



Commander's Log

LEGAL UPDATE FOR MARYLAND CORRECTIONAL
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DISABLED INMATES, THE AMERICANS WITH DISABILITIES ACT, AND LOCAL DETENTION CENTERS

CASE: *Abraham Zemedagegehu v. Arlington County
Sheriff's Office, et al.*
**United States District Court, Eastern
District of Virginia**
**Decided April 28, 2015 (Unpublished
Opinion)(2015 WL 1930539)**

Although this case is not an appellate decision, or even a published opinion, it is noteworthy because the central issue before the court was “if, why and how” Title II of the Americans With Disabilities Act of 1990 (“ADA”) applies to local detention centers. Before launching into the specifics of the case, it is important to understand the background of the ADA.

A. The ADA

The ADA was enacted in 1990 to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and to provide clear, strong, consistent, enforceable standards addressing

discrimination against individuals with disabilities. Title II of the ADA prohibits public entities, including any State or local government and any department, agency, or other instrumentality of a State or local government, from discriminating by reason of disability against a qualified individual with a disability. For purposes of Title II, a qualified individual with a disability is defined as an individual with a disability who, with or without “reasonable accommodations” meets the essential eligibility requirements to receive or participate in programs or activities provided by a public entity. “Reasonable accommodations” include providing: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments, qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments, acquisition or modification of equipment or devices, and other similar services and actions. The Justice Department has created an even more expansive listing of auxiliary aids and services in the Code of Federal Regulations.

To prevail under a Title II ADA claim, a plaintiff must show that he or she was excluded from



participation in, or denied the benefits of, a program or service offered by a public entity, or subjected to discrimination by that entity. To that end, the United States Court of Appeals for the Fourth Circuit, the arbiter of federal law for several states, including Maryland, has recognized three distinct grounds for relief: (1) intentional discrimination or disparate treatment; (2) disparate impact; and (3) failure to make reasonable accommodations.

The lack of reasonable accommodations is generally what prisoners claim in lawsuits filed under Title II of the ADA.

B. State Prisoner Lawsuits Under Title II of the ADA

Two decisions from the United States Supreme Court, some eight years apart, have fashioned if and when disabled state prisoners can bring lawsuits under Title II of the ADA. In the first case, *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998), a unanimous Supreme Court held that the plain text of Title II of the ADA unambiguously extends to state prison inmates. The issue in *Yeskey* was whether Title II of the ADA covered inmates in state prisons. *Yeskey* had been sentenced to serve 18 to 36 months in a Pennsylvania correctional facility. The sentencing court recommended that he be placed in Pennsylvania's Motivational Boot Camp ("the Boot Camp") for first-time offenders, the successful completion of which would have led to his release on parole in just six months. Because of his medical history of hypertension, however, he was refused admission. *Yeskey* filed suit against the Department of Corrections and several department officials, alleging that his exclusion from the Boot Camp violated the ADA. The district court dismissed the case for failure to state a claim, holding the ADA inapplicable to inmates in state prisons. The United States Court of Appeals for the Third Circuit reversed, and the Supreme Court agreed to review the case.

The defendants argued that state prisoners were not covered by the ADA. They relied on the rationale in *Gregory v. Ashcroft*, in which the Supreme Court held that state judges were not covered by the Age Discrimination in Employment Act of 1967. The Supreme Court held, however, that state prisons fall squarely within the statutory definition of "public entity," which includes any department, agency, or other instrumentality of a State or local government. The argument that state prisons do not provide prisoners with benefits of programs, services, or activities as those terms are ordinarily understood was also rejected. The Court observed that prisons provide inmates with many recreational activities, medical services, and educational and vocational programs, all of which at least theoretically benefit the prisoners. In sum, the Court found that the plain text of the ADA provided no basis for distinguishing these programs, services, and activities from those provided by public entities that are not prisons.

