

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

BRANDON COBB, et al., etc.,

Plaintiffs,

v.

GEORGIA DEPARTMENT OF  
COMMUNITY SUPERVISION, et  
al., etc.,

Defendants.

CIVIL ACTION NO.  
1:19-cv-03285-WMR

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**DEFENDANTS' STATEMENT OF MATERIAL FACTS**

Under LR 56.1, NDGa. and in support of their motion for summary judgment, Defendants Georgia Department of Community Supervision (DCS) and Michael Nail, its Commissioner, show the Court that the following are material facts as to which there are no genuine issues to be tried:

**Georgia Department of Community Supervision**

1. DCS was created by the Georgia General Assembly effective July 1, 2015 and is governed by the Board of Community Supervision and the Commissioner of Community Supervision. O.C.G.A. §§ 42-3-1, et seq., 42-3-2, -4.

2. DCS supervises criminal defendants in Georgia on probation and parole.

O.C.G.A. § 42-3-3.

**Communication of Conditions of Supervision by Courts in  
Criminal Sentencing, Georgia Department of Corrections,  
Georgia Department of Community Supervision, Georgia  
Board of Pardons and Parole, and by Sheriffs**

3. Georgia state courts are responsible for communication with defendants in court proceedings. DCS is not responsible for this and has no authority to do so. Ga. Uniform Superior Ct. Rule 73; Ga. Supreme Ct. Rules, Use of Interpreters for Non-English Speaking and Hearing Impaired Persons. (Roper Dep. at 268:10-19).
4. All Plaintiffs were provided by their state sentencing courts with the terms of their criminal sentences and probation/parole conditions at sentencing. (Doc. 34-1 (Brandon Cobb) ¶¶ 9, 15 (Attachment 1, at 9-16 (ECF)<sup>1</sup>); Doc. 34-4 (Joseph Nettles) ¶¶ 9, 14 (Attachment 1, at 8-22); MSJ Exhibit D (Adam Roper Decl.) (Mary Hill) ¶¶ 4, 5 (Attachment 1)).

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<sup>1</sup>Unless otherwise indicated, this brief refers to documents by ECF instead of internal pagination.

5. All Plaintiffs were provided interpreters by their state sentencing courts at sentencing. (Cobb Dep. I (03/29/2021), at 74:6-75:11; Nettles Dep. I (04/21/2021), at 10:1-11:10; Hill Dep. I (8/10/2021), at 21:14-22:9).
6. Nettles is a registered sex offender and many other deaf or hearing-impaired offenders on probation and parole are registered sex offenders. (MSJ Exhibit B (Darrell Smith Decl. 3) ¶ 10; Nettles Dep. II (05/25/2021), at 124:7-11).
7. DCS is the “appropriate official” responsible for communicating registration requirements and conditions of supervision to sex offenders *only* with respect to those “sentenced to probation without any sentence of incarceration in the state prison system or who [are] sentenced [as] first offenders.” O.C.G.A. § 42-1-12(a)(2), -12(b).
8. The Georgia Department of Corrections (DOC) is the “appropriate official” responsible for communicating registration requirements and conditions of supervision to sex offenders who are sentenced to incarceration before probation. DOC is required to communicate this information before a sex offender is released from prison or placed on probation or parole. O.C.G.A. § 42-1-12(a)(2), -12(b).

9. The Georgia Board of Pardons and Paroles (BPP) is the “appropriate official” responsible for communicating registration requirements and conditions of supervision to sex offenders who are placed on parole. O.C.G.A. § 42-1-12(a)(2), -12(b).

### **Deaf Offenders on Probation and Parole**

10. Approximately 200,000 offenders are serving probation or parole at any one time in Georgia. (MSJ Exhibit B (Smith Decl. 3) ¶ 8).
11. DCS does not maintain custody of any offender who is a named Plaintiff in this case or generally of any other offenders whom it supervises. DCS does not provide health care to offenders and has no authority to conduct medical evaluations or hearing assessments of offenders. Also, DCS does not as a part of its operations maintain offenders’ medical records, results of hearing tests, information about hearing capabilities, or information regarding hearing impairment. Accordingly, DCS generally learns that an offender is hearing impaired by: self-identification and request for hearing accommodation, doctor’s statement provided by the offender, or apparent difficulty of the offender in communicating effectively. Once DCS learns that an offender is hearing impaired, the agency maintains that information in its records. (MSJ Exhibit B (Smith Decl. 3) ¶ 23).

