

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

DORIS SAGE, <i>as limited guardian of</i>)	
<i>her son ISAAC SAGE,</i>)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2:16-cv-00116-wks
)	
CITY OF WINOOSKI, <i>et al.,</i>)	
)	
Defendants.)	
)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

INTRODUCTION

Plaintiff Doris Sage, as limited guardian of her son Isaac Sage, alleges that Corporal Jason Nokes of the Winooski Police Department and the City of Winooski violated Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-12134, when Defendant Nokes failed to reasonably accommodate Mr. Sage’s disabilities during an April 25, 2013, interaction that concluded with Mr. Sage’s arrest. Defendants have moved to dismiss the ADA claims, questioning whether the ADA applies to arrests at all, *see* Def. City of Winooski’s Mot. to Dismiss (ECF No. 8-1) at 4–9, or alternatively arguing that the ADA does not apply to Mr. Sage’s encounter with Defendant Nokes because “the scene was not secure and/or [Mr. Sage] posed a threat to human life,” Def. City of Winooski’s Reply in Support of Mot. to Dismiss (ECF No. 23) at 2. *See also* Def. Nokes’s Mot. to Dismiss (ECF No. 14-1) at 4 (adopting by reference the City of Winooski’s arguments regarding Plaintiff’s ADA claims).

The United States, by its attorney, Eric S. Miller, United States Attorney for the District of Vermont, submits this Statement of Interest pursuant to 28 U.S.C. § 517, which provides in

part that “any officer of the Department of Justice[] may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States.” As the officer mandated to enforce the ADA and the author of the title II regulations, the Attorney General has an interest in supporting the ADA’s proper interpretation and application; furthering the statute’s explicit congressional intent to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and ensuring that the Federal Government plays a central role in enforcing the standards established in the ADA. *See* 42 U.S.C. § 12101(b). The Department’s interpretation of its regulations is entitled to substantial deference. *See Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984); *Olmstead v. L.C.*, 527 U.S. 581, 598 (1999) (“The well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.”) (internal quotation marks omitted).

This Statement of Interest clarifies that Title II of the ADA applies to stops and arrests of people with disabilities and explains the application of Title II’s reasonable modification requirement in this context, where the officers may have faced exigent circumstances at some points during the interaction.

FACTUAL ALLEGATIONS

The United States’ interest in this litigation regards only the legal interpretation of the ADA; the United States does not take a position on the facts or ultimate resolution of the case. However, for the purposes of this brief, the United States must rely on the facts alleged in Plaintiff’s original Complaint (ECF No. 1), as “[a] court evaluating a motion to dismiss must accept the facts alleged in the complaint as true and draw all reasonable inferences from those

facts in favor of the nonmoving party.” *Nat’l Fed’n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 567 (D. Vt. 2015) (citing *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007)). A summary of the facts relevant to this Statement of Interest is as follows:

On the afternoon of April 25, 2013, Winooski Police Department (WPD) Officer Chris MacHavern and Defendant Corporal Jason Nokes encountered Isaac Sage on the street after receiving a report from a health club that Mr. Sage was trespassing. Compl. ¶¶ 13–19. Plaintiff alleges that the WPD officers knew or should have known that Mr. Sage, who has a longstanding history of mental health issues, was a person with a disability. *Id.* ¶ 2, 21. Plaintiff further alleges that, despite lacking probable cause to arrest Mr. Sage, Defendant Nokes opened his handcuff case during the interaction and asked Mr. Sage if he wanted to be arrested or go to jail, or words to that effect. *Id.* ¶ 22. Mr. Sage reacted by striking Defendant Nokes in the face. *Id.* ¶ 23. Officer MacHavern attempted unsuccessfully to restrain Mr. Sage physically and by deploying a Taser. *Id.* ¶¶ 25–28. While Officer MacHavern was approaching Mr. Sage in an attempt to incapacitate him, but before Officer MacHavern reached Mr. Sage, Defendant Nokes shot Mr. Sage in the leg from approximately 10-15 feet away. *Id.* ¶¶ 29– 31.

