

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

STANLEY CROPP and  
CATHERINE CROPP,  
Plaintiffs-Appellants,

Case No. 18-1262

v.

LARIMER COUNTY, COLORADO and  
KANDI WULFERT,  
Defendants-Appellees.

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**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICI  
CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS'  
PETITION FOR REHEARING *EN BANC***

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Movants Civil Rights Education and Enforcement Center, AdvocacyDenver, American Civil Liberties Union, American Civil Liberties Union of Colorado, The Arc of the United States, Autistic Self Advocacy Network, Brooklyn Law School's Disability and Civil Rights Clinic, Center for Public Representation, Colorado Cross-Disability Coalition, CommunicationFIRST, Disability Law Colorado, Disability Rights Advocates, Disability Rights Education and Defense Fund, Equip for Equality, Helping Educate to Advance the Rights of Deaf Communities, National Association of the Deaf, National Disability Rights Network and National

Federation of the Blind (“*Amici*”)<sup>1</sup> respectfully move this Court pursuant to Fed. R. App. P. 29(b)(2) for leave to file the attached brief in support of Plaintiffs-Appellants’ Petition for Rehearing *En Banc*.

The undersigned has conferred with counsel for the parties who have stated that the parties do not oppose this motion.

### **ARGUMENT**

Appellant Stanley Cropp, a retired pharmacist with Alzheimer’s, spent a night in the Larimer County Jail because he was unable to understand the paperwork necessary to secure his release, and because Appellee Larimer County (“County”) refused to modify its policies to permit effective communication about that paperwork. Throughout that night, Appellant Catherine Cropp, Mr. Cropp’s wife of more than 40 years and his primary caregiver, repeatedly explained to the County both that Mr. Cropp would not be able to understand the documents, and that she could ensure that he understood them if she could have a direct, unobstructed meeting with him to explain them. The County knew that Mr. Cropp had Alzheimer’s and that that condition impaired his ability to comprehend legal paperwork. Despite this knowledge, the County denied outright the requests for the

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<sup>1</sup> Descriptions of individual *Amici Curiae* are set forth in the Appendix to the attached brief.

accommodation Mr. Cropp needed, without making an individualized inquiry or analysis of his communications needs.

The district court granted the County's motion for summary judgment and, on November 13, 2019, a panel of this Court, in a 2-1 decision, affirmed on the grounds that there was no way the County could have known, under the "deliberate indifference" standard, that it was "substantially likely" that denying the Cropps' request would result in a violation of the ADA.

On December 11, 2019, Plaintiffs-Appellants petitioned for *en banc* review.

*En banc* review is appropriate because the majority's opinion conflicts with: (1) the Supreme Court's decision in *PGA Tour, Inc. v. Martin* that consideration of a policy modification requested under the ADA requires an "individualized inquiry;"<sup>2</sup> and (2) this Court's decision in *Havens v. Colorado Department of Corrections* that, in considering the deliberate indifference standard, "[a] factfinder may conclude that [the defendant] knew of a substantial risk [of a violation of the ADA] from the very fact that the risk was 'obvious.'"<sup>3</sup> The majority's holding also imperils bedrock principles of effective communication crucial to *Amici's* founders, staff, and clients: that communication between public entities and

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<sup>2</sup> 532 U.S. 661, 688 (2001).

<sup>3</sup> 897 F.3d 1250, 1266–67 (10th Cir. 2018) (quoting *Farmer v. Brennan*, 511 U.S. 825, 842 (1994) and *Robertson v. Las Animas Cty. Sheriff's Dep't*, 500 F.3d 1185, 1197 (10th Cir. 2007)).

disabled individuals be “as effective as” that with others, and that public entities give “primary consideration” to the requests of such individuals.<sup>4</sup>

*Amici Curiae* are disability rights and civil rights organizations that share a commitment to the full participation and independence of individuals with disabilities in society. Many of the *Amici* were founded by, are staffed by, represent, and/or provide services to individuals with communications disabilities: people who are deaf, blind, or nonspeaking, or have intellectual disabilities or mental illness. *Amici* thus have both deep expertise in the interpretation and application of the Americans with Disabilities Act’s guarantee of effective communication, and a justifiable concern that the majority’s decision<sup>5</sup> here may undermine that guarantee. *Amici* urge that the right to effective communication will be secured only through *en banc* review and adoption of Judge Lucero’s well-reasoned dissent.<sup>6</sup>

*Amici* respectfully submit that their unique perspective on the conflicts and important questions raised by the majority opinion would be useful to the Court in considering whether to grant *en banc* review.