12. Approximately 88 offenders under supervision by DCS have been identified by DCS as deaf or seriously hearing-impaired. (MSJ Exhibit B (Smith Decl. 3) ¶ 9).

### **Intake of Offenders with a Disability**

13. An offender begins probation or parole by reporting to a DCS office for intake. At intake, DCS creates in its Portal computer system a profile for each offender on probation and parole. (MSJ Exhibit B (Smith Decl. 3) ¶ 4, 6, 11 (Attachment 1, Policy 6.340(IV)(C))).

14. When an offender with a disability reports for intake, a DCS Community Supervision Officer (CSO) enters information about the disability into the offender's Portal profile. This includes any reasonable accommodations needed by the offender. (MSJ Exhibit B (Smith Decl. 3) ¶ 4, 6, 11 (Attachment 1, Policy 6.340(IV)(C))).

15. For offenders reporting at intake who appear to be deaf or hearing-impaired, a CSO engages an interpreter certified in American Sign Language (ASL). This is usually done through Video Remote Interpreting (VRI), which is explained in more detail below. DCS may engage a live ASL interpreter if VRI is unavailable or ineffective with a particular offender. DCS may also use other methods if an offender appears not to know ASL. This includes

Communication Access Realtime Translation (CART) for those hearing-impaired offenders who do not know ASL. (MSJ Exhibit B (Smith Decl. 3) ¶ 4, 6, 11 (Attachment 1, Policy 6.340(IV)(C, G)).

16. Through the ASL interpreter, DCS learns at intake if the offender has been deaf from birth or early childhood. (MSJ Exhibit B (Smith Decl. 3) ¶ 11).

17. If the ASL interpreter engaged by DCS at intake reports difficulties in communicating with the offender, then, subject to the consent of the offender, DCS causes an offender who identifies as deaf to be assessed by an outside assessor to determine his or her communication skills. This outside assessor is an ASL interpreter who specializes in assessing communications skills. (MSJ Exhibit B (Smith Decl. 3) ¶ 12).

18. This assessment culminates in a written recommendation for auxiliary aids and services, if any, which DCS should provide to ensure effective communication. DCS provides the recommended auxiliary aids and services unless the requirements of 28 CFR § 35.164 are satisfied. (MSJ Exhibit B (Smith Decl. 3) ¶ 13).

### **DCS Policies Regarding Communications with Deaf Offenders**

19. The current DCS Americans with Disabilities Act Title II policy was most recently revised on June 1, 2021. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 4, 6 (Attachment 1, Policy 6.340).
20. The DCS ADA Title II policy provides for the use of auxiliary aids and services and reasonable accommodations for deaf or hearing-impaired supervisees. It also contains a grievance procedure. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 4, 6 (Attachment 1, Policy 6.340).
21. Plaintiffs' experts have not addressed the adequacy of the DCS ADA Title II policy, leaving the opinion of Defendants' expert that the policy is adequate uncontradicted. (Erin Moriarty Harrelson Dep. at 99:7-25; Barry Marano Dep., at 233:6-233:18, 235:7-236:11, Dep. Exhibit 130).

### **DCS Use of Video Remote Interpreting and Other Accommodations**

22. VRI is a service that provides a foreign language or ASL interpreter at a remote location in order to facilitate communication between or among persons who do not speak a common language. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 4, 6, 11 (Attachment 1, Policy 6.340(III))).
23. On September 11, 2019, DCS signed a contract with Language Line Solution to provide VRI services to its employees and (CSOs through

software connections on computing devices—including cell phones, tablets, and laptops. (Doc. 67-1 (Smith Decl. 1) ¶¶ 5, 9 (Attachments 1, 2); MSJ Exhibit B (Smith Decl. 3) ¶¶ 4, 15-18 (Attachment 2)).

24.DCS also has the capability of providing CART for those hearing-impaired offenders who do not know ASL. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 4, 15-17 (Attachment 2); Doc. 67-1 (Smith Decl. 1) ¶¶ 5, 9-11 (Attachments 1, 2)).