Plaintiff asserts that at the time Mr. Sage was shot, he was unarmed and not moving towards, or acting threateningly towards, either officer. *Id.* ¶ 24, 46, 58. Plaintiff further alleges that approximately 15 seconds passed between the moment Mr. Sage struck Defendant Nokes and the moment Defendant Nokes shot Mr. Sage. *Id.* ¶ 36. Mr. Sage was taken into custody and charged with two counts of aggravated assault. *Id.* ¶ 2, 43.

DISCUSSION

The United States is aware that a Statement of Interest filed by the United States in an earlier case, *Robinson v. Farley*, No. 15-cv-0803 (D.D.C. filed June 1, 2015), has been brought

to this Court's attention. *See* ECF No. 20-1. The purpose of this Statement of Interest is to reiterate the United States' position on the applicability of Title II of the ADA to law enforcement activities and to clarify that the law does not create a categorical exception for law enforcement personnel during exigent circumstances.

A. Title II Applies to All Law Enforcement Activities, Including Stops and Arrests.

1. The Language of the Statute, and the Department of Justice Regulations and Guidance, Make Plain That Title II Applies to Arrests.

Title II's antidiscrimination provision provides that no 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 be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The starting point in determining the ADA's applicability to law enforcement operations is the statutory text. *See Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209–10 (1998) (ruling that state prisons "fall squarely within the statutory definition of 'public entity'" in Title II of the ADA). By its plain terms, Title II applies to all governmental entities, including law enforcement agencies. Title II uses the term "any" in its ordinary "expansive" sense, *i.e.*, "one or some indiscriminately of whatever kind." *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (citation omitted). Moreover, the statutory text contains no "exception that could cast the coverage of" law enforcement entities "into doubt." *Yeskey*, 524 U.S. at 209. Accordingly, law enforcement agencies fall within the ADA's comprehensive definition of a public entity.

The statutory text further demonstrates that law enforcement entities are subject to Title II's antidiscrimination mandate with respect to all of their operations, including arrests. The reference to "services, programs, or activities," 42 U.S.C. § 12132, is an all-inclusive phrase that covers everything a public entity does. Notably, Congress expressly defined the term "[p]rogram

or activity” in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, which served as the model for Title II, to “mean[] all of the operations of ” a covered entity. *See* 29 U.S.C. § 794(b). Because Congress directed that Title II should not “be construed to apply a lesser standard than the standards applied under” Section 504, 42 U.S.C. § 12201(a), the phrase “services, programs, or activities” carries a similarly broad meaning under the ADA. *See Bragdon v. Abbott*, 524 U.S. 624, 631–32 (1998). The statute further protects individuals with disabilities from being “subjected to discrimination,” 42 U.S.C. § 12132, which can occur during any aspect of an individual’s interaction with a public entity. The statute therefore extends to all law enforcement operations, including arrests.

The legislative history confirms that Congress contemplated that Title II would apply to law enforcement operations generally, and to arrests in particular. The House Report specified that Title II’s antidiscrimination mandate would “extend[] . . . to *all* actions of state and local governments.” H.R. Rep. No. 101-485 (II), at 84 (1990) (emphasis added). The Report further singled out arrests as an example of an activity where “discriminatory treatment based on disability can be avoided by proper training.” *Id.* Pt. 3, at 50. In addition, legislators emphasized that Title II would address discrimination in law enforcement, including the arrest of individuals with disabilities. *See, e.g.*, 136 Cong. Rec. 11,461 (1990) (“Many times, deaf persons who are arrested are put in handcuffs. But many deaf persons use their hands to communicate. . . . [T]hese mistakes . . . constitute discrimination.”); *id.* at E1913, E1916 (daily ed. June 13, 1990) (“[P]ersons who have epilepsy are sometimes inappropriately arrested because police officers have not received proper training to recognize seizures and to respond to them.”). Congress thus expected and intended Title II to cover all law enforcement operations in accordance with the statute’s plain text.