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<sup>4</sup> 28 C.F.R. § 35.160(a)(1), (b)(2).

<sup>5</sup> *Cropp v. Larimer Cty., Colo.*, No. 18-1262, 2019 WL 5959598, at \*8 (10th Cir. Nov. 13, 2016).

<sup>6</sup> *Cropp v. Larimer Cty., Colo.*, 941 F.3d 1237, 1240 (10th Cir. 2019) (Lucero, J., concurring in part and dissenting in part).

WHEREFORE *Amici Curiae* respectfully move this Court for leave to file the attached brief in support of Plaintiffs-Appellants' Petition for Rehearing *En Banc*.

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**In the United States Court of Appeals for the Tenth Circuit**

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STANLEY CROPP, and  
CATHERINE CROPP,

*Plaintiffs-Appellants,*

v.

LARIMER COUNTY, COLORADO, and  
KANDI WULFERT,

*Defendants-Appellees*

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**On Appeal from the United States District Court for the District of Colorado**  
Civil Action No. 15-cv-02806-JLK  
The Honorable John L. Kane

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**Brief of *Amici Curiae* Civil Rights Education and Enforcement Center, AdvocacyDenver, American Civil Liberties Union, American Civil Liberties Union of Colorado, The Arc of the United States, Autistic Self Advocacy Network, Brooklyn Law School's Disability and Civil Rights Clinic, Center for Public Representation, Colorado Cross-Disability Coalition, CommunicationFIRST, Disability Law Colorado, Disability Rights Advocates, Disability Rights Education and Defense Fund, Equip for Equality, Helping Educate to Advance the Rights of Deaf Communities, National Association of the Deaf, National Disability Rights Network, and National Federation of the Blind in Support of Petition For Rehearing *En Banc***

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**STATEMENT OF INTEREST OF *AMICI CURIAE***

*Amici Curiae* disability rights and civil rights organizations share a commitment to the full participation and independence of individuals with disabilities in society. Many of the *Amici* were founded by, are staffed by, represent, and/or provide services to individuals with communications disabilities: people who are deaf, blind, or nonspeaking, or have intellectual disabilities or mental illness. *Amici* thus have both deep expertise in the interpretation and application of the Americans with Disabilities Act’s guarantee of effective communication, and a justifiable concern that the majority’s decision<sup>1</sup> here may undermine that guarantee. *Amici* urge that the right to effective communication will be secured only through *en banc* review and adoption of Judge Lucero’s well-reasoned dissent.<sup>2</sup>

Descriptions of individual *Amici Curiae* are set forth in the Appendix.

All parties have consented to the filing of this brief.

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *Amici* state that they are private non-profit organizations, that they are not publicly held

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<sup>1</sup> *Cropp v. Larimer Cty., Colo.*, No. 18-1262, 2019 WL 5959598, at \*8 (10th Cir. Nov. 13, 2016).

<sup>2</sup> *Cropp v. Larimer Cty., Colo.*, 941 F.3d 1237, 1240 (10th Cir. 2019) (Lucero, J., concurring in part and dissenting in part).

corporations or other publicly held entities, and that they have no parent corporations. No publicly held corporation or other publicly held entity owns ten percent (10%) or more of any *Amicus* organization.

**STATEMENT PURSUANT TO FED. R. APP. P. 29(c)(5)**

No party, party's counsel, or other person authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief.

**INTRODUCTION**

Appellant Stanley Cropp, a retired pharmacist with Alzheimer's, spent a night in the Larimer County Jail because he was unable to understand the paperwork necessary to secure his release, and because Appellee Larimer County ("County") refused to modify its policies to permit effective communication about that paperwork. Throughout that night, Appellant Catherine Cropp, Mr. Cropp's wife of more than 40 years and his primary caregiver, repeatedly explained to the County both that Mr. Cropp would not be able to understand the documents, and that she could ensure that he understood them if she could have a direct, unobstructed meeting with him to explain them. The County knew that Mr. Cropp had Alzheimer's and that that condition impaired his ability to comprehend legal paperwork. Despite this knowledge, the County denied outright the requests for the

accommodation Mr. Cropp needed, without making an individualized inquiry or analysis of his communications needs.

