way of additional clarification, medical programs do not include David Bryant's participation in the nightly pill line for the purpose of receiving prescribed medications. The programs and services encompassed in this order include all programs and services provided to inmates at USP Tucson. This means that whenever David Bryant attends an educational program (other than a computer-directed course that does not require interaction with others), meets with a healthcare provider (other than for the pill line), or participates in a disciplinary proceeding or in a therapeutic, vocational, or other program, a qualified ASL interpreter is to be provided for him. For purposes of these encounters inmates and staff are not qualified interpreters. Certified interpreters are qualified, and others may be if their skills are measured by an objective standard. Live interpreters are preferred whenever possible for medical appointments, disciplinary proceedings, or other high stakes settings. VRI services are required to comply with the standards set out at § 35.160(d).

For the first year after the issuance of a final order in this matter, USP Tucson will file quarterly compliance reports with the Complaint Adjudication Officer pursuant to 28 C.F.R. § 39.170(I)(2) setting out each occasion during the period on which David Bryant participated in a program or service offered by USP Tucson, whether an ASL interpreter was provided to him live or by VRI, and under what standard it was determined that the interpreter was qualified. The necessity of further reporting after the first year will be determined and communicated to USP Tucson during the fourth quarter.

B. Notification of Emergencies

As noted in the Letter of Findings, the assignment of an inmate companion coupled with other methods such as visual alarms may under appropriate circumstances be enough to satisfy regulatory requirements, but this is true only if the significance of the visual alarms is clearly communicated to nonhearing individuals and specific instructions are provided as to what the nonhearing individuals are expected to do in response to each.

Specific training with the assistance of an ASL interpreter whether live or by VRI must be provided to David Bryant as soon as practicable to ensure that he is made aware of precisely what he is to do in response to the blue and the amber light. An opportunity will be afforded to him to ask questions.

C. Telecommunications

Because David Bryant is not currently being provided with access to telecommunications that is comparable to the access provided to hearing inmates, USP Tucson will do whatever is necessary to provide David Bryant with at least occasional opportunities to access TTY services in the evenings and on weekends. This means that sufficient staff must be trained in the use of TTY equipment so that David Bryant's access to TTY does not depend upon the presence or availability of a single staff member.

USP Tucson has the option of providing telecommunications access for David Bryant by VRS rather than TTY and is directed to explore the possibility of implementing the former technology with all deliberate speed.

D. Hearing Aid Batteries and Closed Caption Television

USP Tucson is in compliance with the Letter of Findings with respect to the provision of hearing aid batteries and closed caption television, and will continue such compliance.

V. ATTORNEY'S FEES

Finally, David Bryant requested a period of forty-five days in which to submit his application for attorney's fees with supporting documents. Regulations governing this administrative proceeding, 28 C.F.R. part 39, however, contain no provision for an award of attorney's fees. David Bryant's fee request is made exclusively pursuant to 29 U.S.C. § 794a(b), which provides that "[i]n any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

Whether attorney's fees are recoverable for services performed in administrative proceedings is, of course, a separate question from whether the administrative forum itself has the authority to make such an award. While 29 U.S.C. § 794a(b) makes clear that fees are recoverable, the statutory language confers the authority to make a fee award to the court, and makes no mention of the administrative adjudicator. In *New York Gaslight Club v. Carey, Inc.*, 447 U.S. 54, 61 (1980), the court interpreted the same language in the attorney's fees provision in Title VII, 42 U.S.C. § 2000e-5(k), to mean that the statute authorized an independent action in district court for attorney's fees for work done in mandatory administrative proceedings. While *Gaslight Club* was subsequently criticized in *North Carolina Department of Transportation v. Crest Street Community Council, Inc.*, 479 U.S. 6, 21 (1986), it is evidently still good law and is followed in the Ninth Circuit. See, e.g., *Porter v. Winter*, 603 F.3d 1113, 1114-18 (9th Cir. 2010); *Cal. Ass'n of Physically Handicapped, Inc. v. FCC*, 721 F.2d 667, 671 (9th Cir. 1983).