The administrative implementation of Title II also demonstrates that Title II of the ADA applies to law enforcement activities such as arrests. The Department of Justice has construed Title II to “appl[y] to anything a public entity does.” 28 C.F.R. Pt. 35, App. B; *see id.* (“All governmental activities of public entities are covered.”). In particular, the Department oversees the implementation of Title II with respect to “[a]ll programs, services, and regulatory activities relating to law enforcement.” 28 C.F.R. § 35.190(b)(6). And the Department has further stated that “[t]he general regulatory obligation to modify policies, practices, or procedures requires law enforcement to make changes in policies that result in discriminatory arrests or abuse of individuals with disabilities.” 28 C.F.R. Pt. 35, App. B.

Consistent with this interpretation, the Department has repeatedly issued guidance to assist law enforcement entities in complying with the ADA, including in the context of arrests. For example, 2006 guidance states that “[t]he ADA affects virtually everything that officers and deputies do,” including “arresting, booking, and holding suspects.” U.S. Dep’t of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement* § I, question 2 (Apr. 4, 2006), available at https://www.ada.gov/q&a_law.htm. Additionally, the Department’s Title II Technical Assistance Manual states that “[a] municipal police department encounters many situations where effective communication with members of the public who are deaf or hard of hearing is critical,” including “interviewing suspects prior to arrest,” and “interrogating arrestees.” U.S. Dep’t of Justice, *Americans with Disabilities Act: Title II Technical Assistance Manual Covering State and Local Government Programs and Services* § II- 7.1000(B), illus. 3, at 3 (Nov. 1993 & Supp. 1994), available at <http://www.ada.gov/taman2up.html>. Because Congress expressly vested the Department with authority to implement the ADA through regulations and technical assistance, the Department’s

interpretation of Title II must be accorded “controlling weight unless it is ‘arbitrary, capricious, or manifestly contrary to the statute.’” *ABF Freight Sys., Inc. v. NLRB*, 510 U.S. 317, 324 (1994) (quoting *Chevron*, 467 U.S. at 844); see *Bragdon*, 524 U.S. at 646 (recognizing that “the Department’s views are entitled to deference”); *Johnson v. City of Saline*, 151 F.3d 564, 570 (6th Cir. 1998) (granting deference to *Title II Technical Assistance*).

Therefore, the Department’s conclusion that Title II extends to all law enforcement activities, including stops and arrests, follows from the text and history of the statute and is entitled to deference.

2. Courts Have Largely Applied Title II of the ADA to All Law Enforcement Activities, Including Stops and Arrests.

Consistent with the foregoing, the majority of appellate courts to consider the issue have held that Title II applies to arrests. See *Sheehan v. City and County of San Francisco*, 743 F.3d 1211, 1217 (9th Cir. 2014) (joining the “majority of circuits” and holding that the ADA applies to police interactions), *rev’d in part on other grounds by* 135 S. Ct. 1765 (2015); *Seremeth v. Bd. of Cnty. Comm’rs of Frederick Cnty.*, 673 F.3d 333, 338–40 (4th Cir. 2012) (“The ADA applies to the investigation of criminal conduct.”); *Gohier v. Enright*, 186 F.3d 1216, 1221 (10th Cir. 1999) (“[A] broad rule categorically excluding arrests from the scope of Title II . . . is not the law.”); *Gorman v. Bartch*, 152 F.3d 907, 912–13 (8th Cir. 1998) (police department is a public entity and an arrest is a program or service).

