

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA  
AND THE SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE  
UNDER THE AMERICANS WITH DISABILITIES ACT**

**DJ No. 204-70-85**

**I. INTRODUCTION**

1. The Parties to this Settlement Agreement are the United States of America and the Shelby County District Attorney General's Office ("Shelby County DA's Office").
2. The Shelby County DA's Office is the office of the chief law enforcement officer for Shelby County, Tennessee, vested with sole authority to prosecute violations of state criminal statutes within the judicial district. Tenn. Code Ann. § 8-7-103(1). The Shelby County DA's Office is a "public entity" within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104 and is subject to Title II of the ADA and its implementing regulations.
3. The United States has authority to investigate complaints of disability discrimination and seek remedies for violations of Title II of the ADA. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F.
4. The United States conducted an investigation into the Shelby County DA's Office's services, programs, and activities under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which require that no qualified individual with a disability, 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 be subjected to discrimination by a public entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).
5. On December 1, 2023, the United States issued a letter finding that the Shelby County DA's Office has discriminated against individuals with the disability of human immunodeficiency virus (HIV) through the enforcement of Tennessee's aggravated prostitution statute, Tenn. Code Ann. § 39-13-516. Although said enforcement was consistent with Tennessee law, that law subjects people living with HIV to harsher criminal penalties for engaging in prostitution, a misdemeanor offense, solely because of their HIV status and regardless of any actual risk of harm. Tennessee law also categorizes aggravated prostitution as a "violent sexual offense," mandating registration on the Tennessee Sex Offender Registry (registry), typically for life. The United States found that the Shelby County DA's Office's enforcement of the aggravated prostitution statute, including subsequent enforcement of the registry requirements, denies qualified individuals with disabilities an equal opportunity to participate in or benefit from its services, programs, or activities.
6. The Parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this matter without engaging in protracted litigation. The Parties therefore voluntarily enter into this Settlement Agreement, as set forth below.

## **II. GENERAL NONDISCRIMINATION OBLIGATION**

7. Under Title II of the ADA and the terms of this Agreement, the Shelby County DA's Office:
  - a. Will not exclude individuals with disabilities from participation in or deny them the benefits of its services, programs, or activities, or otherwise discriminate against such individuals. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).
  - b. Will afford qualified individuals with disabilities an equal opportunity to participate in or benefit from any aid, benefit, or service provided to others. 28 C.F.R. § 35.130(b)(1).
  - c. Will reasonably modify its policies, practices, and procedures where necessary to avoid discrimination based on disability. 28 C.F.R. § 35.130(b)(7).

## **III. ACTIONS TO BE TAKEN BY THE SHELBY COUNTY DA'S OFFICE**

8. The Shelby County DA's Office and its personnel will cease enforcement of Tennessee's aggravated prostitution statute. This includes:
  - a. Not initiating new prosecutions or prosecuting cases that opened before the date of this Agreement for violations of Tenn. Code Ann. § 39-13-516;
  - b. Not filing new petitions or continuing to prosecute petitions to revoke suspended sentences for individuals convicted under § 39-13-516 who are currently serving suspended sentences;
  - c. Not initiating new prosecutions or continuing to prosecute cases that opened before the date of this Agreement for violations of Tennessee's Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, including Tenn. Code Ann. §§ 40-39-208 and 40-39-213, for individuals who are only required to register with the Sex Offender Registry because of a conviction or multiple convictions under Tenn. Code Ann. § 39-13-516; and
  - d. Declining to prosecute technical violations of an individual's probation agreement where an individual is serving a sentence of probation for either an aggravated prostitution conviction or a violation of the sex offender registry requirements based solely on an aggravated prostitution conviction.

