

Mateo Caballero (Hawai'i Bar No. 10081)  
[mcaballero@acluhawaii.org](mailto:mcaballero@acluhawaii.org)  
ACLU of Hawai'i Foundation  
P.O. Box 3410  
Honolulu, HI 96801  
Telephone: (808) 522-5908  
Facsimile: (808) 522-5909

Claudia Center (California Bar No. 158255)  
[ccenter@aclu.org](mailto:ccenter@aclu.org)  
American Civil Liberties Foundation  
39 Drumm Street  
San Francisco, CA 94111  
Telephone: (415) 343-0762

**OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES**

**U.S. DEPARTMENT OF HOMELAND SECURITY**

[REDACTED]

Complainant,

v.

U.S. CUSTOMS AND BORDER  
PROTECTION, FEDERAL BUREAU OF  
PRISONS,

Respondents.

**COMPLAINT – VIOLATION OF  
SECTION 504 OF THE  
REHABILITATION ACT**

**INTRODUCTION**

1. This is a complaint of disability discrimination and failure to accommodate in violation of Section 504 of the Rehabilitation Act of 1973. The complainant is [REDACTED] a deaf traveler who experienced discrimination by Customs and Border Protection and the Federal

Bureau of Prisons on January 31 and February 1, 2017.

2. [REDACTED] experienced unlawful denial of communication access through: failure to provide ASL interpreting, failure to provide access to an accessible telephone, and unnecessary handcuffing, all in violation of 29 U.S.C. § 794 and 6 C.F.R. §§ 15.30(b)(1), (4), 15.60(a)(1).

### STATEMENT OF FACTS

3. [REDACTED] is a Japanese citizen who is deaf, a disability under the Rehabilitation Act.

4. In the morning of January 31, 2017, [REDACTED] landed at Honolulu International Airport. Her intent was to visit her boyfriend, a resident of Hawai'i. She was ESTA approved through the Visa Waiver Program.

5. At 8:45 a.m., [REDACTED] was stopped by Customs and Border Protection (CBP) officials, and taken into an office for questioning about her school record. [REDACTED] was previously an international student in the United States.

6. [REDACTED] requested an ASL interpreter for the interrogation, but her request was never granted.

7. From about 8:45 a.m. to about 4:00 p.m., [REDACTED] was questioned by CBP officials without an interpreter. She was forced to communicate by lip reading and writing, all in English. This was not effective communication, and [REDACTED] did not understand what was going on.

8. At around 10:00 a.m., CBP officials took away [REDACTED] phone. She was not able to text or videochat with anyone. At no time was [REDACTED] offered access to a videophone or any other accessible telephone. She was unable to update her boyfriend on what

was going on. He waited 12 hours for her at a café near the airport.

9. At about 2:00 or 3:00 p.m., a woman named Emily Swanson took [REDACTED] into the interview room and showed her a sworn statement written in English. [REDACTED] realized at this time that she would not be permitted to enter the country. As memorialized in the statement, attached as Exhibit A, [REDACTED] again requested an ASL interpreter. An interpreter was not provided.

10. At about 3:00 or 4:00 p.m., [REDACTED] was handcuffed and moved from the airport to the Federal Detention Center (FDC) in Honolulu. She was handcuffed behind her back, so there was no way for her to use her hands to communicate. Also, at the FDC, [REDACTED] was handcuffed behind her back when she was moved from one cell to another cell.

11. When detaining deaf individuals, it is appropriate to modify handcuffing practices to allow such individuals to use their hands to communicate with signs or in writing. See, e.g., U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement, at [https://www.ada.gov/q&a\\_law.htm](https://www.ada.gov/q&a_law.htm) ("There are many ways in which a police or sheriff's department might need to modify its normal practices to accommodate a person with a disability. ... Example: A department modifies its regular practice of handcuffing arrestees behind their backs, and instead handcuffs deaf individuals in front in order for the person to sign or write notes.") and The ADA and City Governments: Common Problems, at <https://www.ada.gov/comprob.htm> ("When interacting with police and other law enforcement officers, people with disabilities are often placed in unsafe situations or are unable to communicate with officers because standard police practices and policies are not appropriately modified. For example, individuals who are deaf or have hearing impairments and use sign

language may be unable to communicate with law enforcement officers if they are taken into custody and handcuffed behind their backs." ). Such modifications were denied to [REDACTED]

There was no basis for considering [REDACTED] a threat to anyone.