The Second Circuit has yet to address the question of whether Title II’s antidiscrimination mandate applies to arrests. See *Valanzuolo v. City of New Haven*, 972 F. Supp. 2d 263, 273 (D. Conn. 2013) (noting that the Second Circuit has not decided the issue); *Ryan v. Vermont State Police*, 667 F. Supp. 2d 378, 386 (D. Vt. 2009) (Conroy, M.J.) (same). That said, the Second Circuit has generally read the ADA broadly, see, e.g., *Henrietta D. v. Bloomberg*,

331 F.3d 261, 279 (2d Cir. 2003), and has noted that “the phrase ‘services, programs, or activities’ [in the ADA] has been interpreted to be ‘a catch-all phrase that prohibits all discrimination by a public entity.’” *Noel v. N.Y. City Taxi & Limousine Comm’n*, 687 F.3d 63, 68 (2d Cir. 2012) (citation omitted)).

Consistent with these principles, “numerous courts within th[e Second] Circuit have ‘[i]n the context of arrests . . . recognized claims’ under the ADA . . . ‘where police execute a proper arrest but fail to reasonably accommodate [a plaintiff’s] disability during the investigation or arrest, causing him to suffer greater injury or indignity than other arrestees.’” *Morales v. City of New York*, No. 13-cv-7667 (RJS), 2016 WL 4718189, at *7 (S.D.N.Y. Sept. 7, 2016) (quoting *Wagner v. City of New York*, No. 14-cv-2521 (VEC), 2015 WL 5707326, at *7 (S.D.N.Y. Sept. 28, 2015)). Indeed, the court in *Williams v. City of New York* recently held that “[t]he only reasonable interpretation of Title II is that law enforcement officers who are acting in an investigative or custodial capacity are performing ‘services, programs, or activities’ within the scope of Title II.” 121 F. Supp. 3d 354, 368 (S.D.N.Y. 2015). Similarly, in *Escoffier v. City of New York*, the court rejected the argument that Title II’s reasonable modification requirement did not apply to “a person’s attempt to report allegedly illegal conduct to the police department,” noting that courts in that district had held that the ADA applies to interactions between people with disabilities and law enforcement. *See* No. 13-cv-3918 (JPO), 2016 WL 590229, at *3–4 (S.D.N.Y. Feb. 11, 2016); *see also* *Coleman v. Syracuse Police Dep’t*, No. 5:16-cv-0836 (LEK/TWD), 2016 WL 4411339, at *6 (N.D.N.Y. July 22, 2016), *report and recommendation adopted*, No. 5:16-cv-0836 (LEK/DJS), 2016 WL 4273215 (N.D.N.Y. Aug. 12, 2016) (“Actions of police departments have been found to fall within the scope of ADA Title II”); *Wagner*, 2015 WL 5707326, at *7 (holding that a jury could find that an officer violated the ADA by

“refus[ing] to permit [plaintiffs] to bring their medically-necessary devices with them to the precinct and otherwise fail[ing] to accommodate their disabilities during their arrest and detention”); *Valanzuolo*, 972 F. Supp. 2d at 279 (analyzing whether arresting officers had provided reasonable modifications to their practices, as required by Title II of the ADA, in communicating with a plaintiff with hearing loss).

Decisions from within the District of Vermont support the view that the ADA applies to law enforcement activities such as arrests. In *Ryan*, the court expressly declined to decide whether Title II applied at the time of arrest, although the court assumed *arguendo* that it did, and granted summary judgment on other grounds. *See Ryan*, 667 F. Supp. 2d at 386–87. However, the *Ryan* court squarely ruled that “[t]he ADA does impose a duty on law enforcement to provide arrestees who are disabled with reasonable accommodations once an arrest of a disabled person has been accomplished.” *Id.* at 389.¹ The court in *Taylor v. Schaffer* denied a motion to dismiss a plaintiff’s claim that the defendant law enforcement officers failed to reasonably accommodate her son’s disability, in violation of the ADA, during an encounter that ended with her son’s death. *See* No. 1:14-cv-123 (JGM), 2015 WL 541058, at *6–8 (D. Vt. Feb. 10, 2015). As in this case, the plaintiff in *Taylor* alleged that there was no exigency at the beginning of her son’s interaction with law enforcement, although one may have arisen during

