

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

CIVIL CASE NO. 1:20-CV-03338

**ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER**

Plaintiffs,

-against-

ANDREW CUOMO, in his official capacity
as Governor of New York State,

Defendant.

Upon the declarations of Dennis Martinez, Douglas Nguyen, James Hallenbeck, and Jill Wildberger, and the affirmation of Marc Fliedner, Esq. on behalf of Disability Rights New York, sworn to the 28 day of April, 2020, and upon the copy of the complaint hereto annexed, it is

ORDERED, that the above named Defendant show cause before a motion term of this Court, at Room _____, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on _____, _____, at _____ o'clock in the ____ noon thereof, or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendant during the pendency of this action from denying Plaintiffs' access to a live televised in-frame ASL interpretation at any and all briefings designed to reach residents of New York; and it is further

ORDERED that, sufficient reason having been shown therefor, pending the hearing of Plaintiffs' application for a preliminary injunction, pursuant to Rule 65, Fed. R. Civ. P., the Defendant is temporarily retained and enjoined from denying Plaintiffs' access to a live televised

in-frame ASL interpretation at any and all briefings designed to reach residents of New York;

and it is further

ORDERED that security in the amount of \$ _____ be posted by the Plaintiffs prior to _____, _____, at _____ o'clock in the _____ noon of that day; and it is further

ORDERED that personal service of a copy of this order and annexed affidavit upon the Defendant or his Counsel on or before _____ o'clock in the _____ noon, _____, _____, shall be deemed good and sufficient service thereof.

DATED: New York, New York

ISSUED: _____M

United States District Judge

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SOUTHERN DISTRICT OF NEW YORK

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NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

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as Governor of New York State,

Defendant.

CIVIL CASE NO. 1:20-CV-03338

**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

DISABILITY RIGHTS NEW YORK

Jessica Barlow, Esq.

Marc Fliedner, Esq.

25 Chapel Street, Suite 1005

Brooklyn, NY 11201

(518) 512-4841

Attorneys for Plaintiffs

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Preliminary Statement

Since the onset of the COVID-19 pandemic in New York State, Governor Andrew Cuomo has been holding daily briefings for the public and press. These briefings provide up-to-date information and statistics regarding the virus, and contain information and executive orders aimed at keeping members of the public safe and healthy. New York's rate of infection has been vastly higher than any other state in the country, and a significant portion of domestic coronavirus-related deaths have been residents of New York. The Governor has asked most New Yorkers to stay home while ordering schools and non-essential businesses to close and hospitals to increase capacity.

Governor Cuomo's briefings have gained national attention as he emerges as a leader in fighting the pandemic and providing detailed, thoughtful commentary on the government's response. However, there are many deaf¹ New Yorkers who cannot understand these critically important briefings without live ASL interpretation. Media reports indicate that every other state in the nation has provided some form of televised ASL interpretation in its briefings. Governor Cuomo does not have in frame ASL interpretation of his briefings on broadcast television. Instead, he has only made ASL interpretation of his briefings available through a link on the governor's official website. Governor Cuomo is failing to provide effective communication to deaf New Yorkers in violation of the Americans with Disabilities Act and Section 504.

Plaintiffs' seek a temporary restraining order and mandatory preliminary injunction to immediately require Governor Cuomo to provide an ASL interpreter in frame during televised broadcast briefings.

¹ Disability Rights New York recognizes that people use many terms to describe their hearing-related disabilities. DRNY uses "deaf" in this Complaint for brevity, with no intent at offending or excluding those who prefer, require, and use other terms.

Statement of Facts

On approximately March 1, 2020, Governor Cuomo began holding daily, televised briefings regarding the coronavirus outbreak in New York. Fliedner Aff. ¶ 3. Governor Cuomo's briefings typically last between thirty and sixty minutes and have included key government officials from the New York State Department of Health, New York State Division of Budget, and the Army National Guard. Fliedner Aff. ¶ 4. Local and major news networks, including ABC, CBS, NBC, Fox, and their local affiliates, have broadcasted Governor Cuomo's briefings both live and on delay to a national audience. Fliedner Aff. ¶ 7. Governor Cuomo's briefings cover a wide range of topics including the number of confirmed COVID-19 cases, the availability of testing and personal protective equipment ("PPE"), and the coordination of local, state and federal government emergency response systems. Fliedner Aff. ¶ 6.

DRNY has received a large number of complaints from deaf New Yorkers who are unable to follow Governor Cuomo's daily briefings due to the lack of televised ASL interpretation. Fliedner Aff. ¶ 10. For these individuals, ASL is their first language, and they do not communicate regularly or effectively through written English. Martinez Dec. ¶ 3; Nguyen Dec. ¶ 4; Hallenbeck Dec. ¶¶ 2, 3; Wildberger Dec. ¶ 2. Therefore, even when closed-captioning is provided (which it is often not), individuals who solely or primarily utilize ASL cannot effectively receive Governor Cuomo's messages. Martinez Dec. ¶ 7; Nguyen Dec. ¶ 4; Hallenbeck Dec. ¶ 5; Wildberger Dec. ¶ 5. Furthermore, closed-captioning is not provided on all channels broadcasting the briefings and even when closed captioning is provided questions from the audience are not captioned. Fliedner Aff. ¶ 8. The closed-captioning frequently contains errors and omissions that make it difficult or impossible for individuals who are deaf to understand the briefings. Fliedner Aff. ¶ 9.

On March 24, 2020, DRNY requested that Governor Cuomo provide live ASL interpretation for all of his briefings. Fliedner Aff. ¶ 11, Exhibit A. On March 27, 2020, Governor Cuomo began offering ASL interpretation of his live briefings only through an online broadcast available only on the Governor's website (<https://www.governor.ny.gov/>), and stated the following via email to DRNY:

Governor Cuomo is committed to ensure that all New Yorkers are promptly and accurately informed about developments related to the COVID-19 pandemic. To that end, he has offered regular press conferences to update the public about the spread of the virus throughout the State as well as to inform the public about resources that the State is making available to assist those who have been impacted. **Our office has already been providing closed captioning for the Governor's press conferences; starting today real-time ASL interpretation for the Governor's press conferences will also be available at <https://www.governor.ny.gov/>.** (NOTE: Information about upcoming press conferences is added to the website generally 30 minutes before the start of the press conference; today's press conference is scheduled to begin at 11:30 AM ET). Going forward, we will continue to assess efforts around accessibility for the Governor's press conferences.

Fliedner Aff. ¶ 12, Exhibit B (emphasis in original).

Governor Cuomo's televised broadcasts do not direct deaf individuals to the ASL broadcast available on his website. Fliedner Aff. ¶ 13. Additionally, the ASL stream is only available when the briefing is live, and requires that a person have internet access. Fliedner Aff. ¶ 13.

On March 30, 2020, DRNY requested that Governor Cuomo provide in-frame ASL interpretation for all briefings broadcast on television because not every deaf person has access to the internet. Fliedner Aff. ¶¶ 14-15, Exhibit C. On April 2, 2020, DRNY made a last attempt to seek a response from Governor Cuomo on the lack of televised ASL interpreters but Governor Cuomo did not substantively respond to either the March 30 or April 2 requests. Fliedner Aff. ¶ 16.

On April 3, 2020, DRNY filed an administrative complaint with the United States Department of Justice regarding Governor Cuomo's failure to provide an ASL interpreter during his briefings. Fliedner Aff. ¶ 17, Exhibit D.

On April 13, 2020, Governor Cuomo hosted a multi-state press briefing with the Governors of New Jersey, Delaware, Connecticut, Rhode Island, Pennsylvania, and Massachusetts announcing the Multi-State Council to Get People Back to Work and Restore the Economy. Fliedner Aff. ¶ 18. During this conference, the other Governors participated via telephone audio, while Governor Cuomo was shown with both picture and audio. Fliedner Aff. ¶ 19. There was no ASL interpreter in frame when Governor Cuomo or the other state's Governors were speaking. Fliedner Aff. ¶ 20. Those deaf residents who rely on ASL in each of the seven participating states were unable to understand the briefing.

DRNY continues to receive complaints from Deaf New Yorkers who are unable to access Governor Cuomo's daily briefings. Fliedner Aff. ¶ 21.

I. Facts Regarding the Individual Plaintiffs

A. Dennis Martinez

Dennis Martinez is a resident of Brooklyn, NY. Martinez Dec. ¶ 1. Mr. Martinez is deaf, and is fluent in ASL. Martinez Dec. ¶ 3. Mr. Martinez was raised in Colombia, and learned to read and write Spanish before being exposed to some English. Martinez Dec. ¶ 2. Mr. Martinez has watched Governor Cuomo's briefings several times since March 1, 2020, but was not able to understand the live briefings due to the lack of ASL interpreter. Martinez Dec. ¶¶ 6, 7.