The district court granted the County’s motion for summary judgment and a panel of this Court, in a 2-1 decision, affirmed on the grounds that there was no way the County could have known, under the “deliberate indifference” standard, that it was “substantially likely” that denying the Cropps’ request would result in a violation of the ADA.

This holding conflicts with the Supreme Court’s decision in *PGA Tour, Inc. v. Martin* that consideration of a policy modification requested under the ADA requires an “individualized inquiry.”<sup>3</sup>

It also conflicts with this Court’s decision in *Havens v. Colorado Department of Corrections* that, in considering the deliberate indifference standard, “[a] factfinder may conclude that [the defendant] knew of a substantial risk [of a violation of the ADA] from the very fact that the risk was ‘obvious.’”<sup>4</sup>

Finally, the majority’s holding imperils bedrock principles of effective communication crucial to *Amici*’s founders, staff, and clients: that communication between public entities and disabled individuals be “as effective as” that with

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<sup>3</sup> 532 U.S. 661, 688 (2001).

<sup>4</sup> 897 F.3d 1250, 1266–67 (10th Cir. 2018) (quoting *Farmer v. Brennan*, 511 U.S. 825, 842 (1994) and *Robertson v. Las Animas Cty. Sheriff’s Dep’t*, 500 F.3d 1185, 1197 (10th Cir. 2007)).

others, and that public entities give “primary consideration” to the requests of such individuals.<sup>5</sup>

## ARGUMENT

### **I. The Effective Communications Requirements of Title II of the ADA.**

Title II of the ADA prohibits disability discrimination by public entities such as the County.<sup>6</sup> Department of Justice implementing regulations, which have the force of law,<sup>7</sup> require the County to “make reasonable modifications in policies ... when ... necessary to avoid discrimination on the basis of disability.”<sup>8</sup> Specifically, the County was required to ensure that communications with Mr. Cropp were “as effective as” communications with nondisabled people, and to “furnish appropriate auxiliary aids and services where necessary to afford [him] ... an equal opportunity to participate in, and enjoy the benefits of” its services, programs, and activities.<sup>9</sup>

As Judge Lucero explained, in determining what types of auxiliary aids and services are necessary, “a public facility ‘shall give primary consideration to the requests of individuals with disabilities.’”<sup>10</sup> This provision required the County to “honor [Mr. Cropp’s] choice unless it [could] demonstrate that another effective

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<sup>5</sup> 28 C.F.R. § 35.160(a)(1), (b)(2).

<sup>6</sup> 42 U.S.C. §§ 12131 *et seq.*

<sup>7</sup> *Marcus v. Kansas Dep’t of Revenue*, 170 F.3d 1305, 1306 n.1 (10th Cir. 1999).

<sup>8</sup> 28 C.F.R. § 35.130(b)(7)(i).

<sup>9</sup> *Id.* §§ 35.160(a)(1), (b)(1).

<sup>10</sup> *Cropp*, 941 F.3d at 1240 (quoting 28 C.F.R. § 35.160(b)(2)).

means of communication exist[ed] or that use of the means chosen would” have constituted a fundamental alteration or undue burden.<sup>11</sup>

## **II. The Majority Opinion Conflicts with the Supreme Court’s Mandate To Conduct Individualized Inquiries of Requests to Modify Policies.**

Larimer County policy limits interaction between jail detainees and family members to a non-contact visitation booth, separated by a glass partition and requiring communication through a telephone. During the night that Mr. Cropp spent in jail, the County steadfastly adhered to that policy, refusing to consider the ample, repeated, and specific evidence provided by Mrs. Cropp – based on her experience with her husband’s condition and his communication needs – of the necessity for a reasonable modification of that policy to permit unobstructed communication.

This conflicts with the Supreme Court’s holding in *Martin* that, to comply with the reasonable modification requirement, “an individualized inquiry must be made to determine whether a specific modification for a particular person’s disability” would be reasonable and necessary.<sup>12</sup> The Court explained that “Congress intended that [the defendant] ... give individualized attention” to

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<sup>11</sup> “Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services Originally Published July 26, 1991,” 28 C.F.R. pt. 35, app. B at 665 (2018), *quoted in Cropp*, 941 F.3d at 1240.