¹ Defendants portray this decision as creating a bright-line rule that the ADA only applies to police interactions once an arrest has been effectuated—not to an initial stop or pre-arrest investigation. ECF No. 8-1 at 16. However, there is no language in the ADA that supports such a rule, nor does the *Ryan* court purport to be announcing one. *Ryan*, 667 F. Supp. 2d at 389-91. The other authority cited in support of the proposition that the ADA only requires reasonable modifications at certain points during the arrest process, *Rosen v. Montgomery County, Md.*, 121 F.3d 154 (4th Cir. 1997), “has been questioned by the Fourth Circuit.” *Williams*, 121 F. Supp. 3d at 366; *see also id.* at 367 (noting that the Fourth Circuit in *Seremeth* concluded that “the ADA applies to the investigations of criminal conduct” whether or not an arrest results).

the interaction. *See id.* at *8. The *Taylor* court’s application of the ADA to these similar circumstances supports its application in this case.

3. There is No Categorical “Exigent Circumstances” Exclusion to Title II.

There is no categorical “exigent circumstances” exception to Title II of the ADA. The plain language of the statute says nothing of the sort. Instead, whether there is an exigency is part of the general fact-based determination as to whether a reasonable modification was available under the circumstances.

Courts of Appeals have largely concluded that no “exigent circumstances” exclusion to the ADA exists for law enforcement activities. As the Fourth Circuit has explained: “We find that while there is no separate exigent-circumstances inquiry, the consideration of exigent circumstances is included in the determination of the reasonableness of the accommodation. . . . [N]othing in the text of the ADA suggests that a separate exigent-circumstances inquiry is appropriate.” *Seremeth*, 673 F.3d at 339; *see also Tucker*, 539 F.3d at 534 (Sixth Circuit decision affirming the district court because it applied a “fact specific” analysis, not because it found a categorical “exigent circumstances” exception to Title II). The Eighth, Ninth, and Eleventh Circuits have taken the same approach. *See Sheehan*, 743 F.3d at 1232 (“[E]xigent circumstances inform the reasonableness analysis under the ADA.”); *Bahl v. Cty. of Ramsey*, 695 F.3d 778, 784–85 (8th Cir. 2012) (“The reasonable modification inquiry is highly fact-specific and varies depending on the circumstances of each case, including the exigent circumstances presented by criminal activity and safety concerns.”); *Bircoll v. Miami-Dade Cty.*, 480 F.3d 1072, 1085–86 (11th Cir. 2007).

The Fifth Circuit alone has taken the view that Title II does not apply to law enforcement activities in exigent circumstances “prior to the officer’s securing the scene and ensuring that

there is no threat to human life,” but that court nonetheless found that Title II did apply “[o]nce the area was secure and there was no threat to human safety.” *Hainze v. Richards*, 207 F.3d 795, 801–02 (5th Cir. 2000). In considering and rejecting the approach taken in *Hainze*, the Eleventh Circuit explained how its approach—the majority approach—differs:

[T]he question is not so much one of the applicability of the ADA because Title II prohibits discrimination by a public entity by reason of [the plaintiff’s] disability. The exigent circumstances presented by criminal activity and the already onerous tasks of police on the scene go more to the reasonableness of the requested ADA modification than whether the ADA applies in the first instance. In other words, the question is whether, given criminal activity and safety concerns, any modification of police procedures is reasonable before the police physically arrest a criminal suspect, secure the scene, and ensure that there is no threat to the public or officer’s safety. . . .

Bircoll, 480 F.3d at 1085–86. While a very small number of district courts in the cases cited by Defendants follow the *Hainze* approach, the courts in many of the cited cases actually conducted a fact-based analysis of all of the circumstances, considered the possibility of reasonable modifications, and found given the facts of those cases that none were required.