The Court also rejected the contention that the term "qualified individual with a disability" was ambiguous when applied to a state prisoner. In this regard, the Court concluded that the words "eligibility" and "participation" in the ADA did not imply voluntariness on the part of an applicant who seeks a benefit from the state, and thus did not connote prisoners who were being held against their will. The Court reasoned that the words do not connote voluntariness, and even if they did, it would still not be true that all prison services, programs, and activities are excluded from the ADA because participation in them is not voluntary. As an example, the Court observed that the prison law library is a service (and the use of it an activity), which prisoners are free to take or leave. The Boot Camp program at issue in *Yeskey* itself was a voluntary program to which eligible inmates made application for selection.

In 2006, the Supreme Court decided *United States v. Georgia*, 546 U.S. 151 (2006), the second case it decided concerning state prisoner lawsuits under



Title II of the ADA. In that case, the Court considered whether a disabled inmate in a state prison may sue the state for money damages under Title II of the ADA. Goodman was a paraplegic inmate in the Georgia prison system who was housed at the State Prison in Reidsville. After filing numerous administrative grievances in the state prison system, Goodman filed a *pro se* complaint in the United States District Court challenging the conditions of his confinement. He named as defendants the State of Georgia, the Department of Corrections, and several prison officials. He brought claims under state law, the Eighth Amendment, and Title II of the ADA, seeking both injunctive relief and money damages against all defendants.

Goodman's filings alleged, among other things, that he was confined for 23–to–24 hours per day in a 12–by–3 foot cell in which he could not turn his wheelchair around. He alleged that the lack of accessible facilities rendered him unable to use the toilet and shower without assistance, which was often denied. On multiple occasions, he asserted, he had injured himself in attempting to transfer from his wheelchair to the shower or toilet on his own, and, on several other occasions, he had been forced to sit in his own feces and urine while prison officials refused to assist him in cleaning up the waste. He also claimed that he had been denied physical therapy and medical treatment, and denied access to virtually all prison programs and services on account of his disability.

The district court dismissed Goodman's constitutional claims, as well as his ADA claims for money damages, holding that they were barred by sovereign immunity. The case was appealed and ultimately reviewed by the Supreme Court. Based on the record, the Supreme Court found that Goodman had sufficiently alleged actual violations of the Eighth Amendment's prohibition against cruel and unusual punishment. Moreover, it found that conduct that allegedly amounts to cruel and unusual punishment under the Eighth Amendment

would also violate Title II of the ADA. The Court concluded that it was quite plausible that the alleged deliberate refusal of prison officials to accommodate Goodman's disability-related needs, including: mobility, hygiene, and medical care, as well as virtually all other prison programs, constituted exclusion from participation in or denial of the benefits of the prison's services, programs, or activities. Therefore, the Court held that Goodman's claims for money damages against the state under Title II were based on conduct that independently could be viewed as cruel and unusual punishment. As such, the Supreme Court held that Title II creates a private cause of action for money damages against a state for conduct that actually violates the constitution and, therefore, Title II validly abrogates state sovereign immunity. Based upon this logic, the Court ruled that the Eleventh Circuit had erred in dismissing Goodman's Title II claims that were based on allegedly unconstitutional conduct.

So, the two Supreme Court decisions established that: (1) Title II of the ADA applies to state prisoners; and (2) state prisoners can sue for money damages under Title II of the ADA for prison conditions or conduct that actually reaches the threshold of cruel and unusual punishment.

C. Local Inmate Lawsuits Under Title II of the ADA

The Supreme Court cases discussed above dealt with the constitutionality of Title II as applied in the context of state prisons, not local or regional detention centers. The cases concerned the clash between a state's sovereign immunity and Congress's expressed intent to override it in the ADA. Although local governments do not possess sovereign immunity, they are impacted by the weighty requirements imposed by the ADA on all facilities, services, and operations. There is one relatively recent federal district court case that addresses these issues in the context of a local detention center. And, even though the decision comes in the form of an unpublished opinion (one