<sup>12</sup> 532 U.S. at 688.

requests for modifications, and referred to “the ADA’s basic requirement that the need of a disabled person be evaluated on an individual basis.”<sup>13</sup> Although *Martin* arose under Title III of the ADA, which applies to private businesses,<sup>14</sup> Title II and Title III contain almost identical requirements for reasonable modifications.<sup>15</sup>

In the present case, the individualized-inquiry mandate must be considered in light of the requirement that the County give primary consideration to Mr. Cropp’s requests for effective communication, and the fact that the County bore the burden to show the effectiveness of any alternative. The record is clear that neither primary consideration nor individualized inquiry occurred. The deputy on duty the night Mr. Cropp spent in jail testified that she does not “ever make accommodations for disabilities such as Alzheimer’s,” and has never made an exception to the non-contact visitation policy.<sup>16</sup> When asked, “[y]ou don’t give any

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<sup>13</sup> *Id.* at 690, 691; *see also, e.g., Wright v. N.Y. State Dep’t of Corr.*, 831 F.3d 64, 77 (2d Cir. 2016) (quoting *Martin* and holding “Title II ... requires that once a disabled prisoner requests a non-frivolous accommodation, the accommodation should not be denied without an individualized inquiry into its reasonableness.”).

<sup>14</sup> 42 U.S.C. §§ 12181 *et seq.*

<sup>15</sup> *Compare* 28 C.F.R. § 35.130(b)(7)(i) (requiring “reasonable modifications in policies, practices, or procedures” where “necessary” to avoid disability discrimination) *with* 42 U.S.C. § 12182(b)(2)(A)(ii) (same); *see also Wright*, 831 F.3d at 77 (“Although *Martin* was decided [under] Title III ..., the individualized inquiry requirement is applicable to failure to accommodate actions under Title II ... as well.”).

<sup>16</sup> *Aplt. App.* 675, 697.



accommodations for a disability with respect to having a meeting unobstructed, correct?” she responded, “Correct.”<sup>17</sup>

This demonstrates conclusively – or at the very least raises a material issue of fact – that the County made no individualized inquiry concerning Mr. Cropp’s communications needs. The majority’s refusal to insist on such an individualized inquiry is in direct conflict with *Martin*.

**III. The Majority Opinion Conflicts with this Circuit’s Decision that Substantial Risk of a Violation of a Federally Protected Right May Be Inferred from the Fact that the Risk Was Obvious.**

The majority held in the County’s favor on the grounds that the Cropps could not show the intentional discrimination necessary to sustain a claim for compensatory damages under Title II.<sup>18</sup> “[I]ntentional discrimination can be inferred from a defendant’s deliberate indifference to the strong likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights.”<sup>19</sup> This standard requires the plaintiff to show (1) that the defendant knew that harm to a federally protected right was substantially likely; and (2) that the defendant failed to act on that likelihood.<sup>20</sup>

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<sup>17</sup> *Id.* 708.

<sup>18</sup> *Id.* at \*6.

<sup>19</sup> *Havens*, 897 F.3d at 1264 (internal citations omitted).

<sup>20</sup> *Id.*

Because the County did not dispute the second prong,<sup>21</sup> the majority focused on the first: whether the County knew that harm to Mr. Cropp’s rights under the ADA was substantially likely. It held that no jury could find that the County had sufficient knowledge of substantial risk.<sup>22</sup> This is contrary to the standard in this Circuit, set forth in *Havens*, that “[a] factfinder may conclude that a prison official knew of a substantial risk [of harm to federally-protected rights] from the very fact that the risk was ‘obvious.’”<sup>23</sup> The majority decision did not cite *Havens* much less acknowledge or apply this standard.<sup>24</sup>

In *Robertson*, on which the *Havens* court relied for the substantial risk standard, this Court reversed summary judgment for the defendant sheriff, holding that a jury could find that the plaintiff detainee’s need for effective communication was obvious based on his request to contact his attorney even though a phone was available to him in jail.<sup>25</sup> “Although Mr. Robertson never specifically stated that he could not use the phone in the pod to make a phone call, the totality of the circumstances present at least a fact question as to whether it was obvious” that he required an accommodation.<sup>26</sup>

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<sup>21</sup> See *Cropp*, 2019 WL 5959598, at \*8.

<sup>22</sup> *Id.* at \*10.

<sup>23</sup> *Havens*, 897 F.3d at 1266-67 (quoting *Farmer*, 511 U.S. at 842 and *Robertson*, 500 F.3d at 1197).

<sup>24</sup> See generally *Cropp*, 2019 WL 5959598.

<sup>25</sup> 500 F.3d at 1198.