9. The Shelby County DA's Office and its personnel will identify all cases the office prosecuted under § 39-13-516 that resulted in conviction and take all available steps to eliminate any ongoing or potential consequences of that criminal conviction, including:
  - a. The Shelby County DA's Office acknowledges that individuals who remain under court supervision for said convictions should be able to have these convictions vacated and the remainder of the applicable sentence terminated. Existing Tennessee law requires said individuals to initiate by Petition such a proceeding but the Shelby County DA's Office agrees as follows:
    - i. Should a Petition be filed in such a matter, the Shelby County DA's Office will not oppose the Petition and will represent to the Court the findings of the United States' investigation and this Agreement; and
    - ii. Within 14 days of this Agreement, the Shelby County DA's Office will send to the United States a list of individuals who are under court supervision for these offenses, to be generated through the Shelby County DA's Office's case management system. In addition to this list, the Shelby County DA's Office will also share for review and approval by the United States a draft letter informing individuals under court supervision of their eligibility for vacation of sentence and termination of supervision; and
    - iii. Within 14 days of the United States' approval of the list of recipients and the letter, the Shelby County DA's Office shall mail a copy of the letter and the United States' December 1, 2023, Letter of Findings to each individual's last reported address.<sup>1</sup> A second copy shall also be mailed to the probation office to which they report.
  - b. The Shelby County DA's Office acknowledges that individuals who owe any court costs, jail fees, probation fees, and fines should be able to seek the elimination of these costs, fees, and fines. Existing Tennessee law requires said individuals to initiate by Petition such a proceeding but the Shelby County DA's Office agrees as follows:
    - i. Should a Petition be filed in such a matter, the Shelby County DA's Office and its personnel will not oppose the Petition;
    - ii. Within 14 days of this Agreement, the Shelby County DA's Office will send to the United States a list of individuals who owe any court costs, jail fees, probation fees, or fines as the result of an aggravated prostitution prosecution or conviction, to be generated through the Shelby County DA's Office's case management system. In addition to this list, the Shelby County DA's Office will also share for review and approval by the United States a draft letter informing individuals who owe any such costs, fees, or fines of their eligibility to seek the elimination of these vacation of any such costs, fees, or fines; and

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<sup>1</sup> Under this Agreement, an individual's last reported address is either a) the individual's last reported address in the case and/or court management system, or (b) the individual's current listed address on the registry, whichever is more current.

- iii. Within 14 days of the United States' approval of the list of recipients and the letter, the Shelby County DA's Office shall mail a copy of the letter and the Letter of Findings to each individual's last reported address. A second copy shall also be mailed to the probation office to which they report.
  - c. This provision also applies to all subsequent convictions of Tenn. Code Ann. §§ 40-39-208 (failure to timely register and report to the registry) and 40-39-213 (failure to obtain and carry an ID designating the individual as a sex offender) in cases where an individual is only required to comply with these laws because of a conviction under Tenn. Code Ann. § 39-13-516.
  - d. To the extent permissible by Tennessee law, if an individual seeks post-conviction relief related to a conviction for aggravated prostitution on the basis that their conviction was a violation of the ADA or constituted disability discrimination or discrimination based on HIV status, the Shelby County DA's Office shall not oppose the petition.
  - e. The Shelby County DA's Office shall appoint specific personnel to execute the legally available steps under this paragraph.
- 10. In addition to not enforcing § 39-13-516, the Shelby County DA's Office and its personnel will cease seeking any other enhanced criminal charges or penalties on the basis of a defendant's HIV status, unless the individual's HIV posed a direct threat to the health and safety of others following an individualized assessment by the Shelby County DA's Office as to the nature, duration, and severity of the risk; and the probability that potential injury will or did actually occur. The Shelby County DA's Office must rely on current medical knowledge and the best available objective evidence in assessing whether an individual poses a direct threat.
- 11. Within 30 days of the effective date of this Agreement, the Shelby County DA's Office will submit to the United States for review and approval draft revisions, additions, and amendments to the DA Office's existing policies, practices, and procedures that incorporate the requirements of this Agreement. Within 30 days of approval by the United States, the Shelby County DA's Office will implement these policies, practices, and procedures and disseminate them to all personnel and contractors.
- 12. Within 60 days of receiving approval from the United States of the policies, practices, and procedures required under Paragraph 11 of this Agreement, the Shelby County DA's Office will provide training to prosecuting attorneys on these new or revised policies, practices, and procedures, and the requirements of Title II of the ADA as they pertain to disability discrimination based on HIV status, HIV and its transmission, and medications used to treat HIV ("ADA Training").
  - a. The ADA Training will be conducted by an individual with substantive knowledge of the ADA and HIV. The Shelby County DA's Office will send the United States for pre-approval the name, qualifications (including resume), and contact information of

the individuals who will conduct the training, no later than 30 days after the effective date of this Agreement. The trainer and the content of the training must be approved by the United States.

- b. The ADA Training may be conducted by computer or in person, and must include an opportunity for trainees to pose questions during or after the conclusion of the training session. If the ADA Training is conducted by computer, the Shelby County DA's Office will provide an email address for attendees to ask questions in writing, and responses to these inquiries will be provided within 10 business days by an individual(s) who has substantive legal knowledge of Title II of the ADA and the provisions of this Agreement. The Shelby County DA's Office will ensure that all new prosecuting attorneys receive the training as a component of new personnel training and orientation.
- c. All training manuals or written or electronic materials will be consistent with the provisions of this Agreement and approved in advance by the United States.