The absence of any mention of attorney's fees in 28 C.F.R. part 39 suggests that the award of attorney's fees pursuant to § 794a(b) is exclusive to the district courts. While the regulations make specific provisions for allocating the costs and expenses of a hearing, 28 C.F.R. § 39.170(k)(5), including travel expenses for the complainant, 28 C.F.R. § 39.170(k)(5)(iv), and the expenses of the administrative law judge and the court reporter, 28 C.F.R. § 39.170(k)(5)(v), no provision is made for attorney's fees. Although 28 C.F.R. § 39.170(k)(3) directs that the adjudicative procedures should comply with 5 U.S.C. §§ 554-557 (sections 5-8 of the Administrative Procedure Act) and authorizes the administrative law judge to take any action permitted by §§ 551-559 thereof, it makes no reference to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, which authorizes the imposition of attorney's fees in agency proceedings.⁵

Nor can it lightly be concluded that the omission in 29 U.S.C. § 794a(b) of authority for imposing fees at the administrative level was other than deliberate. Congress is well aware of how to authorize fee awards at the agency level when it wants to do so. The corresponding provision of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12205 (emphasis added), for example, says that "[i]n any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee" Had the congressional intent been to permit the award of attorney's fees under § 794a(b) to be made in the course of administrative proceedings, the means to accomplish that were at hand. They were not utilized.

This result is consistent as well with the federal courts' approach to similar statutory language in the attorney's fees provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(i)(3)(B) (2005). See *P.N. v. Seattle Sch. Dist. No. 1*, 458 F.3d 983, 986-87 (9th Cir. 2006), *amended and superseded on other grounds on denial of reh'g*, 474 F.3d 1165, 1169 (9th Cir. 2007); *Lucht v. Molalla River Sch. Dist.*, 225 F.3d 1023, 1025-26 (9th Cir. 2000); *Barlow-Gresham Union High Sch. Dist. No. 2 v. Mitchell*, 940 F.2d 1280, 1285 (9th Cir. 1991); *McSomebodies v. Burlingame Elementary Sch. Dist.*, 897 F.2d 974 (9th Cir. 1989) (under Handicapped Children's Protection Act, predecessor of IDEA).

The weight of this authority compels the conclusion that it is the district court, and not the administrative law judge or hearing officer, that is invested by 29 U.S.C. § 794a(b) with the power to award fees for services in this proceeding. David Bryant's fee request must accordingly be addressed to that forum.

⁵ That Justice Department regulations conform the adjudicatory procedures more closely to those required for formal adjudication under the APA does not operate to convert the action to one "governed by" § 554 for EAJA purposes. *Ardestani v. INS*, 502 U.S. 129, 132-34 (1991). Section 554 applies to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing." This is not such a case.

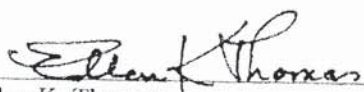
19

RECOMMENDED ORDER

The remedies set forth herein are to be implemented effective immediately upon issuance of a final order and are limited to the BOP facility at USP Tucson. In the event David Bryant is transferred to another institution within the BOP, however, there shall be a rebuttable presumption that the same remedies will accompany him and be made available to him at the other institution as well.

SO ORDERED.

Dated and entered this 20th day of June, 2013.


Ellen K. Thomas
Administrative Law Judge

Appeal Information

Any party may file exceptions to the recommended decision with the Complaint Adjudication Officer within fifteen days of the party's receipt of the recommended decision. Thereafter, each party will have ten days to file reply exceptions with the Officer. 28 C.F.R. § 39.170(k)(7).

20

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2013, I have served copies of the foregoing Recommended Decision with Finding of Fact, Conclusions of Law and Remedies on the following persons at the addresses indicated:

Matthew Fitzwater, Esq.
32nd Floor
125 Broad St.
New York, NY 10004-2498

Deborah Golden, Esq.
Washington Lawyers' Committee for Civil
Rights and Urban Affairs
11 Dupont Circle, N.W., Suite 400
Washington, DC 20036

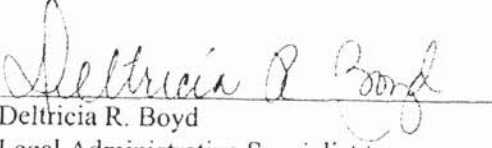
Harlan Penn, Esq.
Western Regional Counsel
Federal Bureau of Prisons
7338 Shoreline Dr.
Stockton, CA 95219

Theresa T. Talplacido, Esq.
FCI Tucson
Federal Correctional Institution
8901 S. Wilmot Rd.
Tucson, AZ 85706

Mina Raskin
EEO Officer
U.S. Department of Justice
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

Mark L. Gross
Complaint Adjudication Officer
U.S. Department of Justice
950 Pennsylvania Ave., NW
Room A4810
Washington, DC 20530

Richard Toscano
Director
U.S. Department of Justice
Equal Employment Opportunity Staff
Justice Management Division
145 M St., NE
Suite 1W801
Washington, DC 20530


Deltricia R. Boyd
Legal Administrative Specialist to
Ellen K. Thomas
Administrative Law Judge
Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 1905
Falls Church, VA 22041
(703) 305-1742 Phone
(703) 305-1515 Fax