<sup>26</sup> *Id.*

Here, no “totality of circumstances” is required to establish that the County was on notice that Mr. Cropp needed the modification: Mrs. Cropp requested it repeatedly throughout the night Mr. Cropp spent in jail, and Mr. Cropp made clear that he did not understand the papers he was expected to sign and wanted to talk with his wife. Indeed, the deputy in charge the night Mr. Cropp spent in jail testified that she knew that Mrs. Cropp wanted unobstructed visitation and yet denied that request.<sup>27</sup>

Q [Mrs. Cropp] told you she wanted to [meet directly with Mr. Cropp] because he has Alzheimer’s and he [m]ight not understand the papers that he’s been given, correct?

A Yes.

Q So you understood that was the reason she wanted to do it when you denied her request?

A Yes.<sup>28</sup>

The majority’s holding – in the face of this explicit evidence that the County knew of the risk to Mr. Cropp’s rights – that there was no way it could have known conflicts with *Havens*, not to mention the requirement that, on summary judgment, the court “view the evidence and draw reasonable inferences therefrom in the light most favorable to the nonmoving party.”<sup>29</sup> Indeed, as Judge Lucero observed,

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<sup>27</sup> Aplt. App. 708-09.

<sup>28</sup> *Id.* 709.

<sup>29</sup> *Talley v. Time, Inc.*, 923 F.3d 878, 893 (10th Cir. 2019).

based on the information the County had, “harm to Mr. Cropp’s ADA ... rights without accommodation was not just ‘substantially likely,’ it was virtually certain.”<sup>30</sup>

In harmony with *Martin*’s requirement of individualized inquiry, other circuits have held that the first prong of the deliberate indifference standard – knowledge of substantial risk – requires investigation. For example, in *Duvall v. County of Kitsap* – on which this Circuit has relied as the source for the deliberate indifference standard<sup>31</sup> – the Ninth Circuit held that a public entity, upon receiving a request for accommodation, “is required to undertake a fact-specific investigation. ... [and] consider the particular individual’s need when conducting its investigation into what accommodations are reasonable.”<sup>32</sup> That circuit has more recently held that “[a] denial of a request [for accommodation] without investigation is sufficient to survive summary judgment on the question of deliberate indifference,”<sup>33</sup> and specifically – in light of Title II’s “primary consideration” requirement – that “a reasonable jury could find that the County was deliberately indifferent and violated Title II ... when it did not conduct an

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<sup>30</sup> *Cropp*, 941 F.3d at 1243.

<sup>31</sup> *See, e.g., Havens*, 897 F.3d at 1264 and cases cited therein.

<sup>32</sup> 260 F.3d 1124, 1139 (9th Cir. 2001).

<sup>33</sup> *Updike v. Multnomah Cty*, 870 F.3d 939, 954 (9th Cir. 2017).

informed assessment of [the plaintiff's] accommodation needs [and] when it did not give primary deference to [his] requests.”<sup>34</sup>

**IV. The Majority Decision Raises Exceptionally Important Issues of Effective Communication with Government Entities.**

*Amici* include organizations of and for people who are deaf, blind and/or nonspeaking, and people with a wide range of other communications disabilities. The majority's decision undermines the requirements of Title II in two ways that threaten communications access for the staff, clients, and constituents of these organizations. First, Title II requires that public entities provide communication with disabled people that is “as effective as” communication with nondisabled people.<sup>35</sup> In contrast, the majority would require disabled people to show that communication offered by a public entity was “wholly ineffective.”<sup>36</sup>

Second, Title II requires that governmental entities give “primary consideration” to the requests of disabled people in determining the appropriate method of communication with them.<sup>37</sup> In contrast, the majority's decision improperly applied the standard under Title I of the ADA – applicable to employers and lacking the “primary consideration” requirement<sup>38</sup> – that “requires

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<sup>34</sup> *Id.* at 958.

<sup>35</sup> 28 C.F.R. § 35.160(a)(1).

<sup>36</sup> *Cropp*, 2019 WL 5959598, at \*10.

<sup>37</sup> 28 C.F.R. § 35.160(b)(2).

<sup>38</sup> *See generally* 42 U.S.C. §§ 12111 - 12117 and implementing regulations.

an employer to provide a ‘reasonable accommodation, not the accommodation [the disabled individual] would prefer.’”<sup>39</sup> This contradicts the plain language of the Title II regulations. The application of the wrong statutory standard provides independent grounds for *en banc* review.