Mr. Martinez works as a Deaf Service Advocate at the Harlem Independent Living Center. Martinez Dec. ¶ 4. Deaf community members have contacted Mr. Martinez asking for information about what Governor Cuomo said during press briefings. Martinez Dec. ¶ 8. Mr.

Martinez is unable to answer community questions about Governor Cuomo's briefings because he does not have access to the information himself. Martinez Dec. ¶ 8. Mr. Martinez has to seek out videos on social media platforms with ASL interpretation of the information covered by Governor Cuomo, thereby delaying timely access to information. Martinez Dec. ¶ 7.

B. Douglas Nguyen

Douglas Nguyen is a resident of Albany, New York. Nguyen Dec. ¶ 1. Mr. Nguyen is deaf, and ASL is his first language. Nguyen Dec. ¶¶ 2, 3. Mr. Nguyen was born and raised in Vietnam, and learned ASL when he moved to the United States in his late teens. Nguyen Dec. ¶ 3. Mr. Nguyen cannot read or write in English. Nguyen Dec. ¶ 4. Because of this, closed-captioning is indecipherable to him, and he requires ASL interpretation to understand spoken communications. Nguyen Dec. ¶ 4. Mr. Nguyen is employed full-time at a home improvement retail store and regularly interacts with customers. Nguyen Dec. ¶ 6. Mr. Nguyen tries to watch Governor Cuomo's briefings because he wants information on how to stay safe at work and in the community as an essential worker. Nguyen Dec. ¶¶ 7, 8.

Mr. Nguyen has watched a number of Governor Cuomo's briefings during March and April 2020. Nguyen Dec. ¶ 7. Mr. Nguyen has been unable to understand the majority of what is said because there is no in-frame ASL interpreter, and he cannot read closed-captioning. Nguyen Dec. ¶ 7. Mr. Nguyen cannot access Governor Cuomo's website as he does not use a computer. Nguyen Dec. ¶ 5.

C. James Hallenbeck

James Hallenbeck is a resident of Endicott, NY. Hallenbeck Dec. ¶ 1. Mr. Hallenbeck is deaf, and his primary language is ASL though he does understand some English. Hallenbeck Dec. ¶¶ 2, 3. Since March 1, 2020, Mr. Hallenbeck has watched Governor Cuomo's briefings on

an almost daily basis since. Hallenbeck Dec. ¶ 4. Mr. Hallenbeck attempts to read the close captioning on the television. Hallenbeck Dec. ¶ 5. However, due to his limited English, and the frequent errors and omissions in the captioning, he understands about half of the information conveyed. Hallenbeck Dec. ¶ 5.

Mr. Hallenbeck does not own a computer. Hallenbeck Dec. ¶ 6. Mr. Hallenbeck worries that he has missed important health and safety information due to his inability to understand the Governor's press briefings, and only learned of the Governor's stay-at-home order only after his brother called him to make sure he was aware of the development. Hallenbeck Dec. ¶¶ 7, 8.

D. Jill Wildberger

Jill Wildberger is a resident of Round Lake, New York. Wildberger Dec. ¶ 1. Ms. Wildberger is deaf and is fluent in ASL, which is her primary language. Wildberger Dec. ¶ 2. Ms. Wildberger also has a learning disability, which makes reading and understanding written English especially challenging for her. Wildberger Dec. ¶ 3.

Ms. Wildberger has attempted to understand Governor Cuomo's coronavirus press briefing of the day either through her iPhone or on her television. Wildberger Dec. ¶ 5. She was unable to comprehend the information because the closed captioning was not contemporaneous with the speaker at the time or was nonexistent, making it impossible for her to follow. Wildberger Dec. ¶ 5. Every time she has tried to access the streaming ASL interpreter feed, it has been unavailable for her to view. Wildberger Dec. ¶ 6. Ms. Wildberger was unaware of the Executive Order requiring New Yorkers to wear masks in public. Wildberger Dec. ¶ 7.

Argument

I. Plaintiffs have been Discriminated Against by Governor Cuomo in Violation of the ADA and Section 504

Plaintiffs have been deprived access to the services of the Governor's daily press briefings because there is no live ASL interpreter in frame.

In order to establish a claim of discrimination under Title II of the ADA,² Plaintiffs must demonstrate that (1) they is a "qualified individuals" with a disabilities; (2) that the Defendant is subject to the ADA; and (3) that Plaintiffs were denied the opportunity to participate equally in or benefit equally from Defendants' services, programs or activities, by reason of their disability. *See Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003).

A. Plaintiffs are Qualified Individuals with Disabilities

The term qualified individual with a disability means "an individual with a disability, who with or without reasonable modifications to rules, policies or practices...meets the essential eligibility requirements for the...participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). Plaintiffs are individuals with disabilities who, with the reasonable accommodation of an interpreter, would be able to equally participate in and benefit from Governor Cuomo's daily press briefings.

It is without question that Plaintiffs are individuals with disabilities. As stated above, each of the individual Plaintiffs is deaf. Under the ADA, an individual has a disability if he has a "physical or mental impairment that substantially limits one or more of the major life activities

² "Claims of disability discrimination under the ADA are held to essentially the identical standard as is applied under Section 504 of the Rehabilitation Act." *Brown v. Connecticut*, 2010 WL 2220580, at *20 (D. Conn. May 27, 2010) (citing *Henrietta D.*, 331 F.3d at 272). Plaintiffs' claims are brought pursuant to both Title II of the ADA and Section 504. In the interest of brevity Plaintiffs present their arguments using reference to the ADA with the understanding that the standard is the same under either statute.

of such individual.” 42 U.S.C. § 12102(2)(A)(B). Hearing is a major life activity. *See* 29 C.F.R. § 1630.2(i)(1)(i).

Plaintiffs are members of the target audience for Governor Cuomo’s press briefings on COVID-19, and therefore clearly “meet the essential eligibility requirements” to benefit from this government service. *See Brooklyn Ctr. for Indep. of Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 640 (S.D.N.Y. 2013).

B. Defendant is a Public Official Subject to Title II of the ADA

Governor Cuomo is a “public entity” under Title II when sued in his official capacity. *Henrietta D.*, 331 F.3d at 288 (holding a state officer sued in his official capacity, under the doctrine of *Ex parte Young*, is a “public entity” subject to liability under the ADA).

C. Defendant’s Failure to Provide Plaintiffs with Effective Communication is Discrimination by Reason of their Disabilities

Plaintiffs need an ASL interpreter in order to effectively participate in Governor Cuomo’s press briefings because they are deaf. Without this reasonable accommodation, Plaintiffs are not receiving effective communication, and therefore cannot access the briefings because they cannot understand the critical information covered.

A plaintiff establishes the requisite causal connection for a claim under the ADA when he shows that *but for* his disability he would not have needed a reasonable accommodation and therefore would not have been denied the benefit or access at issue. *See Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307, 340 (E.D.N.Y. 2012) (citing *Henrietta D.*, 331 F.3d at 277) (emphasis added). In the instant matter, but for their hearing impairments, Plaintiffs would not be facing discrimination.

When examining a claim regarding access to services under the ADA, a Court must focus on whether people with disabilities can actually access the benefits and services they are entitled

to. *See Brooklyn Ctr. for Indep. of Disabled*, 980 F. Supp. 2d at 640 (quoting *Henrietta D.*, 331 F.3d at 271) (“[T]he relevant inquiry asks not whether the benefits available to persons with disabilities and to others are actually equal, but whether those with disabilities are as a practical matter able to access benefits to which they are legally entitled.”). In addition, the access provided must be “meaningful access,” which often requires reasonable accommodation. *See id.*

The applicable regulations are clear that public entities must provide individuals with effective communication under the ADA:

(a)(1) A public entity **shall** take appropriate steps to ensure that communications with applicants, participants, **members of the public**, and companions with disabilities are **as effective as communications with others**.

(b)(1) A public entity **shall furnish appropriate auxiliary aids and services** where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(b)(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, **a public entity shall give primary consideration to the requests of individuals with disabilities**. In order to be effective, auxiliary aids and services must be provided in **accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability**.

