

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE MASSACHUSETTS STATE POLICE**

Background

1. The U.S. Attorney's Office for the District of Massachusetts ("U.S. Attorney's Office") received a complaint alleging that the Massachusetts State Police ("MSP") failed to comply with its communications obligations for individuals who are deaf or hard of hearing pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134 ("ADA"), and its implementing regulation, 28 C.F.R. Part 35. Based on the complaint, the U.S. Attorney's Office initiated an investigation and compliance review to ascertain MSP's compliance with the relevant non-discrimination requirements. 28 C.F.R. § 35.172(b).¹

2. The U.S. Department of Justice ("DOJ" or "the Department") is responsible for administering and enforcing Title II of the ADA, which requires 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).

3. The Department is the designated agency responsible for investigating all programs, services, and regulatory activities related to law enforcement and public safety. 28 C.F.R. § 35.190(b)(6). The Department, through the U.S. Attorney's Office, is authorized under 28 C.F.R. Part 35, Subpart F, to determine MSP's compliance with Title II of the ADA and the Title II regulation. The U.S. Attorney's Office has the authority to, where appropriate, attempt

¹ DJ number 204-36-239

informal resolution of any matter, such as through this settlement agreement. *See* 28 C.F.R. § 35.172(c). If resolution is not achieved, the U.S. Attorney's Office is authorized to take additional steps, including issuing a Letter of Findings, to initiate negotiations to secure voluntary compliance, and to bring a civil action to enforce Title II of the ADA. 28 C.F.R. § 35.173.

4. MSP is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1)(A) and (B), and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.

5. The United States' review of MSP's compliance with the ADA included interviews of persons who are deaf or hard of hearing, MSP sworn officers, MSP civilian employees, and others with knowledge of the allegations. The United States also reviewed documents provided by MSP, including MSP's policies, procedures, and training related to the provision of auxiliary aids and services to individuals who are deaf or hard of hearing.

6. Based on the review, the United States identified concerns with respect to MSP's compliance with the ADA's non-discrimination requirements, which include:

- a. 28 C.F.R. § 35.160(a): Taking appropriate steps to ensure that communication with individuals with disabilities is as effective as communication with others;
- b. 28 C.F.R. § 35.160(b): Furnishing appropriate auxiliary aids and services necessary to ensure effective communication with individuals who are deaf or hard of hearing;
- c. 28 C.F.R. § 35.107(a): Designating an employee who coordinates MSP's efforts to comply with and fulfill its responsibilities under Title II of the ADA, including the investigation of ADA complaints; and

d. 28 C.F.R. § 35.107(b): Adopting and publishing grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II of the ADA.

7. It is the intent of the United States and MSP (collectively, the “Parties”) that this Settlement Agreement (“Agreement”) shall resolve the United States’ investigation and compliance review under Title II of the ADA, 42 U.S.C. §§ 12131-12134.

8. MSP denies that it has failed to comply with the requirements of the ADA, and this Agreement does not amount to any admission of wrongdoing by MSP. This Agreement also does not affect MSP’s continuing responsibility to comply with the ADA. This Agreement does not constitute a finding by the DOJ about whether MSP is in full compliance with the ADA.

9. The United States and MSP agree that it is in the Parties’ best interests, and the United States believes that it is in the public interest, to resolve this matter on mutually agreeable terms without litigation.

Actions to be Taken by MSP

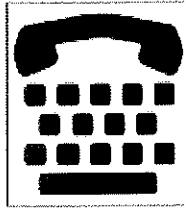
10. **Nondiscrimination.** MSP agrees not to engage in any act or practice, directly or through contracting, licensing, or other arrangements, that has the purpose or effect of unlawfully discriminating against any person who is deaf or hard of hearing in violation of the ADA.

11. **Policy.** Within 60 days of entering into this Agreement, MSP will draft and implement a policy on communicating with people who are deaf or hard of hearing. MSP will submit the draft policy to the United States for its approval, which shall not be unreasonably withheld.