#### **IV. REPORTING**

- 13. The Shelby County DA's Office will provide the United States written status reports delineating all steps taken during the reporting period to comply with this Agreement. The status reports will be sent by email to counsel for the United States, referencing DJ No. 204-70-85, according to the following schedule: a first report within 90 days of the entry of this Agreement, a second report six months after the first, a third report one year after the second, and a final report one year after the third. The United States will review each report and may provide comments about deficiencies or failures to comply to which the Shelby County DA's Office will revise its report accordingly. Each status report will include records to document the Shelby County DA's Office's compliance with the requirements of this Agreement during the preceding reporting period, including:
  - a. Training: The Shelby County DA's Office will submit a list of all current prosecuting attorneys and whether they have taken the training, or if they have not yet done so, when it is anticipated that they will.
  - b. Prosecutions: The Shelby County DA's Office will report to the United States any prosecution being pursued by the office where an individual's HIV status is relevant to the prosecution, including for any sentencing enhancements. HIV status is relevant under this paragraph where an individual's HIV status is used to support the filing of a criminal information or grand jury indictment, or the Shelby County DA's Office otherwise intends to introduce information about an individual's HIV status as part of its case in chief. Individuals include defendants, witnesses, and victims. The Shelby County DA's Office will send the United States written notification of each such prosecution, including a docket number and a description of how an individual's HIV status is being used in the prosecution. Upon request from the United States, the Shelby County DA's Office will furnish a copy of the underlying case file and

documents related to the prosecution.

- c. Complaints of Discrimination: The Shelby County DA's Office will provide written notice of any lawsuits, or other informal or formal complaints, grievances, or charges alleging the Shelby County DA's Office has discriminated against individuals with HIV. Such notice will include, at minimum, a description of the allegation, the name of the individual making the allegation, copies of all documentation in the possession, custody, or control of the Shelby County DA's Office relevant to the allegation, and an explanation of how the Shelby County DA's Office resolved or responded to the allegation.
14. The United States may review compliance with this Agreement at any time and may request additional information from the Shelby County DA's Office related to compliance. The Shelby County DA's Office will provide the information requested or otherwise respond in writing to any such requests by the United States within 14 days of receiving the request and will cooperate in good faith with the United States' efforts to monitor compliance with this Agreement.
15. All materials sent to the United States pursuant to this Agreement will be sent by e-mail to undersigned counsel. If the materials cannot be e-mailed, then the materials will be sent to the following address by common carrier other than the U.S. Postal Service: Stephanie Berger, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street NE, 9th Floor, Washington, D.C. 20002. The cover letter will include a subject line referencing DJ No. 204-70-85.

## **V. IMPLEMENTATION AND ENFORCEMENT**

16. The Shelby County DA's Office will take all necessary steps to effectuate the terms of this Agreement. It is a violation of this Agreement for the Shelby County DA's Office to fail to timely comply with any of the Agreement's requirements.
17. If the United States believes this Agreement or any of its requirements has been violated, it will notify the Shelby County DA's Office in writing and attempt to resolve the issues in good faith. If the United States and the Shelby County DA's Office cannot resolve the issues raised within 30 days, the United States may seek enforcement of this Agreement or take other appropriate action, including filing a lawsuit against the Shelby County DA's Office for violation of Title II of the ADA.
18. Failure by the United States to enforce any provision of this Agreement shall not be construed as a waiver of the United States' right to enforce any provision of this Agreement.
19. This Agreement constitutes the entire agreement between the United States and the Shelby County DA's Office on this matter. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, is enforceable.

20. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall remain in full force and effect.
21. Any time limits for performance imposed by this Agreement may be extended only by the mutual written consent of the Parties.
22. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement. This Agreement does not affect the continuing responsibility of the Shelby County DA's Office to comply with all aspects of the ADA.
23. This Agreement becomes effective the date it is signed by all the Parties. Unless otherwise specified, all time periods designated for an action run from the effective date. This Agreement will remain in effect for 3 years after the effective date.
24. This Agreement is binding on the Parties and each of its officers, agents, employees, successors, and assignees, and all other persons in active concert or participation with them.
25. The persons signing for the Shelby County DA's Office and the United States each represent they are authorized to bind the Parties to this Agreement.
26. This Agreement may be executed in counterparts.
27. This Agreement is a public document. A copy of this document must be made available by the Shelby County DA's Office to any person upon request.

FOR THE UNITED STATES OF AMERICA:

DATED: May 16, 2024

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

REBECCA B. BOND  
Chief



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FOR THE SHELBY COUNTY DISTRICT ATTORNEY GENERAL'S OFFICE:

A handwritten signature in black ink that reads "Steve Mulroy". The signature is written in a cursive style and is positioned above a horizontal line.

Steve Mulroy, District Attorney

DATED: 5/16/24