25.VRI and CART services is provided through AD Astra, Interpreters Unlimited (Under State Contract), and AllWorld Language Consultants (No longer under State Contract, but available on an individual task basis). These agencies allow DCS to be able to go from one to another agency to request an interpreter for a need. Meaning if DCS needs an in-person interpreter for a certain date and time, and one provider does not have availability, the representative from procurement will the select the next entity to contact. If none of the entities under state contract has an available interpreter, then the procurement specialist contacts other entities outside of the state contract. This process has been effective and DCS has been able to schedule an interpreter when the need arises. The entities presently used to obtain interpreters are named in Attachment 2 to the declaration of DCS ADA



Coordinator Darrell Smith. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 4, 15-17 (Attachment 2); Doc. 67-1 (Smith Decl. 1) ¶¶ 5, 9-11 (Attachments 1, 2)).

26. Plaintiffs' experts used ASL communications remotely, which is equivalent to VRI, to communicate with Plaintiffs in order to assess their communications needs and capabilities. (Harrelson Dep. at 37:17-38:15).

27. As a result of the Covid-19 pandemic, DCS has been forced to rely more heavily on remote communications with all offenders. With respect to deaf offenders, this has taken the form of VRI. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 24-26; MSJ Exhibit C (Nail Decl.) ¶¶ 16-19).

28. Due to the Covid-19 pandemic, DCS discontinued all in-person home visits of CSOs with offenders during peak periods of the pandemic except for arrests and other emergencies. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 24-26; MSJ Exhibit C (Nail Decl.) ¶¶ 16-19).

29. VRI and other accommodations are available without delay to facilitate communication between CSOs and hearing-impaired probationers and parolees. All services, including VRI, CART, and live ASL interpreters are available to CSOs without any prior administrative approval. (MSJ Exhibit B (Smith Decl. 3) ¶¶ 15-19 (Attachments 1, 2)).

### **Certified Deaf Interpreters**

30. In his declaration filed July 19, 2019 in support of Plaintiffs' motion for preliminary injunction, Plaintiff Cobb said that he needed both a live hearing ASL interpreter and Certified Deaf Interpreter (CDI) in order to communicate. (Doc. 2-2 ¶¶ 5, 19).
31. Plaintiff Cobb, who is 33 years-of-age, has had a team of both hearing and deaf ASL interpreters only on the following occasions: at his trial in 2014, the hearing in this case in federal court in September 2019, in his depositions taken by defense counsel in this case, and in his meetings with Plaintiffs' counsel in this case. (Cobb Dep. I (03/29/21) at 74:24-75:11, 80:11-12; Cobb Dep. II (04/26/21) at 59:23-60:9).
32. In his declaration filed July 19, 2019 in support of Plaintiffs' motion for preliminary injunction, Plaintiff Nettles said that he needed only a live ASL interpreter in order to communicate. He did not say he needed a CDI. (Doc. 2-6 ¶ 10).
33. In the complaint as originally filed July 19, 2019, Plaintiff Nettles did not allege that he needed a CDI. (Docs. 1 ¶¶ 4, 23, 40). Only in the first amended complaint filed January 22, 2021 and second amended complaint

filed July 1, 2021 did Nettles allege that he needed a CDI. (Doc. 148 ¶¶ 4, 38; Doc. 181 ¶¶ 4, 37).

34. Plaintiff Nettles, who is 53 years-of-age, had never used a CDI until January 2020 during this litigation. (Nettles Dep. I (04/21/2021), at 42:7-9, 47:10-25-48:1-6).

35. Plaintiff Hill, who is 41 years-of-age, had never heard of or used a CDI until she met Plaintiffs' attorneys in 2021. (Hill Dep. I (08/10/2021), at 22:10-24:1).

36. There are presently only four certified CDIs working in Georgia. It is very difficult to schedule these CDIs and often DCS needs to arrange for accommodations on very short notice. (MSJ Exhibit B (Smith Decl. 3) ¶ 22).