having no binding effect as precedent), the opinion is still an important read. The case, *Zemedagegehu v. Arthur*, was filed in the United States District Court for the Eastern District of Virginia by a former detention center inmate, Abreham Zemedagegehu (hereinafter “Zemed”). Zemed is deaf and has no functional ability to speak English or to read lips. Zemed’s primary language is American Sign Language (“ASL”). In his lawsuit, Zemed alleged that on February 2, 2014, he was arrested at Ronald Reagan Washington National Airport (“National Airport”) after he went there to find somewhere warm to sleep. Shortly after his arrest, Zemed was transported to the Arlington County Detention Facility (hereinafter “the jail”), a local detention facility operated by the Sheriff, where he was booked. Zemed attempted to communicate with the National Airport police officers and jail personnel using gestures and in writing. Zemed also requested an ASL interpreter but one was not provided. Consequently, Zemed did not know why he had been arrested nor did he understand why he was being detained in the jail. Zemed also appeared in front of a judge via video conference, but he could not signal to the judge that he was deaf because jail personnel instructed him to remain still.

As part of the booking process, Zemed underwent a medical evaluation, where he made additional requests for assistance. His requests were again denied. Without an ASL interpreter, Zemed did not understand the medical evaluation process and refused to sign a consent form that he could not read. Jail personnel then forced a needle into Zemed’s arm without his consent and placed him in isolation. Scared and confused, Zemed banged on the cell door and repeatedly gestured for assistance, still unaware as to why he was being incarcerated. Zemed had a negative skin reaction to the forced medical procedure and underwent an additional medical procedure, but still did not understand what was happening.

Approximately 24 hours after his arrest, Zemed was arraigned in Arlington County General District Court with the assistance of an ASL interpreter. At his arraignment, Zemed first learned he had been arrested and incarcerated for allegedly stealing an iPad. Zemed returned to the jail after his arraignment and remained incarcerated for nearly six weeks. During his period of incarceration, jail personnel refused to provide effective means for Zemed to communicate, and consequently, Zemed was deprived of meals, recreation, and rehabilitative services at various times.

During Zemed’s six weeks of incarceration, the jail also failed to provide him with an adequate accommodation for telephone access. The jail offered to provide Zemed with a teletypewriter (“TTY”) to make phone calls. However, Zemed could not communicate effectively using TTY because TTY requires proficiency in English. The jail did not have a videophone or any device equipped with videophone software that Zemed could have used to make telephone calls. Zemed attempted to place a telephone call to a friend using TTY, but was unsuccessful. Subsequently, an officer at the jail placed a call to Zemed’s friend, who eventually visited Zemed at the jail. Because of the lack of a videophone, Zemed was unable to place telephone calls for the duration of his incarceration at the jail. Zemed also could not regularly communicate with his court-appointed attorney via telephone, unlike other inmates, and instead relied on in-person visits made by the attorney.

In his lawsuit, Zemed claimed that Defendants violated Title II of the ADA by knowingly and intentionally failing to provide him with an ASL interpreter or other auxiliary aids and accommodations, which denied him the same benefits and services available to non-deaf inmates. Specifically, as a result of these violations, Zemed claimed that he was unable to communicate with jail personnel during the booking process and medical procedures, that he was unable to



effectively communicate his dietary needs, and that he was deprived access to telephone calls, access to counsel, meals and recreation, and rehabilitative services. Zemed sought declaratory and compensatory relief. The Defendants sued included Elizabeth Arthur, the Arlington County Sheriff, in her official capacity (the “Sheriff”), who was responsible for the operation of the jail. The Sheriff, an elected commonwealth (state) official, moved to dismiss the Title II claim on the basis that, as a state official sued in her official capacity, she was immune from suit under the Eleventh Amendment, which precludes individuals from suing a state in federal court. The other Defendants also moved to dismiss and their primary argument was that they could not be held liable for the actions of the Sheriff, who was solely responsible for operation of the jail.