The circuit court decisions that Defendants contend “contradict” the DOJ position in the *Robinson* Statement of Interest are, in fact, consistent with that position. Def. City of Winooski’s Reply in Support of Mot. to Dismiss (ECF No. 23) at 3 & n.1. See *De Boise v. Taser Int’l, Inc.*, 760 F.3d 892, 896 (8th Cir. 2014) (affirming, on summary judgment and based on the facts developed in that case, that “no violation of the ADA occurred because the officers were faced with unexpected and exigent circumstances to which no reasonable accommodations could be made until after the scene was safely secured”); *Bircoll*, 480 F.3d at 1085–86 (expressly disagreeing with the *Hainze* analysis); *Waller ex rel. Estate of Hunt v. Danville, VA*, 556 F.3d 171, 175 (4th Cir. 2009) (declining to comment on whether exigent circumstances are a “constraint upon the ADA” but holding that an exigency is one of the many circumstances courts

consider in determining the reasonableness of a modification); *Tucker v. Tennessee*, 539 F.3d 526, 536 (6th Cir. 2008) (conducting a fact-specific analysis of whether a reasonable accommodation was required in light of the facts that had been developed during discovery). These cases are consistent with the Department of Justice’s position that the existence of an exigency is one of many circumstances to consider in determining the reasonableness of a modification under the ADA.²

Courts within the Second Circuit have not excluded interactions involving exigent circumstances from application of the ADA. In fact, a district court in the Southern District of New York recently embraced the majority view and rejected the argument that the ADA does not apply to arrests when exigent circumstances exist. *See Williams*, 121 F. Supp. 3d at 368. The court explained that, “particularly in light of the remedial purpose of the statute and the weight of authority that has considered the issue,” *id.* at 364–65, “[w]hether a disabled individual succeeds in proving discrimination under Title II of the ADA will depend on whether the officers’ accommodations were reasonable under the circumstances,” including the existence of exigent circumstances, *id.* at 368. This court’s analysis in *Taylor* is not to the contrary. *See* 2015 WL

² Defendants do point to a handful of district court decisions from within other circuits that have followed the approach of the Fifth Circuit in *Hainze*, but do not explain why this Court should adopt this minority view. *See, e.g., Robertson v. City of Bastrop*, No. A-14-CV-0839-SS, 2015 WL 6686473, at *8 (W.D. Tex. Oct. 29, 2015); *Hogan v. City of Easton*, No. 04-cv-759, 2006 WL 2645158, at *9 (E.D. Pa. Sept. 12, 2006); *but see Haberle v. Troxell*, No. 5:15-CV-02804, 2016 WL 1241938, at *12 (E.D. Pa. Mar. 30, 2016) (noting that the result would be the same under either the *Hainze* approach or “under the alternative approach that the other circuits follow”). Defendants also point to *Valanzuolo v. City of New Haven*, 972 F. Supp. 2d 263, 278 (D. Conn. 2013) as supporting the proposition that the ADA does not apply to law enforcement entities when an exigency arises. However, the court in that case engaged in a thorough, fact-specific analysis of whether various accommodations were reasonable after conducting a bench trial and making findings of fact. *See id.* The *Valanzuolo* court read the *Ryan* decision from within this district as supporting its approach. *Id.* at 275 (“U.S. Magistrate Judge John M. Conroy in our sister district court in Vermont applied the foregoing factors to the facts of the *Ryan* case.”).

541058, at *6. Because the court concluded that a jury could find that no exigency existed at the time of the interaction, the question of how exigent circumstances affect ADA Title II analysis was not critical to its holding. *See id.*

While the exigencies surrounding police activity may play a role in determining whether a modification is reasonable, the language of the ADA and the weight of authority interpreting it do not create a categorical exception for law enforcement officers arresting an individual with a disability.