### **DCS Resources**

37. Approximately 734 home visits are made every year by Community Supervision Officers (CSO) with deaf or hearing-impaired offenders and approximately 169 DCS office visits are made every year by CSOs with deaf or hearing-impaired offenders. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 6).

38. Using FY 2021 (July 1, 2020-June 30, 2021) as an example and taking into account all resources available to DCS, the budget for DCS as funded by the

Georgia General Assembly, contained only \$19,200 (0.0001% of the entire DCS budget) that could be used to provide auxiliary aids and services for deaf offenders. From this amount, DCS provides certified live ASL interpreters when needed, ASL interpreters over VRI as needed, and other accommodations as needed. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 7).

39. Thus, if DCS is required to hire a live ASL interpreter or both a hearing interpreter and CDI for all meetings between CSOs and deaf or hearing-impaired offenders, approximately \$788,126 in additional funds would be needed by DCS. This analysis estimates the cost of required contact with supervisees but does not include any supplemental programming that might be additionally assigned to certain supervisees or voluntary programming. The agency's present budget is not sufficient to provide these services at this level. This increase would not be sustainable within the current agency budget and would require a cut in personnel or operating expenses to offset the cost. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 8).

40. For DCS to hire a live ASL interpreter or both a live ASL interpreter and a CDI for every meeting or encounter between a DCS employee and a deaf or hearing-impaired offender (or only for those meetings or encounters in which the offender requested or demanded a live ASL interpreter or both a

live ASL interpreter and a CDI), would cause a fundamental change or alteration in the services, programs, and activities offered by DCS and undue financial and administrative burdens. (MSJ Exhibit C (Nail Decl.) ¶¶ 5-9).

41. All CSOs have law enforcement training and are certified by the Georgia Peace Officers and Standards Training Council as law enforcement officers. Home visits and other meetings between offenders and CSOs raise several security concerns. During 2019-2020, approximately 166 workers' compensation claims were filed due to on-the-job injuries of CSOs. During 2019-2020, CSOs made approximately 1,574 arrests of offenders for violations of probation and parole conditions. In 2017-2020, CSOs used force on approximately 142 occasions, including several on animals. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 10).

42. A total of approximately 720,551 home visits are made every year by CSOs for all offenders. Presently, DCS assigns only one CSO to each home visit. If interpreters without law enforcement training are to attend all home visits with deaf or hearing-impaired offenders, DCS would need to assign at least two CSOs to each of those visits. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 11).

43. If DCS is required to bring live ASL interpreters (either a single interpreter or a team of a hearing interpreter and a CDI), who do not have law

enforcement training, to all home visits with probationers and parolees who are deaf or hearing-impaired, DCS will need to provide additional security for these meetings. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 13).

44. For DCS to hire sufficient CSOs so that at least two CSOs are present at each home visit between a DCS employee and a deaf or hearing-impaired offender would cause a fundamental change or alteration in the services, programs, and activities offered by DCS and undue financial and administrative burdens. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 11, 12).

45. Using FY 2021 (July 1, 2020-June 30, 2021) as an example and taking into account all resources available to DCS, the budget for DCS as funded by the Georgia General Assembly, contained \$127,232,261 (75% of the entire DCS budget—\$169,420,352 in State funds; 82% of the Field Services State funds budget) that could be used to hire CSOs. From this amount, DCS presently employs approximately 1,175 CSOs. DCS would be required to hire 38 additional CSOs for added security at home visits with deaf or hearing-impaired offenders if DCS is required to bring live ASL interpreters (either a single interpreter or a team of a hearing interpreter and a CDI) to all home visits with probationers and parolees who are deaf or hearing-impaired. In order for DCS to hire these additional CSOs, it would need approximately

\$2,368,082 in additional funds. DCS would also need to provide body armor for ASL interpreters. The agency's present budget is not sufficient to provide these funds to support this effort. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 14).

46. The current DCS budget does not support the additional manpower and resources detailed above and to implement these services would alter the funding of agency operations in a detrimental manner as the agency would be required to shift funding from current statutory obligations in order to financially support these changes. As the majority of the agency's budget stems from personal services (staffing), this could result in reduced staffing levels and negatively impact the agency's ability to provide supervision at the level currently provided. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 15).