As to the Sheriff’s assertion of Eleventh Amendment immunity, the court recognized that she could remain subject to suit if she consented to the suit or if Congress, acting under powers granted to it in § Five of the Fourteenth Amendment, which gives Congress the power to enforce the other sections of the Fourteenth Amendment through legislation, clearly abrogated her immunity. Since the Sheriff did not consent to be sued, the issue was limited to whether Congress, in enacting Title II of the ADA, had acted within its power to clearly abrogate the Sheriff’s immunity. The legislative history and the ADA itself clearly and unequivocally established that Congress had intended to abrogate a state’s Eleventh Amendment sovereign immunity. Thus, the inquiry was further limited to whether Congress enacted Title II pursuant to a valid grant of constitutional authority, *i.e.* the enforcement power in § 5 of the Fourteenth Amendment.

The Sheriff argued that Title II did not validly abrogate her Eleventh Amendment sovereign immunity because the accommodations provided for in Title II extended beyond Congress’s prophylactic power in Section 5 of the Fourteenth

Amendment. But the court found that the facts of this case, as alleged in the amended complaint and when taken as true for purposes of the sheriff’s motion, required a different conclusion. As part of its analysis, the court focused on the place of Zemed’s confinement, a local jail, finding that the legislative history of the ADA indicates congressional intent to specifically remedy the disparate treatment of inmates in local jails through enactment of Title II of the ADA. Moreover, the court pointed out that the Supreme Court has suggested that Title II’s remedial scheme was not limited to remedy only violations of the Eighth Amendment as applicable to the states through the Fourteenth Amendment. Thus, public entities *do* have a statutory obligation under Title II to accommodate access to the most basic jail services for deaf pretrial detainees, including, as relevant here, access to medical procedure information and access to the courts or counsel, as guaranteed under the Fourteenth Amendment.

The court, however, at the preliminary motion to dismiss stage, was unwilling to speculate as to the appropriate limitation of services and accommodations in the pre-trial detention context of a local county jail. The court went so far as to candidly admit that Title II, while not a “perfect fit” for disability discrimination in the context of local jails, was still within Congress’ constitutional authority, even if in the process it prohibited conduct which is not itself unconstitutional.

Lastly, and critically, the court reflected that its decision took into account the important distinction between temporary pretrial detention in a local jail and incarceration in a state prison after conviction. Consequently, as a pretrial detainee in a local detention center, Zemed was not required to endure routine discomfort as part of the penalty that criminal offenders pay for their offenses against society. Or, as the Supreme Court had said years before in *Bell v. Wolfish*, 441 U.S. 520 (1979), “[t]he Government concededly may detain a criminal defendant to ensure his presence at trial



and may subject him to the restrictions and conditions of the detention facility, so long as those conditions and restrictions do not amount to punishment”

After the court issued its opinion, Zemed and the Defendants requested that the case be stayed in order for them to engage in settlement negotiations. The case ultimately settled for \$250,000 in the fall of 2016. The settlement further required the sheriff to appoint a coordinator to oversee compliance with the ADA, train staff on the law’s requirements, and ensure that the devices and services Zemed was denied are available at the detention center. The sheriff also issued a Statement that she had taken steps to improve disability services at the jail. As a result of the settlement, technology at the jail has been upgraded, and all staff and contractors now undergo annual ADA training.

D. Conclusion

As a practical matter, going forward, all local detention centers and departments of corrections, whether headed by sheriffs or civilians, must and should operate under the assumption that Title II of the ADA applies to local detention centers. The vast majority of local detention facilities have done just that. Few, if any, have had the temerity to challenge the application of Title II to their facilities. Counter-arguments, including congressional overreach, budget constraints, creating a class of inmates (the disabled) with rights and protections more expansive than those of other inmates, and the inherent burden of serving inmate populations that include both pretrial detainees and convicted prisoners, are likely to fail. As such, detention center administrators must be prepared to reasonably accommodate inmates with disabilities, including the hearing and visually impaired. This means anticipating both the devices and services that may be needed to assist disabled inmates in all aspects of their incarceration, including access to the courts, legal materials, and the grievance process, as well as job, vocational, or other rehabilitative program eligibility. Virtually all

services and programs made available to non-disabled inmates must be reviewed for the potential inclusion of disabled inmates. In this regard, proactive outreach to organizations such as the National Association of the Deaf, the National Federation of the Blind, and the American Civil Liberties Union (ACLU) may be wise.

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