These two holdings significantly imperil communications between public entities and people who are deaf, blind, nonspeaking, have a cognitive disability such as Alzheimer’s, or have any other communications disability. Lack of effective communication, in turn, can lead to far more dire consequences, for example – in the present case – a cold, terrifying, utterly avoidable night in jail; in others, jail suicide following a month without access to sign language interpreters,<sup>40</sup> or death at the hands of the police based on inability to communicate following a traffic stop.<sup>41</sup> As Judge Lucero noted, “[f]orcing inmates with disabilities to use existing services, when their disabilities make ‘meaningful access’ to those services impossible, is exactly the type of discrimination that the ADA ... [is] designed to prevent.”<sup>42</sup>

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<sup>39</sup> *Cropp*, 2019 WL 5959598, at \*5 (quoting *Selenke v. Med. Imaging of Colo.*, 248 F.3d 1249, 1263 (10th Cir. 2001)).

<sup>40</sup> *Ulibarri v. City & Cty. of Denver*, 742 F. Supp. 2d 1192, 1198-1202 (D. Colo. 2010).

<sup>41</sup> “Man fatally shot by trooper after chase in N. Charlotte,” <https://www.wcnc.com/article/news/crime/man-fatally-shot-by-trooper-after-chase-in-n-charlotte/275-301939728> (last visited Dec. 17, 2019).

<sup>42</sup> *Cropp*, 941 F.3d at 1242.

**CONCLUSION**

For the reasons set forth above and in Appellants' Petition for Rehearing *En Banc*, *Amici* respectfully request that this Court review the majority decision *en banc*, reverse, and remand for trial on the merits.

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*Counsel for Amici Curiae*

DATED: December 18, 2019

**Certificate of Compliance**

This brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(4) because it contains 2,568 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Local Rule 32.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman.

Dated: December 18, 2019

/s/ Amy F. Robertson

Amy F. Robertson

*Counsel for Amici Curiae*



**Certificate of Digital Submission**

I hereby certify that with respect to the foregoing:

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/s/ Amy F. Robertson

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**Certificate of Service**

I hereby certify that on December 18, 2019, I electronically filed the foregoing **UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING *EN BANC* and BRIEF OF AMICI CURIAE IN SUPPORT OF PETITION FOR REHEARING *EN BANC*** with the Clerk of the Court, which will send notification of such filing to the following, and placed one copy each of the motion and the brief in first-class mail, postage prepaid, to:

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Civil Rights Education and Enforcement Center

**Appendix: Statements of Interest of *Amici Curiae***

**The Civil Rights Education and Enforcement Center (“CREEC”)** is a national nonprofit membership organization whose mission is to defend human and civil rights secured by law, including laws prohibiting discrimination on the basis of disability. CREEC’s efforts to defend human and civil rights extend to all walks of life, including ensuring that people with disabilities have access to all programs, services, and benefits of public entities, especially programs as fundamental as those that support parenting and families, and the accommodations necessary to sustain them. CREEC lawyers have extensive experience in the enforcement of Title II of the Americans with Disabilities Act (“ADA”) and believe the arguments in this brief are essential to realize the full promise of that statute.

**The Arc of Denver, Inc., d/b/a AdvocacyDenver (“AdvocacyDenver”)**, is a § 501(c)(3), private, not-for-profit membership association dedicated to advocating with and empowering people with intellectual and developmental disabilities (“I/DD”) and their families to participate fully in community life. The organization was founded by a group of parents in 1954 as part of a national deinstitutionalization movement to support people with I/DD to live in their communities. The organization promotes social justice for people with I/DD and their families through the voluntary actions of committed citizens. Current issues addressed by the organization include community participation, family support,

and inclusion in both schools and communities. Advocates for AdvocacyDenver perform work on behalf of their clients with I/DD on matters involving their clients' encounters with the criminal and juvenile justice systems in Colorado. On September 15, 2009, the Arc of Denver changed its name to AdvocacyDenver.

**The American Civil Liberties Union (“ACLU”)** is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. With more than three million members, activists, and supporters, the ACLU fights in all 50 states, Puerto Rico, and Washington D.C. for the principle that every individual's rights must be protected equally under the law. The ACLU's Disability Rights Program envisions a society in which discrimination against people with disabilities no longer exists, and a society in which people with disabilities are no longer segregated into and warehoused in institutions such as nursing homes, jails, and prisons.

**The ACLU of Colorado** works to protect and defend the civil and constitutional rights of individuals in jails and under other forms of state supervision across the state of Colorado. As such, the ACLU of Colorado and its members have a strong interest in ensuring the protection of the rights of individuals with disabilities who are incarcerated in Colorado.