28 C.F.R. § 35.160 (emphasis added).

The purpose of the effective communication requirement is to ensure that the person with a vision, hearing, or speech disability can communicate with and receive information from a covered entity. As stated above, ASL is the first language of Plaintiffs. Plaintiffs do not communicate using English, and do not understand written English as they do ASL. Plaintiffs cannot effectively use alternative means of receiving information such as closed captioning or

reading news articles. Therefore, without an ASL interpreter in frame during briefings with Governor Cuomo, Plaintiffs cannot have meaningful access to his public messages.

Governor Cuomo has provided an ASL stream of his briefings online. However, all people with disabilities do not have internet access. “Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove ... barriers to accessibility.” *Tennessee v. Lane*, 541 U.S. 509, 511 (2004). The stream is only available through the Governor’s website (<https://www.governor.ny.gov/>) and only airs when the press briefing is live. In order to access the ASL stream, an individual needs to know what time that day Governor Cuomo was going live³ (this varies daily and is not announced until approximately 15-20 minutes prior to the briefing starting), needs to be aware that the Governor’s website offers an ASL stream of the briefing, and needs to have internet access. In the alternative, a hearing person only needs to turn on their TV or visit a myriad of new stations’ web pages where the briefings as televised are available both live and on repeat multiple times throughout the day.

The ADA’s implementing regulations require that Governor Cuomo “shall take appropriate steps to ensure that communications with...members of the public...are as effective as communications with others...shall furnish appropriate auxiliary aids and services...[and] shall give primary consideration to the requests of individuals with disabilities.” 28 C.F.R. § 35.160. Plaintiffs cannot receive effective communication from Governor Cuomo without the provision of an ASL interpreter.

But for their disabilities, Plaintiffs would not need a reasonable accommodation in order to access to Governor Cuomo’s briefings. Governor Cuomo’s refusal to provide an ASL

³ Governor Cuomo’s press briefings are often replayed by news outlets in other time slots or on their social media. These replays do not include the ASL stream.

interpreter in frame during his televised briefings deprives Plaintiffs of meaningful access to the messaging coming from his office, and constitutes a failure to provide effective communication under the ADA.

II. Plaintiffs are Entitled to Injunctive Relief

Plaintiffs are entitled to injunctive relief. “A plaintiff seeking a temporary restraining order must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Natera, Inc. v. Bio-Reference Labs., Inc.*, 2016 WL 7192106, at *2 (S.D.N.Y. Dec. 10, 2016) (internal quotation marks, citation, and alteration omitted). “It is well established that in this Circuit the standard for an entry of a TRO is the same as for a preliminary injunction.” *Andino v. Fischer*, 555 F. Supp. 2d 418, 419 (S.D.N.Y. 2008) (collecting cases).

Plaintiffs seek a mandatory preliminary injunction that alters the status quo by commanding that Governor Cuomo provide an ASL interpreter in frame during his televised briefings. *See Cacchillo v. Insmad, Inc.*, 638 F.3d 401, 406 (2d Cir. 2011). A mandatory preliminary injunction may issue only with a clear showing that Plaintiffs are entitled to the relief they request, and with the showing that the damage they will suffer is severe. *See id.* (“A mandatory preliminary injunction should issue only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief.”).

As set forth below, Plaintiffs demonstrate a likelihood of success on the merits, and have already suffered irreparable harm.

A. Plaintiffs have a Likelihood of Success on the Merits

Plaintiffs are entitled to effective communication under Title II of the ADA. Governor Cuomo's failure to provide ASL interpreters in frame at his televised press briefings constitutes illegal discrimination. Therefore, Plaintiffs are likely to succeed on the merits of their claims.

Plaintiffs need only show that there is a fair probability that they will prevail in order to obtain a temporary restraining order. *See Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953) ("To justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of hardships tips decidedly toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.").

B. Plaintiffs Will Suffer Irreparable Harm if a Preliminary Injunction is not Granted

The showing of irreparable harm is the "single most important prerequisite for the issuance of a preliminary injunction." *People of New York ex rel. Spitzer v. Cty of Delaware*, 82 F. Supp. 2d 12, 16 (N.D.N.Y. 2000) (quoting *Bell & Howell v. Masel Supply Co.*, 719 F.2d 42, 45 (2d Cir. 1983)). "Irreparable harm is an injury that is not remote or speculative but actual and imminent, and 'for which a monetary award cannot be adequate compensation.'" *Galusha v. New York State Dep't of Env'tl. Conservaation*, 27 F. Supp. 2d 117, 122 (N.D.N.Y. 1998) (quoting *Tom Doherty Assocs. Inc. v. Saban Entertainment, Inc.*, 60 F.3d 27, 37 (2d Cir. 1995)). The "court must actually consider the injury the plaintiff will suffer if he or she loses on the preliminary injunction but ultimately prevails on the merits, paying particular attention to

whether the remedies available at law, such as monetary damages, are inadequate to compensate for that injury.” *Mint, Inc. v. Amad*, 2011 WL 1792570, at *1 (S.D.N.Y. May 9, 2011).

The harm to Plaintiffs absent the requested relief is both imminent and irreparable. Every day, and sometimes multiple times a day, Governor Cuomo goes live to speak to the people of New York State about a vast amount of critical information. Governor Cuomo shares statistics regarding hospitalizations, intubations, and deaths. He discusses trends in infection rates and the spread of the virus. Governor Cuomo shares information about fighting COVID-19, including best practices for keeping yourself and your family safe, as well as new Executive Orders aimed at keeping all New Yorkers safe.

Without an ASL interpreter in frame with Governor Cuomo during these briefings an entire facet of New Yorkers are without equal access to this critical information which is rapidly changing. Individuals who rely on ASL communication may face consequences if they attempt to utilize areas like parks or non-essential businesses after the public is banned from doing so. People like Plaintiffs may be unaware of mandatory steps they must take, such as covering their face in public, because they were not able to learn of the updated policy from Governor Cuomo’s briefing.

Every day Governor Cuomo emphasizes the importance of the steps New York is taking as a whole, and repeatedly states that “we are all in this together.” Plaintiffs cannot be part of that “we” without access to the message Governor Cuomo is sharing. Individuals who rely on ASL are unable to do their part to further the collective good without access to Governor Cuomo’s briefings. There is no remedy at law that can turn back time and give Plaintiffs the daily comprehensive updates they needed during this nationwide crisis. There is no remedy at law that

could compensate Plaintiffs if they or their families are unnecessarily exposed to the virus because they lacked critical information about how New Yorkers can best stay safe.

C. The Balance of Hardships Weighs Heavily in Favor of Plaintiffs

“When confronted with a motion for a preliminary injunction, a court ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.’” *Main St. Baseball, LLC v. Binghamton Mets Baseball Club, Inc.*, 103 F. Supp. 3d 244, 262 (N.D.N.Y. 2015) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). “Plaintiffs must establish that the ‘balance of hardships tips in their favor regardless of the likelihood of success.’” *Main St. Baseball, LLC*, 103 F. Supp. 3d at 262 (quoting *Salinger*, 607 F.3d at 79–80).

There is no hardship on Governor Cuomo if an ASL interpreter is in frame with him during the daily press briefings. An ASL interpreter has already been hired and is translating the briefings, but that interpreter is not accessible to individuals with disabilities in a meaningful way. In contrast, the failure of Governor Cuomo to provide an ASL interpreter in frame causes immense hardship on Plaintiffs. People need to take multiple extra steps to access the live ASL stream of the press briefings, and many do not even know this stream is available or have internet access. For those who do not have the skill or technology to access this online stream, the hardship is insurmountable.

The only impact on Governor Cuomo in granting Plaintiffs’ motion is a wider framed shot. The effect on Plaintiffs in denying their motion is substantial and irreparable as the lack of access to critical information during the current public health crisis could be life-threatening.

D. The Public Interest will be Advanced by the Provision of Preliminary Relief

During any crisis it is imperative that all members of the public have access to up-to-date information from governing entities. The message coming from Governor Cuomo and all levels of government is consistently that all people need to work together in order to ensure that efforts like social distancing are as effective as possible in order to best serve the interest of all New Yorkers. Plaintiffs' requested injunction furthers that interest. Without access to information through an ASL interpreter, an entire section of the New York public is without the necessary knowledge to act in a way that furthers the public interest.

Without effective social distancing and adherence to orders coming from Governor Cuomo's office, New York may face an increasingly overwhelmed hospital and medical system which would inevitably lead to the deaths of countless more New Yorkers. Individuals who utilize ASL cannot follow executive orders or health department recommendations if they are not aware of them. Without effective communication through the provision of an in frame ASL interpreter during briefings by Governor Cuomo, the Deaf community cannot ensure that they act in the public's interest, and may unknowingly endanger themselves or others.