47. In order to limit the spread of Covid-19 during the pandemic starting in March 2020, DCS has limited home visits with offenders to situations involving the execution of arrest or search warrants and other emergencies. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 16; MSJ Exhibit B (Smith Decl. 3) ¶ 24).

48. During the pandemic, DCS has generally communicated with offenders by audio or video calls. In these calls, CSOs have reviewed offenders'

compliance with supervision conditions. (Nail Decl.) ¶¶ 5, 17; MSJ Exhibit B (Smith Decl. 3) ¶ 25).

49. CSOs have relied on VRI, which is available to all CSOs, to communicate with deaf or hearing-impaired offenders during the pandemic. If a deaf or hearing-impaired offender needs to initiate contact with a CSO, the offender has been able to send a text message to his or her CSO asking for a VRI call, or the offender has been free to use VRS. The use of VRS is free for all deaf persons. (Nail Decl.) ¶¶ 5, 18; MSJ Exhibit B (Smith Decl. 3) ¶ 26).

50. For DCS to conduct all home visits with deaf or hearing-impaired offenders in person and bring live ASL interpreters to these visits would severely disrupt agency operations and impede its ability to limit the spread of Covid-19. This would cause a fundamental change or alteration in the services, programs, and activities offered by DCS and undue financial and administrative burdens to the agency. (MSJ Exhibit C (Nail Decl.) ¶¶ 5, 19).

### **Training of Community Supervision Officers**

51. In addition to following its ADA Title II policy, DCS provides ADA training all CSOs and other employees. All employees are required to complete annual ADA training. Employees are also trained by vendors from Georgia Relay & Language Solutions. ADA Coordinator Smith also



provides one-on-one coaching to CSOs to ensure consistent training and provide updates. (MSJ Exhibit B (Smith Decl. 3) ¶ 20).

### **Likelihood of Future Harm to Deaf Offenders**

52.No revocation proceedings have been initiated against Cobb or Nettles.

(Doc. 34-1, Exhibit A (Mitchell Decl., re Brandon Cobb), ¶ 16; Doc. 34-4, Exhibit D (Worley Decl., re Joseph Nettles) ¶ 15).

53.It was a condition of Mary Hill’s probated sentence that she “avoid injurious and vicious habits,” “submit to evaluations and testing relative to rehabilitation,” and “not use narcotics or dangerous drugs unless lawfully prescribed” or “associate with anyone” who does. (MSJ Exhibit D (Roper Decl.) ¶¶ 4-5 (Attachment 1)).

54. On October 26, 2020, Hill failed a drug screen. (MSJ Exhibit D (Roper Decl.) ¶ 7).

55.Hill admitted that she had ingested a marijuana product before the drug screen. (MSJ Exhibit D (Roper Decl.) ¶ 7).

56.As a result of the positive drug screen and Hill’s admitted drug usage, Roper applied for an arrest warrant and the warrant was issued for Hill on October 27, 2020. Hill was arrested on this warrant on November 3, 2020 at the Forsyth County, Georgia Jail. (MSJ Exhibit (Roper Decl.) ¶¶ 6-11; Roper

Dep. at 157:6-158:9, 247:8-248:16, 249:21-252:11, 255:20-263:12, 265:21-266:3; Dep. Exhibits 115-117).

57. Using a laptop computer, Roper engaged an ASL interpreter over VRI to review with Hill a proposed consent order admitting the drug violation and a community service violation. The Forsyth County Sheriff's policies due to the Covid-19 pandemic required Roper and Hill to communicate through a window in the visitation area, and did not allow Roper and Hill to be in the same room. Roper read the proposed consent order to Hill through the ASL interpreter, but mistakenly failed to read two critical paragraphs. (MSJ Exhibit (Roper Decl.) ¶¶ 6-11; Roper Dep. at 157:6-158:9, 247:8-248:16, 249:21-252:11, 255:20-263:12, 265:21-266:3; Dep. Exhibits 115-117).

58. Hill would have been revoked and sentenced to serve 60 days even if the communication had been perfect, since she admitted the drug violation. (MSJ Exhibit D (Roper Decl.) ¶ 13; Roper Dep. at 63:4-64:9, 267:22-268:9).

Respectfully Submitted,

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