12. **ADA Coordinator.** MSP has designated an individual to coordinate efforts to comply with and carry out its responsibilities under the ADA and this Agreement (“ADA

Coordinator”). The duties of the ADA Coordinator will include overseeing investigation of any complaint communicated to MSP alleging its noncompliance with, or alleging any actions that would be prohibited by, the ADA or this Agreement. MSP will post the name, office address, email address, and telephone number of the employee or employees designated pursuant to this Paragraph on its website as well as at the State Police General Headquarters and all barracks facilities throughout the Commonwealth. *See* 28 C.F.R. 35.107(a). MSP will maintain an ADA Coordinator for the term of this Agreement. If MSP changes its ADA Coordinator, it will notify the United States in writing, and update the name and contact information anywhere it appears, within fifteen (15) days of making such a change.

13. **Notice of Rights.** Effective immediately, at all barracks and other MSP facilities at which law enforcement personnel are reasonably anticipated to engage with members of the public, MSP will post conspicuous signs in public areas, booking and holding areas, and on <https://www.mass.gov/orgs/massachusetts-state-police>, advising the public of the availability of appropriate auxiliary aids and services, including qualified interpreters, as follows: “To ensure effective communication with individuals who are deaf, hard of hearing, or deaf-blind, MSP will make every effort to provide appropriate auxiliary aids and services, such as qualified sign language, oral, or tactile interpreters; videophones; captioned telephones, and TTYs, free of charge. Please ask for assistance by contacting MSP’s ADA Coordinator, [name and full contact information] during business hours, or in an emergency, please dial 911.” *See* 28 C.F.R. § 35.163. The posted signs will include the following: the International Symbol for Hearing Loss, the International Symbol for TTYs, and a symbol to indicate the availability of sign language interpreters:



14. **Effective Communication.**

a. Auxiliary Aids or Services. MSP will ensure that appropriate auxiliary aids and services, including qualified interpreters, are made available to all deaf and hard of hearing individuals, where such aids and services are necessary to ensure effective communication, so that they may participate in and enjoy the benefits of MSP's law enforcement and related services, programs, or activities on an equal basis as others. MSP is not obligated to provide such auxiliary aids and services, including those listed below, where doing so would fundamentally alter the nature of the service provided or place an undue financial or administrative burden on MSP.

i. The type of auxiliary aid or service provided, if available, will depend on the individual's usual method of communication, and the nature, importance, and duration of the communication at issue. In some circumstances, oral communication supplemented by gestures and visual aids, an exchange of written notes, use of a computer, or use of an assistive listening device may be effective. In other circumstances, qualified sign language or oral interpreters are needed to communicate effectively with persons who are deaf or hard of hearing. The more lengthy, complex, and important the communication, the more likely it is that a qualified interpreter will be required for effective communication with a person whose primary means of communication is sign language.

ii. MSP contracts for Qualified Interpreters (as provided in 28 C.F.R. § 35.160(d)) through the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH, or “the Commission”), established by Chapter 716 of the Acts of 1985, which amended Massachusetts General Laws, Chapter 6 §191-197.

b. Primary Consideration. Absent exigent circumstances, in determining what type of auxiliary aid or service is necessary to comply with the ADA, MSP will give primary consideration to the requests for a particular auxiliary aid or service by an individual who is deaf or hard of hearing, within the limitations set forth in paragraph (f) below. *See* 28 C.F.R. § 35.160(b)(2).

c. Routine Interactions. Effective immediately, MSP will submit to the United States for its approval a proposed Communication Card for use by law enforcement personnel to communicate with persons who are deaf or hard of hearing during routine interactions. The Communication Card will include the same types of information and methods of conveying information as the sample Communication Card provided in Attachment A. Within thirty (30) days of the United States’ approval, MSP will produce and provide at least one card to each law enforcement personnel who interacts with members of the community. For purposes of this Agreement, “routine interactions” means all interactions for which no imminent threat or exigent circumstance exists. *See* Paragraph 15 for information about imminent threats.