"In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). "[T]he court must ensure that the 'public interest would not be disserved' by the issuance of a preliminary injunction." *Salinger*, 607 F.3d at 80 (quoting *eBay Inc. v. Mercexchange LLC*, 547 U.S. 388, 391 (2006)).

If Plaintiffs' requested relief is granted there will be no negative impact on the public interest, as the public only benefits from more members having access to critical information.

Conclusion

For all the above reasons, this Court should issue a temporary restraining order and subsequent preliminary injunction granting Plaintiffs' request for the reasonable accommodation of an in-frame ASL interpreter during Governor Cuomo's daily briefings.

Dated: April 29, 2020

Brooklyn, New York

By: /S/ Jessica Barlow_____

JESSICA BARLOW
JB2194

MARC FLIEDNER
MF4201

DISABILITY RIGHTS NEW YORK
Attorneys for Plaintiffs
25 Chapel Street, Suite 1005
Brooklyn, NY 11201
Phone: 518-512-4841
Fax: 518-427-6561 (not for service)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

CASE NO: 1:20-CV-03338

AFFIRMATION

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

Marc Fliedner, Esq., an attorney admitted to practice in New York State and before this Court, hereby affirms under penalty of perjury:

1. I am co-counsel for Plaintiffs and as such have been working in pursuit of an in-frame American Sign Language (“ASL”) interpreter during Governor Cuomo’s televised briefings since March 2020.
2. On or about March 17, 2020, DRNY received its first complaint regarding Governor Cuomo’s failure to provide an ASL interpreter at his briefings.
3. According to Governor Cuomo’s website’s news section (<https://www.governor.ny.gov/news>) he began holding daily televised briefings on or about March 1, 2020, regarding the COVID-19 outbreak in New York.
4. These briefings typically last between thirty and sixty minutes, and include government officials from agencies such as the New York State Department of Health, New York State Division of Budget, and the Army National Guard.

5. According to Governor Cuomo's website, the press briefings are held throughout New York State, including at the Javitz Center in New York City, and in Albany, New York.
6. The briefings cover a wide range of topics including the number of confirmed COVID-19 cases, the availability of testing, information about social distancing and other personal safety measures to be utilized by New Yorkers to stop the spread of the virus, and the coordination of local, state, and federal government emergency response systems.
7. Local and major news networks, including ABC, CBS, NBC, and Fox, have broadcasted Governor Cuomo's briefings live to a national audience.
8. Closed-captioning is not provided on all television channels broadcasting the briefings and when closed captioning is provided questions from the audience are not captioned.
9. The closed-captioning frequently contains errors and omissions that make it difficult or impossible for individuals who are deaf to understand the information being provided in the briefings.
10. DRNY has received a large number of complaints from deaf New Yorkers who are unable to understand Governor Cuomo's daily briefings due to the lack of in frame televised ASL interpretation.
11. DRNY wrote a letter to Governor Cuomo on March 24, 2020 asserting the right of New Yorkers with disabilities to equal access to all government programs and services and requesting in frame ASL interpretation of all briefings. (Exhibit A).
12. On March 27, 2020, Governor Cuomo began offering ASL interpretation through an online broadcast on the Governor's website, and provided a response to DRNY's March 24, 2020 correspondence. (Exhibit B)

13. Governor Cuomo's televised broadcasts do not direct deaf individuals to the ASL broadcast available on his website, and the ASL streams are not archived for the public.
14. On March 30, 2020, DRNY again wrote to Governor Cuomo to advocate for deaf New Yorkers without access to the internet who are therefore unable to benefit from the daily briefings. (Exhibit C).
15. DRNY requested that Governor Cuomo provide simultaneous in frame ASL interpretation for all briefings broadcast on television.
16. On April 3, 2020, DRNY filed a complaint with the United States Department of Justice ("DOJ") regarding Governor Cuomo's failure to provide live televised ASL interpretation. (Exhibit D).
17. On April 13, 2020, Governor Cuomo hosted a multi-state press briefing with the Governors of New Jersey, Delaware, Connecticut, Rhode Island, Pennsylvania, and Massachusetts announcing the Multi-State Council to Get People Back to Work and Restore the Economy.
18. During this conference, the other Governors participated via telephone audio, while Governor Cuomo was shown with both picture and audio.
19. An ASL interpreter was not available in frame during the televised broadcast of this briefing.
20. DRNY continues to receive complaints from Deaf New Yorkers who are unable to access Governor Cuomo's daily briefings.
21. Plaintiffs attach the following documents in support of their Memorandum of Law in Support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction:

- Exhibit A – March 24, 2020 Letter from DRNY to Governor Cuomo
- Exhibit B – March 27, 2020 Email from Governor Cuomo’s Office to DRNY
- Exhibit C – March 30, 2020 Correspondence from DRNY to Governor Cuomo
- Exhibit D – April 3, 2020, complaint filed by DRNY with the United States Department of Justice against Governor Cuomo
- Declaration of Dennis Martinez
- Declaration of Douglas Nguyen
- Declaration of James Hallenbeck
- Declaration of Jill Wildberger

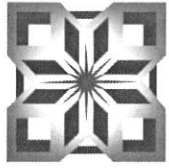
22. I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete

Dated: April 28, 2020



Marc Fliedner, Esq.

Exhibit A



DISABILITY RIGHTS NEW YORK



www.drny.org



mail@drny.org



518-432-7861

March 24, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
The Capitol
Albany, NY 12224

Dear Governor Cuomo:

I would like to express my sincere appreciation for your exemplary leadership during this crisis. New Yorkers are fortunate to have a Governor who not only takes the difficult actions necessary to protect us, but takes the time to consistently communicate to a worried citizenry what is going on, what he is doing, and what New Yorkers must do.

Unfortunately, some New Yorkers are unable to benefit from your daily press briefings because there are no sign language interpreters at your press briefings. Without interpreters, deaf New Yorkers are unable to benefit from the valuable knowledge, wisdom, and inspiration that you convey each day. For many deaf people English is their second language, so even real time captioning is not sufficient for them.

DRNY, as New York's Protection & Advocacy system, has been working cooperatively with our governmental partners during this difficult time. As you know, we have a mandate to ensure that New Yorkers with disabilities have equal access to all government programs and services. Right now, deaf New Yorkers are being denied such access because sign language interpreters are not present at your briefings.

We have received several complaints from deaf individuals expressing their concern and frustration with not understanding your daily briefings. We know this is not what you intend, but it can be remedied easily. I ask you to do so immediately.

Thank you for your valuable leadership at a time when it is so desperately needed.

Respectfully,

Timothy A. Clune

Timothy A. Clune, Esq.
Executive Director

ALBANY

725 Broadway, Suite 450
Albany, NY 12207-5001

BROOKLYN

25 Chapel St, Suite 1005
Brooklyn, NY 11201

ROCHESTER

44 Exchange Blvd, Suite 110
Rochester, NY 14614



TTY: 518-512-3448

Fax: 518-427-6561

Toll Free: 1-800-993-8982

Exhibit B

From: Accessibility <Accessibility@exec.ny.gov>

Sent: Friday, March 27, 2020 11:20 AM

Subject: ASL Accessibility

Thank you for your email and outreach concerning ASL interpretation during Governor Andrew M. Cuomo's COVID-19 press conferences.

Governor Cuomo is committed to ensure that all New Yorkers are promptly and accurately informed about developments related to the COVID-19 pandemic. To that end, he has offered regular press conferences to update the public about the spread of the virus throughout the State as well as to inform the public about resources that the State is making available to assist those who have been impacted. **Our office has already been providing closed captioning for the Governor's press conferences; starting today real-time ASL interpretation for the Governor's press conferences will also be available at <https://www.governor.ny.gov/>.** (NOTE: Information about upcoming press conferences is added to the website generally 30 minutes before the start of the press conference; today's press conference is scheduled to begin at 11:30 AM ET). Going forward, we will continue to assess efforts around accessibility for the Governor's press conferences.

We thank you for reaching out to our office about this important issue. Please do not hesitate to reach out if you have any questions.

We hope you all are staying safe and healthy.

Exhibit C

On Mar 30, 2020, at 4:35 PM, Timothy A. Clune, Esq. <Tim.Clune@drny.org> wrote:

Dear Ms. Gibson,

I hope that you are well. I am writing to follow up on our emails from last week.

As you can imagine, our constituents still have serious concerns about the potential rationing of ventilators and the lack of Personal Protective Equipment in homes serving people with disabilities. Over the weekend, the Office for Civil Rights has issued guidance to states to prevent the application of discriminatory practices during the COVID-19 crisis.