12. At the FDC, [REDACTED] again asked for an ASL interpreter, but this was denied. Staff at the FDC demonstrated ignorance about communication with profoundly deaf individuals such as [REDACTED]. They tried to ask [REDACTED] questions using a Japanese translator on the phone, but this did not work as [REDACTED] cannot hear people talking on the phone. They repeatedly asked [REDACTED] to turn her hearing aids on and off, an ineffective suggestion. [REDACTED] [REDACTED] uses hearing aids only for safety – to hear a car horn, siren, or a shout. She does not use hearing aids to understand spoken words. They kept talking to [REDACTED] and she never understood what they were saying. They ended up writing questions down in English on paper. [REDACTED] was not sure if she could understand the questions. She felt humiliated.

13. At the FDC, [REDACTED] had no access to her personal cell phone, to a videophone, or to any other accessible telephone. She was unable to update anyone about her situation.

14. The failure to provide an ASL interpreter or access to an accessible telephone continued throughout [REDACTED] detention. It was only when she was returned to the airport on February 1, 2017, for a flight back to Japan, and given back her cellphone, that she was able to contact her family in Japan and her boyfriend to tell them about what had happened and where she was.

### **LEGAL CLAIM**

15. Under the Rehabilitation Act of 1973, “[n]o otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of

her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination ... under any program or activity conducted by any Executive agency[.]” 29 U.S. Code § 794(a).

16. The Department of Homeland Security has promulgated regulations implementing the Rehabilitation Act. “The Department [of Homeland Security], in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of disability: (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; [or] (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 6 C.F.R. § 15.30(b)(1).

17. “The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would: (i) Subject qualified individuals with a disability to discrimination on the basis of disability; or (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.” 6 C.F.R. § 15.30(b)(4).

18. “The Department shall take appropriate steps to effectively communicate with applicants, participants, personnel of other Federal entities, and members of the public. ... The Department shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department. ... In determining what type of auxiliary aid is necessary, the

Department shall give primary consideration to the requests of the individual with a disability.”

6 C.F.R. § 15.60(a)(1) (emphasis added).

19. For purposes of Section 504, the term “disability” has the definition given it in section 12102 of title 42. 29 U.S.C. § 705(9)(B). The term “disability” includes “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A). Major life activities include hearing and the operation of a major bodily function. 42 U.S.C. § 12102(2). “Given their inherent nature, [some] types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity.” 28 C.F.R. § 35.108(d)(2)(ii). “For example, ... [d]eafness substantially limits hearing.” 28 C.F.R. § 28 C.F.R. § 35.108(d)(2)(iii)(A).

20. [REDACTED] is a qualified individual with a disability protection by the Rehabilitation Act during her interactions with the Department and its subparts.

21. By failing to provide [REDACTED] with an ASL interpreter, Respondents denied her effective communication and violated the Rehabilitation Act.

22. By failing to provide [REDACTED] with access to an accessible telephone, Respondents denied her effective communication and violated the Rehabilitation Act.

23. By unnecessary handcuffing [REDACTED] thereby impeding her ability to communicate, Respondents denied her effective communication and violated the Rehabilitation Act.

#### **PRAYER FOR RELIEF**

24. Complainant [REDACTED] seeks:

a. A prompt and effective investigation of this important disability discrimination matter;

- b. Training of staff about effective communication and appropriate interactions with deaf travelers.
  - c. Remedial policies and practices to ensure future compliance with the Rehabilitation Act when interacting with deaf travelers.
25. Any additional relief deemed appropriate by the Office of Civil Rights and Civil Liberties.

Respectfully submitted,



Mateo Caballero  
Legal Director  
ACLU of Hawai'i  
P.O. Box 3410  
Honolulu, HI 96801  
(808) 522-5908 (phone)  
(808) 522-5909 (fax)  
[mcaballero@acluhawaii.org](mailto:mcaballero@acluhawaii.org)  
<http://www.acluhawaii.org>



Claudia Center  
Senior Staff Attorney  
Disability Rights Program  
American Civil Liberties Foundation  
39 Drumm Street  
San Francisco, CA 94111  
(415) 343-0762 (land)  
(415) 531-2874 (cell)  
[ccenter@aclu.org](mailto:ccenter@aclu.org)  
<http://aclu.org/>