**The Arc of the United States (“The Arc”)** is the largest national community-based organization advocating for and serving persons with I/DD and their families. Founded in 1950, The Arc has over 650 state and local chapters. The Arc seeks to promote and protect the civil and human rights of people with I/DD and to actively support their full inclusion and participation in the community.

**The Autistic Self Advocacy Network (“ASAN”)** is a national, private, nonprofit organization, run by and for autistic individuals. ASAN provides public education and promotes public policies that benefit autistic individuals and others with developmental or other disabilities. ASAN’s advocacy activities include combating stigma, discrimination, and violence against autistic people and others with disabilities; promoting access to health care and long-term supports in integrated community settings; and educating the public about the access needs of autistic people. ASAN takes a strong interest in cases that affect the rights of autistic individuals and others with disabilities to participate fully in community life and enjoy the same rights as others without disabilities.

**Brooklyn Law School’s Disability and Civil Rights Clinic (“Disability and Civil Rights Clinic”)** represents low-income New Yorkers with I/DD and their families in a variety of civil legal matters, including public benefits, special education, parental rights, alternatives to guardianship, and discrimination in access to programs and services, through direct legal services, public policy reform

and community education. As part of this mission, the Disability and Civil Rights Clinic advocates for adults with I/DD in correctional facilities to ensure that their rights, including the right to effective communication under the ADA, are protected and enforced.

**The Center for Public Representation (“CPR”)** is a public interest law firm that has assisted people with disabilities for more than 40 years. CPR uses legal strategies, systemic reform initiatives, and policy advocacy to enforce civil rights, expand opportunities for inclusion and full community participation, and empower people with disabilities to exercise choice in all aspects of their lives. CPR is both a statewide and a national legal backup center that provides assistance and support to public and private attorneys representing people with disabilities in Massachusetts and to the federally funded protection and advocacy programs in each of the States. CPR has litigated systemic cases on behalf of persons with disabilities in more than 20 states and submitted *amicus* briefs to the United States Supreme Court and many courts of appeals in order to enforce the constitutional and statutory rights of persons with disabilities, including the right to be free from discrimination under the ADA.

**The Colorado Cross-Disability Coalition (“CCDC”)** is a Section 501(c)(3) non-profit organization dedicated to promoting social justice and combining individual and systemic advocacy as effective agents for change that

can benefit people with all types of disabilities. CCDC – primarily led and staffed by people with disabilities – has developed a strong reputation for empowering people with the most significant disabilities to advocate for themselves and for others in difficult situations. CCDC promotes self-reliance and full participation by people with disabilities and their friends and family members through organizing, advocacy, education, legal initiatives, litigation training and consulting, policy development, and legislation. CCDC is viewed as a national model of how a disability rights organization – linking the talents and dedication of people with all types of disabilities and their non-disabled families, friends, and allies – can keep true to its grassroots mission while gaining expertise and increasing the power of people with disabilities to participate effectively in the larger community. The CCDC Civil Rights Legal Program has been very active in enforcing the requirement of effective communication for people with disabilities in general and with respect to interactions between individuals with disabilities and law enforcement agencies in particular. CCDC thus has a particularized interest in seeing that the standards for intentional discrimination (which includes a demonstration of the deliberate indifference to the federally protected rights of individuals with disabilities) be clarified in accordance with the expressed intent of Congress to ensure the provision of broad and sweeping mandates for the elimination of discrimination against people with disabilities.

**CommunicationFIRST** is the only national, nonprofit, 501(c)(3) organization dedicated to protecting and advancing the civil rights of the more than five million people of all ages in the United States who, due to disability or other condition, are unable to rely on speech alone to communicate. Run by and for people with expressive communication disabilities, CommunicationFIRST advances its mission by educating and engaging the public, advocating for policy and practice reform, and engaging the justice system to ensure access to effective communication, to end prejudice and discrimination, and to promote equity, justice, inclusion, and opportunity for our historically marginalized community.