I know that you understand the urgency of these issues as demonstrated by your quick response. I am writing to seek any further information on progress on these issues that you may be able to share with me.

I would also like to seek your assistance with another concern that we raised with the Governor. Since I did not originally send this letter to you, I have attached it here. We requested that an American Sign Language (ASL) interpreter be provided at the Governor's live daily press briefing. Please know that DRNY has received positive feedback to the Governor's immediate addition of the ASL option on the state's website. Thank you.

The Governor is providing great leadership and delivering a much needed message to our community. However, a significant portion of New Yorkers are still not able to benefit from his message because his live briefings still lack a live interpreter.

I watched the Governor on Spectrum News today. There was no ASL interpreter on screen during the live briefing. I have also watched several briefings from the governors of Washington and Michigan, who effectively use an ASL interpreter on the live screen.

I am asking for your assistance to resolve this matter. If necessary, I am available at your convenience to further discuss or answer any questions you may have.

Thank you for your help.

Best regards,
Tim



Timothy A. Clune, Esq.

Executive Director

(He/Him/His/Mr.)

Phone: [518-432-7861](tel:518-432-7861)

Email: Tim.Clune@drny.org

725 Broadway, Suite 450
Albany, NY 12207-5001

www.drny.org

TTY: 518-512-3448 | Toll Free: 800-993-8982 | Fax: 518-427-6561

This email may contain privileged or confidential information. If you receive it in error, do not read it. Please delete it and advise me of the error. Thank you.

Exhibit D

UNITED STATES DEPARTMENT OF
JUSTICE

DISABILITY RIGHTS NEW YORK,

Complainant,

CASE NO:

-against-

COMPLAINT

ANDREW CUOMO, in his official capacity
as Governor of New York State

Respondent.

PRELIMINARY STATEMENT

1. This complaint challenges Governor Andrew Cuomo's practice of holding daily briefings regarding the COVID-19 coronavirus without providing simultaneous American Sign Language ("ASL") interpretation for television broadcast.
2. New York currently has four times more confirmed coronavirus cases than any other state and more than a third of all domestic coronavirus-related deaths have been New Yorkers.
3. Governor Cuomo's daily briefings provide critical information about steps taken by the state government to address the health crisis and recommendations on how New Yorkers can stay safe and help limit the spread of the virus.
4. The Governor has asked most New Yorkers to stay home while ordering schools and non-essential businesses to close and hospitals to increase capacity.

5. Governor Cuomo's briefings have gained national attention as he emerges as a leader in fighting the pandemic and providing detailed, thoughtful commentary on the government's response.
6. There are many deaf and hard of hearing New Yorkers who cannot understand these critically important briefings without live ASL interpretation or complete closed captioning.
7. New York City Mayor Bill de Blasio provides televised ASL interpretation at all of his coronavirus briefings.
8. Media reports indicate that every other state in the nation has provided some form of televised ASL interpretation in its briefings.

JURISDICTION

9. The United States Department of Justice has subject matter jurisdiction over claims of discrimination against state agencies as well as programs and activities receiving federal assistance under 28 C.F.R. § 35.170(c) and 28 C.F.R. § 42.503.

PARTIES

10. Disability Advocates, Inc. is an independent non-profit corporation organized under the laws of the State of New York. Disability Advocates, Inc. is authorized to conduct business under the name Disability Rights New York ("DRNY").
11. DRNY is a Protection and Advocacy system ("P&A"), as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 U.S.C. § 15041 *et seq.*, the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. § 10801 *et seq.*, and the Protection and Advocacy of Individual Rights Act ("PAIR Act"), 29 U.S.C. § 794e *et seq.* with offices in the State of

New York located at: 25 Chapel Street, Suite 1005, Brooklyn, NY 11201; 725 Broadway, Suite 450, Albany, NY 12208; and 44 Exchange Blvd., Suite 110, Rochester, NY 14614.

12. As New York State's Protection & Advocacy system, DRNY is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A) (i); N.Y. Exec. Law § 558(b).
13. Pursuant to the authority vested in it by Congress to file claims of abuse, neglect, and rights violations on behalf of individuals with disabilities, DRNY brings claims on behalf of individuals with disabilities, including the individuals named below, who are seeking or may seek publicly available government information pertaining to the COVID-19 pandemic.
14. Governor Cuomo is the governor of New York State.
15. Governor Cuomo, in his official capacity as Governor of the State of New York, is covered as a public entity under Title II of the ADA.
16. Governor Cuomo, in his official capacity, is a recipient of federal financial assistance and therefore covered under Section 504.

STATEMENT OF FACTS

17. On or about March 1, 2020, Governor Cuomo began holding daily, televised briefings regarding the coronavirus outbreak in New York.
18. Governor Cuomo's briefings typically last between thirty and sixty minutes and have included key government officials from the New York State Department of Health, New York State Division of Budget, and the Army National Guard.

19. Local and major news networks, including ABC, CBS, NBC, and Fox, have broadcasted Governor Cuomo's briefings live to a national audience.
20. Governor Cuomo's briefings cover a wide range of topics including the number of confirmed coronavirus cases, the availability of testing, and the coordination of local, state, and federal government emergency response systems.
21. Closed-captioning is not provided on all channels broadcasting the briefings and even when closed captioning is provided questions from the audience are not captioned.
22. The closed-captioning frequently contains errors and omissions that make it difficult or impossible for individuals who are deaf and hard of hearing to understand the briefings.
23. On March 20, 2020, media reports indicated that every state except New York, Vermont, and Montana provided televised ASL interpretation for at least one of its coronavirus-related government briefings.
24. Upon information and belief, New York is now the only state that has not provided televised ASL interpretation.
25. DRNY has received dozens of complaints from deaf and hard of hearing New Yorkers who are unable to follow Governor Cuomo's daily briefings due to the lack of televised ASL interpretation.
26. DRNY wrote a letter to Governor Cuomo on March 24, 2020 identifying New Yorkers with disabilities' right to equal access to all government programs and services and requesting ASL interpretation of all briefings (see Exhibit A).
27. On March 27, 2020, Governor Cuomo began offering ASL interpretation through an online broadcast on the Governor's website. See <https://www.governor.ny.gov/>.

28. Governor Cuomo's televised broadcasts do not direct deaf and hard of hearing individuals to the ASL broadcast available on his website.
29. On March 30, 2020 DRNY wrote to Kumiki Gibson, Governor Cuomo's Counsel, because deaf and hard of hearing New Yorkers without access to the internet are unable to his benefit from the daily briefings.
30. DRNY requested that Governor Cuomo provide simultaneous ASL interpretation for all briefings broadcast on television.
31. DRNY continues to receive complaints from deaf and hard of hearing New Yorkers who are unable to access Governor Cuomo's daily briefings.
32. DOUGLAS NGUYEN is a resident of Albany, New York.
33. Mr. Nguyen is deaf and ASL is his first language.
34. English is Mr. Nguyen's second language.
35. Because Mr. Nguyen is not fluent in English, he requires ASL interpretation to understand spoken communications.
36. Mr. Nguyen has watched a number of Governor Cuomo's briefings during March and April 2020.
37. Mr. Nguyen has been unable to understand portions of Mr. Cuomo's briefings due to his inability to follow the captioning as well as the lack of an ASL interpreter.
38. Mr. Nguyen was not aware of Mr. Cuomo's website offering ASL interpretation and, in any event, does not have regular Internet access.
39. DEAN DERUSSO is the Director of the New York Chapter of We the Deaf People, an organization dedicated to safeguarding ASL, promoting literacy, empowerment, better

employment opportunities for Deaf people, and improving public attitudes towards the Deaf community.

40. Mr. DeRusso wrote to Governor Cuomo on March 19, 2020 requesting ASL

interpretation on televised briefings (see Exhibit B).

41. Mr. DeRusso states that he and many deaf people whose primary language is ASL have difficulty following closed captioning.

42. Mr. DeRusso reports that the captioning provided during Governor Cuomo's briefings contains numerous spelling errors and incomplete transcription of words, thereby making portions of the briefing incomprehensible.

FIRST CLAIM FOR RELIEF
TITLE II OF THE AMERICANS WITH DISABILITIES ACT
42 U.S.C. § 12101, et seq.

43. DRNY incorporates by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

44. Title II of the ADA states, in pertinent part:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such entity. 42 U.S.C. § 12132.

45. A "public entity" includes state and local government, their agencies, and their instrumentalities. 42 U.S.C. § 12131(1).

46. Governor Cuomo, acting in his official capacity, at all times relevant to this action, and currently is a "public entity" within the meaning of Title II of the ADA.