d. Communication Assessment Form. In routine interactions, law enforcement personnel will use a Communication Assessment Form to assess what auxiliary aids or services are necessary for effective communication, and the timing, duration, and frequency with which they will be provided. The assessment will take into account all relevant facts and circumstances, including the individual’s communication skills and knowledge and the nature

and complexity of the communication at issue. A Model Communication Assessment Form is attached to this Agreement as Attachment B. Effective within thirty (30) days, MSP will either use Attachment B or develop and use a form similar to Attachment B.

e. Ongoing Need for Communication Assessments and Consultation. Law enforcement personnel will regularly reassess communication effectiveness for as long as any communication with an individual who is deaf or hard of hearing is necessary and will consult that individual on a continuing basis to assess what measures are required to ensure effective communication. *See* 28 C.F.R. Part 35, App. A.

f. Access to Interpreters. MSP will ensure that, when required under the terms of this Agreement, MSP promptly seeks interpreting services twenty-four hours a day, seven days a week. MSP obtains interpreters through the Commission. The United States acknowledges, however, that the Commission is not a party to this Agreement and MSP cannot control the extent to which the Commission will make interpreters available.

g. Time for Interpreter Response. Whenever a qualified interpreter is provided by MSP, the qualified interpreter will be provided at the earliest reasonable time. As soon as such services are requested and determined to be necessary to ensure effective communication, MSP will exert reasonable efforts to contact any qualified interpreters or interpreting agencies already known to MSP. If MSP requests a qualified interpreter and one is not provided within a reasonable period of time, MSP will notify DOJ, in writing, within 10 days.

h. Use of Other Members of the Public to Facilitate Communication.

i. MSP will not require an individual who is deaf or hard of hearing to bring another member of the public to interpret for him or her. *See* 28 C.F.R. § 35.160(c)(1).

ii. MSP will not rely on an adult accompanying an individual who is deaf or hard of hearing to interpret or facilitate communication except:

1. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

2. Where the individual who is deaf or hard of hearing specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. *See* 28 C.F.R. § 35.160(c)(2).

iii. MSP will not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. *See* 28 C.F.R. § 35.160(c)(3).

15. **Imminent Threat.** When there is an emergency involving an imminent threat to the safety or welfare of an individual (including law enforcement personnel or members of the public), and there is insufficient time to make available appropriate auxiliary aids and services, law enforcement personnel will use whatever auxiliary aids and services are most effective under the circumstances and consistent with an appropriate law enforcement response to the imminent threat, to communicate with persons who are deaf or hard of hearing. When there is no longer an imminent threat, law enforcement personnel will follow its procedures to provide appropriate auxiliary aids and services, as set forth in Paragraph 14.

16. **Grievance Procedure.** Within sixty (60) days, MSP will draft and distribute a grievance procedure providing for prompt and equitable resolution of ADA complaints to all supervisors and clarify that ADA complaints can be filed through these grievance procedures and that the ADA Coordinator will oversee all ADA investigations.

17. **Proposal for Training.** Within sixty (60) days, MSP will submit a proposed training program for sworn members on the effective communication requirements of both the ADA and this Agreement and appropriate ways of serving people with disabilities to the United States, approval of which shall not be unreasonably withheld. For the purposes of this Agreement, training may include traditional lecture formats, remote training, field training, as well as methods incorporating role-playing scenarios and interactive exercises that instruct officers on how to exercise their discretion. Training may also include testing, writing, or other methods assessing officers' comprehension of the training. The submission of the training program by MSP will include a description of the training, the agenda, any handouts, and the name, title, address, and curriculum vitae of the trainer. The training may be provided via computer-based instruction, and will include:

a. An overview of the range of interactions law enforcement personnel might have with individuals who are deaf or hard of hearing, such as responding to requests; conducting traffic stops; investigating and questioning witnesses; transporting individuals who are deaf or hard of hearing; and communication during the booking, intake, detention, and arraignment processes, including telephone or videophone communication.

b. Information that equips law enforcement personnel to assess the need for and to secure reasonable modifications to policies, practices, and procedures for individuals who are deaf or hard of hearing, including but not limited to securing and using auxiliary aids such as qualified sign language, oral, or tactile interpreters.

c. Instruction on how to use Attachments A and B.