B. Because Title II of the ADA is Applicable to Law Enforcement Entities, They Are Required to Make Reasonable Modifications to Policies, Practices, or Procedures in Stopping and Arresting Individuals with Disabilities Where Necessary to Avoid Discrimination.

Because law enforcement entities are subject to Title II's nondiscrimination requirement, they must "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(7); *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (the "failure to accommodate persons with disabilities will often have the same practical effect as outright" discrimination). The reasonable modification requirement extends to the arrest of an individual with a disability.³

Determining what modifications are reasonable in any given situation is a fact-specific inquiry. In its technical assistance, DOJ has explained that Title II may require a police department to, for instance, "modif[y] its regular practice of handcuffing arrestees behind their

³ Defendants also argue that Mr. Sage was required to, and did not, specifically request a reasonable modification. However, law enforcement and corrections agencies must provide reasonable modifications whenever the need for a modification is apparent, even if the individual has not requested one. *See, e.g., Sheehan*, 743 F.3d at 1233 (holding that police officers were required to make reasonable modifications to account for arrestee's mental illness during arrest, although arrestee had not requested any modification); *Pierce v. D.C.*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015) (prison was required to affirmatively make modifications for deaf inmate, even if he did not "overcome [his] communications-related disability" to request modification).

backs, and instead handcuff[] deaf individuals in front in order for the person to sign or write notes.” U.S. Dep’t of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement* § V (Apr. 4, 2006), available at https://www.ada.gov/q&a_law.htm. Similarly, “an interpreter may be needed in lengthy or complex transactions” involving a deaf arrestee. U.S. Dep’t of Justice, *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers* (Jan. 2006) (under “What Situations Require An Interpreter?”), available at <https://www.ada.gov/lawenfcomm.htm>.

In some circumstances, the ADA may require law enforcement to modify how they approach, interact, or communicate with individuals with mental illness. *See, e.g., Sheehan*, 743 F.3d at 1233 (holding that a jury could find that officers failed to reasonably accommodate plaintiff’s disability by employing “confrontational tactics” during the encounter instead of “engag[ing] in non-threatening communications” or “us[ing] the passage of time to defuse the situation”); *Taylor*, 2015 WL 541058, at *8 (explaining that a law enforcement officer may be required to “reasonably accommodate [an individual’s] disability by leaving him be”). In these circumstances, as is true generally, questions of exigency and safety will play a large role in determining whether a particular modification is reasonable. *See, e.g., Waller*, 556 F.3d 175 (“[E]xigency is one circumstance that bears materially on the inquiry into reasonableness under the ADA.”). Whether a modification is reasonable depends on the specific facts of each case. *See Sheehan*, 743 F.3d at 1233 (“[B]ecause the reasonableness of an accommodation is ordinarily a question of fact . . . we hold that the city is not entitled to judgment as a matter of law on [the arrestee’s] ADA claim.”); *Gorman*, 152 F.3d at 914 (“The factual record will need to be further developed . . . before the remaining issues of potential liability [on the arrestee’s ADA claim] and possible relief are determined.”).

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consider this Statement of Interest in this litigation.

Dated at Burlington, in the District of Vermont, this 18th day of January, 2017.

Respectfully submitted,

UNITED STATES OF AMERICA

ERIC S. MILLER
United States Attorney

By: /s/ Julia Torti
JULIA L. TORTI
Assistant U.S. Attorney
P.O. Box 570
Burlington, VT 05402-0570
(802) 951-6725
Julia.Torti@usdoj.gov

CERTIFICATE OF SERVICE

I, Alyssa Malone, Legal Assistant for the United States Attorney's Office for the District of Vermont, hereby certify that I electronically filed the Notice of Appearance with the Clerk of Court using the CM/ECF system. Notice will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) generated in connection with this document.

Dated at Burlington, in the District of Vermont, this 18th day of January, 2017.

/s/ Alyssa Malone
Alyssa Malone