47. Governor Cuomo provided and provides "services, programs [and] activities" through his office. 28 C.F.R. § 35.130.

48. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2).
49. A “qualified individual with a disability” is a person “who, with or without reasonable modification to rules, policies or practices ... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).
50. Public entities are required to take appropriate steps to ensure that communications with members of the public with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1).
51. Public entities are required to provide “appropriate auxiliary aids and services” when necessary to provide individuals with disabilities an equal opportunity to participate in a service, program, or activity. 28 C.F.R. § 35.160(b)(1).
52. “Auxiliary aids and services” includes qualified interpreters. 28 C.F.R. § 35.104.
53. The necessary type of auxiliary aid or service to ensure effective communication depends on the method of communication used by the individual with a disability; the nature, length, and complexity of the communication involved; and the context of the communication. 28 C.F.R. § 35.160(b)(2).
54. Public entities are required to give primary consideration to the requests of individuals with disabilities in determining what types of auxiliary aids and services are needed. *Id.*
55. Deaf and hard of hearing New Yorkers who seek access to Governor Cuomo’s daily briefings are qualified individuals under the ADA.

56. Deaf and hard of hearing New Yorkers who attempt to access Governor Cuomo's televised briefings are frequently unable to understand portions of the briefing by following closed captioning, when available.
57. Deaf and hard of hearing New Yorkers who do not have access to the Internet are unable to access Governor Cuomo's daily press briefings with an ASL interpreter.
58. As a result of Governor Cuomo's acts and omissions, deaf and hard of hearing New Yorkers are unable to obtain critical health and safety information from his daily briefings.

SECOND CLAIM FOR RELIEF
SECTION 504 OF THE REHABILITATION ACT OF 1973
29 U.S.C. § 794

1. DRNY incorporates by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.
2. Section 504 provides, in pertinent part that "no otherwise qualified individual with a disability in the United States... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).
3. Governor Cuomo was, at all times relevant to this complaint, and is currently a recipient of federal financial assistance within the meaning of Section 504.
4. Governor Cuomo provided and provides a "program or activity" where "program or activity" is described as "all operations of a department, agency, special purpose district or other instrumentality of a State or of a local government." 29. U.S. C. § 794(b)(1)(A).

5. A disability is defined as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 29 U.S.C. § 705(9)(B) citing 42 U.S.C. § 12102(1)(A).
6. Deaf and hard of hearing New Yorkers are qualified individuals under Section 504.
7. Governor Cuomo’s practice of denying access to ASL interpretation violates Section 504 by authorizing, or failing to forbid, actions that:
 - a. Exclude from participation in, deny the benefits of, or otherwise subject individuals to discrimination on the basis of disability. 29 U.S.C. § 794(a); 28 C.F.R. § 41.51(a).
 - b. Deny qualified persons with a disability the opportunity to participate in or benefit from the aid, benefit, or service. 45 C.F.R. § 84.4(b)(1)(i); 28 C.F.R. § 41.51(b)(1)(i).
 - c. Afford qualified persons with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others. 45 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2); 28 C.F.R. § 41.51(b)(1)(ii).
 - d. Limit individuals with a disability in the enjoyment of rights, privileges, advantages and opportunities enjoyed by others receiving an aid, benefit, or service. 45 C.F.R. §§ 84.4(b)(1)(vii), 84.52(a)(4); 28 C.F.R. § 41.51(b)(1)(vii).
8. As a result of Governor Cuomo’s acts and omissions, deaf and hard of hearing New Yorkers who rely on television to access his daily press briefings are denied the full benefits of these briefings.

PRAYER FOR RELIEF

WHEREFORE, DRNY requests the Department to provide relief as set forth below:

1. Find that Governor Cuomo has violated the rights of deaf and hard of hearing New Yorkers.
2. Direct that Governor Cuomo provide simultaneous ASL interpretation for briefings which are broadcast on television.
3. Award reasonable attorneys' fees and costs; and
4. Provide such other further relief as deemed just and proper.

DATE: April 3, 2020
Albany, NY

DISABILITY RIGHTS NEW YORK
Complainant

/s/ _____

Matthew Steele
Matthew.Steele@drny.org

Marc Fliedner
Marc.Fliedner@drny.org

725 Broadway, Suite 450
Albany, NY 12207-5001
(518) 432-7861 (voice)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
DENNIS MARTINEZ**

I, Dennis Martinez, Plaintiff, do hereby declare:

1. I reside in Brooklyn, New York.
2. I was born in the United States but was raised primarily in Colombia. Spanish and Colombian sign language were my first languages.
3. Upon returning to the United States, I learned ASL and it is my primary language.
4. I work as a Deaf Service Advocate at the Harlem Independent Living Center.
5. In my job, a number of my clients are deaf and use ASL to communicate.
6. I have attempted to watch Governor Cuomo's briefings several times since March 1, 2020.
7. I am not able to understand Governor Cuomo's briefings due to the lack of an ASL interpreter and rely on family and coworkers to convey critical information regarding the coronavirus pandemic. I also search for videos on social media platforms with ASL interpretation of the information covered by Governor Cuomo, thereby delaying timely access to information.

8. I am also not able to answer many questions my deaf clients have asked me about Governor Cuomo's briefings. I need to be able to provide my clients with timely information regarding important developments related to the Governor's briefings as part of my job.
9. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020

Dennis Martinez
Dennis Martinez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
DOUGLAS NGUYEN**

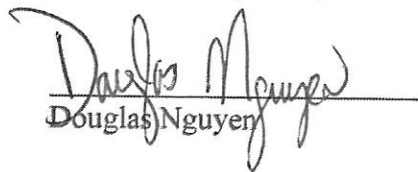
I, Douglas Nguyen, Plaintiff, do hereby declare:

1. I reside in Albany, New York.
2. I am deaf.
3. I was born in Vietnam and learned American Sign Language (“ASL”) as a teenager.
4. I am not fluent in English and therefore do not understand closed captioning.
5. I do not use a computer and therefore cannot access the internet.
6. I work full-time at Home Depot and regularly interact with coworkers and customers at my job.
7. I have watched a number of Governor Cuomo’s daily coronavirus briefings during March and April of 2020 but cannot understand the content of the briefings due to the lack of an ASL interpreter.
8. I watch Governor Cuomo’s briefings because I want to get information on how to stay safe at work and in the community.

9. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020


Douglas Nguyen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
JAMES HALLENBECK**

I, James Hallenbeck, Plaintiff, do hereby declare:

1. I reside in Endicott, New York.
2. I am deaf and my primary language is ASL.
3. I am able to understand some English but am not fluent.
4. I started watching Governor Cuomo's daily briefings on or about March 1, 2020 and have watched them since on most days.
5. I try to understand the briefings by reading the closed captioning on television, but due to my limited English and frequent errors and omissions in the captioning, I can only understand about half of the information conveyed.
6. I do not own a computer and therefore cannot access the Governor's briefings online.
7. I am worried that I have missed important health and safety information because I cannot understand the Governor's briefings.
8. For example, I learned of the Governor's stay-at-home order only when my brother called to tell me about this important development.

9. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020

/s/
James Hallenbeck

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

CASE NO:

ATTORNEY AFFIRMATION

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

Affirmation of Matthew Steele

I, Matthew Steele, depose and state that:

1. I am an attorney licensed to practice law in the State of New York.
2. I assisted in the preparation of the declaration of Plaintiff James Hallenbeck.
3. I read the contents of Mr. Hallenbeck's declaration to him on April 28, 2020 and confirmed that the contents thereof are true and accurate.
4. Due to operational challenges posed by the coronavirus pandemic, I was unable to obtain the original signature of Mr. Hallenbeck prior to the filing of this lawsuit.
5. Mr. Hallenbeck has authorized the submission of his declaration with an electronic signature.

Respectfully submitted,

DISABILITY RIGHTS NEW YORK

By: Matthew Steele

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

CASE NO:

**DECLARATION OF
JILL WILDBERGER**

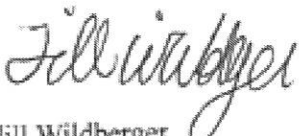
I, Jill Wildberger, Plaintiff, do hereby declare:

1. I reside in in Round Lake, New York.
2. I am deaf and therefore ASL is my preferred language.
3. I have a learning disability that makes it more difficult for me to read and write English.
4. I have attempted to watch Governor Cuomo's briefings at least five times since March 1, 2020.
5. Each time I tried watching the Governor's press briefing, I was unable to understand a significant portion of the information because the closed captioning did not appear to match what the Governor was saying and at other times there was no captioning at all.
6. I have access to the internet but have not been able to successfully stream the live ASL interpreter offered on the Governor's website. I have found the ASL interpreter on the Governor's website to be frequently unavailable.