18. **Implementation of Training.** Within ninety (90) days of the United States' approval of MSP's proposed training, MSP will provide the training to all sworn members who

interact with the public. MSP must include the training in future MSP Academy curricula. All law enforcement personnel must be trained at least once during the term of this Agreement.

Reporting, Enforcement, and Other Provisions

19. MSP will maintain electronic records of all auxiliary aids or services requested by or provided to individuals who are deaf or hard of hearing for the duration of this Agreement. Such records will include the individual's name and contact information; a description of what was provided; if a request was made, the date of the request, the nature of the request, the recipient of the request, the determination regarding the request, the date of the determination, the names of who participated in the determination; and all other documents relating to such requests, determinations, and provisions. While the database is being developed, MSP will utilize a paper form or entry in an existing daily log system to capture the information contained in this paragraph within ninety (90) days from the date of this Agreement. MSP will provide these records to the United States on the following dates: July 31, 2022, January 31, 2023, July 31, 2023, January 31, 2024, July 31, 2024, January 31, 2025, and at any other time upon request.

20. MSP will maintain and provide to the United States copies of any complaints alleging disability discrimination, including any written complaints, written summaries of any oral complaints, or any complaints related to MSP filed pursuant to MSP's grievance procedures on the following dates: July 31, 2022, January 31, 2023, July 31, 2023, January 31, 2024, July 31, 2024, January 31, 2025, and at any other time upon request.

21. It is a violation of this Agreement for MSP to fail to comply in a timely manner with any of the requirements in this Agreement. The Parties may agree in writing to extend any

applicable deadlines specified in this Agreement. The United States will not unreasonably deny requested extensions following MSP's due diligence to meet such a requirement.

22. This Agreement will remain in effect for three (3) years. If the United States determines that MSP has materially complied with all of the terms of this Agreement prior to that time, the United States may elect to terminate the Agreement at that time.

23. Other than addressing the issues identified in Paragraph 6, this Agreement does not purport to remedy any violations or potential violations of the ADA or any other federal or state law and does not relieve MSP of its continuing obligation to comply with all aspects of the ADA.

24. This Agreement (including Attachments A and B) contains the entire Agreement between the Parties concerning the subject matter described in Paragraph 6, and no other statement, promise, or agreement, either written or oral, made by any party or agent of any party, that is not contained in this Agreement, and concerns the subject matter described in Paragraph 6, is or will be enforceable.

25. In consideration for this Agreement, the United States will close this investigation and will not institute a civil action at this time alleging discrimination based on the issues identified in Paragraph 6. The United States, however, may review MSP's compliance with this Agreement at any time. If the United States believes that MSP has violated this Agreement, it will notify MSP and include reasonably specific information regarding the violation. MSP must correct its violations and respond to the United States within thirty (30) days of receipt of the United States' notice. The United States and MSP will negotiate in good faith to resolve any dispute. If the United States and MSP are unable to agree on a resolution within sixty (60) days

of MSP's response, the United States may seek appropriate relief including court enforcement of this Agreement or filing a complaint in federal court under the ADA.

26. No person or entity is intended to be a third-party beneficiary of this Agreement for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or entity to seek relief against MSP, or its official employees, or agents for their conduct. This Agreement is not intended to alter legal standards governing any such claims.

27. If any provision of this Agreement is determined to be invalid, unenforceable, or otherwise contrary to applicable law, such a provision will be restated to reflect as nearly as possible and to the fullest extent permitted by applicable law its original intent and will not, in any event, affect any other provisions, all of which will remain valid and enforceable to the fullest extent permitted by applicable law.

28. This Agreement will be binding on MSP, its agents, employees, and contractors.

29. Failure by the United States to seek enforcement of any provision or deadline of this Agreement will not be construed as a waiver of the United States' right to enforce any deadline or provision of this Agreement.

* * *

30. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.

FOR THE UNITED STATES OF AMERICA

RACHAEL S. ROLLINS
United States Attorney
District of Massachusetts

By: /s/ _____
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Date signed _____

FOR THE MASSACHUSETTS STATE POLICE

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Colonel/Superintendent
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Date signed 03-07-2022