**The Center for Legal Advocacy, d/b/a Disability Law Colorado (“DLC”)**, is a Colorado nonprofit corporation established to protect and promote the legal and human rights of people with disabilities. DLC serves as the federally mandated and state designated Protection and Advocacy System (“P&A”) for individuals with all types of disabilities throughout the state, including individuals with Alzheimer’s Disease and other communication disabilities. Pursuant to our authorizing statutes, we investigate facilities serving individuals with disabilities when there is probable cause to believe that such individuals have experienced abuse, neglect, or rights violations. *See* Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI Act”), 42 U.S.C. § 10801 *et seq.*; Developmental Disabilities Assistance Bill of Rights Act (“DD Act”), 42 U.S.C. § 15001 *et seq.*;



and Protection and Advocacy of Individual Rights Program (“PAIR”), 29 U.S.C. § 794e *et seq.*; and all accompanying regulations. DLC is also authorized to monitor facilities, provide education and training regarding the rights of individuals with disabilities, and litigate issues when one or more individuals are experiencing rights violations based on their disability.

**Disability Rights Advocates (“DRA”)** is a non-profit, public interest law firm that specializes in high impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, employment, transportation, education, and housing. DRA’s clients, staff and board of directors include people with various types of disabilities. With offices in New York City and Berkeley, California, DRA strives to protect the civil rights of people with all types of disabilities nationwide.

**Disability Rights Education & Defense Fund (“DREDF”)**, based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil rights of people with disabilities. Founded in 1979, DREDF remains board- and staff-led by people with disabilities and parents of children with disabilities. DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal and California disability civil rights laws. DREDF is

among the party counsel for the plaintiff class in the ongoing litigation case currently styled *Armstrong v. Newsom*, 94-CV-02307-CW (N.D. Cal), representing a class of California inmates with disabilities.

**Equip for Equality (“EFE”)**, founded in 1985, is an independent, non-profit organization that administers the federally-mandated protection and advocacy system in Illinois. EFE’s mission is to advance the human and civil rights of people with disabilities in Illinois. One of EFE’s area of focus is to advocate that people with disabilities are not discriminated against when interfacing with the criminal justice system, including with respect to effective communication under Title II of the ADA. For instance, EFE is class counsel in *Holmes v. Baldwin*, 1:11-cv-02961 (N.D. Ill.), a class action lawsuit brought to ensure that prisoners who are deaf and hard of hearing are provided with effective communication while incarcerated. EFE was also counsel in *Communities United v. City of Chicago*, 1:17-cv-07151 (N.D. Ill.), systemic litigation that, among other things, sought to address the failure of the Chicago Police Department to comply with the effective communication requirements of Title II of the ADA when interacting with people with disabilities. Because of EFE’s expertise in working with people with disabilities who interface with the criminal justice system, it has critical information and an important perspective to provide to this Court.

### **Helping Educate to Advance the Rights of Deaf Communities**

**(“HEARD”)** is a national, volunteer-dependent nonprofit organization that supports deaf/disabled people at every stage of the criminal legal process, up to and including arrest and during and after incarceration. HEARD created and maintains the only national database of police violence and discrimination against deaf/disabled people and the only national database of deaf/disabled imprisoned people. HEARD has worked on dozens of wrongful arrest and conviction cases involving this same group. Our exhaustive and unprecedented research on the intersections of ableism, racism, classism, and mass incarceration informs our advocacy and helps expose and address injustices within and throughout the criminal legal system that have gone unreported, unaddressed, and unexamined for generations. HEARD is run by deaf/disabled people and has a deep interest in cases involving deaf/disabled people navigating the criminal legal system.

**The National Association of the Deaf (“NAD”)**, founded in 1880, is the oldest national civil rights organization in the United States, and is the nation's premier organization of, by and for deaf and hard of hearing individuals. The mission of the NAD is to preserve, protect, and promote the civil, human and linguistic rights of 48 million deaf and hard of hearing individuals in the country. The NAD endeavors to achieve true equality for its constituents through systemic changes in all aspects of society including but not limited to education,

employment, and ensuring equal and full access to programs and services. The NAD is especially concerned with any failure of communication access with respect to law enforcement given the high risk involved in any interaction with officers. Serving all parts of the USA, the NAD is based in Silver Spring, MD.

**The National Disability Rights Network (“NDRN”)** is the non-profit membership organization for the federally mandated P&A and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

**National Federation of the Blind (“NFB”)** is the largest and most influential membership organization of blind people in the United States. With tens of thousands of members, and affiliates in all fifty states, the District of Columbia, and Puerto Rico, the ultimate purpose of the NFB is the complete integration of the

blind into society on an equal basis. Since its founding in 1940, the NFB has devoted significant resources toward advocacy, education, research, and development of programs to ensure that blind individuals enjoy the same opportunities enjoyed by others.