7. Due to my limited access to the Governor's briefings, I was not made aware of the Governor's executive order requiring New Yorkers to wear a facemask in a timely fashion.
8. I would be able to understand Governor Cuomo's briefings if televised ASL interpretation were provided as a reasonable accommodation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 28, 2020


Jill Wildberger

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DENNIS MARTINEZ, DOUGLAS
NGUYEN, JAMES HALLENBECK, JILL
WILDBERGER, and DISABILITY RIGHTS
NEW YORK,

CASE NO: 1:20-CV-03338

COMPLAINT

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official
capacity as Governor of New York State

Defendant.

PRELIMINARY STATEMENT

1. Plaintiffs challenge Governor Andrew Cuomo's practice of holding daily press briefings regarding the COVID-19 pandemic without providing simultaneous American Sign Language ("ASL") interpretation for television broadcast for deaf audience members.
2. The impact of the COVID-19 pandemic is being disproportionately felt by New Yorkers, with confirmed COVID-19 cases at a rate four times greater than any other state and with more than a third of all domestic COVID-19 related deaths occurring in New York.
3. Governor Cuomo's daily briefings provide critical information about steps taken by the state and federal government to address the health crisis and recommendations on how New Yorkers can stay safe and help limit the spread of the virus.
4. The Governor has ordered schools and non-essential businesses to close.
5. The Governor has ordered people in New York to maintain a 6-foot distance when in public

6. The Governor has ordered the public to wear masks or face coverings when taking public or private transportation or riding in for-hire vehicles.
7. Governor Cuomo's briefings have briefed the public on important developments, and provided commentary on the government's response at the local, state and national levels.
8. Many deaf New Yorkers cannot understand Governor Cuomo's briefings without live televised ASL interpretation in frame.
9. According to the 2014 census, there are approximately 208,000 people in New York City who are deaf or hard of hearing.
10. Rochester, New York, is home to the United States' largest deaf population per capita, with about 90,000 people who are deaf or hard of hearing living in the metropolitan area.
11. ASL is the primary language for the majority of deaf individuals,
12. These individuals are often unable to follow closed captioning due to imperfections in the transcription, English being their second language, cognitive and/or processing issues, and other factors.
13. Media reports indicate that every other state in the nation has provided some form of live televised ASL interpretation in frame during its briefings.

JURISDICTION AND VENUE

14. Plaintiffs' federal claims are made pursuant to Title II of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act of 1973 ("Section 504").
15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.
16. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201, 2202.
17. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(2) as a number of

the events and omissions complained of below occurred in this district, Defendant has an office in this district, and Plaintiff Martinez resides in New York City.

PARTIES

18. PLAINTIFF DENNIS MARTINEZ is a deaf resident of Brooklyn, New York.
19. PLAINTIFF DOUGLAS NGUYEN is a deaf resident of Albany, New York.
20. PLAINTIFF JAMES HALLENBECK is a deaf resident of Endicott, New York.
21. PLAINTIFF JILL WILDBERGER is a deaf resident of Round Lake, New York.
22. PLAINTIFF DISABILITY ADVOCATES, INC. is an independent non-profit corporation organized under the laws of the State of New York. Disability Advocates, Inc. is authorized to conduct business under the name Disability Rights New York (“DRNY”).
23. DRNY is a Protection and Advocacy system (“P&A”), as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act (“DD Act”), 42 U.S.C. § 15041 et seq., the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (“PAIMI Act”), 42 U.S.C. § 10801 et seq., and the Protection and Advocacy of Individual Rights Act (“PAIR Act”), 29 U.S.C. § 794e et seq. with offices in the State of New York located at: 25 Chapel Street, Suite 1005, Brooklyn, NY 11201; 725 Broadway, Suite 450, Albany, NY 12208; and 44 Exchange Blvd., Suite 110, Rochester, NY 14614.
24. As New York State’s Protection & Advocacy system, DRNY is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities. 42 U.S.C. § 15043(a)(2)(A) (i); N.Y. Exec. Law § 558(b).

25. Pursuant to the authority vested in it by Congress to file claims of abuse, neglect, and rights violations on behalf of individuals with disabilities, DRNY brings claims on behalf of individuals with disabilities, including the individuals named herein who are seeking or may seek publicly available government information pertaining to the COVID-19 pandemic.
26. DEFENDANT ANDREW M. CUOMO is the governor of New York State.
27. Governor Cuomo is responsible for ensuring that New York operates its services, programs, and activities in conformity with Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”).
28. Governor Cuomo, in his official capacity as Governor of the State of New York, is covered as a public entity under Title II of the ADA.
29. Governor Cuomo, in his official capacity, is a recipient of federal financial assistance and therefore covered under Section 504.

STATEMENT OF FACTS

30. On or about March 1, 2020, Governor Cuomo began holding daily, televised briefings regarding the COVID-19 outbreak in New York.
31. Governor Cuomo’s briefings typically last between thirty and sixty minutes.
32. Governor Cuomo’s briefings have included key government officials from the New York State Department of Health, New York State Division of Budget, and the Army National Guard.
33. Governor Cuomo has held briefings through New York State, including the Javits Center in New York City, and the Capitol in Albany, New York.

34. Local and major news networks, including ABC, CBS, NBC, and Fox, have broadcasted Governor Cuomo's briefings live to a national audience.
35. Governor Cuomo's briefings cover a wide range of topics including the number of confirmed COVID-19 cases, the availability of testing, information about social distancing and other personal safety measures to be utilized by New Yorkers to stop the spread of the virus, and the coordination of local, state, and federal government emergency response systems.
36. New York is the only state that has never provided televised in frame ASL interpretation of its COVID-19 briefings.
37. DRNY has received a large number of complaints from deaf New Yorkers who are unable to understand Governor Cuomo's daily briefings due to the lack of in frame televised ASL interpretation.
38. On March 24, 2020 DRNY requested that Governor Cuomo provide in frame ASL interpretation of all his briefings.
39. On March 27, 2020, Governor Cuomo began offering ASL interpretation of his live briefings only through an online broadcast on the Governor's website.
40. On March 27, 2020, DRNY received the following response from the Governor's office regarding the request for ASL interpreters at the live briefings:

Governor Cuomo is committed to ensure that all New Yorkers are promptly and accurately informed about developments related to the COVID-19 pandemic. To that end, he has offered regular press conferences to update the public about the spread of the virus throughout the State as well as to inform the public about resources that the State is making available to assist those who have been

impacted. **Our office has already been providing closed captioning for the Governor's press conferences; starting today real-time ASL interpretation for the Governor's press conferences will also be available at <https://www.governor.ny.gov/>.** (NOTE: Information about upcoming press conferences is added to the website generally 30 minutes before the start of the press conference; today's press conference is scheduled to begin at 11:30 AM ET). Going forward, we will continue to assess efforts around accessibility for the Governor's press conferences.

41. Closed-captioning is not provided on all television channels broadcasting the briefings and when closed captioning is provided questions from the audience are not captioned.
42. The closed-captioning frequently contains errors and omissions that make it difficult or impossible for individuals who are deaf to understand the information being provided in the briefings.
43. Governor Cuomo's televised broadcasts do not direct deaf individuals to the ASL broadcast available on his website.
44. DRNY requested that Governor Cuomo provide simultaneous in frame ASL interpretation for all briefings broadcast on television.
45. On March 30, 2020, DRNY again wrote to Governor Cuomo to advocate for deaf New Yorkers without access to the internet who are therefore unable to benefit from the daily briefings.
46. On April 3, 2020, DRNY filed a complaint with the United States Department of Justice ("DOJ") regarding Governor Cuomo's failure to provide live televised ASL interpretation.

47. On April 13, 2020, Governor Cuomo hosted a multi-state press briefing with the Governors of New Jersey, Delaware, Connecticut, Rhode Island, Pennsylvania, and Massachusetts announcing the Multi-State Council to Get People Back to Work and Restore the Economy.
48. An ASL interpreter was not available in frame during the televised broadcast of this briefing.
49. DRNY continues to receive complaints from deaf New Yorkers who are unable to access Governor Cuomo's daily briefings.

Plaintiff Dennis Martinez

50. PLAINTIFF DENNIS MARTINEZ is a 30-year-old deaf resident of Brooklyn, New York.
51. Mr. Martinez is fluent in ASL, and it is his preferred and primary language.
52. Mr. Martinez was raised in Colombia and learned to read and write Spanish before learning some English.
53. Mr. Martinez has watched Governor Cuomo's briefings several times since March 1, 2020.
54. Mr. Martinez is not able to understand Governor Cuomo's live briefings due to the lack of an ASL interpreter.
55. Mr. Martinez works as a Deaf Service Advocate at the Harlem Independent Living Center.
56. Deaf community members have contacted Mr. Martinez asking for information about what Governor Cuomo said during his press briefings.

57. Mr. Martinez is unable to answer community questions about Governor Cuomo's briefings because he does not have access to the information himself.

58. Mr. Martinez has to seek out videos on social media platforms with ASL interpretation of the information covered by Governor Cuomo, thereby delaying timely access to information.

Plaintiff Douglas Nguyen

59. PLAINTIFF DOUGLAS NGUYEN is a 56-year-old deaf resident of Albany, New York.

60. Mr. Nguyen learned ASL as a teenager and it is his only language.

61. Mr. Nguyen does not read, write or understand English.

62. Mr. Nguyen does not use a computer and does not have access to the internet.

63. Mr. Nguyen is employed full-time at a home improvement retail store and regularly interacts with customers and co-workers.

64. Mr. Nguyen watched a number of Governor Cuomo's daily briefings during March and April of 2020, but he cannot understand them because there is no ASL interpreter.

65. Mr. Nguyen watches Governor Cuomo's briefings because he wants information on how to stay safe at work and in the community.

66. Mr. Nguyen is unable to access Governor Cuomo's website because he does not use a computer.

Plaintiff James Hallenbeck

67. PLAINTIFF JAMES HALLENBECK is a 63-year-old deaf resident of Endicott, New York.

68. Mr. Hallenbeck's primary language is ASL and he understands some English.

69. Mr. Hallenbeck has watched Governor Cuomo's briefings on an almost daily basis.

70. Mr. Hallenbeck attempts to read the closed captioning on television but due to his limited English and frequent errors and omissions in the captioning he understands about half of the information conveyed.
71. Mr. Hallenbeck does not own a computer and therefore cannot access the Governor's briefings online.
72. Mr. Hallenbeck worries that he has missed important health and safety information due to his inability to understand the Governor's briefings.
73. Mr. Hallenbeck learned of the Governor's stay-at-home order only when his brother called him to make sure he was aware of this development.

Plaintiff Jill Wildberger

74. PLAINTIFF JILL WILDBERGER is a 23-year-old deaf resident of Round Lake, New York.
75. Ms. Wildberger is fluent in ASL, which is her preferred language.
76. Ms. Wildberger also has a learning disability.
77. Ms. Wildberger has watched Governor Cuomo's briefings several times since March 1, 2020.
78. Ms. Wildberger was unable to understand a significant portion of the information in the briefing because the closed captioning did not appear to match what the Governor was saying and at other times there was no captioning at all.
79. Ms. Wildberger also struggled to understand the closed captioning due to her learning disability.
80. Ms. Wildberger has access to the internet but found that the live ASL interpreter offered on the Governor's website was frequently not available.

81. Due to her limited access to the Governor’s briefings, Ms. Wildberger was not aware of the Governor’s executive order requiring New Yorkers to wear a facemask.

FIRST CLAIM FOR RELIEF
TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12101, *et seq.*

82. DRNY incorporates by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.

83. Title II of the ADA states, in pertinent part:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by any such entity. 42 U.S.C. § 12132.

84. A “public entity” includes state and local government, their agencies, and their instrumentalities. 42 U.S.C. § 12131(1).

85. Governor Cuomo, acting in his official capacity, at all times relevant to this action, and currently is a “public entity” within the meaning of Title II of the ADA.

86. Governor Cuomo provided and provides “services, programs [and] activities” through his office. 28 C.F.R. § 35.130.

87. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2).

88. A “qualified individual with a disability” is a person “who, with or without reasonable modification to rules, policies or practices ... meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

89. Public entities are required to take appropriate steps to ensure that communications with members of the public with disabilities are as effective as communications with others.

28 C.F.R. § 35.160(a)(1).

90. Public entities are required to provide reasonable accommodations in the form of “appropriate auxiliary aids and services” when necessary to provide individuals with disabilities an equal opportunity to participate in a service, program, or activity. 28

C.F.R. § 35.160(b)(1).

91. “Auxiliary aids and services” includes qualified interpreters. 28 C.F.R. § 35.104.

92. The necessary type of auxiliary aid or service to ensure effective communication depends on the method of communication used by the individual with a disability; the nature, length, and complexity of the communication involved; and the context of the communication. 28 C.F.R. § 35.160(b)(2).

93. Public entities are required to give primary consideration to the requests of individuals with disabilities in determining what types of auxiliary aids and services are needed. *Id.*

94. Plaintiffs in seeking access to Governor Cuomo’s daily briefings are qualified individuals under the ADA.

95. Plaintiffs in their attempts to access Governor Cuomo’s televised briefings are frequently unable to understand portions of the briefing by following closed captioning, when available.

96. Plaintiffs who do not have access to the Internet are unable to access Governor Cuomo’s daily briefings with an ASL interpreter.

97. As a result of Governor Cuomo’s acts and omissions, deaf New Yorkers are unable to obtain critical health and safety information from his daily briefings.

SECOND CLAIM FOR RELIEF
SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C. § 794

98. DRNY incorporates by reference each and every allegation contained in the foregoing paragraphs as if specifically alleged herein.
99. Section 504 provides, in pertinent part that “no otherwise qualified individual with a disability in the United States... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).
100. Governor Cuomo was, at all times relevant to this complaint, and is currently a recipient of federal financial assistance within the meaning of Section 504.
101. Governor Cuomo provided and provides a “program or activity” where “program or activity” is described as “all operations of a department, agency, special purpose district or other instrumentality of a State or of a local government.” 29. U.S. C. § 794(b)(1)(A).
102. A disability is defined as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 29 U.S.C. § 705(9)(B) citing 42 U.S.C. § 12102(1)(A).
103. Deaf New Yorkers are qualified individuals under Section 504.
104. Governor Cuomo’s practice of denying access to ASL interpretation violates Section 504 by authorizing, or failing to forbid, actions that:
- a. Exclude from participation in, deny the benefits of, or otherwise subject individuals to discrimination on the basis of disability. 29 U.S.C. § 794(a); 28 C.F.R. § 41.51(a).

- b. Deny qualified persons with a disability the opportunity to participate in or benefit from the aid, benefit, or service. 45 C.F.R. § 84.4(b)(1)(i); 28 C.F.R. § 41.51(b)(1)(i).
 - c. Afford qualified persons with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others. 45 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2); 28 C.F.R. § 41.51(b)(1)(ii).
 - d. Limit individuals with a disability in the enjoyment of rights, privileges, advantages and opportunities enjoyed by others receiving an aid, benefit, or service. 45 C.F.R. §§ 84.4(b)(1)(vii), 84.52(a)(4); 28 C.F.R. § 41.51(b)(1)(vii).
105. As a result of Governor Cuomo's acts and omissions, deaf New Yorkers who rely on television to access his daily briefings are denied the full benefits of these briefings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court to provide relief as set forth below:

1. Issue a Temporary Restraining Order requiring Governor Cuomo to provide live televised in frame ASL interpretation at any and all briefings designed to reach residents of New York;
2. Enter preliminary and thereafter permanent injunctive relief, pursuant to 28 U.S.C. § 2202, requiring Governor Cuomo to provide live televised in frame ASL interpretation at all briefings designed to reach residents of New York;
3. Order Governor Cuomo to immediately provide live televised in frame ASL interpretation at any and all briefings designed to reach residents of New York;

4. Enter a declaratory judgment, in accordance with 28 U.S.C. § 2201, declaring that the Governor Cuomo's actions and failures violate the ADA and Section 504 by subjecting Plaintiffs to discrimination;
5. Retain jurisdiction over this action to ensure Governor Cuomo's compliance with the mandates of the ADA and Section 504;
6. Award plaintiff reasonable attorney fees and costs;
7. Provide such other further relief as deemed just and proper

DATE: April 29, 2020
Albany, NY

DISABILITY RIGHTS NEW YORK
Plaintiff

By: /S/ Jessica Barlow

JESSICA BARLOW
JB2194

MARC FLIEDNER
MF4201

DISABILITY RIGHTS NEW YORK
Attorneys for Plaintiffs
25 Chapel Street, Suite 1005
Brooklyn, NY 11201
Phone: 518-512-4841
Fax: 518-427-6561 (not for service)